



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-001203  
First Tier No: RP/00015/2023  
DC/50309/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 8 August 2024**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE  
DEPUTY UPPER TRIBUNAL JUDGE SILLS**

**Between**

**Secretary of State for the Home Department**

Appellant

**and**

**Salamu Muzangi  
(no anonymity order made)**

Respondent

**Representation:**

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer  
For the Respondent: Ms Barton, Counsel instructed by the UK Law Firm

**Heard at Manchester Civil Justice Centre on 5 July 2024**

**DECISION AND REASONS**

1. The Respondent Mr Muzangi is a national of the Democratic Republic of Congo born on the 2<sup>nd</sup> September 1963. The Secretary of State has made a deportation order against him because he is a foreign criminal. On the 2<sup>nd</sup> February 2024 the First-tier Tribunal (Judge Hollings-Tennant) allowed the Respondent's appeal against that decision on human rights grounds. The Secretary of State now appeals against that decision.
2. The facts relied upon by the Secretary of State are not in contention. Mr Muzangi has two convictions for handling stolen goods. In 2003 he received a

sentence of 15 months, wholly suspended, and then in 2017 he did it again: this time he was sent to prison for 2 years. He is therefore a foreign criminal as defined by s32 of the UK Borders Act 2007, and insofar as he relies on Article 8 is to be regarded as a 'medium offender': s117C Nationality Immigration and Asylum Act 2002.

3. The facts relied upon by Mr Muzangi in respect of his human rights appeal are also accepted. He is a 60 year old man who has lived in this country since 1994. He was granted indefinite leave to remain in 2001. He lives here with his wife, and enjoys an Article 8 family and private life with his 6 children, and 4 grandchildren. He is a community activist of over ten years standing who has played an important role in assisting other migrants to settle in North Manchester. Mr Muzangi is also seriously unwell. Amongst other things he has various heart problems, diabetes, osteoarthritis, a partial loss of vision, obesity and a brain tumour. In 2022 he was admitted to intensive care for an extended period but latterly has been unable to leave his house because of his lack of mobility: in a recent visit to the home paramedics were unable to get him out in order to take him to hospital. The accepted evidence was that he is instead cared for round the clock by his wife, who has made arrangements for accessibility aids such as a hospital bed, hoists and a commode to be fitted at their home. The family GP confirmed by letter that his medical conditions are "multiple and chronic" and unlikely to improve. He is assessed as being bed bound and requires support in all daily activities.
4. On these facts Judge Hollings-Tennant was asked to decide, *inter alia*, whether the decision to deport would place the UK in breach of either Article 3, or Article 8<sup>1</sup>.
5. In respect of the Article 3 health claim, Judge Hollings-Tennant found that the Mr Muzangi had established a *prima facie* case that he was seriously unwell and in need of long term personal care [at §41]. He had further established a *prima facie* case that the healthcare system in the DRC is extremely limited and that there are serious doubts as to whether he would be able to access the care he requires [§42]. That evidential burden of proof having been discharged, it was for the Secretary of State to dispel any serious doubts about whether such treatment would be accessible. Since the Secretary of State had done nothing of the sort, despite being well aware of Mr Muzangi's health conditions, Judge Hollings-Tennant found that he had failed to do so [§44] before reaching this global conclusion:

45. In light of my findings as set out above, I find the Appellant's appeal must succeed on medical grounds because he has established a *prima facie* case that his removal would likely result his intense suffering and a reduction in his life expectancy. There is sufficient evidence before me to establish he requires 24-hour care and extensive medication for chronic health conditions that are unlikely to improve. Further, whilst the focus was on his state of physical health, it is sufficiently clear that removal is likely to have a significant adverse impact on his mental health, particularly bearing in mind his quite understandable fears as to how he would survive on his own in the DRC. I note his GP opines

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<sup>1</sup> Not material to this appeal was the further issue of whether Mr Muzangi's refugee status, conferred upon him by a decision of the Home Office dated 5<sup>th</sup> February 2001 should be ceased and/or revoked. Judge Hollings-Tennant decided this matter in the Secretary of State's favour and there has been no cross appeal.

that a move overseas will very likely cause premature death. It also seems to me the process of removal would present significant practical challenges and give rise to inhuman and degrading treatment in itself. I take into account that his GP asserts it is very unlikely the Appellant would be able to travel by road or plane due to his physical conditions. As such, on the evidence presented before me and having applied guidance in the relevant authorities, I find that removing the Appellant to the DRC would amount to a breach of his human rights under Article 3 of the ECHR.

6. The decision then goes on to address Article 8. Noting that Mr Muzangi is a 'medium offender' the Tribunal directed itself to the exceptions in s33 of the Borders Act 2007 and to the relevant caselaw on how 'undue harshness' is to be established. Having had regard to the circumstances of Mr Muzangi's wife, it found that she is a qualifying partner who has lived in the UK for over 20 years. Her life, children and grandchildren are all here. The couple's youngest son, a British national, is at an important stage in his education and has never been to the DRC. I interpolate that we are informed by Mr McVeety that none of that was issue, and the Secretary of State was not suggesting that the family relocate to the DRC *en masse*. The real issue before the First-tier Tribunal was the 'stay' scenario, where Mr Muzangi would be returning to the DRC alone whilst his wife and British children and grandchildren remained here. Of this the Tribunal said as follows:

49. I also find it is unduly harsh on both the Appellant's wife and children to expect them to remain here whilst he is deported (the 'stay scenario'). I reach this conclusion because there is a distinct likelihood they would never see him again in person and his removal would give rise to unjustified mental anguish. Having cared for him over the last few years, his wife would be faced with the prospect of not only losing her husband but doing so prematurely and whilst he is in another country with no family or wider support network. His children plainly care for their father and would also face the prospect of losing him without being in a position to provide face-to-face practical and emotional support during what is clearly a very difficult time for the Appellant and his family. In the circumstances, I find the Appellant benefits from exception [2] in section 117C(5) of the 2002 Act and, as such, the public interest does not require deportation.

7. The appeal was thereby allowed with reference to both Articles 3 and 8.

### **The Challenge: Discussion and Findings**

8. The Secretary of State contends that the decision of the First-tier Tribunal is flawed for two central errors of law:
- i) The First-tier Tribunal applied the wrong standard of proof in respect of Article 3;
  - ii) The findings on the lack of medical care in the DRC are inadequately reasoned and this infects the conclusions on Article 3 and 8.

9. Before us Mr McVeety accepted that in fact ground (ii) stands and falls with ground (i). We therefore address them together, albeit that they come at the same issue – availability of care – from slightly different angles.
10. In respect of ground (i) the Secretary of State submits that in approaching this ground of appeal the First-tier Tribunal erred in applying the lower standard of proof to Mr Muzangi’s case. For instance, at the Tribunal’s paragraph 43 it uses the following formulation:

43. The burden of proof is on the Appellant to establish a *prima facie* case to the lower standard, that of a reasonable degree of likelihood, that necessary care and medical treatment is not available or would not be accessible to him in the DRC.

11. It is submitted on behalf of the Secretary of State that this was an error:

At §43 of the decision, the Judge refers to the burden of proof being on the Appellant to establish a *prima facie* case to the lower standard, that of a reasonable degree of likelihood. The lower standard is also referred to in §15 of the decision. Unlike in the context of asylum, in an Article 3 medical case, the standard is not a reasonable degree of likelihood. The correct test is whether the Appellant has adduced evidence capable of demonstrating that there are substantial grounds for believing that Article 3 would be violated (*AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17). Once that test is established, it is for the Respondent to dispel any serious doubts...

12. In respect of ground (ii) the Secretary of State submits, in effect, that such evidence that there was about care in the DRC was at such a general level as to be useless. It is submitted that it was irrational for the Tribunal to conclude from such general evidence that Mr Muzangi would not have access to the care he needs to prevent him suffering serious harm for the purpose of Article 3..
13. In *AM (Article 3 health cases) Zimbabwe* [2022] UKUT 00131 (IAC) the Upper Tribunal gave practical guidance on how such cases should be approached in the wake of the Supreme Court decision in *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17:

(1) Has the person (P) discharged the burden of establishing that he or she is “a seriously ill person”?

(2) Has P adduced evidence “capable of demonstrating” that “substantial grounds have been shown for believing” that as “a seriously ill person”, he or she “would face a real risk”:

[i] “on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment,

[ii] of being exposed

[a] to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering, or

[b] to a significant reduction in life expectancy”?

2. The first question is relatively straightforward issue and will generally require clear and cogent medical evidence from treating physicians in the UK.

3. The second question is multi-layered. In relation to (2)[ii][a] above, it is insufficient for P to merely establish that his or her condition will worsen upon removal or that there would be serious and detrimental effects. What is required is “intense suffering”. The nature and extent of the evidence that is necessary will depend on the particular facts of the case. Generally speaking, whilst medical experts based in the UK may be able to assist in this assessment, many cases are likely to turn on the availability of and access to treatment in the receiving state. Such evidence is more likely to be found in reports by reputable organisations and/or clinicians and/or country experts with contemporary knowledge of or expertise in medical treatment and related country conditions in the receiving state. Clinicians directly involved in providing relevant treatment and services in the country of return and with knowledge of treatment options in the public and private sectors, are likely to be particularly helpful.

4. It is only after the threshold test has been met and thus Article 3 is applicable, that the returning state’s obligations summarised at [130] of Savran become of relevance – see [135] of Savran

14. In oral submissions Mr McVeety accepted that the extent of Mr Muzangi’s illnesses was not in issue: it had been expressly conceded by the Presenting Officer on the day that he is “seriously unwell”. The burden of proof in respect of question 1 had therefore been discharged. Furthermore the extent of Mr Muzangi’s illnesses were such that it also had to be accepted that without appropriate care he would face a serious rapid and irreversible decline in his state of health resulting in both intense suffering and a significant reduction in his life expectancy. The only dispute between the parties before the First-tier Tribunal had therefore been the extent to which appropriate care might be accessible in the DRC. Mr McVeety acknowledged that the Secretary of State had not produced any specific evidence about that. What the Tribunal said was this:

42. There is limited country information before me as to whether the level of care required or the medication the Appellant needs is available or accessible in the DRC. However, there is some relevant evidence contained in a US Overseas Security Advisory Council (OSAC), DRC Country Security Report 2022, which states that medical care is extremely limited throughout the country, with a lack of public safety infrastructure, non-existent or inadequate emergency response and difficulties associated with obtaining competent medical care elevating the risks and consequences of illness, injury and/or accidents. There is reference to medical facilities experiencing shortages of medication and locally available drugs being of inferior quality.

Whilst there is no specific evidence before me relating to the care provision that may be available or information about the particular medication the Appellant requires, I consider the evidence demonstrates that the state of the healthcare system in the DRC gives rise to serious doubts as to whether the Appellant would have access to the level of care and medication he requires.

43. The burden of proof is on the Appellant to establish a *prima facie* case to the lower standard, that of a reasonable degree of likelihood, that necessary care and medical treatment is not available or would not be accessible to him in the DRC. In this particular case, having considered the evidence presented, I find the Appellant has discharged that burden. I have reached this conclusion because it is not in dispute that the Appellant suffers from chronic physical conditions for which he requires long-term personal care, he is taking a significant amount of medication, and there is sufficient evidence to demonstrate that medical care in the DRC is extremely limited. Whilst it is fair to say, on the evidence presented, that it is somewhat unclear as to whether the Appellant can access medication privately, it seems to me he would face considerable, if not insurmountable challenges in raising funds to pay for round the clock care and the medication he needs on a regular basis, even if available at all or consistently. Further, the Grand Chamber in *Paposhvili* observed that whilst it is for an applicant to adduce evidence capable of demonstrating there are substantial grounds for believing they would be exposed to a real risk, a certain degree of speculation is inherent in the preventative purpose of Article 3 and it is not for the person to provide clear proof of their claim that they would be exposed to such risk.

44. Given my findings that the Appellant has established a *prima facie* case of potential infringement of Article 3 of the ECHR, it is for the Respondent to dispel any serious doubts or obtain assurances as to the availability of appropriate care and treatment in the DRC, as the state is better placed to obtain evidence as to likely availability and accessibility there (see *AM (Zimbabwe)* and *Paposhvili*). In this case, the Respondent has not undertaken any review of the decision under challenge and, as such, there does not appear to have been any proper or up-to-date assessment of such issues. Whilst some of the medical evidence was adduced late, there was enough evidence presented for the Respondent to undertake a review and consider reports from reputable organisations about the extent of any care provision in the DRC and accessibility of medication with reference to cost, particularly given clear evidence of his physical conditions and bearing in mind this matter has been previously been adjourned several times. In the circumstances, I find the Respondent has failed to dispel the serious doubts raised by the Appellant having established a *prima facie* case despite having had sufficient opportunity to address the issue and subject the risk to close scrutiny applied guidance in the relevant authorities,

I find that removing the Appellant to the DRC would amount to a breach of his human rights under Article 3 of the ECHR.

15. Having carefully considered this reasoning as a whole, we are quite satisfied that the First-tier Tribunal was entitled to reach the conclusions that it did about the availability of healthcare; further we are satisfied that the Tribunal understood and applied the correct standard.
16. Dealing with standard of proof first, the grounds are somewhat confused in their assertion that there is a different standard of proof to be applied in health cases. The question, in all Article 3 claims, is ultimately whether there is a “real risk” of a violation. The “high threshold” referred to by the caselaw relates not to the statistical likelihood that harm will occur, but to the seriousness of the harm itself. Thus someone who is absolutely certain to suffer some discomfort will fail; someone who faces the more modest, “lower” standard of a real risk will however succeed if it is a real risk of dying in inhumane and degrading circumstances. The sequential questions to be addressed by the decision maker in accordance with Paposhvili and AM are indeed demanding, but they are *evidential* hurdles erected to ensure that the harm is indeed of the minimum level of severity required to establish a violation. It is for the claimant to adduce evidence “capable of demonstrating” that “substantial grounds have been shown for believing” that as “a seriously ill person”, he or she would face that real risk. Looking at Judge Hollings-Tennant’s reasoning, we are satisfied that he properly took each of those hurdles in turn. We certainly do not accept that he erred in his overall application of the test.
17. There was before him evidence, apparently unchallenged and from reputable international sources, that medical care is “extremely limited throughout the country”; there is a shortage of medication and what there is, is of inferior quality; emergency care is “non-existent or inadequate”. No evidence was provided to the contrary. In those circumstances the Tribunal was in our view rationally entitled to conclude that Mr Muzangi had produced evidence capable of demonstrating that substantial grounds had been shown for believing that there was a real risk of him not being able to access the care he needs. It must be recalled that at present he is cared for, on a 24 hour basis, by his wife with the support of other family members and NHS staff including the family GP. He is, the uncontested evidence shows, bedbound. It was his accepted evidence that he has no family or close connections members in the DRC: after his 30 year absence from that country that is entirely unremarkable. Whether or not some palliative care or nursing could be paid for privately was neither here nor there given the finding that Mr Muzangi and his family would face insurmountable obstacles in sourcing and funding it. That was the appellant’s case, and the Secretary of State did not dispel those serious doubts. It follows that the Tribunal was entitled to allow the appeal on Article 3 grounds, and to take the absence of care for Mr Muzangi, and the impact that this would have on his family members, into account in its Article 8 balancing exercise.

## **Decisions**

18. The decision of the First-tier Tribunal is upheld.
19. The appeal is dismissed.

20. There is no order for anonymity.

Upper Tribunal Judge Bruce  
Immigration and Asylum Chamber  
14<sup>th</sup> July 2024