



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: HU/18723/2019**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 19<sup>th</sup> October 2021 &  
15<sup>th</sup> February 2022**

**Decision & Reasons Promulgated  
On the 22<sup>nd</sup> March 2022**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**J T  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Dr V Onipede of Counsel, instructed by Melvyn Everson & Co Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Sierra Leone born in 1960. She arrived in the UK on 18<sup>th</sup> June 2019 as a visitor. On 9<sup>th</sup> August 2019 she applied for leave to remain outside of the Immigration Rules on human rights grounds. This application was refused on 30<sup>th</sup> October 2019. Her appeal

against this decision was dismissed by First-tier Tribunal Judge R Cooper in a determination promulgated on the 10<sup>th</sup> February 2021.

2. Permission to appeal was granted by Upper Tribunal Judge Perkins on 7<sup>th</sup> April 2021, and on 29<sup>th</sup> June 2021 I found that the First-tier Tribunal had erred in law for the reason set out in my decision which is appended to this decision at Annex A. All of the findings of the First-tier Tribunal were set aside, and I made it clear that the remaking could include consideration of Articles 3 and 8 ECHR.
3. The matter came before me to remake the appeal. Ms Cunha had had to take over representation of this matter for the respondent at the hearing on 19<sup>th</sup> October 2021 due to the last-minute sickness of a colleague, and did not have the appellant's bundle. She asked for half an hour to read the bundle and prepare, which I granted her. She confirmed she was ready to proceed when we resumed the hearing. As a result of the late start we had to adjourn the hearing part-heard after taking the evidence, and the section of the hearing dealing with submissions took place on 15<sup>th</sup> February 2022.
4. Prior to commencing the hearing on 19<sup>th</sup> October 2021 I asked Ms Cunha whether certain matters were accepted by the respondent and so were not in dispute at the hearing. She agreed that the appellant's work history was not disputed, and neither was her biological relationship with her two daughters and grandchildren in the UK.
5. At the hearing on 15<sup>th</sup> February 2022 Ms Cunha complained that the appellant had failed to send her an electronic bundle which Dr Onipede had promised his instructing solicitors would do at the end of the last hearing. She received a copy of the bundle before the start of the hearing on 15<sup>th</sup> February 2022 however, and was given the time she requested to examine it before starting her submissions.

#### *Evidence & Submissions – Remaking*

6. The appellant's evidence from her statement dated 28<sup>th</sup> February 2020 and oral evidence is in summary as follows.
7. The appellant worked as a police officer from June 1984 to January 2011, during which time she was with the Special Court in Sierra Leone, where people were tried for war crimes, from 2003 to 2010. She then worked for the Anti-Corruption Commission (the ACC) as an investigating officer from January 2011. She visited her daughter in the UK and her family on about seven occasions from 2013 and had previously returned in accordance with her visit visas. In September 2018 the appellant resigned from her work due to health issues and concerns for her own safety due to her work.
8. The appellant only intended to visit the UK for a short period when she arrived in June 2019 with a visit visa valid until 10<sup>th</sup> August 2019. She

came to the UK on this visit, and on the two previous ones (March-April 2018 and September 2018 to January 2019), because her eldest daughter is serious unwell and was in hospital at that time. The appellant did not wish to disclose the condition her elder daughter suffers from because it is a confidential matter which she is not at liberty to reveal. Her eldest daughter remains unwell with this underlying condition, and also had Covid-19 at the time of the hearing in October 2021.

9. The appellant has suffered from threats of serious harm in the past. In 1999 rebels had entered her home and she had had to hide under a mattress whilst her relatives were threatened because she had been an investigator in a treason case which had resulted in some of these people's relatives being executed. In September 2008 she was called in the night with a threat from a person who said that they were from the Kamajor (a brutal group who had involvement in the Sierra Leonian civil war) and told she would have her head cut off. She reported this matter to the Special Court Security but heard nothing further.
10. The appellant acted in 2014 as the senior protection officer for two international journalists who made a documentary film for Al Jazeera Investigates called "Sierra Leone: Timbergate". This documentary, made by Mr Sorious Samura and Mr AAA in 2012, exposed corruption in the timber industry and implicated a lot of prominent individuals including the then Vice President of Sierra Leone, Mr Sam Sumana. This film had a big impact both within Sierra Leone and internationally. The then President intervened directly to protect a friend of his, Mr Momoh Conteh, who was implicated by the film. The President eventually told the ACC to discontinue their investigation into this corruption; and this led to verbal attacks on the appellant and others at the ACC as enemies of the state.
11. When the appellant was in Sierra Leone she had reported the threats made to her to the police, as she had been a police officer, but the police had simply said she should not fear because she was a police officer. They did not provide her with evidence of making the reports. She had not tried to remain in the UK as a result of these previous threats, despite having travelled back and forth to visit her daughters in the UK since 2013. She tolerated the situation at that time, and had the consideration of being the breadwinner for the family. Prior to 2013 she also had not had the resources to have left Sierra Leone.
12. The appellant applied to vary her visit permission for leave to remain on human rights grounds in August 2019. This was because she had decided that it was unsafe to return to Sierra Leone, and also that she did not wish to return as she had no work or family in that country. Her husband was deceased; her sister died in 2018; and her two children both live in the UK with her four grandchildren. She explained that she did not claim asylum as she thought she might be able to go back at some point in the future, and her understanding of asylum was that the

Sierra Leone government would think she was exposing them and that she would never be able to return if she made an asylum application. She thought if she claimed asylum someone in the Sierra Leone community would get to know and her life would be at even greater risk. She had been happy going back and forth seeing family in this country, but this was no longer sufficient for her safety. She had not discussed making an asylum claim with her lawyers as she had decided to make the human rights claim.

13. In September 2019 the appellant received a call from a previous work colleague, Mr IK who told her that another work colleague, Mr Joseph Conteh, had gone missing following receiving a threatening phone call in which he was told he would not live to see another Christmas. Mr IK thought that the appellant should not return to Sierra Leone. Mr Joseph Conteh has not been heard of or found since this time.
14. Around the same time in 2019 the appellant received a call from Mr Sorious Samura who had been speaking to the new commissioner of the ACC in Sierra Leone. The commissioner had mentioned the appellant's name and said that he was taking care of "bad elements", which Mr Samura understood to be a threat. It was at this point that it was clear to the appellant that she absolutely could not return to Sierra Leone as the risk to her of death or serious harm was too high.
15. The appellant explained that she has continued to receive threats and calls via WhatsApp and Yahoo Messenger in the UK because people had her number from the time when she worked as an investigator with the ACC in Sierra Leone. They would call her mobile and realise she was not in Sierra Leone, and then use these internet ways of calling. She had tried changing her number a lot of times when she lived in Sierra Leone, maybe ten times, in the past but it was always possible to get her new number from people who knew her in Sierra Leone. Likewise, it would have been futile to change her address in Sierra Leone as she knew so many people all over the country from her work as an investigator. She was simply too well connected and so could not hide.
16. The appellant explained that the last threat she received was on 3<sup>rd</sup> October 2021 when a witness, Mr Ismail Mousa, she had dealt with during the "Peacekillers" investigation threatened her by alleging she had been paid a lot of money as no one was eventually prosecuted and that she would be "in hot soup". She had dealt with him as she had co-ordinated witnesses, and the witnesses wanted justice and compensation for what happened to them in the Sierra Leonean civil war. Mr Mousa was the brother of the former vice president of the MPIC government and during the civil war his wife had been killed, his house and village bombed because of his relationship with his brother. He felt aggrieved because the matter was arraigned before the Supreme Court but nothing happened. She believes that he threatened the appellant because he could not get to the more senior people or get anything from those currently working with the ACC to make anything happen,

and he feels that the appellant got him to give a lot of information which exposed him. This was not what the appellant had wanted to happen.

17. If the appellant were to be returned to Sierra Leone she is afraid of upset witnesses like Mr Mousa but also those in government. The current government, as of March 2018, is the Sierra Leone Peoples' Party, and prior to them the party in charge had been the APC. The APC ruled from 2007 to 2018, although many people were actually the same in both governments. She was clear that it was no longer safe for her return to Sierra Leone. She had heard that she was being scapegoated by the current head of the ACC for the failure of the "Peacekillers" investigation, and as result he had threatened to purge bad elements such as her. She fears as a result of this hostility she might be killed, or kidnapped and disappear like Joseph Conteh. She is also afraid of the previous commissioner at the ACC, Mr Kamara, and his influential relatives.
18. The appellant does not believe that she could find safety by internally relocating in Sierra Leone because it is a small country of about 7 million people. Although she lived in the western region relocating elsewhere would make no difference to her ability to avoid threats.
19. The appellant explained that if there was a proper and complete change of government in the future she would hope to be able to return to Sierra Leone as it is ultimately her home. She has no other issues in Sierra Leone, such as debt or property disputes, and receives a pension which is paid into her bank account in Sierra Leone. She has no family there, although a nephew based in the USA does travel there for business. Her original home, that she owned, was bombed and destroyed in the civil war and the one that she rented after that she ceased to pay rent for in about November 2019, as by that point in time she had decided she definitely could not return to Sierra Leone because of the information provided by Sorious Samura. She is only making this claim because of the risk to her life: she had previously been happy and loved her life coming and going between the UK for visits whilst being based in Sierra Leone.
20. The appellant explained that the documents at pages 77 to 88 of the appellant's bundle relate to a work colleague, Ms Hariyatu Bangura, who resigned from the ACC in 2017 and went into politics against the SLPP and was then denied her seat in parliament and arrested
21. The evidence of Mr Sorious Samura from his written statement and oral evidence, is in summary as follows. He is a dual British and Sierra Leonean citizen. He is an eminent award-winning journalist who has won both EMMY and BAFTA awards. He has made many investigative documentaries for the BBC, CNN, Channel 4 and Aljazeera English, but he mainly works for Insight TWI which is based in London.

22. Mr Samura has made two films which involved the appellant: one in 2012 and one in 2017. In 2012 he made a film called "Sierra Leone: Timbergate" about corruption surrounding the smuggling of timber in which the then Vice President and other prominent individuals were implicated. When he testified in court, in a case brought by the ACC in approximately 2014, against these corrupt people the appellant was one of the protection officers assigned to him by the ACC. Attempts were made against his life (and he was always very careful about the food he ate as he feared poisoning) and those of some of the officers guarding him due to the political nature of the charges. Mr Samura's opinion is that the ACC was playing a double role, and the then commissioner told him that he thought that the appellant was leaking secrets to him. Although Mr Samura denied that this was the case the then commissioner of the ACC said that "moles would be purged". That commissioner was later rewarded by the President of Sierra Leone, and became the Attorney General, because he allowed the ACC Timbergate case to be thrown out due to political pressure. The judge who threw out the case also became the Chief Justice. After the case was over Mr Samura was aware that the appellant and other protection officers continued to receive threats as they would call him to let him know, and he had tried to plead with the President of Sierra Leone to allow them to work in safety. He even had to assist one local journalist with whom he worked on this investigation to claim asylum in Sweden.
23. The second film he worked on with help from the appellant was in 2017, and was called "Peacekillers", and was about atrocities committed by Nigerian peacekeepers who had been sent to Sierra Leone in the civil war. The appellant was interviewed for this film and helped to identify relevant victims for him. Mr Samura had hoped that the film would put pressure on the government and UN to compensate these victims of the civil war. People in the ACC thought that Mr Samura had paid the appellant for her information, but this was not true, and the government were annoyed as they felt the film made them look bad. The appellant received threats as a result of her involvement, as did some of the witness who talked to the filmmakers and some of them, such as one police officer were sacked from their jobs. Some of these victims now blame the appellant for having introduced them to Mr Samura and the filmmakers which was very hard for her.
24. In 2019 Mr Samura went to Sierra Leone as the new government, elected in July 2019, said that they wanted his help in the fight against corruption. He was also working on a documentary called "Sing Freetown". He learned that an officer, Mr Abdullai Kamara, who had worked with the appellant and him in 2012, had mysteriously disappeared. He does not know he has definitely been killed but he has not been seen since about 2016. Mr Samura had discussions with the now Attorney General, and previous head of ACC, who told him that the appellant had leaked information to journalists for his films, and was seen as being in his camp and anti-government. He had heard from the appellant that a "thug" associated from the ruling party had been

leaving threatening messages about her, and in discussions with the current ACC commissioner he heard the appellant referred to as “enemy of the party” and a “bad apple”. Mr Samura’s belief is that the appellant is at risk of harassment, threats and death if she returns to Sierra Leone. It was as a result of these conversations with senior figures that he advised the appellant via WhatsApp, in 2019, not to return to Sierra Leone as he believes that she is seen as a traitor for helping expose wrong-doing. He had been relieved that the appellant was not in Sierra Leone at the time he called to tell her this.

25. Mr Samura’s view is that the appellant is at risk, even though she no longer works for the ACC or for anyone else in Sierra Leone, because she has been branded a traitor by both victims and those in power. He is also seen as a traitor, but has some protection because he is so internationally well-known: for instance, when he was imprisoned in Liberia Nelson Mandela helped to obtain his release. Things have happened to him in Sierra Leone such as the time when someone tampered with the wheels on his car and it fell apart, so he does nevertheless take precautions with respect to food, having bodyguards, not revealing where he is staying and not staying at his family home. The appellant is at risk because of her association and work with him, and does not have the protection of an international reputation as she is a small player. The appellant is also at risk because of her work aside from her connection with him. She worked on trials in the Special Court prosecuting people such as the Chief Minister, JJ Saffa, known as JJ Blood, and these people now hold power. People like the appellant are being punished for doing the right thing against corruption and atrocities. The motive is, in his opinion, pure revenge so it is not important that the appellant is now retired.
26. The evidence of Ms Marie George from her written statement and oral evidence is in summary as follows. She is a British citizen, married with children, and daughter of the appellant. She works as a nurse and has lived in the UK for the past 12 years. For the past five years the appellant has visited her and her family in the UK. Her mother was very dedicated to her work with the police in Sierra Leone, and particularly with the Special Court and the ACC. As a result of her work she faced threats. She resigned from her work because of these threats. In 2018 the appellant resigned from her job, but she remained happy to be based in Sierra Leone and visit her daughters in the UK. She applied to remain in this country because it became clear that the risk to her safety was too great in Sierra Leone. The appellant has not applied to remain in the UK to look after her grandchildren, and when she arrived in the UK she intended to return to Sierra Leone. The appellant applied to stay in the UK on human rights grounds because of a colleague going missing, and a call from a former colleague telling her about threats.
27. Ms Cunha, for the respondent, relied upon the reasons for refusal letter dated 30<sup>th</sup> October 2019 and made oral submissions. In summary the reasons for refusal letter argues as follows. The appellant does not

qualify to remain under the family life Immigration Rules in Appendix FM. The appellant does not qualify to remain on the basis of her private life applying paragraph 276ADE(1)(vi) of the Immigration Rules because she would not have very significant obstacles to integration in Sierra Leone. It is argued that as the appellant has lived in Sierra Leone for her whole life, and is now 61 years old, she would have no problem re-establishing her private life ties in her country of nationality. When looked at more broadly it is not accepted that it would be disproportionate to require the appellant to leave the UK as it is not considered that she has a more than normal bond emotional bond with her two daughters and grandchildren in the UK, or that this decision would be contrary to the best interests of the minor children.

28. In relation to Article 3 ECHR Ms Cunha accepted the appellant's work history as she has claimed. She also accepted that Mr Samura is a witness whose evidence should be given weight. She criticised the evidence of the appellant however. She argued that it was a problem for the appellant that she did not know as much about her own case as Mr Samura, and submitted that this was a weakness in the claim. She noted that the appellant had indicated that she would wish to return to Sierra Leone one day and felt that her oral evidence was not certain enough to make out a real risk of serious harm, although she was unable to provide a specific example of evidence which supported this contention. Ms Cunha argued that the appellant was vague and should not be accepted as meeting the lower civil standard of proof applicable in Article 3 ECHR protection claims. The appellant had failed to claim asylum through the proper channels, and this was a matter that should be given weight in line with JA (human rights claim: serious harm) Nigeria [2021] UKUT 0097, and thus we should be sceptical of her claim, and find that she was not at Article 3 ECHR risk on return to Sierra Leone.
29. Dr Onipede relied upon his written and oral submissions. He submitted, in summary, that both the appellant and Mr Samura were credible witnesses who should be believed, and that I should find that the appellant was at Article 3 ECHR risk on return to Sierra Leone. She had done sensitive work for the Special Court of Sierra Leone and the Anti-Corruption Commission, and was subject to threats to her life as a result. She was at risk as a result of being an investigator and witness protector from disgruntled witnesses whose cases had gone nowhere; from the politicians who had been challenged in the courts by the Anti-Corruption Commission; and because of her association with Mr Samura and his documentaries which had accused people in power of corruption and crimes.
30. Dr Onipede submitted that the evidence of the appellant and Mr Samura is supported by Sierra Leonean country of origin materials. My attention was particularly drawn to the US State Department Report on Sierra Leone for 2020 and the Amnesty International Report of May 2021 Sierra Leone: Steps Forward and Human Rights Challenges. In particular I was



asked to consider material about opposition politicians and journalists being arrested and detained in both reports; and in the US State Department Report documentation of the use of violence and harassment against journalists and of continued issues of corruption, with continued investigations and cases brought to justice in the Anti-Corruption Court by the Anti-Corruption Commission.

31. At the end of the hearing I reserved my decision.

### *Conclusions - Remaking*

32. I find that this case turns on whether the Article 3 ECHR protection claim made by the appellant through her human rights application is found to be credible, and thus whether return to Sierra Leone is found to represent a real risk of serious harm to the appellant. The appellant has made it clear in her evidence that absent her fear of serious harm she would be able to live in Sierra Leone, although of course she would also like to visit daughters and grandchildren in the UK. She has given evidence that she is paid a pension into a Sierra Leonean bank account, and it is clear therefore that she would, absent threats to her life, be able to live an ordinary retired life there with a rented home and friends in Sierra Leone. The only significant obstacles to integration the appellant would have if she were to return to Sierra Leone are therefore those relating to her fear for her life or serious harm due to her past work and associations with Ms Samura. I therefore find that the Article 8 ECHR claim will succeed only if the Article 3 ECHR claim is found to be credible.
33. In relation to the Article 3 ECHR claim it is relevant to note that the respondent has accepted the appellant's work history firstly as a police officer with the Special Court of Sierra Leone trying those accused of war crimes between 2003 and 2010, and then as an investigating officer with the Anti-Corruption Commission, from 2011 to her retirement in 2018.
34. The evidence of Sorious Samura is also not challenged by the respondent. He has said that the appellant assisted him in making two films in Sierra Leone: the first was "Timbergate" in 2012 which implicated the Vice President of Sierra Leone and other senior people in corrupt and illegal timber smuggling; and the second "Peacekillers" in 2017 about victims of UN peacekeepers, which the then government disliked because they felt it made them look bad.
35. The appellant was Mr Samura's protection officer when he went to court in 2014 following the making of Timbergate to give evidence against those whose wrong-doing was identified in the film. Mr Samura's evidence is that the Anti-Corruption Commissioner got a position in government when the case against the Timbergate wrong-doers was thrown out by the court, and that people in government believed that the appellant had provided him with information for money and was

therefore responsible for their being put under investigation/prosecution at this time, and was a “mole who should be purged”. He has tried to speak up for the appellant to say that she had not done this but felt he had not been believed. Mr Samura was also aware from the appellant that she had received threats both from people who had spoken out during the making of the film *Peacekillers*, and from the authorities after the film was made 2017 as she had told him this. She had said at that point she believed that she was at risk of physical violence and even death.

36. In July 2019 Mr Samura travelled to Sierra Leone where he had discussions with the current attorney general in Sierra Leone (the previous head of the ACC) who let it be known that the appellant was seen as anti-government and associated with Mr Samura; and the new anti-corruption commissioner, who had referred to the appellant as “an enemy of the people” and “one of the bad apples of the country”. His view is that people in both major political parties had formed the view that the appellant was a traitor, and that therefore she was at risk of disappearance and serious harm. He advised the appellant not to return to Sierra Leone because of this risk, and when he had called her on WhatsApp was relieved to discover that she was in the UK at that point. His view is that he has an international reputation which protects him, at least to a certain extent although he also believes that attempts are and can be made to harm him, but that the appellant would be at serious risk from the authorities in Sierra Leone as a result of her honest anti-corruption work which has upset those in power leaving them with a desire for revenge.
37. I give significant weight to the evidence of Mr Samura, which comes from a person I consider to have a public reputation for honesty and accuracy which he would wish to preserve as a journalist trying to expose dishonesty and corruption. Mr Samura’s evidence contains threats to the appellant relayed from persons in significant positions of power in Sierra Leone. Whilst Mr Samura clearly believes there are threats to his safety in Sierra Leone his continued work in and travels to that country, and indeed other countries in Africa where there is a risk to his life, show that he is not an overly risk adverse person. I find that his assessment of these threats of serious harm to the appellant as significant and real it to be given weight.
38. There was no contention that the appellant had been inconsistent in her evidence with that of Mr Samura, or between her oral and written evidence. Ms Cunha did however make submissions, which I attempted to clarify, that the appellant’s oral evidence had been weak and vague. Ms Cunha could not however give me a specific example of the appellant playing down the risk she now faced on return to Sierra Leone from her oral evidence, as opposed to evidence that if things improved in the future the appellant would wish to return to Sierra Leone. Ms Cunha also submitted that I should find the appellant’s evidence insufficient as the most compelling evidence before the Upper Tribunal

came from Mr Samura, a witness, and not the appellant whom, she submitted, seemed to know less about the risks to her than Mr Samura. The appellant's case is based on a history of threats resulting from her work but with the contention that her claim was triggered largely by the assessment of increased risk that she faced provided by Mr Samura in 2019, combined with the news of the disappearance of Mr Joseph Conteh, a former work colleague, whom she learned had gone missing following receiving threatening phone calls. As such it makes sense that Mr Samura is able to articulate in more detail why the appellant is at risk, as it was information given directly to him by very senior government figures in Sierra Leone that has led, in large part, to this claim. I do not find that the fact that perhaps the most important testimony has come from a witness must be damaging to an Article 3 ECHR claim, or is indeed to this one, perhaps particularly when a claim is made and in part arises *sur place*.

39. It is the case however that the appellant has not subjected herself to the rigours of an asylum interview within the respondent's specified asylum claim process, and instead has applied on a form making a human rights application with a fee, and combined an application to remain with family in the UK along with information about her facing threats and danger due to her past work. JA (human rights claim: serious harm) Nigeria concludes that where a human rights claim raises protection issues firstly it is the duty of the respondent to draw to the attention of applicant that they may wish to make a protection claim. The applicant is not obliged to claim asylum and may have Article 3 ECHR risks considered in the context of a human rights claim under the ECHR and with reference to paragraph 276ADE(1)(vi) of the Immigration Rules. However, if the applicant does not make an asylum/protection claim through the channel provided for this there may be some scepticism of the appellant by the respondent, and before the Tribunal, given their failure to subject themselves to the asylum process.
40. The appellant has provided an explanation for her choice not to formally claim asylum: she believes that a formal claim would mean she could never return to Sierra Leone as it would become known, and the Sierra Leonean government would think she was further exposing them. Of course, asylum applications in the UK are confidential, but I accept the appellant holds this genuine if misguided fear. I find however that I cannot have the same confidence in her own testimony that I would potentially have been able to have had she explained her history at an asylum interview, as this process would undoubtedly have tested what she has had to say further than simply making a paper application. However, ultimately, when viewed in the round, I find that the appellant's history that she believes that she is at risk of serious harm, primarily from state agents, is to be found credible because it is corroborated in significant respects by her evidence of her employment and by the witness evidence of Mr Samura, both of which are accepted as credible and evidence on which weight can be placed by the respondent and myself.

41. The question that remains is whether the appellant is at real risk of serious harm if returned to Sierra Leone. It is the opinion of Mr Samura, a man who is of Sierra Leonean origin and who, I find, has a comprehensive understanding of the history and politics of that country and of threats made to those who challenge the powerful, that the appellant's life would be at risk in that country. He is also a person with a reputation for good judgement that he would wish to preserve. The respondent has not made any submissions that I should not give weight to his opinion that there is a real risk of serious harm to the appellant if she were to return to Sierra Leone. I note however that Mr Samura is not however a country of origin expert on Sierra Leone, and he has not produced an expert report. I find therefore that the risks that Mr Samura and the appellant say exist should be considered in the context of the country of origin materials to assess whether they are plausible. From the Amnesty International Report of 2021 it is clear that there are instances of a person connected to opposition political parties and a journalist being arbitrarily arrested and detained. The US State Department Report on Sierra Leone for 2020 records several reports of the government or its agents committing arbitrary and unlawful killings, and of the arbitrary detention of persons including opposition party members, and records the use of violence against journalists. It is also noted that government officials sometimes manage to engage in corrupt practices with impunity despite the ACC and a new Anti-Corruption Court continuing its work to root out corrupt practices. I find that this material is consistent with the authorities in Sierra Leone on occasion carrying through threats of violence, killing and arbitrary detention against those who are perceived as political opponents because they have a history of exposing those in power in a way which displeases them.
42. Applying the lower civil standard of proof, and considering all of the evidence in the round, I am satisfied that the fears of Mr Samura in respect of the appellant, and of the appellant herself, are sufficiently plausible when considered in the context of these country of origin materials for me to find that the appellant would be at real risk of serious harm from state agents if returned to Sierra Leone. As I find that the risk arises primarily from state agents I do not need to consider sufficiency of protection or internal flight, particularly as Sierra Leone is a small country, around the same size as Ireland, with a population of some 8 million people.
43. It follows that the appeal will be allowed under Article 3 ECHR; and for the same reasons under Article 8 ECHR as return to Sierra Leone would amount to a disproportionate interference with the appellant's right to respect to private life due to having to live with a real risk of that serious harm.

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 and all of the findings.
3. I remake the appeal allowing it on human rights grounds, as it would be both a breach of Articles 3 and 8 ECHR to return the appellant to Sierra Leone.

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 the protection issues her human rights claim raises.

Signed: Fiona Lindsley  
Upper Tribunal Judge Lindsley

Date: 16<sup>th</sup> February 2022

## **Annex A: Error of Law Decision**

### **DECISION AND REASONS**

#### *Introduction*

1. The appellant is a citizen of Sierra Leone born in 1960. She arrived in the UK on 18<sup>th</sup> June 2019 as a visitor. On 9<sup>th</sup> August 2019 she applied for leave to remain outside of the Immigration Rules. This application was refused on 30<sup>th</sup> October 2019. Her appeal against this decision was dismissed by First-tier Tribunal Judge R Cooper in a determination promulgated on the 10<sup>th</sup> February 2021.
2. Permission to appeal was granted by Upper Tribunal Judge Perkins on 7<sup>th</sup> April 2021 on the basis that it was arguable that the First-tier judge had erred in law in not treating the appeal as a protection appeal even though the appellant had chosen not to rely upon international protection grounds herself. In directions from Upper Tribunal Judge Stephen Smith dated 22<sup>nd</sup> April 2021 the parties' attention was drawn to JA (human rights claim: serious harm) Nigeria [2021] UKUT 0097
3. The matter came before me to determine whether the First-tier Tribunal had erred in law. The hearing was held via a remote Teams hearing in light of the need to reduce the transmission of the Covid-19 virus, and in light of this being found to be acceptable by both parties, and being a means by which the appeal could be fairly and justly determined. There were no difficulties of audibility or connectivity.

#### *Submissions – Error of Law*

4. The grounds of appeal argue in summary that the appellant raised a protection claim under Article 3 and 8 ECHR in her application. In these circumstances it was not open to the First-tier Tribunal to simply consider the appeal by reference to the Immigration Rules without reference to this element. The Asylum Policy Guidance of the respondent states at page 10 that if someone asks for protection then they must be treated as claiming asylum even if they only raised the ECHR and do not mention the Geneva Convention.
5. It is argued that there are serious and compelling circumstances qualifying the appellant to remain in the UK as she raises a fear to her life in Sierra Leone emanating from her previous work as a police officer in the anti-corruption commission. The First-tier Tribunal erred in law in failing to consider whether her removal would breach Article 3 ECHR in these circumstances. It is accepted by the First-tier Tribunal that the appellant has had a long and distinguished career in the Sierra Leone police force at paragraph 31 of the decision, and that she had had worked on high profile corruption cases.

6. In a Rule 24 notice dated 22<sup>nd</sup> April 2021 from Mr A McVeety of the Specialist Appeals Team the respondent conceded the First-tier Tribunal erred materially in law as the First-tier Tribunal ought to have considered the protection issues raised by the appellant in light of what is said in JA (human rights claim: serious harm) Nigeria in the context of very significant obstacles to integration test under paragraph 276ADE(1)(vi) and with reference to the proportionality of her removal under Article 8 ECHR. The respondent therefore invited the Upper Tribunal to remake the appeal but only under Article 8 ECHR because the appellant's counsel conceded that Article 3 ECHR was not being pursued at the appeal, and on the basis that the appellant was not an asylum seeker as she had declined to claim asylum.

### *Conclusions - Error of Law*

7. A material error of law is found by consent given what is said for the respondent in the Rule 24 notice and in light of the guidance of the Presidential Panel in JA (human rights claim: serious harm) Nigeria. It was an error of law to fail to consider risks to the appellant's security and safety on account of her past employment, as is done at paragraph 41 of the decision, when concluding that she could not meet the Immigration Rules and show very significant obstacles to integration if returned to Sierra Leone, and to exclude the same issues at paragraph 36 of the decision in relation to the proportionality of her removal under Article 8 ECHR outside of the Immigration Rules.
8. JA (human rights claim: serious harm) Nigeria concludes that where a human rights claim raises protection issues firstly it is the duty of the respondent to draw to the attention of applicant that they may wish to make a protection claim. The applicant is not obliged to claim asylum and may have Article 3 ECHR risks considered in the context of a human rights claim under the ECHR and with reference to paragraph 276ADE(1)(vi) of the Immigration Rules. However if the applicant does not make an asylum/protection claim through the channel provided for this there may be some scepticism of the appellant by the respondent, and before the Tribunal, given their failure to subject themselves to the asylum process, and they will not be able to rely upon grounds of appeal under the Refugee Convention but it will be open to them to rely upon all human rights grounds: i.e. Article 3 ECHR and Article 8 ECHR.
9. It was agreed that the appeal would be remade in the Upper Tribunal, that no interpreter would be required, and that the estimated hearing length will be 2 hours. No one objected to the hearing before a face to face one in Field House if that was possible in the context of the Covid-19 Pandemic. Although Dr Onipede, Counsel for the appellant, did not to argue Article 3 ECHR before the First-tier Tribunal he said that he was instructed to argue it at the remaking hearing before the Upper Tribunal and I find that he is entitled to do this as the original grounds of appeal raised both Articles 3 and 8 ECHR, although the appellant must take note of the fact that a protection claim not subjected to the rigours of

the asylum process may be viewed with “some scepticism” as per JA (human rights claim: serious harm) Nigeria.

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 of the findings.
6. I adjourn the remaking hearing.

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 the protection issues her human rights claim raises.

Signed: Fiona Lindsley  
Upper Tribunal Judge Lindsley

Date: 29<sup>th</sup> June 2021