



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
IA/07329/2014

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3<sup>rd</sup> November 2014**

**Decision Promulgated  
On 9<sup>th</sup> December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**Mr Andrew Nicol  
(Anonymity Direction Not Made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Nicol in person.

For the Respondent: Mr S Kandola Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of South Africa and was born on 5<sup>th</sup> February 1989. He applied for leave to remain which was refused by the respondent on 21<sup>st</sup> January 2014. A further decision to remove the respondent was made further to Section 47 of the Immigration Asylum and Nationality Act 2006. His

appeal was considered further to Appendix FM (family life) and Paragraph 276 ADE (private life) by First Tier Tribunal Judge Boyd on 29<sup>th</sup> May 2014 and dismissed on 13<sup>th</sup> June 2014.

2. The judge recorded [5] that the appellant failed to attend the hearing and that

*'He [the appellant], later in the morning, did on contact state he would not be attending, stating that both he and his representative were suffering from flu. He did not ask for an adjournment. I considered Rules 19 of the Procedure Rules. I was not satisfied that a good reason for his non-attendance had been given. The appellant failed to contact the Tribunal until the Tribunal contacted him and there was no evidence to support his claim that he was unable to attend'.*

3. An application for permission to appeal by the respondent was granted by First Tier Tribunal Judge Hollingworth on the basis that it was arguable that no medical certificate could have been obtained in the time available.
4. At the hearing before me the appellant did attend and he explained first that he was not aware that the hearing had proceeded on the day until he received the judge's determination and secondly his sister had in fact contacted the Tribunal in the morning to advise that he was ill and had requested an adjournment. He advised that there had been a change of address for him in March but this had not been adopted by the Tribunal.
5. I find that there is reference to this change of address in an email sent by the appellant to the Tribunal albeit after the event in June 2014. Nonetheless he must have been aware of the date of the hearing because his sister, according to the appellant telephoned the Tribunal. However, at the hearing before me, the appellant produced an email from his sister, Melissa Nicol, confirming that she called the Tribunal in the early hours of the morning on the day of the hearing to inform the judge of 'our illness and to ask for a rehearing'. I accept this. It does not appear that this was relayed to the judge.
6. No alternative address had been recorded by the Tribunal and I note that the appellant also confirmed that a bundle had been sent to the First Tier Tribunal for the hearing but no bundle relating to the appellant was on file. This advised of a change of address but none was made. I accept therefore, as both the file and the change of address were absent, that there may have been further evidence which was relevant to the appeal not before the First Tier Tribunal Judge.

7. As Mr Kandola pointed out at the hearing the appellant has now been in the United Kingdom lawfully for ten years (he entered the UK on 29<sup>th</sup> October 2004) and it would be important for the appellant to obtain professional legal advice.
8. I find that there is an error of law in the determination of the First Tier Tribunal judge for the reasons explained above and I set aside that determination.
9. The matter, however, in view of the nature and extent of the findings to be made, should be returned to the First Tier Tribunal for a hearing de novo with a direction that **ALL evidence** to be relied on by the appellant is to be provided to both the Tribunal and the respondent in a paginated and indexed bundle at least 14 days prior to the rehearing listed for 22<sup>nd</sup> April 2015.

Signed

Date 3<sup>rd</sup> November 2014

Deputy Upper Tribunal Judge Rimington