



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

Appeal Number: PA/00519/2015

**THE IMMIGRATION ACTS**

**Heard at Liverpool  
On 7 November 2019**

**Decision & Reasons Promulgated  
On 6 December 2019**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**LENA JULIAMAREIKER AMENOPE FUMEY  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Holmes, instructed by Greater Manchester Immigration  
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. By a decision promulgated on 4 December 2018, I set aside the First-tier Tribunal decision. My reasons for doing so were as follows:

“1. The appellant, Lena Juliamareiker Amenope Fumey, was born on 8 June 1996 and is a female citizen of Togo. She entered the United Kingdom on a visit visa 25 March 2015. On 22 May 2015, she claimed asylum. By a decision dated 30 June 2015, the Secretary of State refused her application. An appeal to the First-tier Tribunal was dismissed but that decision was set aside by Deputy Upper Tribunal Judge Alis in a decision dated 19 October 2016. Judge Alis (then sitting as a Judge of the First-tier Tribunal) reheard the case on

remittal and promulgated his decision on 30 August 2017. He dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. This litigation has encountered procedural difficulties. The appellant speaks English but her first language is Ewe. She has been assisted both in her asylum interviews and also before the First-tier Tribunal by the same interpreter. It transpires that that interpreter was the only interpreter in Ewe language operating in the United Kingdom. Unfortunately, he has now moved to another job. The Upper Tribunal have been unable, despite considerable efforts, to identify another Ewe interpreter. Notwithstanding that difficulty, I directed that the appeal should remain in my list at Manchester on 5 November 2018. The appellant attended with a social worker, Ms Scraggs. I spoke to the appellant in English and am satisfied that her proficiency in English is sufficient for her to give evidence. Indeed, the appellant did not suggest otherwise. I am grateful for the assistance provided to the Tribunal by Ms Scraggs who has indicated that she will endeavour to attend any future hearing before the Tribunal to support the appellant.

3. Granting permission in the Upper Tribunal, Upper Tribunal Judge Plimmer wrote:

“(1) It is arguable the First-tier Tribunal made a mistake of fact which has caused unfairness as contended in ground 4.

(2) It is also arguable that given the crucial importance attached to omissions within the evidence it was arguably procedurally unfair to not seek an explanation from the appellant or her father as contended in grounds 2 and 5.

(3) All grounds are arguable.”

4. The appellant contends that the judge wrongly rejected the statement of a security guard who witnessed the appellant being apprehended by police in 2015 on the grounds that the appellant had not mentioned his involvement in the incident of 2015 in her written witness statement. The appellant contends that this was never put to her and she had no opportunity to provide an explanation. Further, the appellant contends that neither the Presenting Officer nor the judge asked the appellant’s father (who gave oral evidence before the Tribunal) why he had not mentioned that a chief had witnessed his daughter’s arrest in 2015. In his first written statement the appellant contends that her father was only asked why he had not obtained “written evidence” earlier to which he replied he had not been asked to obtain anything until 2017. The appellant asserts that her evidence that in July 2017 the appellant’s solicitor did ask her father to gather written evidence whilst on a trip to Togo has not been challenged by the respondent. Notwithstanding that fact, the judge had failed to give weight to that uncontested evidence.

5. Upon reading the decision and the Record of Proceedings carefully, I find that there is some merit in the appellant’s contentions. It is, of course, not always possible to seek or obtain an explanation as regards every single point which may be taken as to credibility. However, as Judge Plimmer pointed out, the omissions in

the evidence identified by Judge Alis appear to have been highly material and, at least in part, led him to reject the credibility of the appellant's account. I find that the judge should have given the appellant the opportunity to deal with the concerns which he had regarding these apparent weaknesses in the evidence. In the circumstances, I set aside the decision.

6. I am concerned that this litigation should reach a conclusion; the initial claim for asylum was made several years ago. I am concerned also that, if I were to remit the appeal to the First-tier Tribunal, that Tribunal may attempt in vain to locate the services of an Ewe interpreter. I was told by the appellant that her father no longer supports her appeal and will not be giving oral evidence. The only witness will, therefore, be the appellant. Further, I have satisfied myself that the appellant has a sufficient grasp of English to give her own evidence and be cross-examined in that language. For these reasons, I will remake the decision in the Upper Tribunal at or following a reserved hearing at Manchester on a date to be fixed.

### **Notice of Decision**

The decision of the First-tier Tribunal which was promulgated on 30 August 2017 is set aside. None of the findings of fact shall stand. Upper Tribunal Judge Lane shall remake the decision at or following a resumed hearing in the Upper Tribunal at Manchester Civil Justice Centre on a date to be fixed (two hours allowed: no interpreter). Both parties may send to each other and file at the Upper Tribunal copies of any written evidence upon which they may respectively seek to rely no later than 10 days prior to the resumed hearing."

2. At the resumed hearing at Liverpool on 7 November 2019, the appellant was represented by Mr Holmes of counsel. The hearing was conducted in English. As I recorded in my error of law decision, it has not been possible to obtain the services interpreter in the appellant's first language. No objection was raised by the appellant or by her counsel regarding the use of English throughout the Upper Tribunal and I was entirely satisfied that the appellant understood all the questions which were put to her and that she was able to articulate her answers to those questions such that all present understood her.
3. The burden of proof is on the appellant. The standard of proof is whether there are substantial grounds for believing that the appellant will face a real risk of persecution or Article 3 ECHR ill-treatment upon return to Togo. I have taken into account the provisions of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 together with Paragraphs 327 to 339 of HC 395 (as amended). I have sought to identify the core parts of the appellant's evidence and have assessed each item of that evidence before considering the evidence as a totality.
4. The appellant adopted her witness statements as her evidence in chief. She was cross-examined by Mr Bates, who appeared for the Secretary of

State. Having heard the oral submissions of both representatives, I reserved my decision.

5. I do not find the appellant to be a witness of truth. I find no part of her account of past events in Togo may be relied upon. I have reached those findings for the following reasons.
6. First, it was striking that the appellant appeared to be very largely unaware of the evidence given by her father who had previously supported her asylum appeal. By the time the appeal reached the Upper Tribunal, the father of the appellant was no longer offering support. Notwithstanding that fact, the appellant was unaware in cross examination that her father had stated in written evidence that he had travelled in 2017 to Togo in order to locate the appellant's uncle who the appellant claims had fled from the Togo authorities in February 2015. At that time, the appellant claimed that she had been distributing leaflets for the Togo opposition party with her cousin but had been seized by the police and taken to her uncle's home. The appellant's uncle (who only has one leg) had been able to escape from the police as had the appellant who shortly after had travelled to the United Kingdom. In the context of that claim, I do not find it credible that the appellant should be unaware that her own father, previously a supporting witness in her claim and appeal, should have travelled to Togo in 2017 to look for the appellant's uncle. Had the appellant been telling the truth, I find that she would have been aware of the details of her own claim for asylum, including particulars provided by supporting witnesses; her ignorance and lack of interest in her own appeal leads me to conclude that the account provided to the IAC and the respondent is the invention not of the appellant but others seeking to obtain for her immigration status in the United Kingdom. When asked why she had not discussed her father's evidence in her appeal, the appellant replied that, '[my father] just provided evidence which I hadn't even read through and did not know.' It had been the father's evidence also that the appellant's uncle had, following an escape which is itself unlikely given his disability, relocated to the capital of Togo. I accept Mr Bates's submission that, had the uncle, whom the appellant claims is a member of the ANC opposition party in Togo, had problems with the Togo authorities, he would not have relocated to the capital city.
7. Secondly, as regards the leaflets which she claims to have been disputing, the appellant said that she was aware that the leaflets demanded a change of government and had she had no idea what other opinions or ideologies were being advanced. I do not find it credible that the appellant, who appears to be an intelligent and educated woman, would have engaged in the potentially dangerous activity of distributing leaflets for an organisation the aims of which she had not even sought to comprehend.

8. Thirdly, the appellant gave inconsistent evidence regarding the involvement of her cousin in the February 2015 incident involving the Togo authorities. In oral evidence before the Tribunal, the appellant said that her cousin had not been with her when the police had stopped her although he had been in the vicinity of the incident. However, in previous evidence, she had said that cousin had been aware what was going on and, in order to avoid being apprehended, he had run away. Had the appellant telling the truth, I find that she would have been able to have given a consistent account of past events when asked to recount them.
9. The appellant relies upon the expert report of Dr Benjamin Lawrance of the University of Arizona. However, the expert report is problematic. First, at [20], the expert describes the appellant as having been 'seriously' beaten and 'maltreated physically and mentally' by government agents in February 2015. The appellant's own evidence was that she was dragged by the collar and by her arm but not otherwise assaulted. It would appear that the expert has, for reasons which are not apparent, added his own gloss to the appellant's evidence of the incident. Secondly, at [32], the expert claims that, were the appellant to attempt to relocate to another part of Togo, she would encounter difficulties because of her name, accent and her use of the Ewe language. These characteristics would lead strangers to assume that she is 'an opponent of the illegitimate regime of Faure Gnassingbe.' However, it has never been part of the appellant's claim that she would face any difficulties in any part of Togo on account of her tribe identity or ethnicity. Mr Holmes, who appeared for the appellant, submitted that the expert was not restricted to matters raised only by the appellant and her representatives in their instructions to him and had been instructed to comment of matters of ethnicity. I accept that may be the case, but I find that it is significant that the appellant herself has never claimed that she would face tribal/ethnicity problems in Togo and I find that, notwithstanding the expert's comments, she has no subjective fear in that regard. In any event, I find that the appellant faces no real risk of ill-treatment should she return to her home area of Togo where the problems identified by the expert will not pertain.
10. The expert report also contains reference to a number of other asylum cases involving individuals from Togo, including one case which has yet to be completed but is pending in the courts of the United States of America. It is difficult to see how these references assist the Tribunal at all. Viewed as a whole, I find that I agree with Mr Bates's description of the expert report as consisting to a large extent of advocacy for the appellant's appeal rather than objective evidence, properly sourced. I have attached limited weight to the report accordingly.
11. In the light of my findings and observations, I have concluded that the incident in February 2015 that did not take place as described by the appellant. I find the appellant has never come to the attention of the

Togo authorities, either as described in her account or at all. I find that the appellant's uncle is not a member of a Togo opposition party and that the appellant has no profile whatever as a supporter of opposition politics in Togo. I find that the appellant may return without risk to her home area of Togo and that she would there not face any risk on account of her political opinions, tribal characteristics or ethnicity, in the latter case because she would be living with others having the same characteristics and ethnicity.

12. No appeal in the Upper Tribunal is advanced on grounds other than asylum/Article 3 ECHR. I dismiss the appellant's appeal against the decision of the Secretary of State dated 30 June 2015 refusing her international protection

**Notice of Decision**

This appeal is dismissed.

Signed

Date 22 November 2019

Upper Tribunal Judge Lane