Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/01028/2018 (V)

THE IMMIGRATION ACTS

Heard at Field House via Teams	**Decision & Reasons Promulgated**
On 22nd June 2021	**On 7th July 2021**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

TS
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Jegarajah, of Counsel, instructed by Greater London Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Interpretation: Ms E Green, in the Tamil language

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Sri Lanka born in 1986. He arrived in the UK in June 2008 and claimed asylum on arrival. His application was refused, and his appeal dismissed in November 2008. He made further

submissions in November 2010, June 2013 and October 2016 which were all refused. A judicial review of the final refusal resulted in the decision letter of 19th December 2017, which is the decision against which this appeal is brought. His appeal against the decision was dismissed by First-tier Tribunal Judge Colvin in a determination promulgated on the 15th January 2019.

2. Permission to appeal was granted and I found that the First-tier Tribunal had erred in law for the reasons set out in my decision on error of law at Annex A promulgated on 13th September 2019. There was then a hearing to determine the issues as to whether it would be contrary to the public interest under s.108 of the Nationality, Immigration and Asylum Act 2002 to disclose an email exchange detailed at paragraph 39 of the decision of the First-tier Tribunal and not provided to the appellant. I decided there was no public interest in this remaining secret for the reasons set out in my decision which is found at Annex B of this decision, and it was disclosed with the email addresses of the officials redacted.

3. On 15th July 2020 directions were sent out to the parties to require them to prepare for the remaking hearing. In response the appellant provided submissions from Ms Jegarajah dated 4th August 2020, and a consolidated bundle of documents for the remaking hearing. Nothing was received from the respondent until yesterday when Mr Melvin submitted an application under Rule 15(2A) of the Upper Tribunal Procedure Rules 2008 with further evidence namely a letter dated 6th January 2021 from the Chief Registrar, Chief Magistrate's Court in Colombo to the British High Commission in Colombo stating that the cash receipt that the appellant submitted from the Sri Lanka lawyer was not issued by them. Mr Melvin has also provided a skeleton argument today.

4. The matter now comes before me to remake the appeal. In light of the need to take precautions against the spread of Covid-19 and with regard to the overriding object set out in the Upper Tribunal Procedure Rules to decide matters fairly and justly this hearing took place via Teams, a format to which neither party raised objection. There were no significant issues of connectivity or audibility during the hearing.

5. The factual issue to be determined in this appeal is whether the arrest warrant against the appellant which, states that he is wanted in connection with being involved with LTTE terrorist activities, is a genuine document or not. It is accepted that if it is genuine then the appellant will have a well founded fear of persecution based on his imputed political opinions applying the country guidance in GJ & Ors (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 at paragraph 356(7)(d) where it is found that being the subject of an arrest warrant means a person will be on the stop list at the airport and will be detained by the authorities, and will then be at real risk of serious harm for reason of his or her imputed political beliefs and thus will be entitled to succeed in his appeal. In light of this being the only factual issue for me to decide the appeal proceeded by way of submissions only.

6. Ms Jegarajah agreed to Mr Melvin's application to admit the letter to the British High Commission from the Chief Magistrates Court of 6th January 2021, and so I admitted this evidence despite it only having being provided yesterday. The key documentation relevant to the issue I had to determine, skeleton arguments and submissions documents aside, is as follows:

- Letter from Mr Raguraajah, Attorney at Law, to Greater London Solicitors dated 3rd April 2018 with a statement of truth that he had obtained a certified copy of the arrest warrant for the appellant from Colombo Magistrates Court
- Bar Association of Sri Lanka card for Mr Raguraajah
- Warrant of Arrest B/9840/8/2010 for the appellant in Sinhalese with certified translation
- Cash receipt for obtaining the warrant dated 9th March 2018 to Mr Raguraajah
- DHL envelope used to send all of the above documents to Greater London Solicitors by Mr Raguraajah
- Letter of 8th February 2018 by which Greater London Solicitors instructed Mr Raguraajah
- Letter of 30th November 2018 by which Greater London Solicitors sought opinion of Mr Raguraajah regarding the DVR
- Letter from Mr Raguraajah dated 3rd December 2018 to Greater London Solicitors giving his opinion on the DVR
- Document Verification Report dated 5th November 2018 with respect to the arrest warrant B/9840/8/2010
- To Whom it May Concern letter from Ms Emma Hardy of the British High Commission dated 26th September 2018 regarding verification processes for court documents in the Chief Magistrates Court

Submissions – Remaking

7. Mr T Melvin for the respondent makes, in summary, the following submissions. He submits that the appellant's arrest warrant is not a genuine one for the reasons set out in the DVR dated 5th November 2018 (in summary that the arrest warrant details provided by the appellant through the Sri Lankan lawyer instructed by his UK solicitors do not match records they have been able to check at the Chief Magistrates Court in Colombo), and given the supportive evidence of Emma Hardy, Immigration Liaison Manager in the BHC Colombo in her letter of 5th December 2018 (which explains why the respondent asserts that she has used the correct verification procedure, and that there is no separate procedure for terrorism cases). The respondent argues that the DVR evidence was obtained through a procedure which was compliant with Article 22, and the Upper Tribunal should prefer the evidence of this DVR

process. It is also argued that it could be possible that the DVR process could confirm whether a reference number for an arrest warrant was correct through its process even if this was not a process by which a full court file/ copy of the warrant could be obtained.

8. It is noted by Mr Melvin that there is no report from Mr Punethanayagam verifying the letters and verification procedures of the Sri Lankan lawyer Mr Raguraajah, which was contemplated at one point by the appellant but abandoned due to lack of funds, and so the appellant has not shown that the process that Mr Raguraajah used is a valid one. It is argued that it is strange that the solicitors who had acted for the appellant since 2013 suddenly decided to make enquiries in 2018 about an arrest warrant from 2010 regarding matters which took place prior to the appellant's entry to the UK in 2008. It submitted that the fact that that Mr Raguraajah only paid a small amount of money to get a warrant that is ten years old casts doubt on the validity of the documents; as does the fact that the appellant is a person found to lack credibility in relation to his history of arrests in 2005 and 2007 in two decisions of the First-tier Tribunal, and had not previously claimed to be the subject of an arrest warrant or that he was charged, fingerprinted or photographed when detained. There is also a failure to provide a copy of the motion that Mr Raguraajah used to obtain the documents, and instead the only document pertaining to this process is the receipt for the fee, which has been shown to be an unreliable document by the correspondence from the Chief Magistrates Court of 6th January 2021, as this states that the receipt for the appellant's lawyer's application is not a document issued by them and so throws significant doubt on the appellant's verification process

9. As a result, Mr Melvin submitted, that I should find that appellant had not shown the arrest warrant to be a document on which weight could be placed, and as a result the appeal should be dismissed.

10. Ms Jegarajah submits, in summary, as follows. It is important to understand that the appellant relies upon two letters from a Sri Lankan attorney, Mr Raguraajah, which do not require any further corroboration as no issue is taken with his integrity, and further his Sri Lankan Bar Association card (BASL), proving him to be a Sri Lankan attorney, has been provided to the respondent. The appeal must be determined from the position that the parties are equal, and there is no special deference to the respondent. It is simply a matter of considering the evidence from both sides in the round. Why Mr Raguraajah was instructed in 2018, and not earlier, is a matter of confidential client privilege, but it is submitted that as soon as the appellant was aware that there was a warrant for his arrest he instructed his UK solicitors of this fact and they independently instructed a Sri Lankan lawyer.

11. It is argued that the appellant has produced compelling evidence that the arrest warrant is genuine. Mr Raguraajah, a qualified Sri Lankan attorney (verified by a Sri Lankan bar card), was contacted by the

appellant's UK solicitors independently of the appellant (see page 165 of the bundle), and the letter of instruction is provided to the Upper Tribunal so it is clear everything was done professionally and in an entirely straight forward fashion. The Sri Lankan lawyer, Mr Raguraajah applied to the magistrates court for a certified copy of the court file, and provided a letter confirming this as well as providing the documents, which appear from page 157 of the bundle. A certified copy of the court file signed by the court registrar was obtained. There are magistrates court stamps on the documents and a certificate of authenticity with the file copy, and a cash receipt from Mr Raguraajah showing his payment of the fee to do this. The DHL envelope in which the copy of the court file was sent by Mr Raguraajah to the UK solicitor has also been provided, and is at page 164 of the bundle. It is argued that no specific issue is taken with the copy of the court file signed by the court registrar.

12. Mr Raguraajah has confirms in his subsequent letter of 3rd December 2018 at page 106 of the bundle, as a result of instructions from the appellant's UK solicitors which appear at page 108 of the bundle, that he followed the correct procedure and has explained that there is a different procedure for obtaining terrorism case documents, as these are brought before Court 8 by the TID, and expressed the opinion in his letter that the BHC may have checked in the police register books but that these would not have contained terrorism cases and so they would not have been able to verify the genuineness of the appellant's arrest warrant in this way. He expresses concern that the BHC have permission to examine confidential police documents. The evidence of Mr Raguraajah is consistent with the factual finding made the Upper Tribunal in VT (Article 22 Procedures Directive – confidentiality) Sri Lanka [2017] UKUT 368 at paragraph 63 which refers to a Court 8 being where most TID cases are heard, and it is clearly a further consistency with the evidence in VT that the number 8 features in the reference number for this appellant's document. VT also contains evidence that the second secretary migration at the BHC in Colombo accepts that most Sri Lankan lawyers act with integrity at paragraph 55 of the decision, and there is no evidence that Mr Raguraajah is one of the few who have been referred to the BASL as a result of a complaint. There is no verification by the respondent of Mr Raguraajah's credentials although this could easily have been done, and would have been conclusive in finding the case made out by the appellant, and in addition the respondent failed to respond to the appellant's letter asking that they name a suitable joint expert to verify the documents.

13. It is argued that the DVR and the letter of Ms Hardy should be given little weight because it is clear from VT that the British High Commission in Colombo has form for breaching Article 22 in verifying evidence by writing to the director of the TID to verify warrants, a procedure which was found to risk putting genuine asylum seekers and their families in danger and of producing unreliable evidence, and it is concerning that the British High Commission have a special arrangement with the police officers in the court, as set out by Ms Hardy, which enables them to

check records without following the proper procedure of using a Sri Lankan lawyer. The DVR does not identify the people who went to do the verification, and the letter from Ms Hardy is unsigned and is a generic letter written "to whom it may concern" due to concerns about a DVR in a different immigration appeal expressed by the First-tier Tribunal Judge hearing that appeal.

14. Ms Jegarajah argues that little weigh should be given to the letter apparently from the Chief Registrar of Colombo Magistrates Court dated 6th January 2021 because there is no letter of instruction explaining how it came into being or by whom it was requested; because there is no proper seal on the letter; because it is not written on headed paper; because there is no name of the chief registrar; because it is ungrammatical with "connection" in the first sentence and "has" in the second sentence wrongly capitalised; and because the word "Magistrate" is wrongly spelt, without an e, in the chief registrar's stamp. It is argued that such a document produced by an appellant would almost certainly be given no weight. It is argued that it should also be seen as having less weight if it was in fact requested by local staff or an immigration officer working in the High Commission who is not independent of the respondent rather than by a senior member of foreign office staff who might be seen as having more distance from the respondent, and so the fact that it is not known who requested it from within the British High Commission or what request precisely was made means that the document should be given even less weight.

15. In conclusion Ms Jegarajah argues that the evidence of the respondent has not been shown to be independent and worthy of weight as it is obtained by a party to these proceedings who have been shown to have a rather too cosy relationship with the Sri Lankan government from the evidence in VT and by the description of how the respondent say the documents were obtained in the letter of Ms Hardy. Further, the Sri Lankan government are known to have no ethical standards as they are happy, amongst other things, to commit war crimes and systematically torture people in detention.

Conclusions – Remaking

16. This is an asylum appeal and so the standard of proof is the lower civil standard and the burden of proof is on the appellant.

17. If the evidence from Mr Raguraajah stood alone I would have no hesitation in finding that the arrest warrant was genuine: there is, as has been submitted, a complete set of documents which show solicitors in the UK with professional obligations instructed a Sri Lankan attorney with similar obligations to search for and if present obtain an arrest warrant. Mr Raguraajah has provided a set of documentation which in itself displays no reason to mean it should be disbelieved, and the DHL envelope in which it was sent to the UK has also be provided. He has explained how he obtained the documents and provided the cash receipt

for having done so. I do not find it of any significant weight against the appellant that the "motion" document is not included, as I find that sufficient documentation has been provided. I also find that it would have be very easy for the respondent to check whether these documents were genuinely provided by Mr Raguraajah, and exclude the possibility that his identity had somehow be stolen by someone wishing to make money by providing fake legal documentation or that he was acting dishonestly. Further it would appear from VT that this is something that has been done in the past so that corrupt or abusive attorneys can be reported to the Sri Lankan Bar Association. This is a matter which I give some, although not significant weight, in the appellant's favour as a very simply enquiry via his contact details at the Sri Lankan Bar Association would have confirmed that the material he provided was authentically his and in good faith by a person with relevant professional skills, applying (i) of the guidance in VT. However, the documentation of Mr Raguraajah does not stand alone and so I must look at the other evidence and examine the context in which it exists and decide if it is ultimately to be believed.

18. The appellant himself was found to be totally lacking in credibility and to have fabricated his claim in its entirety due to his evidence being vague and implausible by Judge of the First-tier Tribunal Cohen in his decision of 19th December 2008. This of course was the starting point for Judge of the First-tier Tribunal Colvin in his decision of 15th January 2019, which I set aside and I am currently remaking. Judge Colvin looks at the evidence of the arrest warrant and the grant of refugee status to the appellant's brother in Australia in 2010, and concluded that they did not suffice to displace the conclusions of Judge Cohen. I have preserved his findings with respect to the brother's refugee status in Australia not putting the appellant at real risk of serious harm as these were not challenged in the grounds of appeal, but set aside those in relation to the arrest warrant. There are additional findings by Judge Colvin regarding the evidence of the appellant being implausible and not credible in relation to his contact with his brother in Australia.

19. It is clear therefore that the assessment of the credibility of the appellant is not a factor in his favour, however it is the case that the appellant's history in his original asylum interview (answers to questions 9-11) does include the fact that he was required to sign at a police station after having been detained in September 2005 for 5 months and did so up until 27th November 2007, and that this detention followed his originally being arrested by the Sri Lankan army due to his family LTTE association, as set out in his answer to question 7 of the asylum interview, and an assumption he had connections with them (as reflected in his answer to question 50) , and further his evidence was that it was necessary to pay a bribe for his release when he was detained for the second time in 2007/2008 (answer to question 73). So whilst this history has not been found to be credible, the existence of an arrest warrant is not inconsistent with what the appellant has said, and so I do not accept the submission of Mr Melvin that this adds a further factor against the appellant. I make it clear that I find that the arrest warrant confirmation

from Mr Raguraajah comes about without any involvement of the appellant, but nevertheless the context of the appellant's disbelieved asylum claim is, I find, of relevance as a factor against him and as such weighs against the warrant being genuine.

20. I now turn to the DVR of the arrest warrant by the British High Commission in Colombo dated 5th November 2018. This is by two unknown persons of unknown status and qualifications from the British High Commission. Entry is permitted to the "registry office" of the Chief Magistrates Court by the superintendent in the police post, but they were not accompanied into the office whilst they made checks. I accept that the procedure described did not run any risk of disclosing any personal details of the appellant to anyone in the Sri Lankan authorities, and so was compliant with Article 22 of the Procedures Directive as there was no direct contact with the alleged actor of persecution which might alert them to the protection claim made by the appellant. A register was checked for the number on the appellant's arrest warrant but the number was found to relate to a house "theft" by a person with a different name to the appellant. On the face of it this is weighty evidence against the appellant.

21. However, the question that arises next is whether this was a procedure by which the appellant's number on his warrant for a terrorist offence could be checked. The respondent says it is, and relies upon the general letter regarding the validity of this procedure from Ms Emma Hardy, Immigration Liaison Manager at the British High Commission in Colombo dated 26th September 2018. I am satisfied that the procedure for checking references in Ms Hardy's letter does not breach Article 22 of the Procedures Directive from what is said at paragraph 3 of the letter. There is a "cover story" as to why the officers from the British High Commission are making checks related to visa applications, and no personal details of the appellant are taken, and even the reference number being checked is not held in an identifiable form. The letter from Ms Hardy indicates that it is staff from the Immigration Enforcement International section of the Home Office who conduct these checks, as she is the manager of this section and she refers to a colleague having done the check in another case for whom this general letter was prepared at paragraph 4. I find therefore that it is a check done by a party to this appeal, the respondent, but I also accept that it would be done by a person with civil service code obligations to be honest and act with integrity and impartially. The letter also states at paragraph 6, based on information from the "judicial registrar" with responsibility for courts 6 and 8, that terrorism cases are not treated differently from other crimes and so their numbers will be in the same registers; and at paragraph 7 that records relating to cases prior to 2015 are not general, but may sometimes be, in the Magistrates Court records. Ms Hardy confirms at paragraph 9 of the letter that in discussion with the Deputy Inspector General of Police for Terrorism Investigation Division (TID) that he confirmed this system, and also said that a "solicitor" would not be able to obtain a copy of the document. It is further said that in discussion with the Solicitor General

Ms Hardy was informed that an individual or solicitor would not have an arrest warrant in their possession, although the letter does not say that he said it would not be possible to get a copy.

22. Mr Raguraajah's second letter of 3rd December 2018 provides a different view on what has happened when the staff from the Home Office based on the British High Commission go to make their DVR checks from that set out by Ms Hardy. It is his view that they have not been checking the court file registers at all but instead the police are allowing them to check their records in the police register books, and that these police records do not include terrorism cases handled by TID. It is his view that the court office would not allow officials from the British High Commission to enter the court office to review documents, and that the correct procedure is either for the subject of a warrant or a Sri Lankan Attorney with the court to obtain certified copy documents.

23. Whilst it might normally be the case that the view of a number of senior officials from a country of origin passed to a British civil servant at the High Commission should be given greater weight than that of a regular lawyer from that country there is the consideration as to whether information from the judicial registrar to the Chief Magistrates Court, deputy inspector of the TID and the solicitor general in Sri Lanka can be seen as neutral sources when giving information to the Immigration Liaison Manager at the British High Commission in Colombo. Ms Jegarajah submits that information from a murderous regime, which routinely tortures people and which may wish to mislead a representative of a country known to provide protection to substantial numbers of those who they see as a threat to the integrity of the Sri Lankan state, must be treated with caution. I find that there is weight to be given to this consideration.

24. The final piece of evidence that I must consider is that addressed as coming from the Chief Registrar of Colombo Magistrates Court dated 6th January 2021 which states that the payment receipt (giving the number on the receipt produced by Mr Raguraajah) was not issued by this court and the number does not relate to it. This is a worrying document because it has no seal on the letter and it is not written on headed paper; because there is no name given for the chief registrar or legible signature; because it is ungrammatical with "connection" in the first sentence and "has" in the second sentence wrongly capitalised; and perhaps most significantly because the word "Magistrate" is wrongly spelt without an e in the chief registrar's stamp under his signature. It is unclear how it was obtained, and Mr Melvin made no submissions on how this happened or addressing the issues with it even though I allowed him to make a brief reply to Ms Jegarajah's submissions (which he used to emphasis a couple of other submissions instead). The only information I have therefore is that it was sent to him by the British High Commission. I accept Ms Jegarajah's submission that this is not a document that can be given weight given the defects in it and in light of the level at which it is

said to have been written and the source it is said to have been written for.

25. This is an extremely difficult decision to make. It would of course have been a lot easier if either side had had the funds to instruct an expert who could have clarified the current system for obtaining details of and verifying an arrest warrant in Sri Lanka: sadly the appellant did not have these funds and I assume resources were not available to the respondent for this purpose either.

26. Drawing my conclusions together I consider that the evidence from the Sri Lankan attorney, contacted through a firm of UK solicitors, whom I start from the position is likely to be honest and have acted with integrity, is comprehensive and that Mr Raguraajah answers the evidence produced against him in the DVR report and explains how he says that the British High Commission have, in his view, been misled. I find that it is possible that the Sri Lankan authorities might wish to mislead the British High Commission in this way, as it would seem to be likely that they would be aware, whatever cover stories are now given, that until 2017 the respondent was seeking confirmation of the validity or otherwise of arrest warrants in relation to asylum cases as they were directly approaching the TID in this respect albeit with personal information redacted, as is clear from the evidence in VT. It is also quite possible that the senior officials questioned generically by Ms Hardy did not understand that the officials from the British High Commission were looking in police register books rather than the court file registry when providing reassurance that details of terrorism case were kept in the court registry. The respondent has not put the explanation of Mr Raguraajah in his letter of 3rd December 2018 to any of these senior official contacts for comment, and has not made contact with him via a call, email or letter challenging that the documents did not properly come from him or are forgeries as they could easily have done: I acknowledge that there is no general duty on the respondent to authenticate these documents but I find the latter check was one as set out at (i) of the guidance in VT where a simply inquiry could have conclusively and safely resolved the authenticity of the document. I am unable to give any weight to the document from the Chief Registrar of Colombo Magistrates Court dated 6th January 2021 for the reasons I set out above, so this does not undermine the documents the appellant has submitted from Mr Raguraajah. For these reasons, whilst having regard to the fact that the appellant is a person whose claim has been found otherwise to lack credibility, ultimately I find however that the appellant has shown to the lower civil standard of proof that there is an arrest warrant for terrorist offences against him in Sri Lanka.

27. As a result I conclude that the appellant has a well founded fear of persecution on the basis of his imputed political opinions and is entitled to succeed in his appeal.

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 remake 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 appellant. 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 appellant from the contents of his protection claim.

Signed: Fiona Lindsley Date: 25th June 2021
Upper Tribunal Judge Lindsley

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Sri Lanka born in 1986. He arrived in the UK in June 2008 and claimed asylum on arrival. His application was refused, and his appeal dismissed in November 2008. He made further submissions in November 2010, June 2013 and October 2016 which were all refused. A judicial review of the final refusal resulted in the decision letter of 19th December 2017, which is the decision against which this appeal is brought. His appeal against the decision was dismissed by First-tier Tribunal Judge Colvin in a determination promulgated on the 15th January 2019.

2. Permission to appeal was granted on the 8th May 2019 by Upper Tribunal Judge Bruce on the basis that it was arguable that the First-tier judge had erred in law for the reasons set out in the grounds particularly given the grant of permission in December 2018 by the Court of Appeal in TA (Bangladesh) v SSHD (C5/208/1691) on a similar point.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. In her grounds of appeal and in oral submissions Ms Jegarajah contends, in summary, as follows.

5. Firstly, it is argued that the First-tier Tribunal failed to make findings on whether the appellant's solicitors' Sri Lankan lawyer was a properly qualified lawyer, whether he provided a letter to the UK solicitors, whether he attended the court and obtained a file copy of the arrest warrant relating to the appellant and a receipt; and thus correctly verified the arrest warrant dated 10th February 2010 which documents the fact the appellant is suspected of being involved with LTTE terrorist activities. These were key issues that needed to be determined in the appeal. It is not correct to discount this evidence, as is done at paragraph 46 of the decision, by saying that there is no evidence from the Chief Registrar at the Chief Magistrates Court in Colombo regarding the application made as there is direct evidence of this application through the cash receipt and the certified documents in the supplementary bundle at S44-S47.

6. Secondly, it is argued that the First-tier Tribunal erred in law and acted unfairly by placing reliance on undisclosed materials (relating to the document verification process – see paragraph 39 of the decision) not shown to the appellant with a failure to follow the correct procedure at Rule 13 of the Tribunal Procedure Rules 2014, and in particular in not

disclosing the documents to the appellant when there was no application by the respondent for a non-disclosure direction and giving no reasons why they should not be disclosed to the appellant.

7. Thirdly, it is argued that the First-tier Tribunal erred in law by being satisfied that the processes for verifying documents being used by the respondent was compliant with Article 22 of Council Directive 2005/85/EC which is partially transposed into paragraph 339IA of the Immigration Rules, when in fact that process poses a risk of breaching confidentiality in the asylum process, in line with the grant of permission by Sir Stephen Silber in TA (Bangladesh) v SSHD (although that case had now concluded by consent so there would be no forthcoming guidance from the Court of Appeal on the issue). Even though there has not been an approach to the director of the TID directly as had happened in the matters consider in VT (Article 22 Procedures Directive – confidentiality) Sri Lanka [2017] UKUT 00368 it is possible that the new DVR process could also place family at risk as what is said about that process simply is not credible in light of the evidence from the Sri Lankan lawyer instructed by the appellant's solicitors.

8. Fourthly, it is argued that the appeal was unfairly determined as the appellant only had one day to make submissions about the letter from Emma Hardy, Immigration Liaison Manager at the British High Commission Colombo dated 26th September 2018 which was submitted by the respondent in accordance with directions dated 6th December 2018, after the hearing as recorded at paragraph 40 of the decision, with respect to the verification process carried out by the respondent for court documents in Sri Lanka. This was because the First-tier Tribunal directions said to have been posted on Friday 4th January 2019 were not received by the appellant's solicitors until Tuesday 8th January 2019 (which is evidenced by their office date stamp) and the deadline for submissions by the appellant was the 9th January 2019. Counsel was in court on 8th January 2019 and so there was no opportunity for submissions to be made on behalf of the appellant. Further, if the appellant had had that opportunity to make observations then the points set out in the grounds of appeal at paragraph 9 regarding the fact that the process claimed for checking a terrorist arrest warrant was not correct in light of the evidence from the appellant's solicitors' Sri Lankan lawyer and further points regarding the lack of compliance with Article 22 and paragraph 229IA would have been made.

9. In a Rule 24 notice and through oral submissions made by Mr Melvin the respondent argues that the arrest warrant was considered in a thorough assessment by the First-tier Tribunal, and the DVR was found to be obtained through a procedure which was compliant with Article 22. It was reasonable for the First-tier Tribunal to prefer the evidence of this DVR process rather than the evidence of the appellant's solicitors' Sri Lankan lawyer, particularly as the actual application to the Sri Lankan court by which the lawyer claims to have verified the arrest warrant was not produced to the First-tier Tribunal, as is noted by the First-tier

Tribunal at paragraph 46 of the decision. It was possible that the DVR process could confirm whether a reference number for an arrest warrant was correct through its process even if this was not a process by which a full court file/ copy of the warrant could be obtained. There was no evidence that the errors found arguable in TA (Bangladesh) resembled the issues in this case. The First-tier Tribunal had correctly placed the evidence of the lawyer in the context of the low credibility of the appellant. Mr Melvin accepted however that if the contended arrest warrant for involvement with terrorist LTTE activities was credible then the appellant would be entitled to succeed in his asylum appeal applying the country guidance in GJ notwithstanding the other issues with his credibility.

10. At the end of the hearing I informed the parties that I found that the First-tier Tribunal had erred in law in determining the appeal with reference to the arrest warrant and that I would set out my full reasons in writing. It was agreed that the remaking would be adjourned but retained in the Upper Tribunal. It was also agreed that there should be a preliminary hearing regarding the issue of the emails described at paragraph 39 of the decision to determine whether the Upper Tribunal should prohibit the disclosure of these documents. Both parties were permitted to provide input into this process should they so wish.

Conclusions – Error of Law

11. The First-tier Tribunal erred in law firstly due to two issues of procedural fairness in the making of the decision relating to the arrest warrant. As argued by Ms Jegarajah above I find that the appellant was not given a fair opportunity to provide further written submissions on the letter of 26th September 2018 from Emma Hardy Immigration Liaison Manager at the British High Commission Colombo, which had been disclosed after 4th December 2018, in the directions issued by the First-tier Tribunal on the 4th January 2019 giving the appellant until 9th January 2019. I accept that those directions arrived with the appellant's solicitors the day before the deadline to respond, and that this was not a reasonable timeframe. I also, and more importantly, find that the internal email exchange relied upon by the First-tier Tribunal at paragraph 40 of the decision in relation to this letter has not been disclosed to the appellant without a proper process complying with the Tribunal Procedure Rules 2014 which again raises issues of procedural fairness and does not uphold the principle of maintaining, wherever possible, open justice.

12. Secondly, I find that the First-tier Tribunal erred in law in failing to provide sufficient reasoning for dismissing the verification of the arrest warrant by the appellant's solicitors' Sri Lankan lawyer and in finding that the process set out in the respondent's document verification process was indeed one by which this arrest warrant could be verified, and thus that there could be no implicit issues of a breach of the duties in Article 22 of the Procedures Directive prohibiting direct contact with the alleged actor of persecution in the country of origin in a manner which might

alert them to the likelihood that a protection claim had been made or in a manner which might place applicants or their family members in the country of origin at risk (iii VT (Article 22 Procedures Directive – confidentiality) Sri Lanka [2017] UKUT 368). I come to this conclusion for the following reasons.

13. Whilst the responses in the Emma Hardy letter, set out at paragraph 38 of the decision, sets out assurances with respect to Article 22 issues, the key issue of whether this letter accurately outlines the process that is and could be employed to verify terrorist arrest warrants when it is at odds with the evidence from the Sri Lankan lawyer instructed by the appellant's solicitors about how a terrorist arrest warrant can be verified is not sufficiently addressed. There is a failure to make an explicit finding on whether terrorist cases are dealt with differently from other matters, with the register of cases held only at the TID office, as is contended in the evidence of the Sri Lankan lawyer instructed by the appellant's solicitors particularly in his letter of 3rd December 2018, or whether the (general) information obtain by Ms Hardy from the TID, the Judicial Registrar and the Attorney General's Department that there is no separate process and it is possible to gain access and check these with all other warrants in the registry office above the police post is correct. A reasoned decision needed to be made on this point.

14. I find that it was not sufficient to prefer the evidence from the document verification process by say that there was "no copy of such a motion" as the appellant's solicitors' Sri Lankan lawyer describes as being necessary to obtain the copy of the arrest warrant as is done at paragraph 46 of the decision. The appellant's solicitors provided in a bundle of documents lodged with the First-tier Tribunal the following: S49 letter of instruction from Greater London Solicitors Ltd to the Sri Lankan lawyer; S41 – S42 a letter from the lawyer with his Bar Association of Sri Lanka card saying that he had attended the Magistrates Court and obtained a copy of the arrest warrant; S45 a cash receipt for the application to obtain a copy of the warrant; S43-44 and S46-S47 a copy of the warrant with translation with a record of the date the application was made and stamps from the Magistrates Court with the date the copy was issued; S48 DHL envelope sending documents from the Sri Lankan lawyer to Greater London Solicitors Ltd. It is not explained in the decision why these documents did not suffice to show an application had been made, particularly as they are stamped with the Magistrates Court stamps.

Decision:

4. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

5. I set aside the decision of the First-tier Tribunal and all findings relating to the arrest warrant at paragraphs 34 to 48 of the decision, but preserve

all other findings made by the First-tier Tribunal which are not challenged in the grounds of appeal.

6. I adjourn the remaking of the appeal.

Directions Regarding Disclosure of the internal emails set out at paragraph 39 of the First-tier Tribunal:

1. The respondent has 14 days from the date this decision is sent to the parties to apply to the Upper Tribunal for a direction that the email exchange detailed at paragraph 39 of the decision of the First-tier Tribunal is prohibited from being disclosed to the appellant.

2. If no application is made within this time period the email exchange will be disclosed to the appellant 21 days after the date this decision is sent to the parties.

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 appellant. 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 appellant from the contents of his protection claim.

Signed: Fiona Lindsley Date: 11th September 2019
Upper Tribunal Judge Lindsley

Annex B: Decision under s.108 of the Nationality, Immigration and Asylum Act 2002 regarding the disclosure of the internal email exchange

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Sri Lanka born in 1986. He arrived in the UK in June 2008 and claimed asylum on arrival. His application was refused, and his appeal dismissed in November 2008. He made further submissions in November 2010, June 2013 and October 2016 which were all refused as fresh claims. A judicial review of the final refusal resulted in the decision letter of 19th December 2017, which is the decision against which this appeal is brought. His appeal against the decision was dismissed by First-tier Tribunal Judge Colvin in a determination promulgated on the 15th January 2019.

2. Permission to appeal was granted by Upper Tribunal Judge Bruce, and I found for the reasons set out in my decision at Annex A dated 11th September 2019, that the First-tier Tribunal had erred in law. I set aside the decision and all findings relating to the arrest warrant at paragraphs 34 to 48 of the decision, but preserve all other findings made by the First-tier Tribunal which were not challenged in the grounds of appeal.

3. On 29th October 2019 the parties were notified that there would be a preliminary hearing on today's date under s.108 of the Nationality, Immigration and Asylum Act 2002 regarding the disclosure of the internal email exchange detailed at paragraph 39 of the decision of the First-tier Tribunal.

4. The test under s.108 of the 2002 Act is whether disclosure of the email exchange would be contrary to the public interest. It is necessary under this provision that I investigate that allegation in private.

Submissions & Conclusions – Preliminary Issue

5. Following my directions of the 11th September 2019 the respondent applied for an order prohibiting the disclosure of the email exchange described in the decision of the First-tier Tribunal at paragraph 39 as follows: "copies of internal Home Office emails which are confidential and non-disclosable" and "show an exchange between Ms Sreeraman for the respondent, a Home Office case worker and Ms Hardy, the Immigration and Liaison Manager at the BHC Colombo following the letter received from the appellant's solicitors dated 4th December 2018." Mr Tony Melvin, Senior Executive Officer, said, in his letter of 24th September 2019, making the s.108 application that this was done because of "the extremely sensitive information contained within those exchanges". He added that: " the email exchanges disclose information such as names

and contact details of a number of Home Office/ FCO staff. The emails also disclose other sensitive information about other cases and the ongoing verification processes with several Sri Lankan organisations."

6. However, when I showed Mr Melvin my bundle of documents marked " For the Judge's Eyes Only", which is the documents referred to at paragraph 39 of the First-tier Tribunal decision, he agreed that they could be disclosed so long as the emails and telephone numbers of the staff members were redacted. They did not contain information about other cases or ongoing verification processes with Sri Lankan organisations. I provided Mr Melvin and the appellant with a copy of the redacted emails.

7. Ms Jegarajah then said that she wished to apply for disclosure of the emails referred to in Mr Melvin's letter of 24th September 2019 which did include details of the Sri Lankan organisations. We agreed that any such application needed to be made in writing with reasoning as to why these other emails, which have never been disclosed to the First-tier or Upper Tribunal, are relevant to the determination of this appeal. I suggested that expert evidence, ideally a jointly agreed expert, might be more relevant to determine which of the verification processes (that of the appellant's lawyer or the High Commission) was correct and thus of greater assistance in deciding the appeal.

Decision:

8. The email exchange referred to at paragraph 39 of the First-tier Tribunal and addressed to Judge Colvin "For the Judge's Eyes Only" dated 18th December 2018 was disclosed by consent, with email addresses and telephone numbers redacted, to the appellant.

Directions:

1. Any application by the appellant for disclosure of further emails by the respondent must be made in writing within 28 days of today's date.

2. The appeal is to be listed for a remaking before me at the first available date after 17th February 2020.

3. A consolidated bundle containing only relevant documents is to be served and filed 10 days prior to the hearing date.

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 appellant. 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 appellant from the contents of his protection claim.

Signed: Fiona Lindsley Date: 17th December 2019
Upper Tribunal Judge Lindsley