



IAC-FH-CK-V1

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

Appeal Numbers: IA/49312/2014  
IA/49333/2014  
IA/49339/2014  
IA/49344/2014  
IA/49358/2014

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment Decision & Reasons  
Tribunal Promulgated  
On 11 March 2016 On 4 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**MR NIRMAL KUMAR ATHI**

**MRS RAJ RANI ATHI**

**[AKA]**

**[ADA]**

**[PAA]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr R Martin of Counsel

For the Respondent: Mr T Wilding, a Senior Presenting Officer

**DECISION AND REASONS FOR REMITTING TO THE FIRST-TIER TRIBUNAL**

**Introduction**

1. The appellant is a citizen of India who appeals against the decision of the First-tier Tribunal (FtT) to dismiss the appeal brought by Mr Athi. Mr Athi is married to Raj Rani Athi, his wife. Akriti Athi, Aditi Athi and Parvesh Athi are his children. They are all appellants.
2. Judge of the First-tier Tribunal Perkins gave them permission to appeal to the Upper Tribunal against the decision of the FtT to dismiss their appeals against the respondent's decision to refuse them leave to remain under the Immigration Rules, or alternatively, on human rights grounds. Judge Perkins gave them permission because the decision of the FtT did not deal with the appellant's main ground of appeal, namely that the respondent had been wrong not to decide to allow him to remain as a student. Arguably, the FtT should also have considered the contention that the appellant should not be removed because a timely application for leave to remain had not been decided.
3. The respondent's preliminary view was that the decision that she had made on 2 December 2014 did not adequately dispose of the appellant's Tier 4 application. The Upper Tribunal is respectfully invited in that Rule 24 response to find that the decision of the respondent was not in accordance with the law.

### **The Hearing**

4. At the hearing both parties were represented. The respondent's representative, Mr Wilding, maintained the concession that there had been a material error of law in the decision of the FtT.
5. Both parties conceded that the matter should be remitted to the First-tier Tribunal (the FtT) for a new hearing before a different judge.

### **My Decision**

6. It was accepted that the fairest way to deal with this matter was to remit the matter to the FtT. Accordingly, I find that there was a material error of law in the decision of the FtT in failing to consider the appellant's application for leave to remain as a student and/or that tribunal needs to consider whether the appellants' removal would be contrary to law in all circumstances.

### **Directions**

7. I direct as follows:
  - (1) The matter be remitted to the FtT for a fresh hearing before a judge other than Judge of the First-tier Tribunal Pacey.

- (2) None of the findings of fact of the FtT shall stand.
- (3) All further directions are to be issued by the First-tier Tribunal in Birmingham.
- (4) The FtT is to consider whether a fee award is appropriate.

**Anonymity**

There is no anonymity direction in this case.

**Notice of Decision**

I find a material error of law in the decision of the First-tier Tribunal such that that decision requires to be set aside. I have made directions for the remittal of the matter to the FtT above.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal I have considered making a fee award and have decided to make no fee award.

Signed

Date

Deputy Upper Tribunal Judge Hanbury