



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: DA/00792/2013

**THE IMMIGRATION ACTS**

**No hearing**

**On 24<sup>th</sup> July 2013**

**Determination  
Promulgated**

**On 29<sup>th</sup> July 2013**

**Before**

**Mr C M G Ockelton, Vice President**

**Between**

**FRANCIS OSAIGBOVO GIWA-OSAGIE**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REMITTAL**

1. The appellant, a national of Nigeria, appealed to the First-tier Tribunal against the decision of the respondent on 16 April 2013 making a deportation order against him under the provisions of s.32 of the UK Borders Act 2007. A panel of the First-tier Tribunal, Judge Britton and Doctor Okitikpi, dismissed his appeal, in a determination sent out on 3 June 2013. The appellant has permission to appeal to this Tribunal against that decision.
2. The appellant was in detention at all material times and remains in detention. About a week before the date fixed for the hearing in the First-tier Tribunal, there was an application for an adjournment, on the basis that the appellant's solicitors had not been able to prepare adequately. The application was refused on the grounds that there had been sufficient time. A member of the firm appeared before the First-tier Tribunal at the hearing and renewed the application. When it was refused, on the additional ground that the representative had apparently failed to take the opportunity of having a number of hours with appellant on the very day of

the hearing, the representative withdrew, leaving the Tribunal to hear the appeal without his assistance. The appellant gave oral evidence, which is noted in the determination.

3. The reasons given for the grant of permission to appeal to this Tribunal are that it is arguable that the First-tier Tribunal erred in its decision to refuse an adjournment and to proceed in the absence of the representative. In a response to the grant of permission, the Secretary of State indicates that she “does not oppose the appellant’s application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing”.
4. It is not entirely easy to see what the Secretary of State means. As permission had been granted, no useful purpose would have been served by her opposing the application for permission; and the phrase “a fresh oral (continuance) hearing” means nothing to me. But it does appear that the parties are in agreement. In the circumstances no useful purpose would be served by holding a hearing.
5. The position is that, as the parties agreed, the hearing conducted by the First-tier Tribunal is one which, in the circumstances ought not to have taken place. The appellant had thought until the moment that the hearing started that he would be represented. To require him to proceed immediately and to deal with the matter himself created an impression of unfairness. No doubt the Tribunal intended to create no such impression, and made the decision that it thought was best on the day: it seems to me, as it apparently seems to the Secretary of State, in both cases with the benefit of hindsight, however, that they just stepped over the margin of what was permissible.
6. I note that the appellant’s previous representative appears to have acknowledged before the First-tier Tribunal that the lack of any preparation in the period between the notice of appeal and the date of the hearing was a matter for which he and his firm were responsible. The Tribunal will take that matter up with the appropriate authorities when the appellant’s appeal is no longer pending. For the present, the appropriate decision is that which follows, taking into account that the proceedings before the First-tier Tribunal may be regarded as having been unfair. I emphasise that although the First-tier Tribunal’s decision is set aside, the evidence given before that Tribunal remains evidence in the case and may be relied upon by either party in subsequent hearings.
7. The decision of the First-tier Tribunal was affected by error of law. I set it aside. I remit the appellant’s appeal to the First-tier Tribunal for consideration by a differently-constituted panel.

TRIBUNAL

C M G OCKELTON  
VICE PRESIDENT OF THE UPPER  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 24 July 2013