



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

Appeal Number: AA/06118/2012

**THE IMMIGRATION ACTS**

**Heard at Laganside Courts, Belfast**

**Determination**

**On 30 October 2014**

**Promulgated**

**On 7 November 2014**

**Before**

**The President, The Hon. Mr Justice McCloskey**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MAHENDRAN NAGENDRAN**

Respondent

**Representation:**

Appellant: Mr Mills, Senior Home Office Presenting Officer  
Respondent: Mr McTaggart (of Counsel), instructed by Murphy Irwin and Company Solicitors

**DETERMINATION AND REASONS**

1. By a decision made on 08 June 2012 on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), the Appellant herein, the Respondent's claim for asylum was refused. It was further determined that he did not qualify for humanitarian protection and that to remove him from the United Kingdom would not infringe any relevant person's rights under Article 8 ECHR.

2. The Respondent's appeal to the First-tier Tribunal (the "FtT") succeeded under Article 8 ECHR. The basis of the FtT's decision is ascertainable from the following passages:

"[40] *I weigh the Appellant's mental health difficulties. [Counsel] submitted that the mental health difficulties suffered by the Appellant do mean that it would be disproportionate to remove him from the United Kingdom ..... would be an unlawful interference with his personal and moral integrity. I have considered the decision of the European Court of Human Rights in the case of Bensaid .....*

[41] *In this case the Appellant still suffers from serious symptoms of PTSD and depression associated with his experiences of torture in detention in Sri Lanka ....*

[42] *I accept on the basis of all of this evidence that the Appellant's mental health would be severely affected by his removal to Sri Lanka. I am satisfied that this would amount to an adverse effect on his physical and moral integrity and therefore his private life. Given the potential severity of the consequences of removal upon the Appellant, I am satisfied that his removal would not be proportionate to the Respondent's legitimate aim."*

The appeal was allowed accordingly.

3. Permission to appeal was granted on the basis that the FtT had arguably erred in law by failing to take into account the country evidence relating to the availability of mental health treatment facilities in Sri Lanka. Upon the hearing of the appeal, it was acknowledged on behalf of the Secretary of State that this complaint is not sustainable, having regard particularly to [32] of the FtT's determination, wherein [449] of the country guidance decision in GJ [2013] UKUT 00319 (IAC) is reproduced. It was acknowledged that this had evidently been overlooked in formulating the Secretary of State's application for permission to appeal. It was accepted that it was open to the FtT to conclude that [32] of GJ applies to the Respondent. It was further accepted that the FtT had dealt adequately with the relevant country evidence and had given sufficient reasons for its findings and conclusions. Mr Mills conceded, accordingly, that the appeal was without merit.

## **DECISION**

4. I consider that this concession was well made. Accordingly, I dismiss the appeal and affirm the decision of the FtT.

*Seamus McCloskey*

THE HON. MR JUSTICE MCCLOSKEY

Appeal Number AA/06118/2012

UPPER TRIBUNAL

PRESIDENT OF THE  
IMMIGRATION AND ASYLUM CHAMBER

Date: 30 October 2014