



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/09798/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 10 April 2015

Determination Promulgated  
On 15 April 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

Baskaran Arulmohan  
[No anonymity direction made]

Claimant

**Representation:**

For the claimant: Mr N Paramjorthy, instructed by A&P Solicitors  
For the appellant: Mr S Whitwell, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is the appeal of the Secretary of State against the decision of First-tier Tribunal Judge Barber promulgated 21.1.15, allowing, on asylum and human rights grounds, the claimant's appeal against the decisions of the respondent, dated 30.10.14, to refuse his asylum, humanitarian protection and human rights claims, and to remove him from the UK by way of directions under section 47 of the Immigration Asylum and Nationality Act 2006. The Judge heard the appeal on 6.1.15.
2. First-tier Tribunal Judge Wellesley-Cole granted permission to appeal on 5.2.15.

3. Thus the matter came before me on 10.4.15 as an appeal in the Upper Tribunal.

### **Error of Law**

4. For the reasons set out herein, I find that there was no material error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Barber should be set aside.
5. The single ground of application assert that the First-tier Tribunal Judge made a material error of law at §35 of the decision by departing from the risk factors set out in the country guidance case of GJ and others (Post civil war) Sri Lanka CG [2013] UKUT 00319. The judge stated that the claimant is not on a stop list or one of the categories of persons coming within paragraph 7 of GJ, yet in the same paragraph the judge held, "Given his activities in the diaspora it seems to me a real risk that he may well be detained for questioning where his scars may become apparent thus creating further interest in him."
6. In granting permission to appeal, Judge Wellesley-Cole observed, "As GJ is a country guidance case, the findings in paragraph 35 do appear to be contradictory because the judge firstly held he did not come within Category 7(a) and yet gives his activities in the diaspora as the reason for possible detention. As he may have departed from GJ he may have fallen into error in this respect."
7. Whilst there is an apparent inconsistency in the statements in §35, I am satisfied that the judge provided cogent reasons open on the evidence to justify the conclusion that on the facts of this case there remains a real risk of ill-treatment or harm to justify allowing the asylum, humanitarian protection and human rights claims.
8. The judge accepted the claimant's case in its entirety. It was accepted that:
  - (a) He has been arrested and detained;
  - (b) He had been mistreated and tortured by the Sri Lankan authorities, resulting in scaring;
  - (c) There had been 2 post-conflict searches, in 2011 and 2014;
  - (d) He had engaged in diaspora activities, attending demonstrations in the UK.
9. At §34 the judge referred to paragraph 339K of the Immigration Rules, which provides that "the fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated." The judge found that there was a real risk of ill-treatment or harm on return and set out reasons in §35, the sole source of complaint by the Secretary of State.
10. In his submissions, Mr Whitwell suggested that the judge was referring to (7)(a) of GJ. In fact, the judge did not state (7)(a), only (7). Mr Paramjorthy suggested that it is most likely that the judge was in fact referring to (7)(d) of GJ, and when read in that light, §35 makes perfect sense. (7)(d) relates to those on a computerised 'stop' list

accessible at the airport, of those against whom there is an extant court order or arrest warrant.

11. It is not clear to me whether that is what the judge intended to state, as the paragraph refers to a category of persons within (7) of GJ. In any event, even if the Secretary of State is right and there is an inconsistency in that paragraph it cannot be a material error as pursuant to 339K, the judge has found that the claimant had suffered serious ill-treatment and this was thus a serious indicator of a well-founded fear of persecution or a real risk of suffering serious harm. No good reasons to the contrary have been identified from the decision or the evidence by the Secretary of State.
12. The judge may well have found that the diaspora activities were not, by themselves, sufficient to amount to a significant role in post-conflict Tamil separatism, given that there were only two events he attended. However, when added to the fact that he has already been subjected to ill-treatment including torture by the Sri Lankan authorities, and that he bears the marks of scarring, I find that it was open to the judge to conclude that there was a real risk of persecution and of serious harm, for which cogent reasons have been provided.
13. Further, at §37 the judge was also satisfied that if returned to Sri Lanka the claimant would face a real risk of suffering treatment which would breach the UK's article 3 ECHR obligation.
14. In the circumstances, it is inevitable on the factual findings, regardless of the apparent inconsistency in §35, that the claimant's appeal would have to be allowed.

**Conclusions:**

15. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains allowed on all grounds as found by the judge.



**Signed**  
**Deputy Upper Tribunal Judge Pickup**

**Dated** **10 April 2015**

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

**10 April 2015**