

UK - VT (Article 22 Procedures Directive - confidentiality), 19 July 2017

Country of Decision:

United Kingdom

Country of Applicant:

Sri Lanka

Date of Decision:

19-07-2017

Citation:

VT v. Secretary of State for the Home Department, [1017], UKUT 00368 IAC

Court Name:

Upper Tribunal (Immigration and Asylum Chamber)

Keywords:

Actor of persecution or serious harm
Benefit of doubt
Credibility assessment
Duty of applicant
Relevant Documentation
Standard of proof

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1]European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [2] > Art 22European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3]European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [4]European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [5]**Headnote:**

The Tribunal reasserted the decision maker's duty of confidentiality in considering documents produced in support of a protection claim. Where there is a need to make an inquiry in the

country of origin then written consent must be given by the applicant. Moreover, Article 22 of the Asylum Procedures Directive prohibits direct contact with the alleged actor of persecution. Additionally, the Refugee Convention requires that the authentication of a document is undertaken with a precautionary approach, namely whether an inquiry is necessary or should be framed in a specific manner and whether there is a safer alternative. Ultimately, disclosure of personal information should go no further than is strictly necessary.

The Tribunal found that the respondent was unlikely to have breached confidentiality in her inquiries into the authenticity of the documents produced; and that if she had, the remedy would not be the grant of refugee status; and that the appellant had not established that he had a credible case for asylum on the basis of the documents submitted. Nonetheless the Tribunal highlighted that a failure to comply with the duty of confidentiality might be relevant to the overall assessment of risk on return.

Facts:

The case concerns V.T., a Sri Lankan national whose father was a well-known member of the LTTE. He entered the UK as a student in September 2014 and sought asylum in November; his claim has been through a number of appeals, this being the most recent. V.T. claimed that he would be at risk if returned to Sri Lanka, since he was arrested while in Sri Lanka and taken to court in 2014. The respondent did not find his account of his arrest credible; and the case hinges on her attempts to investigate it without infringing Article 22, i.e. informing the alleged agents of persecution of his asylum claim.

Decision & Reasoning:

The Tribunal first outlined the standards relating to the burden of proof for establishing a claim as well as the assessment of evidence. Whilst the Tribunal held that the burden of proof is on the applicant to establish the claim, reference was made to the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status and jurisprudence which stated that an applicant may have difficulty in producing evidence to support a claim and that such evidence should be assessed in the round rather than in isolation. The Tribunal went on to note that there is no general duty of inquiry upon the examiner to authenticate the documents produced as well as the importance of confidentiality in asylum claims, which derives, most notably, from the humanitarian objective of the Refugee Convention and the role of the Procedures Directive article 22 (par 19-38). The Tribunal states that "Any direct contact made in a manner that might lead the alleged actor of persecution to conclude that a person is likely to have made a protection claim, or in a way that might give rise to additional risk, is likely to engage the prohibition under Article 22." Therefore, "Careful consideration should be given to the duty of confidentiality, to whether an inquiry is necessary, to whether there is a safer alternative and whether the inquiry is made in a way that does not give rise to additional protection issues for applicants or their family members."

Nonetheless, the Tribunal highlights (par 36) that: "It cannot be right that a breach of a procedural requirement would give rise to recognition as a refugee if the evidence shows, as a matter of fact, that a person does not have a well-founded fear of persecution." That is, breach of article 22 by the respondent does not entail the right of asylum for the appellant. However, the Tribunal qualifies this by stating that a breach of confidentiality to the alleged actor of persecution might give rise to additional risk to an applicant which could, in turn, be ameliorated by a grant of status.

Given that the asylum claim rests on V.T.'s account of his arrest and detention at the Chief

Magistrate's Court in Sri Lanka, the key element in arriving at a decision was the respondent's claim that this account was not credible. The essential evidence for the appellant was documentary: the certified copy of the court records and the arrest warrant obtained by his lawyer Mr D. (par 74). In order to justify her claim that V.T.'s account was not credible, the respondent had to make inquiries in Sri Lanka, which finally in the Tribunal's opinion 'significantly undermined the reliability' of his evidence (par 103). However, as the Tribunal pointed out (par 91), 'the current method of inquiry, by sending redacted copies of the documents to the Sri Lankan authorities (the TID)....risks breaching the prohibitions in Article 22 and is unlikely to produce reliable evidence relating to the authenticity'. In this case, the further enquiries at the Chief Magistrates Court (par 104-105) were not prohibited by Article 22 since that court 'does not involve direct contact with an alleged actor of persecution' (par 104); and they led to the conclusion that the appellant's documents were unreliable and that the appellant has failed to establish on the low standard of proof that his account is credible. Lastly the Tribunal holds that the fact that the respondent sent a redacted copy of an arrest warrant that has been proven to be unreliable to TID is unlikely to lead to identification of the appellant or a breach of Article 22.

Outcome:

Application denied.

Observations/Comments:

This judgment (among others on documentary evidence from Sri Lanka) should be viewed together with the recent PJ (Sri Lanka) v SSHD [2014] EWCA, a starred decision in which the burden of proof that documentary evidence was reliable was placed on the applicant. The introduction of Article 22 clarifies the difficulties which stand in the way of verification of documents, when the issuer of the documents is associated with the alleged agents of persecution; although in this case the Secretary of State was able to circumvent them.

This case summary was written by Luke Hodgkin, LLM Birkbeck University.

Attachment(s):

[Article 22 APD 14 MArch 2017.pdf](#)[6]

Other sources cited:

UNHCR Advisory opinion on the rules of confidentiality regarding asylum information 2005

UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (December 2011)

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[4] <https://www.asylumlawdatabase.eu/node/353>

[5] <https://www.asylumlawdatabase.eu/node/3946>

[6]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Article%2022%20APD%2014%20MArch%20>