



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

Appeal Numbers: LP/00174/2020
PA/50171/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 14 October 2021**

**Decision & Reasons
Promulgated
On 17 November 2021**

Before

**THE HONOURABLE MR JUSTICE PUSHPINDER SAINI
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE ALLEN**

Between

**MR I B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, instructed by Ison Harrison Solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of the appellant against the decision of 6 November 2019 refusing his claim for asylum deciding that he was a person liable for removal.
2. The judge came to a number of adverse findings in this case as regards exclusion from international protection and there is no challenge to the

findings in that regard. The issue that it is narrowed down to is that of Article 3 and in respect of this point there are essentially two material and perhaps one could say crucial findings by the judge. The first is at paragraph 94 where the judge found that the appellant was at real risk of being detained at the airport for questioning and also the finding at paragraph 89 that contrary to earlier country guidance the judge set out the correct test as identified in MS (Zimbabwe) that there are strong grounds supported by cogent evidence which she then cites to depart from the country guidance and to find that in general prison conditions in Russia do breach Article 3.

3. There has been no challenge by the Secretary of State to the findings in either of those regards and we are therefore essentially left with findings which, put together, involve a real risk of detention and a real risk of detention in prison conditions which breach Article 3.
4. It seems to us therefore that in the circumstances we have no alternative but to find that the judge erred in law in her findings on Article 3 and to substitute for her decision in that respect a decision that the appeal succeeds on Article 3 grounds..

Notice of Decision

The appeal is allowed under Article 3 of the European Convention on Human Rights.

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

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



Signed

Date 29 October 2021

Upper Tribunal Judge Allen