



IAC-FH-AR-V2

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

Appeal Number: IA/16310/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 20 August 2015
Prepared 20 August 2015**

**Decision & Reasons Promulgated
On 30 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR EARL CHAPEL MILLER
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Presenting Officer
For the Respondent: No appearance or representation

DECISION AND REASONS

1. In the decision the Appellant is referred to as the Secretary of State. The Respondent is referred to as the Claimant. Appellant, a national of Jamaica, appealed against the Respondent's decision dated 3 April 2014 to refuse leave to enter for the purposes of a visa visit.
2. The basis of refusal was in the alternative in that either the claimant, Mr Miller, had made false representations concerning the intended visit, and its length in particular,

or that the Appellant had failed to show that he had made proper provision in terms of his family and in relation to his employment so as to give rise to the concern that he did not intend to leave at the conclusion of the visit and had misrepresented his domestic circumstances to obtain entry clearance.

3. His appeal came before First-tier Tribunal Judge Obhi, the Judge, whose decision [D], on 3 September 2014, only addressed the first issue, namely whether the Appellant had misrepresented to the ECO, or alternatively to the Immigration Officer, his intentions. The judge accepted that the Appellant had been naïve and in all the circumstances which he addressed had not sought to use deception or intend to deceive as to the length of his visit.
4. However, what the judge did not do in considering the matter was take into account that the entry clearance application had been made on the basis of it being a four week visit. Therefore the assessment of his financial needs whilst in the United Kingdom were plainly likely to be materially different if the Appellant was visiting for ten weeks let alone intending to stay for six months. The judge did not take such factors into consideration.
5. Further, in assessing that issue the judge did not take into account the fact that the Appellant had obtained a four week holiday with the consent of his employer and/or been given ten weeks holiday. But the Appellant certainly had not obtained any consent from the employer either to preserve his job or to make financial provision for his wife and family by leaving for a period of six months.
6. I find the judge's failure to address those issues render the judge's conclusion unsafe and amounted to a material error of law. Further, the judge did not deal with the issue in the alternative of the refusal by reference to the length of stay for six months and its potential impact in terms of a change in circumstances since the original visa was issued. Therefore it is plain, as the initial decision made clear, that the matter fell to be considered under paragraph 321(i) and (ii) of the Immigration Rules. The Judge's failure to do so was similarly an error of law.
7. Accordingly I was satisfied that the judge's omissions meant the Original Tribunal's decision cannot stand and the matter would have to be remade. I was satisfied that it was appropriate, applying the Presidential Guidance that the matter should be dealt with in the Upper Tribunal.
8. With the grant of permission directions were given but no further representations have been received by or on behalf of the Appellant, nor did the Sponsor attend or make any representations concerning the matter. In the circumstances I have considered whether or not it is appropriate to proceed in the absence of the Appellant.
9. I am satisfied the Appellant had voluntarily absented himself from the process, has not provided any information to support his case. He previously had made representations through solicitors. They ceased to act and notified the Tribunal on 22 July 2015, after receipt of the notice of hearing for today's hearing, that they no

longer acted. They confirmed the Appellant's address as recorded on the case file; being that of the UK Sponsor. I am satisfied that by first-class post proper and reasonable notice of the hearing had been served on the Appellant and Sponsor. In the absence of further information or response I find that the Appellant has either through removal or departure no longer taken any interest in the outcome of the appeal. In those circumstances I find, having regard to the overriding objective, that the fair and just course is for this appeal to be disposed of.

10. I find, in the absence of evidence to properly explain the Appellant's circumstances, that the appeal against the adverse decision of the Secretary of State (dated 3 April 2014) is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

No anonymity direction was sought or is necessary.

Signed

Date 28 October 2015

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 28 October 2015

Deputy Upper Tribunal Judge Davey

PS. I regret that this promulgation has been delayed because the file was miss-located.