



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Applications nos. 38851/09 and 39128/09
by N.M. and M. M.

against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on
25 Janvier 2011 as a Chamber composed of:

Having regard to the above application lodged on 22 July 2009,

Having regard to the interim measure indicated to the respondent
Government under Rule 39 of the Rules of Court,

Having regard to the decision to grant priority to the above application
under Rule 41 of the Rules of Court,

Having regard to the decision to grant anonymity to the applicants under
Rule 47 § 3 of the Rules of Court,

Having regard to the observations submitted by the respondent
Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The present applicants are both nationals of Uzbekistan. The first applicant, Ms N.M., was born in 1950 and lives in . Her son, the second applicant, Mr M.M., was born in 1983 and also lives in . They are represented before the Court by , lawyers practising in Gwent. The United Kingdom Government (“the Government”) were represented by their Agent, of the Foreign and Commonwealth Office.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The first applicant

3. The first applicant entered the United Kingdom on 22 August 2004 on a six month visitor’s visa valid until 13 January 2005.

4. On 9 September 2004, she claimed asylum on the basis of her Russian ethnicity, Orthodox Christianity, and the threats to and attacks upon her family by the mafia because of her British son-in-law who, it was assumed, must be sending money to the family in Uzbekistan. In particular, she claimed that, while in Uzbekistan, three men had held a knife to her ribs demanding money in 2003 and that her family home had been subjected to an attempted arson attack in August 2004.

5. On 14 October 2004, her application was refused by the Secretary of State who considered her claim to be incredible because, *inter alia*, there were discrepancies in her account of when she had started to receive demands of money from the mafia; she had failed to claim asylum on previous visits to the United Kingdom in 1998, 2000, and 2001; there were inconsistencies in the date that she claimed to have been attacked with a knife; it was implausible that the mafia would have known when her British family had sent her money in Uzbekistan; and her son-in-law would not have returned to Uzbekistan after 1996 if his life was genuinely in danger there. In addition, the Secretary of State considered that she had failed to demonstrate that there would be insufficient protection from the Uzbek authorities from the mafia or that she would be unable to relocate internally within Uzbekistan. Finally, the problems and discrimination that she claimed to have suffered due to her ethnicity and religion were not considered to amount to persecution.

6. Her appeal against this refusal was dismissed by the then Immigration Appellate Authority (“the IAA”) on 2 February 2005. The Adjudicator upheld the majority of the Secretary of State’s findings and also found that the first applicant’s credibility was undermined by her delay in claiming

asylum until 9 September 2004. Furthermore, the Adjudicator found nothing in the objective evidence to suggest that the first applicant would be at risk in Uzbekistan by virtue of her status as a returning failed asylum seeker.

7. On 26 May 2005, the then Asylum and Immigration Tribunal (“the AIT”) dismissed an application for reconsideration of that determination.

8. On 27 July 2005, the High Court granted an application for reconsideration of that determination for unknown reasons.

9. In a decision promulgated on 23 April 2008, the AIT dismissed her appeal upon reconsideration, finding that the IAA’s decision had to stand as her representatives had conceded that it did not disclose any arguable error of law.

2. The second applicant

10. The second applicant also entered the United Kingdom on 22 August 2004 on a six month visitor’s visa valid until 13 January 2005.

11. He also made an application for asylum on 9 September 2004, on the basis of his Russian ethnicity, Orthodox Christianity, the multiple attacks upon him by the mafia because of his British brother-in-law (which had led to the second applicant’s hospitalisation for ten days), and an attempted arson attack upon the family home in August 2004.

12. On 22 October 2004, his application was also refused by the Secretary of State who considered his claim to be incredible because, *inter alia*, he had not been physically attacked until four years after his brother-in-law had left Uzbekistan; there were discrepancies in his account of when he had been attacked; it was implausible that the mafia would have been aware of when his brother-in-law had sent the family money; and he had failed to claim asylum on previous visits to the United Kingdom in 2000 and 2003. The Secretary of State also considered that the second applicant had not established that the police had failed to assist him or that he would be unable to relocate within Uzbekistan. It was noted that the second applicant claimed not to practise his religion and therefore it was not accepted that he would be at risk of persecution on that account. The problems that he claimed to have suffered due to his ethnicity and religion were not considered to amount to persecution.

13. His appeal against this refusal was dismissed by the IAA on 19 January 2005. The Adjudicator upheld the findings of the Secretary of State and found that the second applicant’s account of past events was not credible. Furthermore, the Adjudicator did not accept that Christians or ethnic Russians were persecuted in Uzbekistan. Whilst the Adjudicator was satisfied that the second applicant had an existing private and family life in the United Kingdom, it was found to be proportionate to remove him to Uzbekistan in the lawful and legitimate interests of immigration control.

14. On 30 March 2005, the second applicant was granted permission to appeal to the then Immigration Appeal Tribunal (“the IAT”). On 3 February

2006, further to reforms of the IAA (see paragraphs 23–26 below), the appeal was dismissed by the AIT. It found that the second applicant had not submitted any objective evidence with regards to the situation of ethnic Russians or Christians in Uzbekistan and therefore could not make out his contention that the Adjudicator had failed to take into account any such evidence.

15. On 14 March 2006, the second applicant submitted further representations in relation to the increased risk upon return of ethnic Russians to Uzbekistan, which were rejected by the Secretary of State on 21 September 2007 as not amounting to a fresh claim. It was accepted that Russians may face discrimination in Uzbekistan, but not that such treatment would amount to persecution. It was considered that the documents that the second applicant had submitted were generic and did not specifically relate to his own experience.

3. Decisions relating to the first and second applicants

16. On 25 February 2008 and 6 May 2008, further representations were submitted to the United Kingdom Border Agency on both the first and second applicants' behalf, which were rejected on 25 June 2009 as not amounting to a fresh claim. Given the previous findings upon appeal, the United Kingdom Border Agency did not accept that there was any objective evidence to suggest that they would be at real risk on account of their ethnicity or religion on return to Uzbekistan. It was accepted that discrimination against ethnic Russians might be perpetrated by random individuals, but considered that the applicants could seek protection from the authorities or move to another part of the country to avoid the same. It was also considered that the applicants could decide to join their extended family that had already moved to the Russian Federation from Uzbekistan. In relation to their claims under Article 8 of the Convention, it was accepted that the first applicant had both family life with her British daughter, son-in-law and grandson and private life in the United Kingdom after having integrated into the community over a period of five years. Similarly, it was accepted that the second applicant had both family life with his British sister, brother-in-law, and nephew and private life in the United Kingdom. Nevertheless, it was not considered that their removal would be disproportionate under Article 8 as they had remained in the United Kingdom unlawfully and would be removed together.

17. On 20 July 2009, the applicants submitted further representations through their legal representatives, in which they relied upon compassionate and discretionary grounds which focussed on their family life in the United Kingdom. Those representations also clarified that they were not pursuing their asylum claims and stated:

“... it is not contended that there is any continuing asylum, or Humanitarian Protection claim. Although anti-Russian and Government harassment are running at

high levels in Uzbekistan, there is insufficient evidence to counter the judicial (and [Home Office]) conclusion, in each of these cases, that those threats do not amount to „persecution“ or any risk of „serious harm“ upon return. For both mother and son, their claims are compassionate, derived from their family situation in ”

18. On 23 July 2009, those representations were rejected by the United Kingdom Border Agency as not amounting to a fresh human rights claim as it was considered that the applicants’ claim to have established family life in the United Kingdom had already been fully considered both on appeal and in responses to earlier representations. It was not accepted that the relationship between the first applicant and her adult daughter, or the second applicant and his adult sister constituted family life for the purposes of Article 8 of the Convention as they had not submitted any evidence of dependency. Furthermore, it was considered that the applicants could maintain contact with family members in the United Kingdom by the usual methods of communication from overseas. It was considered that the applicants’ removal was necessary and proportionate to the wider interests of maintaining an effective immigration control.

19. On 24 July 2009, the applicants submitted further representations which they claimed raised new and serious concerns about the likelihood of torture of failed asylum seekers forcibly returned to Uzbekistan. Those representations were supported by a letter dated 23 July 2009 from Mr [redacted] the former British Ambassador to Uzbekistan from 2002 to 2004, which set out concerns about the fate of anybody deported to Uzbekistan whose exit visa had expired. Mr [redacted] stated that:

“The notoriously cruel Uzbek security service – the SNB – have a permanent presence behind the immigration officers at Tashkent airport and at all points of entry. They would pick up anybody with an expired exit visa and subject them to ferocious questioning.

In February 2003, the UN Special Rapporteur on torture, published a report that said that torture in Uzbekistan was a „routine investigative technique“. I can absolutely confirm that from experience of hundreds of cases. Any hint that [the applicants] had claimed political asylum in the UK – and the Uzbek SNB are a massive, very efficient and well-equipped intelligence service – and [the applicants] will almost to a certainty be subjected to treatment that well exceed the bar for torture.”

20. Later the same day, the United Kingdom Border Agency refused those representations concluding that they did not amount to a fresh claim. It was noted that Mr [redacted] had been reprimanded by the Foreign and Commonwealth Office on several occasions in 2003 and 2004, and subsequently dismissed from his post in October 2004 at which point he had been charged with gross misconduct and an investigation had been commenced. Given Mr [redacted]’s outspoken public views on the human rights situation in Uzbekistan, it was not considered that he could be accepted as an independent source of evidence which would add weight to their claims.

21. Simultaneously, the applicants lodged applications with the Court and requested interim measures under Rule 39 of the Rules of Court to stop their removal to Uzbekistan later that day.

22. On 24 July 2009, the Acting President of the Section to which the application was allocated decided to apply Rule 39 of the Rules of Court and indicate to the Government of the United Kingdom that the applicants should not be expelled until further notice.

B. Relevant domestic law and practice

1. Primary legislation

23. Section 82(1) of the Nationality, Immigration and Asylum Act 2002 (“the NIA Act 2002”), provides a right of appeal against an immigration decision made by the Secretary of State for the Home Department.

24. Until 4 April 2005, appeals in asylum, immigration and nationality matters were heard by the IAA. Section 101 of the NIA Act 2002 provided that, with the permission of the IAT, a party to an appeal could apply to the IAT against an Adjudicator’s determination on a point of law. Section 103 of the NIA Act 2002 provided that where the IAT had determined an appeal under section 101, a party to the appeal could bring a further appeal on a point of law to the Court of Appeal. It also provided that, in the event that the Court of Appeal upheld any error of law in the determination, it had the power to make any decision which the IAA could have made or to remit the case to the IAA.

25. From 4 April 2005, the then AIT replaced the former system of Adjudicators and the IAT. This in turn has been replaced by the Immigration and Asylum Chambers.

26. Section 2 of the Human Rights Act 1998 provides that, in determining any question that arises in connection with a Convention right, courts and tribunals must take into account any case-law from this Court so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen. Section 6(1) provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right.

2. Fresh asylum and human rights claims

27. Section 1(4) and 3(2) of the Immigration Act 1971 provide for the making of Immigration Rules by the Secretary of State. Paragraph 353 of the Immigration Rules provides as follows:

“When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that

has previously been considered. The submissions will only be significantly different if the content:

- (i) had not already been considered; and
- (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.”

28. As regards the scrutiny of fresh asylum claims and the power of the courts to review such scrutiny, the Court of Appeal in *WM (DRC) v. Secretary of State for the Home Department* [2006] EWCA Civ 1495 (paragraphs 10-11) has held:

“Accordingly, a court when reviewing a decision of the Secretary of State as to whether a fresh claim exists must address the following matters. First, has the Secretary of State asked himself the correct question? The question is not whether the Secretary of State himself thinks that the new claim is a good one or should succeed, but whether there is a realistic prospect of an adjudicator, applying the rule of anxious scrutiny, thinking that the applicant will be exposed to a real risk of persecution on return ... The Secretary of State of course can, and no doubt logically should, treat his own view of the merits as a starting-point for that enquiry; but it is only a starting point in the consideration of a question that is distinctly different from the exercise of the Secretary of State making up his own mind. Second, in addressing that question, both in respect of the evaluation of the facts and in respect of the legal conclusions to be drawn from those facts, has the Secretary of State satisfied the requirement of anxious scrutiny? If the court cannot be satisfied that the answer to both of those questions is in the affirmative it will have to grant an application for review of the Secretary of State’s decision.”

29. Thus, an applicant making fresh representations must establish that they have a realistic prospect of success to establish a “fresh claim” which, even if then refused by the Home Office, will nonetheless generate a fresh right of appeal to be considered on the merits.

3. Country guidance determinations

30. Country guidance determinations of both the former AIT and IAT are to be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal that determined the appeal. Unless expressly superseded or replaced by a later country guidance determination, country guidance determinations are authoritative in any subsequent appeals so far as that appeal relates to the country guidance issue in question and depends upon the same or similar evidence.

31. In the country guidance determination of *OM (Returning citizens – minorities – religion) Uzbekistan* CG [2007] UKAIT 00045, the AIT considered a large amount of objective evidence in relation to the general human rights situation in Uzbekistan and heard evidence from Mr (see paragraph 19 above).

32. In relation to Mr s evidence, the AIT commented as follows:

“We have some concern about Mr [redacted]’s evidence. He is in an unusual position and it has given us cause to reflect on the weight which we should give to his opinion. We say that for this reason. Mr [redacted] has produced a short statement which is entirely unsourced. He has given evidence during the course of which he gave an indication in general terms as to some of the sources which he relies upon. In one aspect, the return of the German failed asylum seekers, there was express source, namely the German Ambassador. Having said that his report was unsourced, we acknowledge that he is not an expert of an academic nature who relies upon the reports of others for their information. Rather, he had been the United Kingdom’s Ambassador in Uzbekistan for two years or so and is therefore a person who has had an exceptional opportunity to observe and obtain information. We also acknowledge that, the Uzbekistan Government having ejected much of the foreign press, and many NGOs, there is limited opportunity for obtaining information about what is going on there.

...

We are left with the impression that although Mr [redacted] is in a unique position to assist us about Uzbekistan, he also has interests of his own which may effect, consciously or otherwise, the interpretation which he puts on facts and events. We have therefore decided that although the factual incidents of which he speaks are likely to be reliable, we should treat with some circumspection his interpretation of them. That is not to say that we reject his interpretation out of hand. We are fortunate in this case that there is also a great deal of background evidence from other sources.”

33. In light of the above and other considerations, the AIT then held as follows:

“We are not satisfied that it is not possible to obtain a passport renewal outside Uzbekistan. We say that because the appellant’s husband has recently returned there and he will in all probability have had to obtain some form of travel document. He arrived with the appellant in 1996. We have not been told of any difficulty on his part.

...

The fact that he has returned undermines Mr [redacted]’s assertion that it is not possible to get documentation. We accept he may not have been issued with an actual passport but that does not matter. It is the fact he was in possession of an official document that enabled him to return, apparently without difficulty, which is important. His return also detracts very considerably from Mr [redacted]’s evidence, and the appellant’s mother-in-law’s assertion, that there is severe punishment for those who do return, having stayed away beyond the end of their exit visa. The appellant is still in communication with her mother-in-law and we have no doubt that if her former husband had been charged, or even imprisoned, as a result of returning after a long absence, she would have heard about it and we would have been told. We find there is no satisfactory evidence that it is not possible to obtain a travel document (whether it be a renewed passport or some other form of documentation). Nor is there any satisfactory evidence to show that a returnee is likely to be punished for having been out of the country longer than permitted.”

34. The AIT further held that there was no satisfactory evidence that non-Uzbeks faced discrimination of such a nature as to amount to persecution, or serious harm, or a breach of their Article 3 rights. Furthermore, it held that, whilst followers of all religions, save for Muslims who attend registered mosques, were subject to a degree of harassment, it

did not in general amount to persecution, serious harm or a breach of a worshippers' human rights. Finally, it held that ministers of religion, those who practise religion in unregistered premises, particularly active members of evangelical Christian congregations, and proselytising or fundamentalist denominations of any religion could be at risk depending on the facts in every case.

C. Relevant objective information about Uzbekistan

1. Report of the United Nations Special Rapporteur on Torture

35. In his report of 3 February 2003, the Special Rapporteur concluded that torture or ill-treatment was "systematic" in Uzbekistan. He also stated that "the pervasive and persistent nature of torture" throughout the criminal investigative process in Uzbekistan could not be denied. Uzbekistan has not extended a further invitation to the Special Rapporteur on Torture to visit the country, despite repeated requests.

2. The United Nations Committee against Torture

36. In its Concluding Observations upon Uzbekistan of 26 February 2008, the Committee against Torture set out its concerns about, *inter alia*, "numerous, ongoing and consistent" allegations concerning the routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings.

37. Furthermore, after setting out information about the numerous allegations of excessive use of force and ill-treatment by Uzbek military and security forces during the May 2005 events at Andijan (when at least several hundred protesters were killed by the Uzbek authorities), the Committee reported that it had received credible reports that some persons who had sought refuge abroad and had been returned to the country had been kept in detention in unknown places and possibly subjected to breaches of the Convention.

3. The United Nations Human Rights Committee

38. In its Concluding Observations upon Uzbekistan of 7 April 2010, the Human Rights Committee set out various concerns, including, *inter alia*:

"the continued reported occurrence of torture and ill-treatment, the limited number of convictions of those responsible, and the low sanctions generally imposed, including simple disciplinary measures, as well as indications that individuals responsible for such acts were amnestied and, in general, the inadequate or insufficient nature of investigations on torture/ill-treatment allegations."

39. The Committee also concluded that it remained “concerned about the need for individuals to receive an exit visa in order to be able to travel abroad”.

4. Reports of non-governmental organisations

40. In its submissions to the United Nations Human Rights Committee dated 28 April 2009 and January 2010, Amnesty International remained seriously concerned about persistent allegations of widespread torture and other ill-treatment of detainees and prisoners by law enforcement personnel and prison guards, reports of which stemmed from all layers of civil society. Allegations had also been made that individuals returned to Uzbekistan from other countries pursuant to extradition requests were held in incommunicado detention, thereby increasing their risk of being tortured or otherwise ill-treated. The submission also set out that illegal exit abroad or illegal entry into Uzbekistan, including overstaying the permission to travel abroad or failure to renew it, are punishable under Article 223 of the Criminal Code with imprisonment from three to five years or in aggravated circumstances by up to ten years’ imprisonment. Returned asylum seekers were considered to be particularly vulnerable to being charged under Article 223, as many would not have renewed their permission to travel abroad.

41. In its submissions to the United Nations Human Rights Committee of June 2009 and February 2010, Human Rights Watch set out its concerns about the “atrocious” human rights record of Uzbekistan. It noted that the Government of Uzbekistan continued to refuse access to the country to no fewer than eight United Nations special procedures (the human rights mechanisms established by the United Nations to address either specific country situations or thematic issues) despite their repeated requests for invitations to visit Uzbekistan. It also reported that torture and ill-treatment remained endemic to the criminal justice system in Uzbekistan, and stated that another distinct concern relating to torture and ill-treatment is that of Uzbek refugees and asylum seekers forcibly returned by neighbouring countries, despite the risk of torture and ill-treatment that they face upon return.

COMPLAINTS

42. In their initial applications to the Court, the applicants complained that their removal to Uzbekistan would violate Articles 2, 3, 6 and 8 of the Convention. Under Articles 2 and 3, they claimed that, if returned, there was a real risk that they would be subjected to ill-treatment and/or torture which would lead to their death. Under Article 8, they complained that their

removal would violate their rights to respect for family life. Under Article 6, they complained that they would face an unfair trial if removed to Uzbekistan. In addition, the second applicant complained that the damage caused to his passport by the United Kingdom Border Agency violated his right to enjoy his possessions under Article 1 of Protocol No. 1 of the Convention.

43. More recently, in their response to the Government's observations, the applicants complained that their lack of legal representation at their appeal hearings breached Article 6 of the Convention and that they had no effective remedy under Article 13 of the Convention in the United Kingdom.

THE LAW

44. The relevant Articles of the Convention are as follows. Article 2, where relevant, provides:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law..."

Article 3 provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 6, where relevant, provides:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

Article 8 provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 13 provides:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 1 of Protocol No. 1, where relevant, provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law...”

A. Articles 2 and 3 of the Convention

45. The Court considers that it is more appropriate to deal with the complaint under Article 2 in the context of its examination of the related complaint under Article 3 and will proceed on this basis (*NA. v. the United Kingdom*, no. 25904/07, § 95, 17 July 2008).

1. The parties' submissions

a. The applicants' submissions

46. The applicants submitted that they faced a real risk of ill-treatment and torture if returned to Uzbekistan as failed asylum seekers who had been out of Uzbekistan for more than six years. Relying on the letter from Mr [redacted] dated 23 July 2009 (see paragraph 19 above), they claimed that on their arrival in Uzbekistan, they would come to the attention of the Uzbek Security Services because their visas and permission to travel had expired and their passports were damaged which would indicate to the Uzbek Security Services that they had claimed asylum in the United Kingdom. As a result, they claimed that they would be detained for investigation and subjected to ill-treatment and torture by the Uzbek Security Services.

47. Furthermore, they also alleged that they would be charged with criminal offences under Article 223 of the Criminal Code for not renewing their permission to travel abroad and would be sentenced to between three and ten years' imprisonment for the same. Relying on the United Nations Special Rapporteur's report (see paragraph 35 above), they submitted that their lives would be put at risk by the methods of interrogation and torture used by the Government of Uzbekistan.

b. The Government's submissions

48. As a preliminary objection, the Government submitted that the applicants had failed to exhaust domestic remedies because, following the dismissal of their appeals to the AIT, neither applicant had applied for permission to appeal to the Court of Appeal. Furthermore, although the applicants had submitted further representations, they had made no challenge in domestic proceedings to the United Kingdom Border Agency's conclusion that those representations disclosed no realistic prospect of success on a further appeal to the AIT (and hence that they did not amount to a "fresh claim"), and in particular had failed to apply for judicial review of those decisions.

49. The Government further submitted that the applicants' claims were manifestly ill-founded and that they faced no risk in Uzbekistan. First, the

Government argued that they would not be at any risk by virtue of the fact that their exit visas had expired and they would be able to apply for certificates of entry before returning to Uzbekistan. The Government relied on information provided by a Tashkent law firm to the British Embassy in Tashkent which stated, *inter alia*, that the expiry of an exit visa would not be considered to be illegal because an exit visa was only issued to confirm the right of exit within a specified period; and that, contrary to the understanding of Amnesty International, “overstaying the permission to travel abroad or failure to renew it” was not punishable under Article 223 of the Criminal Code because once an individual had left Uzbekistan, he or she was free to stay abroad for any period desired provided that other passport regime regulations were satisfied. That information also demonstrated that if an individual had left Uzbekistan within the period of validity of the exit visa, Article 223 did not apply; that Uzbek nationals did not require any permission to enter Uzbekistan; and that there were no penalties applicable for returning to Uzbekistan after an exit visa had expired.

50. Furthermore, the Government submitted that Uzbek passports can be replaced if lost or damaged or renewed if expired at the Uzbek Embassy in the United Kingdom. Alternatively, a certificate of entry can be issued by the Embassy in cases involving expired passports for citizens returned to Uzbekistan. Provided that a holder of an expired passport applied immediately for renewal or in due course obtained a certificate of entry into Uzbekistan while travelling abroad, expiry of a passport did not constitute a breach of Uzbek laws. Even if an individual had not applied for renewal of his passport, the maximum penalty would be an administrative penalty of up to “three minimal wage units” (given current values the equivalent of up to GBP 45).

51. Second, the Government submitted that the applicants’ fear of facing ill-treatment simply by virtue of being failed asylum seekers was also ill-founded as there was no suggestion that they were of any adverse interest to the Uzbek authorities. In that regard, the Government submitted that the references in the objective evidence to the detention, torture and ill-treatment of Uzbek refugees and asylum seekers forcibly returned to Uzbekistan were confined to those cases where the Uzbek authorities had a pre-existing adverse interest in the individual concerned; where individuals had been returned pursuant to extradition requests; and where individuals connected with the events at Andijan in May 2005 had been returned. In addition, whilst there were wide-spread reports of torture or ill-treatment in the investigation and conduct of criminal proceedings, none of the reports suggested the use of torture or ill-treatment simply by virtue of a person’s status as a returning failed asylum-seeker. The applicants had failed to provide any evidence that they would be at risk of facing detention and trial or at risk of being believed to have committed any offence upon return.

52. The Government pointed out that they had made approximately 50 returns to Uzbekistan in 2009, many of which were enforced, and a similar figure in 2008. They claimed that they were not aware of any reports of any of those returnees being ill-treated upon their return, despite the fact that many were overstayers and/or failed asylum seekers whose exit visas would have been likely to have expired, and many had been returned without a valid passport.

53. The Government did not accept that the letter from Mr [redacted] relied upon by the applicants was accurate, observing that his evidence to the AIT in the country guidance case of *OM*, cited above at paragraphs 30 - 34, had been materially inaccurate in this regard as he had claimed that there had been no deportees from the United Kingdom to Uzbekistan. Even in 2004, the year that Mr [redacted] had left his post as British Ambassador, there had been 45 recorded enforced or voluntary departures to Uzbekistan. The Government submitted that the AIT had been correct to treat Mr [redacted]'s evidence with circumspection.

54. Third, the Government did not accept that the applicants had complained to the Court that they would be at risk of ill-treatment by reason either of their ethnicity or their religion. To that end, the Government observed that the applicants had accepted in their representations dated 20 July 2009 that they were not at risk upon return by virtue of their ethnicity or religion, and had not sought to revive those allegations in their complaints to the Court.

2. The Court's assessment

a. General principles

55. The Court notes the Government's preliminary objection and recalls its finding in *NA. v. the United Kingdom*, cited above, § 90, that in expulsion cases judicial review is in principle an effective remedy which applicants should be required to exhaust before applying to this Court. However, the Court considers it unnecessary to rule on whether the present applicants have failed to exhaust domestic remedies in respect of this complaint since, in any event, it considers this complaint to be manifestly ill-founded for the reasons set out below.

56. The Court recalls the general principles applicable to expulsion cases, as established in its previous case-law and summarised in *NA. v. the United Kingdom*, cited above, §§ 109-113:

“109. Expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (*Saadi v. Italy* [GC], no. 37201/06, § 125, 28 February 2008).

110. The assessment whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assess the conditions in the receiving country against the standards of Article 3 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (*Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II). Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (*H.L.R. v. France*, judgment of 29 April 1997, *Reports* 1997-III, § 40).

111. The assessment of the existence of a real risk must necessarily be a rigorous one (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 96; and *Saadi v. Italy*, cited above, § 128). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it.

112. If the applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Saadi v. Italy*, cited above, § 133). A full and *ex nunc* assessment is called for as the situation in a country of destination may change in the course of time. Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities (see *Salah Sheekh*, cited above, § 136).

113. The foregoing principles, and in particular the need to examine all the facts of the case, require that this assessment must focus on the foreseeable consequences of the removal of the applicant to the country of destination. This in turn must be considered in the light of the general situation there as well as the applicant's personal circumstances (*Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, § 108)."

57. The Court has held that the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others v. the United Kingdom*, cited above, § 111, and *Saadi v. Italy*, cited above, § 131) and that, where the sources available to it describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov v. Turkey*, cited above, § 73; and *Saadi v. Italy*, cited above, § 131).

58. The Court's approach to the assessment of objective information was also restated in *NA. v. the United Kingdom*, cited above, §§ 118-122:

"119. In assessing conditions in the proposed receiving country, the Court will take as its basis all the material placed before it or, if necessary, material obtained *proprio*

motu. It will do so, particularly when the applicant – or a third party within the meaning of the Article 36 of the Convention – provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government. The Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see *Salah Sheekh*, cited above, § 136; *Garabayev v. Russia*, no. 38411/02, § 74, 7 June 2007, ECHR 2007-... (extracts)). As regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights-protection organisations such as Amnesty International, or governmental sources, including the US State Department (see *Saadi v. Italy*, cited above, § 131).

120. In assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations (see *Saadi v. Italy*, cited above, § 143).

121. The Court also recognises that consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that same consideration must apply, *a fortiori*, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do.

122. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court."

59. Finally, the Court recalls that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof (see *F.H. v. Sweden*, no. 32621/06, § 95, 20 January 2009). However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see *F.H. v. Sweden*, cited above, § 95).

b. Application of these principles to the present cases

60. In the present case, the applicants allege that they would be at risk of ill-treatment in Uzbekistan both because their exit visas have expired and because they claimed asylum in the United Kingdom. The Court notes that,

whilst the applicants claimed asylum in the United Kingdom based on their ethnicity, religion and the risk from the mafia, in their representations to the United Kingdom Border Agency dated 20 July 2009, they explicitly accepted that they would not be at risk on those grounds. Moreover, they have not sought to revive those allegations either before the domestic authorities or before the Court. Furthermore, they have never claimed to have had any political involvement in Uzbekistan or that the Uzbek authorities have any pre-existing adverse interest in them for any reason. Therefore, the Court will examine the risk to the applicants upon return to Uzbekistan solely as failed asylum seekers whose exit visas have expired.

61. First, in considering whether or not the applicants would be at risk as failed asylum seekers upon return, the Court recognises that the reports on the human rights situation in Uzbekistan paint a disturbing picture. In particular, in 2003, the United Nations Special Rapporteur stated that torture or ill-treatment was systematic in Uzbekistan. In 2008, the United Nations Committee Against Torture referred to “numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials”. Reports from Amnesty International and Human Rights Watch corroborate that view and indicate that torture and ill-treatment remain endemic to the criminal justice system in Uzbekistan.

62. The Court has also taken heed of the United Nations Committee Against Torture’s concerns that it had received credible reports that some persons who had sought refuge abroad and been returned had been kept in detention in unknown places and possibly subjected to ill-treatment; and reports in similar terms from Amnesty International and Human Rights Watch. Finally, the Court takes note of the letter from Mr [redacted] the former British Ambassador to Uzbekistan, in which he stated that the applicants would almost certainly be at risk of torture if the Uzbek authorities became aware that they had claimed asylum abroad.

63. However, the Court observes that, with the exception of the letter from Mr [redacted] all of the other evidence available that describes the detention, torture and ill-treatment of forcibly returned Uzbek refugees and asylum seekers relates to cases where the Uzbek authorities had a pre-existing interest in the individual concerned either because they were returned pursuant to an extradition request or because they were believed to be connected to the events at Andijan in May 2005.

64. As regards the weight to be attached to Mr [redacted]’s evidence, the Court notes that it was carefully considered by the AIT in the country guidance case of *OM*, set out above at paragraphs 30 - 34. After detailed examination, the AIT viewed Mr [redacted]’s evidence with some circumspection given that he had interests of his own which affected, consciously or otherwise, his interpretation of facts and events. Furthermore, the AIT found that other evidence, relating to the appellant in

OM, detracted very considerably from his evidence. The Court considers that there is no new evidence before it which would require it to reach a different conclusion and therefore considers that the Government were entitled to take the view that Mr [redacted]'s evidence was not wholly accurate.

65. In the present case, the Court notes that the applicants do not allege that the Uzbek authorities have any pre-existing interest in them whatsoever, nor do they allege that they have ever been arrested in the past, or that they have any connection to the events at Andijan. They claim solely that they would be at risk as returnees who had claimed asylum abroad given the generally poor human rights record of Uzbekistan.

66. Having regard to all of the above, and the fact that the mere possibility of ill-treatment on account of an unsettled situation in Uzbekistan would not in itself give rise to a breach of Article 3, the Court concludes that the applicants have failed to adduce evidence capable of establishing substantial grounds for believing that they would be exposed to a real risk of being subjected to treatment contrary to Article 3 upon return solely on the basis of their status as failed asylum seekers without any further distinguishing features to bring them to the attention of the Uzbek authorities.

67. Second, in considering whether or not the applicants would be arrested upon return by the Uzbek authorities due to the expiry of their exit visas, the Court notes that the domestic authorities concluded that it had not been established that returnees who had been abroad for longer than permitted by an exit visa were at real risk of punishment on return (see in particular the findings of *OM*, as set out above at paragraphs 30 - 34). The Court considers that there is nothing in either the applicant's submissions or the objective information (as set out above at paragraphs 35 - 41) before it to cause it to come to a different view or to suggest that the applicants would be arrested or detained upon return such as to put them at risk of being exposed to interrogation or treatment contrary to Article 3 of the Convention.

68. The Court acknowledges that Amnesty International has had some concerns that illegal exit abroad, including by overstaying permission to travel abroad, is punishable under Article 223 of the Criminal Code. However, the Court is not convinced that the applicants have demonstrated that they would be at risk of such arrest upon return having regard to the fact that the applicants do not allege that they left Uzbekistan without valid exit visas; instead they claim solely that their exit visas have expired in the period that they have been living in the United Kingdom. In this respect, the Court notes that, according to the information provided to the Government by the Tashkent law firm (see paragraph 49 above), overstaying permission to travel abroad is not punishable under Article 223 because, once an individual had left Uzbekistan within the period of validity of an exit visa,

Article 223 did not apply. It further notes that the Tashkent law firm also stated that Uzbek nationals did not require any permission to enter Uzbekistan and there were no penalties for returning to Uzbekistan after an exit visa had expired.

69. Furthermore, the Court considers that, in its assessment of the risk of arrest by the Uzbek authorities upon return, the individual profiles of the applicants are highly significant. To that end, the Court recalls first, that the applicants have no political connections or interests adverse to the Uzbek authorities. Second, the applicants are neither sought by the Uzbek authorities pursuant to an extradition request, nor are they wanted on suspicion of any criminal charges in Uzbekistan (cf., *inter alia*, *Garayev v. Azerbaijan*, no. 53688/08, 10 June 2010; *Abdulazhon Isakov v. Russia*, no. 14049/08, 8 July 2010; *Ismoilov and Others v. Russia*, no. 2947/06, 24 April 2008; and *Muminov v. Russia*, no. 42502/06, 11 December 2008). Third, they have no links to the events at Andijan which occurred in 2005 after they had already left Uzbekistan. Finally, they have never come to the attention of the Uzbek authorities in the past.

70. Having regard to all of the above, the Court concludes that the applicants have failed to demonstrate that there is a real risk that they would be arrested or detained by the Uzbek authorities upon return such as to put them at risk of being exposed to interrogation or treatment contrary to Article 3 of the Convention.

71. The Court therefore concludes that the applicants have failed to demonstrate substantial grounds for believing that they would be exposed to a real risk of being exposed to treatment contrary to Article 3 of the Convention if removed to Uzbekistan. Consequently, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

B. Article 8 of the Convention

72. The first applicant submitted that her expulsion and consequent separation from her adult daughter and grandson with whom she had lived for five years would interfere with her right to family life. Similarly, the second applicant submitted that his removal and consequent separation from his adult sister and nephew with whom he had lived since he was 21 years of age would interfere with his right to family life.

73. The Court recalls that Contracting States have the right as a matter of well-established international law and subject to their treaty obligations, including the Convention to control the entry, residence and expulsion of aliens (see *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006-XII and *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, Series A no. 94). To that end, Article 8 cannot be considered to

impose on a State a general obligation to respect immigrants’ choice of the country of residence and to authorise family reunion in its territory (see, *inter alia*, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, cited above, § 68; *Gül v. Switzerland*, judgment of 19 February 1996, *Reports of Judgments and Decisions* 1996-I, pp. 174-75, § 38; and *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX). Moreover, while the removal of a person from a country where his or her family resides may in some circumstances raise an issue under Article 8, the Court has held in immigration cases that there will be no family life between parents and adult children unless they can demonstrate additional elements of dependence (*Iyisan v. the United Kingdom* (dec.), no. 7673/08, 9 February 2010; *Kwakye-Nti and Duffie v. the Netherlands* (dec.), no. 31519/96, 7 November 2000). The same considerations must also apply to adult siblings (see, for example, *Onur v. the United Kingdom*, no. 27319/07, § 45, 17 February 2009).

74. In the present case, the Court notes that the applicants are adults and that they have not submitted evidence to the Court to suggest any elements of dependency with their relatives in the United Kingdom such as to attract the protection of Article 8. In any event, even assuming that the applicants have established private and family life for the purposes of Article 8 in the United Kingdom, the Court finds that their proposed removal is “in accordance with the law” and pursued a legitimate aim, namely the maintenance and enforcement of immigration control. As to the necessity of the interference, the Court finds that any private or family life that the applicants have established during their stay in the United Kingdom when balanced against the legitimate public interest in effective immigration control would not render their removal a disproportionate interference. In particular, the Court notes that the applicants are not settled migrants and have never been granted the right to remain in the respondent State. Their stay in the United Kingdom, pending the determination of an asylum and several human rights claims, has at all times been precarious. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

C. Other complaints

75. The applicants make two complaints invoking Article 6 of the Convention. First, they argued that they would be at risk of being held in incommunicado detention and would not receive a fair hearing in any proceedings against them in Uzbekistan for overstaying the validity of their passports. Second, referring to both Article 6 and Article 13, they submitted

that they had not been legally represented at their appeal hearings; that the IAA's finding that their evidence was not credible was speculative and unsupported by sustainable reasons; that evidence relating to the human rights position in Uzbekistan which was in the public domain had not been adequately considered by the Secretary of State or the domestic courts; and that the domestic authorities had failed to investigate properly the background of their claims.

76. In relation to the first ground, the Court recalls that expulsion may exceptionally give rise to an issue under Article 6 where there is a risk of a "flagrant denial of justice" in the country of destination (*Mamatkulov and Askarov v. Turkey*, cited above, §§ 88-90). However, for the reasons set out above in relation to their complaints under Articles 2 and 3 of the Convention, the Court does not consider that the applicants have demonstrated that they would come to the adverse attention of the Uzbek authorities or face any criminal proceedings upon return. Consequently, the applicants are not at risk of a flagrant denial of justice in Uzbekistan. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

77. As regards the second ground, the Court recalls that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6 § 1 of the Convention (*Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X). This complaint must therefore be rejected as incompatible *ratione materiae* with the provisions of the Convention in accordance with Article 35 §§ 1 and 4 of the Convention.

78. Further, in light of the findings set out at paragraphs 60-71 above, the Court does not consider that the applicants have demonstrated any "arguable" complaints under the Convention such as to engage Article 13 of the Convention. In the circumstances, this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

79. Finally, the second applicant has failed to substantiate his complaint that the immigration authorities breached his rights to enjoyment of his possessions Article 1 of Protocol No. 1 by damaging his passport and drawing a pen-line through his visa. This complaint is therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

D. The interim measure indicated under Rule 39

80. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

81. For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Registrar

President