



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

Appeal Number: AA/00842/2015

**THE IMMIGRATION ACTS**

**Heard at Newport (Columbus Decision & Reasons Promulgated House)  
On 16 June 2017**

**On 22 June 2017**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**N I L  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Joseph instructed by Crowley & Co Solicitors  
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

- 1.** This appeal is subject to an anonymity direction.
- 2.** The appellant is a citizen of the Democratic Republic of the Congo (DRC) who was born on [ ] 1977. He arrived in the United Kingdom on 3 October 2013 and claimed asylum.
- 3.** On 12 December 2014, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds. On 19 December 2014, the Secretary of State made a decision to remove the appellant by a way of directions to the DRC.
- 4.** The appellant appealed to the First-tier Tribunal and, in a determination promulgated on 6 July 2015, Judge Holder dismissed the appellant's appeal.

5. The appellant appealed to the Upper Tribunal with permission and, in a decision dated 5 May 2016 the Upper Tribunal (UTJ Grubb) concluded that the First-tier Tribunal had erred in law in reaching its adverse decision and the appeal was remitted to the First-tier Tribunal for the decision to be remade.
6. Following the remittal, in a decision dated 5 October 2016, Judge A D Baker dismissed the appellant's appeal on all grounds.
7. The appellant sought permission to appeal that decision to the Upper Tribunal. Permission was initially refused by the First-tier Tribunal but on 7 December 2016, the Upper Tribunal (UTJ Canavan) granted the appellant permission to appeal.
8. In a rule 24 notice dated 20 December 2016, the Secretary of State indicated that she did not oppose the appellant's appeal to the Upper Tribunal and, in essence, accepted that the decision should be set aside and remade.
9. At the hearing before me, I raised with both representatives the fact that I had previously dealt with the appeal. Both Mr Diwnycz, for the Secretary of State and Mr Joseph for the appellant agreed that it was proper for me to deal with the appeal as the Secretary of State, through Mr Diwnycz, accepted that the First-tier Tribunal's decision should be set aside and both agreed that in those circumstances the appeal should again be remitted to the First-tier Tribunal for the decision to be remade.

### **Decision**

10. Consequently, I am satisfied that the decision of the First-tier Tribunal involved the making of an error of law. That decision cannot stand and is set aside.
11. The appeal is remitted to the First-tier Tribunal for rehearing. It was accepted by both representatives that Judge Holder's finding in para 32 that the appellant had been a member of Toges-Noires since 2000 should stand.
12. Thus, I remit the appeal to the First-tier Tribunal and direct that it be heard by a judge other than Judge Holder or Judge A D Baker.

Signed

A Grubb  
Judge of the Upper Tribunal

Date: 21 June 2017