



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**  
**Prepared 8 September 2023**

Case No: UI-2023-001594

First-tier Tribunal No: HU/53429/2022  
IA/05457/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 29<sup>th</sup> of September 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**The Secretary of State for the Home Department**

Appellant

**and**

**MK**

**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer  
For the Respondent: Ms Lynne Brakaj, Iris Law Firm

**Heard at Field House on 8 September 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

1. In this appeal the original parties retain their original names albeit it is the Secretary of States' appeal,
2. The Appellant appealed against the Respondent's decision dated 28 April 2022 to refuse his fresh claim for asylum. The Appellant claimed to have a well-founded fear of persecution in the DRC (Democratic Republic of Congo) based on an imputed political opinion but the appeal was pursued on the basis of the risk on return of ill-treatment amounting to a breach of Article 3 of the ECHR because he had exited the DRC using a false passport. The matter came before First-tier Tribunal Judge Forster who, on 3<sup>rd</sup> March 2023 allowed the appeal on Humanitarian Protection grounds.
3. Permission to appeal that decision was given to the Secretary of State by First-tier Tribunal Judge Saffer on 12 May 2023. The grounds settled by the Secretary of State are quite extensive and permission was given on all grounds but the substance of the criticism was that the Judge had failed to correctly address the evidence and the implications of the manner in which the Appellant left the DRC.
4. The First-tier Tribunal Judge was, it seemed to me, left in a difficult position on the evidence that was before him. Of more recent times, there has been information under the 2020 CPIN which showed the extent to which there was risk on return of being detained even for, if it was, for no more than 24 hours, giving rise to the likelihood of proscribed ill-treatment contrary to Article 3 of the ECHR. The matter in terms of the CPIN evidence has moved on from that recited in the guidance in BM (false passport) DRC [2015] UKUT 00467 (IAC).
5. Thus, the assumption that had been made that diminished individual risk in accordance with the considerations outlined in BM had changed as the Judge was aware and as the Respondent had recited in the reasons for refusal letter at paragraph 51. I found that the Judge did not make a material error of law but rather had done the best he could in the somewhat difficult circumstances he faced and reached the view, albeit it could have been better expressed that he did. I find that no material error of law was made by the First-tier Tribunal Judge and in the circumstances the Respondent's appeal is dismissed.



Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**On 20<sup>th</sup> of September 2023**