



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

Appeal Number: HU/22540/2016
HU/22539/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 6th November 2017**

**Decision & Reasons Promulgated
On 6th November 2017**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**SAROJ SATYARAM KATRE
SATYARAM KATRE**

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U Sood, instructed by Trent Centre for Human Rights

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant sought and was granted permission on the grounds, in essence, that the First-tier Tribunal judge had failed to have adequate regard to the evidence before her.
2. The First-tier Tribunal judge set out the evidence before her but either failed to acknowledge in her decision that it was evidence or failed to reach a decision on which element of the evidence she accepted. For example she

set out the oral evidence of the failed attempts made by the UK based family to find suitable care for the appellants in India (paragraph 26) but then stated that there was no evidence to show that care and support could not be accessed from other sources (paragraph 27); that treatment has been paid for by the family to date and the “suggestion is that they will continue to do so rather than depend on the NHS” (paragraph 21) and that they had signed an undertaking to that effect (evidence in the bundle) yet in paragraph 21 notes the consultant’s comment about the NHS. The judge does not make a reasoned finding, or indeed a finding, that there will in fact be a drain on NHS public services, yet holds that there is a drain on public services which weighs heavily against the appellants.

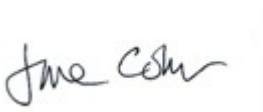
3. Mr Tarlow acknowledged that the decision was, overall, unsustainable. It is not sufficient for a First-tier Tribunal to recite the evidence and fail to reach a reasoned decision.
4. The First-tier Tribunal judge erred in law in failing to have adequate regard to the evidence before her and failing to give reasons or adequate reasons for findings made.
5. I note that there have been concerns expressed as to the manner in which the hearing before the First-tier Tribunal took place. Those expressed concerns have played no part in my decision to set aside the First-tier Tribunal decision but it may well be that there were difficulties in the giving of evidence before the First-tier Tribunal judge. The findings of the First-tier Tribunal are set aside in their entirety. It is not the role of the Upper Tribunal to make primary findings of fact and I remit the appeal to the First-tier Tribunal, no findings preserved. No doubt the First-tier Tribunal will consider the vulnerability of the appellants when they give their evidence and in the arrangements for the hearing.

Conclusions:

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 and remit the appeal to the First-tier Tribunal for rehearing.

Date 6th November 2017



Upper Tribunal Judge Coker