



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal no: IA 16041-12

**THE IMMIGRATION ACTS**

At **Field House**  
on **29.10.2013**

Decision signed: **29.10.2013**  
sent out: **20.11.2013**

Before:

Upper Tribunal Judge  
**John FREEMAN**

Between:

**Kenneth Kayode Kehinde EKE**

appellant

and

**Secretary of State for the Home Department**

respondent

Representation:

For the appellant: *Samina Iqbal* (counsel instructed by Sam)  
For the respondent: Mr J Parkinson

**DETERMINATION AND REASONS**

This is an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge John Cooper and a lay member), sitting at Kingston Crown Court on 3 July 2013, to allow a deportation appeal by a citizen of Nigeria, born 18 August 1990. There are a number of grounds, but the first is about the panel's failure to apply the 'new Rules' on such cases, in force from 9 July 2012.

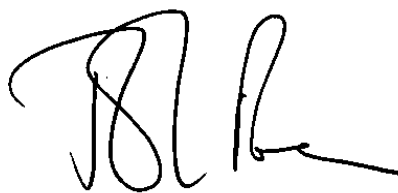
2. As both sides agree, this was a clear error of law, particularly in the light of *MF (Nigeria)* [2013] EWCA Civ 1192, which has since become available. It will require the decision to be re-made, and the only issue is about the form of the hearing that will need. Mr Parkinson, having at first been inclined to insist on pursuing his challenges to the panel's findings of fact, argued that I could re-decide the case for myself on the evidence as set out

in their decision, and the principles laid down in *MF (Nigeria)*. Miss Iqbal pointed to the steps which were under way to get up-to-date evidence about the appellant's condition from the consultant psychiatrist who has been treating him for some time in hospital, and asked for a full fresh hearing.

3. If the further evidence awaited had been from a purely forensic psychiatrist, in the sense of one engaged for the purpose, then I should have taken the view that it ought to have been made available for today, and gone on to decide the case myself on what was before me. However, since this appellant is actually under treatment in hospital, first those representing him are to an extent in the hands of those representing him there; and, second the situation itself amounts to some confirmation that he has an ongoing condition considered to require treatment at present.
4. So I shall direct a full fresh hearing: since fresh evidence is to be taken in any case, and it will not come before the original panel, all findings of fact will be open. This will inevitably be a time-consuming exercise, for which a full day will be required, and I have decided that it should take place before a different panel of the First-tier Tribunal. They will have to decide whether the extent to which any continuing psychiatric needs of the appellant could be met in Nigeria would amount to the 'very compelling reasons' (see *MF (Nigeria)* paragraph 43) required to outweigh the public interest in his deportation. It is hard at present to see anything else in this case which could amount to reasons of that kind, though that too would be for the panel to decide in due course.
5. The date for the fresh hearing will be set by the First-tier Tribunal at Hatton Cross, since as the appellant is detained in hospital a secure court will be required. Immediate steps should be pursued to ensure the provision of an up-to-date report from his current psychiatrist. When a hearing date is received, any difficulties it may give over that requirement should lead to an immediate application to the resident judge. While any further orders will be for the First-tier Tribunal, it would not be wise for those representing the appellant to put their hopes in any application for adjournment at a later stage.

**Home Office appeal allowed**

**Fresh hearing in First-tier Tribunal, not before Judge Cooper or Mr A Richardson JP**

A handwritten signature in black ink, appearing to be 'JLR', written in a cursive style.

(a judge of the Upper Tribunal)