



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

Appeal Number: IA/00062/2016

THE IMMIGRATION ACTS

**Heard at UT (IAC) Hearing in Field Decision & Reasons
House Promulgated
On 17th January 2018 On 07th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**MR EMMERSON JALVIN KACHIBEKETE
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Malawi. He was given entry clearance as a working holidaymaker on 19th January 2008 with a valid visa until 7th January 2010. Further leave was granted. He applied for leave to remain outside the Immigration Rules and when that application was refused by the Secretary of State his subsequent appeal was heard before First-tier Tribunal Judge Turquet who in a decision promulgated on 26th April 2017 dismissed the appeal in respect of the Immigration Rules and on human rights grounds.

2. The Appellant did not appear for his hearing. The judge noted that and proceeded to deal with the case in his absence. The judge had considered the overriding objective of the Rules and were satisfied that the case could be heard fairly and justly in the absence of the Appellant.
3. The Appellant then sought permission to appeal against the decision of Judge Turquet and stated in the grounds that having received a document bundle printed "false" dated 6th April 2017 neither he nor his representatives were aware that the actual date was 5th April 2017.
4. In short the Appellant's case is that he has been a victim of procedural unfairness. Permission to appeal was granted on this basis.
5. Before me the Appellant explained that he had gone to his Tribunal hearing on 6th April (the date following the date when he should have been to the hearing) because that was the date the solicitors told him to attend. I observed that the Notice of Hearing was sent to the Appellant on 9th March 2017 at a different address - the Appellant said he had not been living at that address for some time and had been residing at his present address since 2016. Helpfully Ms Everrett produced a bundle relating to the Appellant's documents which gives the date of the hearing as 5th April 2017 but as she pointed out it seems that the 5th has been written on top of the 6th April indicating that the Appellant may well be correct when he said that he did attend on 6th April because that was the date he thought was applicable. In a letter on file dated 13th April 2017 and received at Hatton Cross on 21st April 2017 the Appellant refers to "an error from solicitors".
6. In all the circumstances (and while the matter may not be free from doubt) I am prepared to accept that the Appellant did his best to attend the hearing but because of his understanding that the date of the hearing was 6th April he duly attended on that date consistent with the fact that he did not attend the hearing before Judge Turquet.
7. Plainly no fault attaches to Judge Turquet in the absence of any explanation from the Appellant or his representatives on the due date but it seems on balance that the Appellant attempted to attend the hearing and can properly say that he has been a victim of procedural unfairness.
8. It therefore seems to me that the decision is not safe and must be set aside. I have concluded that because further fact-finding is necessary the matter should be remitted to the First-tier Tribunal.
9. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is that it is appropriate to remit the case to the First-tier Tribunal. To avoid further difficulty I would only add that the Appellant's address appears to be [] Craven Street, St Marys in Southampton and not St Marks - the latter word

having been being used to advise him of the date of the hearing before me.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the appeal to the First-tier Tribunal.

No anonymity order is required.

Signed *JG Macdonald*

Dated 5th February 2018

Deputy Upper Tribunal Judge J G Macdonald