



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/12911/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27 February 2015**

**Decision & Reasons
Promulgated
On 03 March 2015**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

**KELVI CHINEDU EMESIOBI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by or behalf of the appellant
For the Respondent: Ms A Everett, HOPO

DECISION ON ERROR OF LAW

1. The appellant has been granted permission to appeal the determination of First-tier Tribunal Judge Handley dismissing his appeal against the refusal of the respondent on 24 January 2014 to refuse his application for a Residence Card as confirmation of a right to reside in the United Kingdom.

2. Permission was granted on the basis that unusual circumstances arose in relation to the venue and the consequences of attendance at the incorrect venue. At paragraph 21 of the determination the judge stated that it was found significant that the EEA sponsor did not attend the hearing. Even in the absence of this an arguable error of law arises since at paragraph 22 the judge did not accept that the decision breached Article 8 without giving any reasons. Section 55 was not considered.

3. At today's hearing there was no appearance by or on behalf of the appellant. Graceland, Solicitors sent a fax to the court dated 26 February 2015 requesting that the hearing be adjourned because the appellant was ill. If I was not prepared to adjourn the hearing, they requested that permission be granted and the appeal listed on a later date. Attached to the fax was a prescription issued by a doctor on 24 February for 28 Naproxen tablets. The appellant submitted a self certified medical report (Statutory Sick (SSP)) stating that he had "muscular bruises on the body". He said the sickness began on 23 February 2015 and the end date for the sickness was 30 February 2015". As we all know February this year has 28 days. For this reason and the lack of explanation as to what precisely "muscular bruises" are, I do not find the medical report satisfactory.

4. I was tempted to determine the appeal because the medical evidence was not a satisfactory explanation for his failure to attend coupled with the fact that there was no appearance by his sponsor either.

5. However, for the reasons given by First-tier Judge P J M Hollingworth for granting permission, I find that the appeal would have to be reheard. I take on board the point made in the respondent's response under Rule 24 that the judge was not obliged to consider Article 8 and section 55 within Article 8 because there was no removal decision.

6. The appeal is remitted to Hatton Cross for rehearing by a First-tier Judge other than FtTJ Handley. The Notice of Hearing will have to be specific as to the hearing centre where the appeal will be heard.

Signed

Date

Judge Eshun

Judge of the Upper Tribunal