



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

Appeal Number: PA/05682/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 February 2019**

**Decision & Reasons Promulgated
On 25 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**ALISON [J]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr S Kotas of the Specialist Appeals Team

DECISION AND REASONS

1. The Appellant is a Grenadian born on 8 September 1975. On arrival in the United Kingdom on 15 November 2016 he was refused leave to enter as a visitor and then claimed to be entitled to subsidiary protection. On 1 June 2017 the Respondent refused his application.
2. The Appellant appealed under s.82 Nationality, Immigration and Asylum Act 2002 as amended. The Appellant did not attend the hearing or give any explanation for his failure so to do. Judge of the First-tier Tribunal GJ Ferguson was satisfied that notice of the time, date and place set for the hearing had been validly served in accordance with the requirements of

the Procedure Rules and by a decision promulgated on 02 August 2018 he dismissed the appeal.

3. On 07 September 2018 the Appellant's application for permission to appeal was refused by a Judge of the First-tier Tribunal. The Appellant renewed his application to the Upper Tribunal and on 22 January 2019 Upper Tribunal Judge Grubb extended time for lodging the application and granted permission to appeal on that basis that at the material time the Appellant had been investigated for TB and advised to practice "home isolation".
4. On 05 February 2019 the Respondent lodged a response to the grounds of appeal under Procedure Rules 24. The response did not seek to oppose the Appellant's appeal, noting the reasons given for the Appellant's failure to attend the hearing.
5. The Appellant attended the hearing on 21 February. Mr Kotas referred to the Respondent's Rule 24 response. I find that through no fault of the Judge, he was unaware that the Appellant was under medical instruction to remain at home. In proceeding with the hearing in the involuntary absence of the Appellant the Appellant has not had a fair hearing because he did not have the opportunity to present his case. Consequently, the Judge's decision is fatally flawed and must be set aside.
6. With this in mind and having regard to s.12(2) Tribunal's Courts and Enforcement Act 2007 and Practice Statement 7.2.b, I consider it appropriate for the appeal to be heard afresh with no findings preserved in the First-tier Tribunal by a judge other than Judge GJ Ferguson.

Anonymity

7. There was no request for an anonymity direction and having considered the appeal I find none is warranted.

SUMMARY OF DECISION

The decision of the First-tier Tribunal contains an error of law and is set aside.

The appeal is remitted to the First-tier Tribunal for hearing afresh.

Anonymity direction not made.

Signed/Official Crest

Date 21. iii. 2019

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal