



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

Appeal Number: IA/29972/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 7 June 2014**

**Determination**

**Promulgated**

**On 3 July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**MR OLAKUNLE KAYODE ARAGBAIYE**

**and**

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

Appellant

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr Lawrence Tarlow, Home Office Presenting Officer

**DETERMINATION AND REASONS FOR FINDING A MATERIAL ERROR/NO  
MATERIAL ERROR OF LAW**

**Introduction**

1. The appellant is a Nigerian national and was born on 10 October 1981. On 28 February 2012 he applied for leave to remain in the UK having come here in September 2009 on a visa conferring a leave to enter until 29 February 2012. The respondent refused his application and made directions for his removal under Section 47 of the Immigration, Asylum

and Nationality Act 2006. On 15 July 2013, fifteen days after that decision, the appellant gave notice of appeal . That appeal was heard by Judge of the First-tier Tribunal Samimi (the Immigration Judge).

### **Proceedings before the Upper Tribunal**

2. Following the promulgation of the Immigration Judge's decision, the appellant gave notice of appeal to the Upper Tribunal on 17 March 2014. Although his application was out of time Designated First-tier Tribunal Judge Zucker decided to give permission to appeal on the grounds that there may have been procedural unfairness in the Immigration Judge proceeding to determine the appeal in the appellant's absence. The reason for this is that the appellant was "mentally incapable" at the date of the hearing and being unrepresented at that hearing may have suffered an injustice. He wished to put his case forward at the Upper Tribunal. Judge Zucker considered that although the Immigration Judge could not be criticised for circumstances about which she was unaware the grounds were nevertheless arguable.
3. According to the Tribunal file, the appellant is now represented by Danbar Solicitors. That firm submitted grounds of appeal on 17 March 2014. There is attached to the grounds a letter from a cognitive behavioural therapist, Natoy Burnett, stating that the appellant had been referred to her service. She assessed the appellant to be suffering from "anxiety and worry". She would be contacting Dr Abiola, I assume the appellant's doctor, for a "more detailed assessment". The appellant and his solicitors were informed that permission to appeal had been granted by a notice dated 1 May 2014 and on 7 May 2014 a notice of hearing was sent to both the appellant and his solicitors informing them that the hearing was to be on Monday 9 June 2014 at 2pm. The notice stated that the Upper Tribunal would not consider evidence that was not before the First-tier Tribunal unless the Upper Tribunal has specifically decided to permit that evidence and that if a party or his representative did not attend the hearing the Tribunal may determine the appeal in the absence of that party. On 4 June 2014 the appellant's solicitors sent a fax to the Tribunal informing it that it was no longer acting for him.
4. Neither the appellant nor a legal representative attended the hearing. Having regard to the provisions of Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. With the approval of the respondent, I decided to proceed with the hearing in the absence of the appellant. I reserved my decision as to whether or not there was a material error of law in the decision of the First-tier Tribunal.

### **Discussion**

5. The grounds of appeal dated 20 February 2014 state that the appellant had been "experiencing health problems" which impacted on his "mental capacity". However, the only document that I have been supplied with is

the letter from Ms Burnett and medical notes which do not in themselves give a diagnosis or prognosis of his condition. The appellant is described as being “unemployed”. He apparently does not take “psychotropic medication”. Page 2 of that document describes the appellant as suffering from depression and “constant migraines”. He is also said to suffer from a low mood or anxiety. Although he had come to the UK on a student visa to study business studies he never started that course. The appellant was not said to be at risk of self-harm and it seems that his guardian, the Reverend Isaac, that the appellant “did not take ‘no’ for an answer”. The document was dated 5 September 2013. It seems further contact with the medical services took place on 20 September 2013. The therapist then Susan Keal describes the appellant as not having attended on that date. A further attempt at engagement on 25 November 2013 was put off due to the need for the appellant to re-book the appointment. This occurred on 26 November when again the appellant did not attend. On 29 November he again did not make any contact. On 29 November 2013 a further attempt at contact was unsuccessful. On 2 December 2013 the appellant was advised to telephone for an appointment. On 9 January 2014 the appellant was assessed by Ms Burnett who recorded the appellant’s “worries”. Further contact on 14 January 2014 was with a Natasha Alexander, to whom the appellant described his worries about finance and his career. On 22 January 2014 he was again seen by Ms Burnett but nothing of note seems to have transpired. A subsequent entry on 7 February 2014 simply fixed an appointment for 19 February when the appellant was one hour late and could not be seen due to that. A subsequent appointment was fixed for 19 February 2014 when again contact could not be made. On 26 February 2014 the appellant appears to have hung up when he was telephoned by a member of NHS staff but on 3 March 2014 he was given another appointment. However, I have not been supplied with the details of that.

6. In addition to the appellant’s poor record of attendance at medical appointments, the appellant has failed to attend the hearing of his appeal to the First-tier Tribunal or the Upper Tribunal. He has not given any explanation for his non-attendance at those hearings. There is no clear diagnosis of any form of mental illness that would help to explain his behaviour, either before this or the First-tier Tribunal. In the absence of any explanation for the appellant’s failure to attend before the First-tier Tribunal for the hearing of his appeal, the Immigration Judge was right to proceed with the hearing on 5 February in his absence having regard to Rule 19 of the Asylum and Immigration Tribunal (Procedure) Rules 2005. Rule 19(1) (a) requires the Tribunal to be satisfied that the appellant or his representative had been given notice of the date, time and place of the hearing. In the absence of any explanation for the appellant’s absence, I am satisfied that the requirements of the Rules were met. No reason for finding any error in the decision of the First-tier Tribunal has been placed before me.

7. No additional or alternative basis has been put forward for the appellant to remain in the UK. According to the medical records above the appellant has not been studying in the UK and therefore the statement in paragraph 2 of the grounds drafted by his solicitors to the effect that he is “very keen to complete his studies in the UK” is plainly wrong. Such a statement should not have been made.
8. Having been given an opportunity to attend the Upper Tribunal and explain his case, the appellant has failed to take that opportunity and no basis upon which I find any material error in the decision of the First-tier Tribunal has been put forward. Additionally there is no substance to the complaint that the respondent’s decision may contravene his rights under the 1951 Convention Relating to the Status of Refugees or any other international convention.

### **Decision**

9. Having carefully reviewed the decision of the First-tier Tribunal and the background leading up to that hearing I have concluded that the appellant has failed to establish any material error of law and the decision of the First-tier Tribunal to dismiss his appeal therefore stands. The appellant did not apply for any fee and no fee order or anonymity orders were made.  
Accordingly all the findings of the First-tier Tribunal stand.

Signed

Date

Deputy Upper Tribunal Judge Hanbury