



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

Appeal Number: PA/02713/2020

THE IMMIGRATION ACTS

**Heard remotely via Teams
On 8 June 2021**

**Decision & Reasons Promulgated
On 23 June 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**SD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karnik

For the Respondent: Mr Tan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Togo who was born in 1993. He appealed the First-tier Tribunal against a decision of the Secretary of State made on 6 March 2020 dismissing his claim for international protection. The First-tier Tribunal, in a decision promulgated on 22 December 2020, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The appellant claimed to have been involved in opposition politics in Togo and that he faced a real risk of harm as a consequence should he return there. The appellant's account of past events was rejected as untrue by the judge. At [47], the judge noted that the appellant claimed in his

asylum interview and subsequently in the course of his claim that he was member of the ANC, a political party. However, the judge observed that, in his screening interview, the appellant had stated that, 'if you don't belong to a political party, you don't have anything.' The judge found that, 'this, it is my clear view, is the appellant saying that he is not a member of a political party.' The judge noted that the appellant later in the same interview in response to a question about membership of 'pro-government groups, political organisations, armed or violent organisation, group or party' had answered 'no.' The judge found that on two occasions in the screening interview, the application had 'made no mention of any political issues, opinion or activity whatever...'

3. In my opinion, the judge has misunderstood the appellant's evidence. First, it is not correct to say that the appellant had made no mention in the screening interview of political activity. At [4.1], the appellant stated that he feared 'the government' 'because we did some demonstrations. We asked for our rights.' Secondly, it is tolerably clear that the appellant (giving evidence in French with the assistance of an interpreter) has used the expression 'political party' specifically to refer to the ruling government party of Togo. He refers at [4.1] to 'the political party' 'organising elections ... we will be hit'. When he says that, 'if you don't belong to a political party, you don't have anything' it is obvious from the context that he is referring to *the* political party, i.e. the ruling party. By analogy, if one had spoke of '*the Party*' in Soviet Russia any time between the 1930s and the 1980s one would have only have been understood to be referring to Soviet Communist Party. Indeed, if in the screening interview answers one replaces the indefinite with the definite article, the sense is made even clearer. Thirdly, the question which I have quoted at [2] above, whilst it does refer to 'political organisations', mainly concerns membership of pro-government or 'armed or violent' organisations; again it is important to remember that the question was put to the appellant through an interpreter.
4. The judge's failure to understand this part of the appellant's evidence has impacted on other parts of her analysis. Understandably given her reading of the screening interview, the judge has taken a particularly dim view of the credibility of the appellant's account which appeared to change inexplicably from one in which the appellant had no political interest whatever to the appellant being at risk of detention for membership of the ANC. For the reasons I have given above, the judge's assessment is not accurate. Secondly, whilst she accepts the expertise and agrees with the findings of the report of the expert, Dr Lawrence, the judge did not 'accept' the report because its 'prevailing pre-requisite' was that the appellant was a person with 'an anti-government profile' which the judge categorically found that the appellant did not possess. As that finding is not sound, the judge's treatment of the expert report has also been tainted by her error.
5. I find that, notwithstanding the judge's additional findings rejecting the credibility of the appellant's evidence, it is not possible or desirable to

separate out and preserve those other findings whilst rejecting the incorrect findings on the screening interview. The judge has carried out a holistic assessment of the evidence, as she was required to do; consequently, her errors in part of that analysis have vitiated the whole. There will need to be a hearing *de novo* of the appeal which is better conducted in the First-tier Tribunal to which the appeal is returned for it to remake the decision. As regards the remaining grounds of appeal, some arise directly from the judge's error in respect of the screening interview. The remaining grounds were not addressed in any detail, if at all, at the Upper Tribunal initial hearing and, given that none of the findings of fact of the First-tier Tribunal are to be preserved, I do not propose address them now.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for it to remake the decision following a hearing *de novo*.

LISTING DIRECTIONS: first available date; not Judge Mack; 2 hours; First-tier Tribunal to decide whether face to face or remote; French interpreter; Manchester.

Signed

Date 10 June 2021

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.