



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

Appeal Numbers: AA/07668/2015  
AA/07734/2015  
AA/07735/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> May 2018**

**Decision & Reasons Promulgated  
On 10<sup>th</sup> May 2018**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**PR (1)  
NM (2)  
CR (3)  
(ANONYMITY ORDER MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Jagarajah, of Counsel, instructed by Greater London Solicitors Ltd

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellants are citizens of Sri Lanka, the first two appellants are a married couple and the third appellant their son. The appellants arrived in the UK in October 2010 with the second appellant having leave as a Tier 4 student migrant and the other two appellants having leave as her dependents. This leave to remain was extended until October 2014. In April 2014 the appellants made a trip to Sri Lanka, and returned in May 2014. On 17<sup>th</sup> October 2014 the first appellant made his asylum claim.
2. The asylum claim presented is, in short summary, that the first appellant has a well founded fear of persecution on grounds of his imputed political opinions on return to Sri Lanka because he provided accommodation to a Tamil for three weeks between April and May 2010, and it later transpired that this man was a suspected terrorist connected to killings in Colombo. The first appellant says he was detained and questioned in 2010 but was released following payment of a bribe and left Sri Lanka to study in the UK. He says he returned to Sri Lanka in 2014 as he was told that the police were no longer making enquiries about him but he was arrested from the family home and detained and ill-treated. Since he has returned to the UK the police have been to the family home on a number of occasions and he is afraid as there are arrest warrants for him, and he believes he will be detained and ill-treated if returned to Sri Lanka.
3. This claim was refused in a decision dated 23<sup>rd</sup> April 2015. The appellants appealed, and their appeal was dismissed by the First-tier Tribunal. This decision was found to contain errors of law, and was set aside by the Upper Tribunal. The decision was then remade in the First-tier Tribunal by Designated Judge of the First-tier Tribunal McCarthy, however the appellants once again appealed to the Upper Tribunal and Deputy Upper Tribunal Judge McGinty found that there had been an error of law in the decision, and remitted it once again to the First-tier Tribunal for hearing de novo. The appeal was then remade by Judge of the First-tier Tribunal Landes in a decision promulgated on the 1<sup>st</sup> November 2017.
4. Permission to appeal was granted by Upper Tribunal Judge Gill on 15<sup>th</sup> March 2018 on the basis that it was arguable that the First-tier judge had erred in law. Firstly, it was arguable that the decision to refuse to adjourn the hearing to obtain supporting evidence was unfair, particularly as this was used as a ground of refusal at paragraph 68. Secondly it was arguable that the First-tier Tribunal erred in the application of the decision of VT v SSHD (Article 22 Procedures Directive - confidentiality) Sri Lanka [2017] UKUT 368.
5. The matter came before me to determine whether the First-tier Tribunal had erred in law.

### *Submissions & Conclusions – Error of Law*

6. Three errors of law are set out in the grounds of appeal but Ms Jagarajah only pursued one. She did not rely upon the arguments that it was procedurally unfair to refuse to adjourn the hearing or the more general contention that the credibility of the appellant was not properly assessed to the lower civil standard of proof applicable in asylum claims.
7. Ms Jagarajah did however maintain that an erroneous approach has been taken to the court file and arrest warrants and other associated documents obtained by the appellants' solicitors, and that this was highly material to the outcome of the appeal.
8. Ms Jagarajah submitted that the documents at pages 83 and 84 of the bundle that was before the First-tier Tribunal showed the Sri Lankan attorney, Mr R Raguaraajah, who the First-tier Tribunal conclude is independent, was instructed directly by Greater London Solicitors, and had on instructions from Greater London Solicitors met the Sri Lankan TID and the officer in charge and confirmed that the file was with them under reference B/5455/01/14 and that the arrest warrant is still in force against the first appellant. He also attended the Colombo Magistrates Court and was able to confirm that the arrest warrant had a mistaken reference number, B5455/01/10 but this did not affect its validity. He also confirms that when he attended the Colombo Magistrates Court previously he showed the Court Registrar the court file papers provided by Greater London Solicitors. It was his, Mr Raguaraajah's, error to repeat the wrong arrest warrant reference number for the court file. Mr Raguaraajah's earlier letter confirmed that the case records sent to him by Greater London Solicitors were a true copy of the Colombo Magistrates Court file for the first appellant, and had attached a copy of his Bar Association of Sri Lanka registration card. His letter of instruction is set out at page 119 of the bundle, and the DHL envelope by which the evidence of Mr Raguaraajah was sent to the UK is included at page 117 of the bundle.
9. The copy documents sent to Mr Raguaraajah for checking with the Magistrates file had been obtained by the appellant's solicitors from the first appellant's own Sri Lankan attorney, Mr U Gunasekera, and the evidence of this is set out at page 147 of the bundle. Mr Gunasekera might be seen as tainted as he was first contacted by the appellants rather than the appellant's UK solicitors, see the finding of the First-tier Tribunal at paragraph 48 of the decision, and so hence the checking process through the independent Mr Raguaraajah, as set out at paragraphs 49 and 50 of the decision.
10. The translations of the documents were done by a court interpreter from Colombo, as can be seen by the stamps on those documents which can be found at pages 148 to 154 of the bundle. They are a complete copy of the court file. From page 149 of the bundle it can be seen that the

arrest was under the Act of Terrorist Prevention and the allegation was that the first appellant helped an LTTE pistol team member who had killed a former president and former defence minister and others. It is an application by the TID, who are the prosecutors in this case. The allegations are very detailed, see page 151 of the bundle, and the first appellant's full name appears. It can be seen that the first appellant was produced on 16<sup>th</sup> April 2014 and the 30<sup>th</sup> April 2014, and that Mr Gunasekera appeared and applied for bail, see page 153 of the bundle, with the second appellant (his wife) as a surety. The notes then record that the first appellant failed to attend on 16<sup>th</sup> May 2014 and on the 30<sup>th</sup> May 2014 and that warrants were issued for the arrest of the first and second appellants.

11. The First-tier Tribunal rightly rejected the respondent's document verification evidence as it had been obtained contrary to Article 22 of the Procedures Directive relying upon VT, and because the checks were possibly against the wrong case number. At paragraph 46 of the decision it is accepted that the court and arrest warrant documents are generally consistent bar the issue of the numbers which is addressed by the evidence of Mr Raguaraajah. It is also accepted that the first appellant was bailed, see paragraph 47 of the decision.
12. Ms Jagarajah argues that the First-tier Tribunal finds erroneously at paragraphs 51 and 75 of the decision that VT means that evidence from Sri Lanka lawyers even if obtained directly from an independent Sri Lankan lawyer by an English lawyer cannot be seen as reliable as there is corruption in which Sri Lankan lawyers have been involved, and because as Judge Landes states : " I observe that a Sri Lankan lawyer who was corrupt might seek to contact the client of the UK lawyer instructing him or the client's family to ask for money to give false testimony to send back to the UK lawyer." This was not the position taken in VT. There was evidence from the British High Commission in Sri Lanka that some Sri Lankan attorneys had produced false documents but as a result the Sri Lankan Bar Association had taken action against those lawyers and they were subject to penalties. Neither Mr Gunasekera nor Mr Raguaraajah had been involved in this or were subject to penalties for such matters. Further the evidence of the respondent, set out at paragraphs 54 and 55 of the decision in VT, was that the majority of attorneys of the Sri Lankan Bar Association were honourable, and members of the legal profession in Sri Lanka had acted with great bravery and integrity. There was no evidence supporting a contention that the evidence of a Sri Lankan attorney should not be treated as reliable, just as evidence of an English lawyer would be, as there was no evidence of systemic corruption in the legal world or in the courts, or indeed the press, in Sri Lanka. Further, no allegations of specific corruption had been put to Mr Raguaraajah.
13. I find that the First-tier Tribunal failed to give the powerful evidence of Mr Raguaraajah and the court file in support of the appellants' claim proper consideration by taking into account irrelevant considerations as

set out by Ms Jagarajah above. The First-tier Tribunal had also made other positive findings in the appellants favour: namely that the respondent's document verification report could not be given significant weight; that the documents were generally consistent with the appellant's case; that the background evidence supports the appellant being able to escape by payment of a bribe; that provision of accommodation to the suspected terrorist might mean the authorities were only interested in the first appellant and not his family; that it was not inconsistent with the background evidence that the appellant was not detained at the airport but was only detained at home; and that the evidence of the first appellant and his wife (the second appellant) and his father are largely consistent. In these circumstances I therefore find that the error of law was material.

14. I informed the parties of my decision without giving an oral judgement. Both parties were happy to proceed immediately with the remaking of the decision.

#### *Submissions & Conclusions - Remaking*

15. Ms Jagarajah relied largely on the detailed submissions above. She submitted that the first appellant was being arrested for a serious issue of treason, which was viewed as more serious as he is seen as a traitor as a Sinhalese man. It was contended by the Sri Lankan state that he had assisted the LTTE and thereby serious political killings. The court file documents show that he was and is the subject to an investigation rather than a prosecution for a political crime, and during this investigation the TID had had to seek judicial authority to detain. She submits that the evidence that the court documents are genuine from Mr Raguaraajah is not contradicted by anything from the respondent, who could have contacted Mr Raguaraajah or the registrar of the court (as the appellant would have consented to this rather than the director of TID which would have been inappropriate) to check the validity of this evidence had they so wished. It should therefore be accepted that the appellants had a well founded fear of persecution on account of their imputed political opinions in line with the country guidance decision of GJ and others (post-civil war: returnees) Sri Lanka [2013] UKUT 00319, and the appeal should be allowed.
16. Ms Everett accepted that the respondent had not taken the steps outlined above to challenge the evidence of Mr Raguaraajah, and asked simply that I look at all of the evidence in the round.
17. At the end of the hearing I informed the appellants that I would be allowing the appeal, but would set out my reasons in writing.
18. I find that the evidence of the attorney and member of the Sri Lankan Bar Association Mr Raguaraajah that the court documents relating to the first appellant and warrants for the first and second appellant's arrest are genuine compelling. There is no reason to question his integrity as a

qualified attorney and Bar Association member, and he has carried out careful checks and documented this to the Tribunal to a high level, and honestly accepted making a mistake as to the court file reference by referring to the erroneous one relating to the arrest warrant. The documents themselves contain serious allegations of the first appellant assisting terrorism at the highest level; they are also detailed; no reasons have been identified for their being in the wrong format, with the one issue of a wrong number having been carefully explained; they are found to be broadly consistent with the appellant's case and the appellant, his wife and father were found to be largely consistent with each other by the First-tier Tribunal. I find that this evidence strongly outweighs the negative findings of the First-tier Tribunal that the appellant failed to mention the court date on 16<sup>th</sup> May 2014 and the number of arrest warrants; that he was inconsistent about his exact relationship with the Tamil man he accommodated which led to the investigation by the TID; that it was not consistent that he could have kept his passport after the court hearing; that the second appellant and his father knew little about the warrants and gave an inconsistent history as to how they knew the Tamil man; and that the appellants had delayed in making their asylum claim.

19. Considering all of the evidence before me, I am satisfied to the lower civil standard of proof, applying the guidance in GJ, that the first appellant has a well founded fear of being detained and subject to ill-treatment on return to Sri Lanka as a person who in the eyes of that state poses a threat to the integrity of Sri Lanka as a single state and because it is probable that his name and that of the second appellant is on a computerised stop list at the airport due to the existence of arrest warrants against them.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I re-make the decision in the appeal by allowing it under the Refugee Convention and on human rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellants from the contents of their protection claim.

Signed: Fiona Lindsley

Date: 1<sup>st</sup> May 2018

Upper Tribunal Judge Lindsley