



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00077/2016

THE IMMIGRATION ACTS

Heard at Field House
On 6 July 2021

Decision & Reasons Promulgated
On 5 August 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

K N (DRC)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Toby Lindsay, a Senior Home Office Presenting Officer
For the respondent: Mr Mathias Ume-Ezeoke of Counsel, instructed by Chris Solicitors

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of K N who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The Secretary of State appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the Secretary of State's decision on 9 May 2016 to cease international protection with reference to Article 1C(5) of the Refugee Convention. The Secretary of State did not offer humanitarian protection leave or grant leave to remain in the United Kingdom on human rights grounds. The claimant is a citizen of the Democratic Republic of the Congo (DRC).
2. **Mode of hearing.** The remaking hearing was a face to face hearing at Field House.

Ambit of this appeal.

3. The appeal was remitted to the Upper Tribunal by the Court of Appeal to the Upper Tribunal for remaking, in *Secretary of State for the Home Department v KN (DRC)* [2019] EWCA Civ 1665 (09 October 2019). The decision of the First-tier Tribunal has been set aside, save that the evidence given before the First-tier Judge forms part of the claimant's evidence for the remaking hearing.
4. The Court of Appeal directed the Upper Tribunal to conduct 'for a full investigation as required by Article 1C(5) as to whether the circumstances in connection with which KN was recognised as a refugee have ceased to exist'.
5. In addition, the claimant has become involved in *sur place* oppositionist activities in the United Kingdom. The claimant is an active member of APARECO (UK) (hereafter 'APARECO') and another diaspora opposition group, CRC Platform. Upper Tribunal must consider whether the claimant's *sur place* activities create a new risk entitling him to international protection.
6. It is common ground that these are the only issues to be dealt with in the remaking hearing: the claimant has not challenged the rejection of his Article 8 ECHR claim, and the Secretary of State does not challenge the finding that he has rebutted the section 72 presumption.

Background

7. The claimant's father was an opposition politician during the Mobutu years and is now a supporter of Mr Felix Mubake's UDPS breakaway group, which opposes the coalition government of President Félix Tshisekedi ('President Tshisekedi') and the former President, Mr Joseph Kabila Kabange ('Mr Kabila'), who governed DRC in coalition following the Presidential election in December 2018 at which President Tshisekedi was the successful candidate. President Tshisekedi was elected on behalf of the UDPS Party, but there has been a subsequent three-way split in that party, caused by concerns about the coalition with Mr Kabila.
8. The claimant's father was granted asylum on application, and remains a recognised refugee, with political opinion as his Convention reason. His evidence in these proceedings that he remains politically active in opposition groups in the United

Kingdom, in particular, keeping up with the anti-coalition UDPS activities of Mr Mubake at regular meetings.

9. The claimant, his mother and siblings joined his father in the United Kingdom in 1991, when he was 10 years old, by way of refugee family reunion. They were in due course granted indefinite leave to remain on that basis. The claimant is 30 years old now. When younger, he was for a time involved in criminal activity, and received numerous convictions for various offences, culminating in a conviction for conspiracy to commit robbery for which on 8 June 2012 he was sentenced to 4½ years' imprisonment, triggering the automatic deportation provisions of the Borders, Citizenship and Immigration Act 2009.
10. The Secretary of State accepts that the claimant has not reoffended since 2010, that his mother and siblings remain in the United Kingdom, and that he has a British citizen partner and two British citizen children. The elder boy has already reached the age of majority; the younger, a daughter, is 10 years old now. It is accepted that has rebutted the dangerousness presumption in section 72 of the Nationality, Immigration and Asylum Act 2002 (as amended).

Cessation decision

11. On 9 May 2016, the claimant was notified of the Secretary of State's decision to cease his refugee status, following consultation with his representatives and with UNHCR, and her intention to remove him to DRC.
12. The Secretary of State can produce only an incomplete copy of the letter from UNHCR on which she relied in making her decision. It is clear that this is not a question of misnumbering of paragraphs, as there are two numbered footnotes omitted also.
13. I approach this decision on the basis that the Secretary of State did not take into account whatever is omitted from the copy of the letter on her files:

Previous proceedings

14. The First-tier Judge allowed the claimant's appeal in 2017, finding the claimant and his witnesses to be credible historians and that the Secretary of State had not carried out the assessment of durable change which Article 1C(5) requires.
15. The Secretary of State appealed to the Upper Tribunal, citing inadequacy of reasoning in the First-tier Tribunal's decision regarding cessation. The Upper Tribunal set aside the decision of the First-tier Tribunal for material error of law, but then remade the decision to the same effect as the First-tier Judge, namely, that the decision to revoke the claimant's refugee status breached the United Kingdom's obligations under the Refugee Convention.
16. The Secretary of State then appealed to the Court of Appeal.

Court of Appeal

17. On 9 October 2019, the Court of Appeal set aside the decision of the Upper Tribunal, which it found to have adopted too narrow an interpretation of Article 1C(5) of the Convention. At [38] in the judgment of Lord Justice Baker, with whom Lord Justices Leggatt and McCombe agreed, he said this:

“38.It is true, as Mr Malik pointed out, that a person is a refugee if he satisfies the definition of a refugee in article 1A(2) of the Convention, even if his status has not or not yet been recognised by a contracting state. As stated in paragraph 28 of the UNHCR Handbook, a person "does not become a refugee because of recognition, but is recognised because he is a refugee". ... the refugee has a legitimate expectation that he will not be stripped of the status save for demonstrably good and sufficient reason. Any individual who has been recognised as a refugee under Article 1A(2), and who is not liable to refoulement under Article 33(2), can only be deported if the Convention ceases to apply to him for one of the reasons set out in article 1C.” [Emphasis added]

Evidence before the Upper Tribunal

18. I heard oral evidence from the claimant, and received into evidence documents, including a short witness statement from his father, comprised in a bundle prepared by Chris Solicitors, as well as the Home Office bundle. The claimant’s father remains a recognised refugee but was unable to attend and give oral evidence, because he was accompanying the claimant’s mother to a hospital appointment.
19. I have had regard to all evidence and argument before me, whether oral or documentary, in particular that to which the parties directed me at the hearing, whether or not it is set out in detail in these Reasons. I have also had regard to the oral evidence given by the claimant at the First-tier Tribunal hearing, which the First-tier Judge accepted as credible. In cross-examination, Mr Lindsay did not challenge the credibility of the evidence given today.
20. At the end of the hearing I reserved my decision.

UNHCR letter

21. On 12 February 2015, following consultation by the Secretary of State, UNHCR gave advice to the Secretary of State on the proposed cessation decision. The copy of the UNHCR letter on the file is missing page 6: Mr Lindsay said that the archived copy in the respondent’s GCID records was the same and that (despite a direction to do so), given the circumstances of the Covid pandemic, the Secretary of State had not been able to produce a full copy of the letter. It is plain that a page is missing, since although the text flows reasonably from page 5 to page 7, there are two numbered footnotes missing, which would have been on page 6.
22. I approach the letter on the basis that the Secretary of State’s decision is based on the incomplete copy. UNHCR expressed concern that the Secretary of State applied a policy of reviewing international protection for cessation purposes when an individual committed a criminal offence. The claimant, having been granted refugee

status based on his father's political opinion, had not yet been interviewed to see what his personal risk might be.

23. The Secretary of State had emphasised in her letter to UNHCR that she '[did] not apportion any weight to an individual's conviction when considering whether cessation is appropriate' but nevertheless, an approach whereby a criminal conviction was used to trigger an individual consideration of Article 1C(5) was considered to risk erroneously introducing an Article 33(2) gloss into the application of the cessation clauses.
24. UNHCR recommended that the application of the cessation clauses should entail 'a restrictive and well-balanced approach to their interpretation, ...a strong presumption in favour of retaining refugee status, and a high threshold of proof for the application of any cessation clause'. UNHCR referred to country evidence in 2014, including the Freedom House Report, *Freedom in the World 2011*, which confirmed violence, harassment and pressure on UDPS members. This, of course, was before the end of President Mobutu's government. Nothing in the letter can assist the Tribunal with the situation today.

CPIN 2019

25. The Secretary of State's 2019 CPIN is relevant, because it is her summary of the international materials, and is used by caseworkers.
26. At 4.3 of the CPIN, the Secretary of State records that President Felix Tshisekedi of the UDPS became president of the DRC on 24 January 2019, following which there was a compromise between his party and that of former President Joseph Kabila, who are working together in government. At 7.4, details are given of the Congolese Support Group (CSG), the principal expatriate DR Congolese organisation.
27. At 7.4.3, the CPIN deals with the Alliance de Patriotes pour la Refondation du Congo (APARECO). The report says that the Secretary of State has not been able to find any information on how APARECO and similar groups in the diaspora are currently viewed by the DRC authorities. The November 2019 CPIN contains nothing about Valentin Mubake and the split in the UDPS. Other sources indicate that Mr Mubake was expelled from the UDPS in 2017 for engaging in negotiations with Mr Kabila without the input of the UDPS leadership.

US State Department Report 2020

28. The 2020 US State Department Report on the DRC says that:

"Arbitrary Arrest: Security personnel arrested and detained civil society activists, journalists, and opposition party members and sometimes denied them due process (see sections 1.a., 2.a., and 5). Security forces regularly held protesters and civil society activists incommunicado and without charge for extended periods. The United Nations reported the SSF arbitrarily arrested at least 1,327 persons across the country as of June 30, compared with 2,947 persons during the same period in 2019. Human rights

defenders continued to be subject to arbitrary arrest and detention without a fair public trial. ...

Pretrial Detention: Prolonged pretrial detention, ranging from months to years, remained a problem. A local NGO, the Congolese Association for Access to Justice, estimated that between 75 and 80 percent of the prison population was in pretrial detention. Judicial inefficiency, administrative obstacles, corruption, financial constraints, and staff shortages also caused trial delays. According to a *Deutsche Welle* report in May, prisoners in Kasai-Oriental capital Mbuji Mayi's central prison and at the Ndolo military prison in Kinshasa were often denied their right to a trial."

Claimant's evidence

29. The claimant adopted two witness statements. In the first, dated 23 February 2017, he stated that his father left Zaire (now DRC) in 1988, when the claimant was about 7 years old. His father was granted refugee status in 1989 directly upon application.
30. In early 1991, the claimant, his mother and his siblings travelled to the United Kingdom, and were granted refugee status in line with his father, as was then the Secretary of State's policy. The claimant attended school in the United Kingdom. He began to commit crimes because 'I was lazy, it was easy money, and I was greedy'. His friendship group were also committing crimes. It did not occur to the claimant that this behaviour could compromise his refugee status and lead to his being deported to DRC.
31. The claimant's father was a difficult, controlling man, probably for cultural reasons. He kept all the family's important documents, including the claimant's status document and travel document, the claimant not seeing any of them until he was much older. The claimant did not realise until 2008 that he could travel outside the United Kingdom and did not see his immigration status document until his solicitor showed it to him.
32. In 2000, when the claimant would have been about 19 years old, he met his partner, who was then 16 years old. His parents were not happy that the claimant was in a relationship with a white woman: in 2017, he said he had no contact with his parents. The claimant was in prison when his partner's mother died and feels that he let her down badly by not being there to support her. They have children together and the relationship has survived his bad behaviour and also his parents' disapproval.
33. The claimant's understanding of the situation in DRC was that on return, people were detained and questioned and that after such a long absence, and with no local family, things would be very difficult for him. He had no remaining connections to DRC. The claimant was really scared to return to such a violent place. He had heard that those with no family were detained on return. Return to DRC would tear him, and his family, apart.
34. The claimant in 2017 did not know and had never been told in detail why his father was granted refugee status: his understanding was that his father was a fairly high-ranking member of the UDPS, when it was an oppositionist party under President

Mobutu. The claimant could not say, one way or the other, whether the authorities in DRC would now connect him with his father, if he were returned. However, he feared that his name might spark interest in him as his father's son, putting him at risk if he were returned.

35. The claimant gave evidence at the First-tier Tribunal hearing on 7 July 2017. He adopted his witness statement summarised above, and said that due to a difficult relationship with his controlling father, he had left home as soon as he could. He had four siblings in the United Kingdom and some extended family in Paris.
36. The relationship between him and his partner had now lasted for 17 years. They had two children together. His partner had visited him every week in prison and the claimant had plenty of time to think. He had decided that whatever he was chasing before was not worth the loss of time with his family, or the emotional and financial consequences. He considered that he could now be a good example to his children.
37. The claimant had tried to get work in the construction industry, but it was difficult because of the weekly reporting requirement. Such a regular absence could not be explained away. It forced him to tell employers of his criminal history, and then he did not get the job. The Job Centre were aware of the difficulty and the family was living on benefits. The claimant's son and partner also gave evidence in support of his appeal.
38. The First-tier Judge found the witnesses' evidence, including that of the claimant, to be generally credible. The judge considered that the Secretary of State's decision breached the United Kingdom's obligations under the Refugee Convention and allowed the asylum appeal. The human rights element of the appeal was dismissed.
39. In March 2020, the claimant made a second witness statement, which he also adopted as part of his evidence today. Since 2017, he had become more interested in DRC and its politics, and had taken the time to find out more about his father's political past. He now understood that the elections in DRC were unfair and that opposition parties were silenced. He had researched the available organisations and had joined APARECO in July 2017, learning about the corruption in politics and leadership in DRC.
40. The claimant had joined two other United Kingdom-based pressure groups, Conseil des Résistants Congolais Platform (CRC Platform), and Resistance Combattants Kongolais (RCK) both of which opposed the coalition Tshisekedi/Kabila government in DRC. He went to meetings of these three groups, regularly every month, usually in London but often in Birmingham. The claimant was attending as many demonstrations as possible, distributing leaflets and engaging with youth members.
41. It was now almost 30 years since the claimant had been to DRC, and 10 years since his last criminal offence. He had lived blamelessly in the community with his family since his release in 2014, reporting every week, without further incident.

42. The claimant gave oral evidence at the hearing today. In answer to supplementary questions from his Counsel, he said that he was sure that the groups of which he was a member were monitored, and that the authorities in the DRC would be aware of everything they did. When President Felix Tshisekedi visited the United Kingdom, the and the organisations with which he was connected held discussions, group meetings, and a group chat on WhatsApp, discussing the situation in DRC.
43. He still belonged to APARECO and another organisation whose name he could not remember. Both were against what the government in DRC was doing.
44. The claimant knew from experience that the DRC authorities watched Facebook and social media. They would be able to recognise people at the airport and would question you as to who you are, and who was behind the group, and so on. He knew of a couple of people who had problems. A friend of his had returned 5 years ago and not been heard from since his return.
45. In cross-examination, the claimant said that he had become involved in political organisations in the United Kingdom because he wanted to see whether it was safe to go back to DRC. A friend had introduced him to the group: he had learned that there was no employment and nothing to go home to. He was attracted to the group, so he joined.
46. The claimant had read up on his father's history now and understood it. His father remained politically active, holding meetings in the expatriate community to keep up to date. The claimant confirmed that he had strongly held political beliefs regarding the political situation in the DRC. If returned to DRC, he would tell the truth about what happened to him and what he believed.
47. His father was involved with the UDPS breakaway party of Mr Valentin Mubake, not APARECO. They were not in the same organisations. However, the claimant was now sure that if he were returned to DRC and the authorities asked about his father, he would be 'digging my own grave'.
48. In re-examination, the claimant said that his father gave out leaflets and 'stuff like that' and once a month, or once every two months, he went to meetings to find out what Mr Mubake was doing.

Claimant's father

49. The claimant produced his father's original asylum statement on which international protection was granted. It records that his father became involved with the UDPS at the end of 1987 and distributed pamphlets in his home area. He was a founder member of a human rights council which emerged from the UDPS in January 1988 and on 10 January 1988, a meeting was raided by CNRI agents, who arrested 6 people, including the appellant's father. They were tortured, and told they would be tried. Following an intervention by the appellant's grandmother, the appellant's father was helped to escape by a colonel, and left Zaire (as it then was) in February

1988, coming to the United Kingdom via Belgium where he was granted international protection on application.

50. There was a witness statement from the claimant's father, dated 16 May 2021. The claimant's father did not attend the hearing as he was required to accompany his wife, the claimant's mother, to a hospital appointment. The statement is so short that it can be quoted in full:

“[Name and address details]. I am a British citizen; I came to the United Kingdom in February 1988, claimed asylum and was recognised as refugee. I can confirm that my party UDPS-People which was created and managed by Mr Valentin Mubake is in opposition with the ruling party - UDPS of Felix Tshisekedi. I am still in opposition party as a member of UDPS-People of Valentin Mubake. If my son is deported, his life will be at risk and he will be killed. The above statement I made are true to the best of my knowledge and belief.”

Other documents

51. The claimant produced a membership document dated 5 December 2019 from Mbala Ndongosi, Territorial representative of APARECO in the United Kingdom. The document, which Mr Lindsay has not challenged, confirms that the claimant became a member of APARECO on 18 July 2017. A statement from Mr Livingstone Moundele, deputy representative at APARECO's London branch, dated 6 March 2020, stated his strong belief that the claimant is at high risk of serious harm on return to DRC. APARECO 'always opts for a Popular Uprising in order to truly liberate DR Congo from criminal system and to end the occupation of the Congo'.
52. Mr Moundele says that as President Tshisekedi's party is in coalition with the Mr Joseph Kabila's party, nothing had changed. President Tshisekedi had not won the presidency, but his elevation was the subject of 'an apparent corrupt bargain' between him and Mr Kabila's party. When accepting the Presidency, President Tshisekedi had described Mr Kabila's opposition group as not adversaries, but partners.
53. The claimant had shown his face at different APARECO events and his photograph had been published on APARECO's official website and Facebook page, which the DRC secret services were known to monitor. In particular, on August 16 2019. Mr Moundele and the claimant had been photographed together at a demonstration in front of the Rwandan Embassy, and on 29 March 2019 at a demonstration outside the Congolese Embassy. On 19 January 2020 and 15 February 2020, they had both demonstrated when President Tshisekedi came to London.
54. The claimant produced his CRC Platform and RCK membership cards. A letter from the Chair of both organisations, Mr Lutete Kasongo, confirmed that CRC Platform is a pressure movement of Congolese people in the United Kingdom, while RCK is an international coalition, in both cases working to combat the coalition between President Tshisekedi and Mr Kabila. The claimant had been tasked with spreading the ideology of the movement among Congolese people in the United Kingdom, and

had shown great commitment to the main aim, 'to make clear to the coalition regime that the Congolese people will not continue tolerating his dictatorship and his pillage of the country wealth at the industrial scale'. The movement had witnessed a surge in support in the Congolese community.

55. The current regime was described as 'cracking down all civil liberties'. Political, student and human rights activists were in prison and many more were killed or kidnapped for exercising freedom of speech or daring to challenge the coalition government. Mr Kasongo was sure that the claimant would be in danger on return: all CRC Platform and RCK members and associates were considered as enemies by the Tshisekedi/Kabila coalition government, a 'barbaric regime with a track record of human rights abuse'.

Secretary of State's submissions

56. For the Secretary of State, Mr Lindsay relied on the skeleton argument filed by Mr Steven Kotas on 21 October 2020. In relation to cessation, Mr Kotas relied on *Secretary of State for the Home Department v JS (Uganda)* [2019] EWCA Civ 1670, arguing that this decision was dispositive of the cessation issue in the Secretary of State's favour.
57. As regards the claimant's *sur place* activities and the risk they created, Mr Kotas' argued that even taking the claimant's account at its highest, membership of APARECO, the CRC Platform or RCK (all oppositionist groups) was not sufficient to put the claimant at risk on return. None of them were major political parties in modern DRC, where there were 'hundreds of political parties' (see CPIN).
58. The Upper Tribunal should be prepared to depart from, or to distinguish, the claimant's position from that of 'leaders, office bearers or spokespersons' in APARECO, as set out in the Tribunal's country guidance given in *BM and others (returnees - criminal and non-criminal) DRC CG* [2015] UKUT 293 (IAC). At [87] in *BM*, the Upper Tribunal had found that the DRC government monitors opposition in the United Kingdom, in particular APARECO, and that it was likely to report periodically to the DRC government, in particular its ANR and DGM agencies. Leaders, office bearers and spokespersons of APARECO were likely to be known both to the DRC Embassy in the United Kingdom and to the government in DRC.
59. There had been a change in government and an improvement in the overall situation of opposition parties. In April 2021, the coalition had been definitively ended by President Tshisekedi, who had ejected Mr Kabila and all those who supported him from his government. The claimant could not have now any objectively well-founded fear of persecution if returned, and the circumstances in which he had been recognised as a refugee had ceased to exist. The current *sur place* claim was a disingenuous and self-serving fabrication to bolster the claimant's prospects of remaining in the United Kingdom.
60. In oral submissions, Mr Lindsay accepted that the factual matrix in this appeal was distinguishable from that in *JS (Uganda)*, because the Upper Tribunal was being

asked to investigate the current circumstances of this particular individual in his own country. Mr Malik had argued the case before the Court of Appeal on the basis that current country conditions in DRC were accepted to be relevant to the assessment of those circumstances.

61. Mr Lindsay said that it was for the Upper Tribunal to decide whether the claimant fell to be treated as a credible witness, which the First-tier Judge had found him to be. If his account were credible, he could not be expected to lie about his political views or his family connection to his father, and the risk had to be assessed on that basis: see *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31.
62. The Secretary of State's position remained that there was a durable change in the DRC. President Mobutu had lost power in May 1997. The Secretary of State would continue to rely on her November 2019 CPIN Opposition to the Government, Democratic Republic of the Congo. Mr Lindsay contended that there was no evidence that the father's former political involvement would put him at risk now, or that the present UDPS government remained interested in pre-1997 Mobutu oppositionists.
63. 'Opposition' in DRC needed to be construed broadly and Mr Lindsay acknowledged that the CPIN remained somewhat equivocal as to country conditions. The CPIN did not completely resolve the question of whether those who supported other UDPS groups than that currently in power, following the split in the UDPS, remained at risk.
64. There remained the question whether the claimant, by his *sur place* activities, had put himself at risk in his own right. The First-tier Judge had found him to be a credible witness and Mr Lindsay accepted that in his oral evidence before the Upper Tribunal, the claimant had given no obvious basis to go behind the First-tier Tribunal's credibility assessment.
65. The claimant's evidence had been that if asked about his politics on return, he would tell the truth. His involvement with oppositionist groups in the United Kingdom would constitute a risk on return, if his evidence were accepted as credible. In that case, even if the original basis for the grant of international protection fell away, the claimant would remain a refugee, for new reasons.
66. Mr Lindsay said that he was not instructed to concede the appeal and asked the Upper Tribunal to remake the decision by dismissing the appeal.

Claimant's submissions

67. For the claimant, Mr Ume-Ezeoke relied on a skeleton argument prepared by Chris Solicitors on 15 May 2021. In that skeleton, the claimant indicated that he would rely on his bundle and on material from Jeune Afrique, translated and included with the skeleton, as well as the updating statement from his father already mentioned.

68. The claimant contended that he would still face persecution if returned to DRC now. The burden of proof of a durable and significant change such that the fear of persecution can no longer be regarded as well-founded lies on the Secretary of State: see *Salahadin Abdulla and others v Bundesrepublik Deutschland (Area of Freedom, Security and Justice)* [2010] EUECJ C-175/08 (02 March 2010). In the present appeal, the Grand Chamber of the Court of Justice of the European Union held that:

“2. When the circumstances which resulted in the granting of refugee status have ceased to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution on the part of the person concerned either for the same reason as that initially at issue or for one of the other reasons set out in Article 2(c) of Directive 2004/83, the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted.”

Following the United Kingdom’s EU Exit, that decision no longer binds the United Kingdom, but it continues to have persuasive force as an international decision on the issue before the Upper Tribunal today.

69. The claimant argued that the Secretary of State should have considered at the date of decision (or, indeed, today in the context of the present remaking), whether the circumstances in DRC had changed such that the claimant’s father would not face persecution in DRC. The Secretary of State had not challenged the claimant’s case that the UDPS had split into three parties, one of which was the ruling Tshisekedi party, while the other two remained opposition parties. The claimant’s father remained actively involved in anti-government activities.
70. The current government of DRC continued to be guilty of human rights abuses: see the November 2019 CPIN at 6.3.8-6.3.9, 6.3.12, 6.4.1, and 6.5.36.5.4. the claimant’s father remained at risk.
71. The claimant himself was now at risk because of his activities with APARECO, CRC Platform and RCK. He had attended many anti-government demonstrations in the United Kingdom, where he had addressed the public. He was a refugee in his own right.
72. In oral submissions, Mr Ume-Ezeoke relied on his skeleton argument. There was not yet a fundamental and durable change in DRC, despite the overthrow of the Mobutu regime. He asked me to allow the appeal.

Analysis

73. I begin by considering the Article 1C(5) issue. Article 1C(5) of the Refugee Convention is as follows:

“C. This Convention shall cease to apply to any person falling under the terms of section A if: ...

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;
...”

74. The circumstances in which the claimant was granted international protection when he came to the United Kingdom, many years ago, were that his father was an anti-government oppositionist, opposing the Mobutu regime through UDPS. As already stated, the UDPS government of President Tshisekedi remains in power, but the claimant’s father is opposed to that branch of the Party and supports a splinter UDPS movement led by Mr Felix Mubake. He remains, therefore, an oppositionist.
75. The November 2019 CPIN was written barely 100 days into the life of the now-defunct coalition government, but there are specific examples therein of ill treatment of opposition groups by the new regime: see in particular 6.1.2, which noted that a report of the Human Rights Council recorded 141 human rights violations in the month following the election, including the arbitrary killing of 20 people, including three women and three children, 32 violations of the right to liberty and security of persons (mass arrests of 371 people, including at least 19 women and 50 children) and 23 incidents of violation of the right to physical integrity, affecting 62 people, including 14 women and two children.
76. In June 2019, UNJHRO responded to a request from the FCO concerning the treatment of returnees to DRC:

“Following the December 2018 elections and commitments made by President Tshisekedi to improve the human rights situation, there has been a slight opening up of the democratic space. The most visible signs of this positive development were the release of some political prisoners, and prisoners of opinion, the return of political exiles and the holding of several peaceful demonstrations.

However, obstacles to freedom of the press, attacks and threats against human rights defenders and other civil society actors and the repression of several peaceful protests, including through lethal force, continue to be observed. The vast majority of these violations were committed by state agents, mainly from the national police.” [Emphasis added]

77. The Secretary of State, who bears the burden of proof of durable change, has not produced any updated material indicating that these problems have reduced since June 2019. The evidence before the Tribunal is not sufficient to establish that there has been a durable change and that the claimant’s father is no longer at risk.
78. The Secretary of State has not challenged the father’s witness statement, which says that he remains opposed to the Tshisekedi/Kabila coalition, which he regards as illegitimate, and that he supports Mr Mubake’s splinter UDPS, which also opposes the current government. My primary finding therefore is that on the facts, the

circumstances in which the claimant was granted refugee status, that he was a family member of a political opponent of the DRC government, have not ceased to exist.

79. As Mr Lindsay acknowledged, the decision in *JS (Uganda)* is not on all fours with the facts of the present appeal. The circumstances which had led to JS's being granted leave in line with his mother, that is to say, the risk in Uganda, had ceased to apply in that case. *JS (Uganda)* is best understood as an exception to the more usual position that a risk of persecution or serious harm to the political opponents of President Tshisekedi extends to the paradigm particular social group, the family members of the primary refugee. At [90] in the judgment of Lord Justice Underhill, agreeing with Lord Justice Haddon-Cave, who wrote the principal judgment, he said this:

"90.I should like to observe, at the risk of spelling out the obvious, that this issue only arises in cases where the risk of persecution which leads to the grant of protection to the "primary" refugee does not also extend to his or her family members: very often of course it will, either because they share the same characteristic as gives rise to the risk or because the persecutor will extend his persecution of, say, a political activist to his or her family members irrespective of their own conduct or opinions. I do not wish to be understood as saying that there may not be very strong reasons for the admission of family members even where they personally are not at risk: I say only that those reasons do not derive from the Convention itself." [Emphasis added]

80. Turning to the second point, the risk from the claimant's own *sur place* activity, I begin by considering the country guidance in *BM and Others (returnees – criminal and non-criminal) DRC CG [2015] 293 (IAC)* which held that:

"3. A national of the DRC who has a significant and visible profile within APARECO (UK) is, in the event of returning to his country of origin, at real risk of persecution for a Convention reason or serious harm or treatment proscribed by Article 3 ECHR by virtue of falling within one of the risk categories identified by the Upper Tribunal in MM (UDPS Members – Risk on Return) Democratic Republic of Congo CG [2007] UKAIT 00023. Those belonging to this category include persons who are, or are perceived to be, leaders, office bearers or spokespersons. As a general rule, mere rank and file members are unlikely to fall within this category. However, each case will be fact sensitive, with particular attention directed to the likely knowledge and perceptions of DRC state agents."

81. That guidance relates to evidence about the pre-coalition government of President Mobutu. It is most unfortunate that the writers of the November 2019 CPIN were apparently unable to access information written in French, for example on APARECO's website. French is not an unusual language and it is surprising that the Secretary of State has no case workers available who can read it. The evidence in the CPIN relates, as already stated, only to the first 100 days of the coalition government.
82. There is some evidence in the public domain. The most recent US State Department Report for DRC, dealing with events in 2020, does not indicate that durable change had yet occurred. In its Executive Summary, the Report said this:

“The [coalition] government took some steps to identify, investigate, prosecute, and punish officials who committed human rights abuses, although there was impunity for many such abuses. Authorities often did not investigate, prosecute, or punish those who were responsible, particularly at higher levels. The government convicted some officials on counts of murder, rape, torture, arbitrary detention, and corruption, and sometimes punished security force officials who committed abuses.

Government security forces, as well as illegal armed groups, continued to commit abuses, primarily in the restive eastern provinces and the Kasai region. These abuses included unlawful killings, disappearances, torture, destruction of government and private property, and sexual and gender-based violence. ...”

83. In relation to political opinion, the Report stated:

“Political Parties and Political Participation: The law recognizes opposition parties and provides them with “sacred” rights and obligations. *Government authorities and the SSF, however, prevented opposition parties from holding public meetings, assemblies, and peaceful protests.* The government and the SSF also limited opposition leaders’ freedom of movement. The SSF used force to prevent or disrupt opposition-organized events.

State-run media, including television and radio stations, remained the largest sources of information for the public and government (see section 2.a.). *There were reports of government intimidation of political opponents, such as denying opposition groups the right to assemble peacefully (see section 2.b.), and exercising political influence in the distribution of media content.”* [Emphasis added]

84. Mr Lindsay did not challenge the veracity of the claimant’s assertion that he is himself, now, a political oppositionist, being a United Kingdom member of APARECO, CRC Platform and RCK, who has taken part in meetings and youth outreach, as well as demonstrations, and would not be prepared to lie about them on return. Mr Lindsay accepted that conditions in detention in the DRC are such that any period of detention longer than one day would be likely to involve torture and prison conditions which breach Article 3 ECHR: see the 2019 CPIN at 6.7, *passim*.
85. If this alternative question is reached, I am satisfied to the lower standard applicable to international protection cases, that the claimant’s activities would be known to the DRC authorities and would put him at risk of persecution or serious harm on return.
86. Accordingly, I remake the decision in this appeal by allowing the claimant’s appeal against the Secretary of State’s decision to cease protection.

Costs of the July 2020 hearing

87. There were a series of adjournments of the remaking hearing, including one in July 2020 on which the Upper Tribunal expressly reserved the question of costs, following significant under-preparation for that hearing and failure to comply with directions by Counsel Ms Shivani Jegarajah, and a dispute between her and her instructing solicitors as to whose fault that was. I reserved the position on costs, and must therefore make an order today thereon.

88. Mr Lindsey did not seek to pursue the Secretary of State's costs of the October 2020 hearing. The claimant is now represented by different solicitors and Counsel, who have made every effort to comply with the Upper Tribunal's directions, including those previously breached, and to prepare the case properly for hearing.
89. I am satisfied that the normal situation in statutory appeals of no order for inter partes costs is appropriate.

DECISION

90. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the claimant's appeal.

I make no order for *inter partes* costs.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 28 July 2021