



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/01458/2015**

**Appeal Number:**

**HU/01459/2015**

**HU/01460/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated  
On 9<sup>th</sup> January 2018**

**On 21<sup>st</sup> December 2017**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**FALGUNI RAJENDRA SHAH  
RAJENDRA GAMANLAL SHAH  
MANIT RAJENDRA SHAH  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Iengar, Counsel instructed by Aston Bond, Solicitors  
For the Respondent: Mr P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens India and their appeal was dismissed by the First-tier Tribunal in a decision promulgated on 10<sup>th</sup> March 2017. Their only right of appeal was on human rights grounds. As the grant of permission states the Judge dismissed the appeals under the Immigration Rules not on human rights grounds. That was a fundamental error of law. The Home Office in the Rule 24 notice conceded that there was indeed an

error of law and that the matter should be reheard at a fresh oral (continuance) hearing.

2. At the hearing before me Ms Lengar pointed out that the grounds for permission advanced that the judge had adopted the wrong burden of proof. That was clear from paragraph [9] of the decision. The burden in respect of Article 8 and whether the matter was proportionate lay with the Secretary of State. The judge concentrated on consideration of whether there are significant obstacles to return and appeared to conflate any consideration under Article 8 with the Immigration Rules. His findings are similarly conflated.
3. Mr Duffy conceded that the matter should return to the First-tier Tribunal Judge for full consideration. I find that there is an error of law and the decision shall be set aside with no findings preserved.
4. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed Helen Rimington

Date 21<sup>st</sup> December 2017

Upper Tribunal Judge Rimington