



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

LM (returnees – expired exit permit) Uzbekistan CG [2012] UKUT 00390(IAC)

THE IMMIGRATION ACTS

**Heard at : Field House
On : 4 July 2012**

Determination Promulgated

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Before

**UPPER TRIBUNAL JUDGE GLEESON
UPPER TRIBUNAL JUDGE KEBEDE**

Between

LM

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Vokes, instructed by Blakemores Solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

COUNTRY GUIDANCE

(1) Article 223 of the Uzbekistan Criminal Code (UCC) makes it an offence for a citizen to leave the country without permission – what is described as “illegal exit abroad”. The basic offence of “illegal exit abroad” is punishable by a fine or by imprisonment for between three to five years.

(2) In specified aggravating circumstances (a physical breach of the border, conspiracy, or the exit abroad of a state employee requiring special permission) the penalty for “illegal exit abroad” under Article 223 of the UCC rises to five to ten years’ imprisonment. It is unclear from the evidence before us whether a fine will also be imposed.

(3) Uzbek citizens are required to obtain an exit permit prior to leaving the country. However, Annex 1 to the Resolution of the Council of Ministers No. 8, issued on 06.01.1995, provides that no penalties apply to someone who returns to Uzbekistan after the expiry of their exit permit. Normally, exit permits can be renewed at the Uzbekistan Embassy in the third country where an Uzbek citizen is living.

(4) There are cases of Uzbek nationals, having left the country lawfully, nevertheless being charged with “illegal exit abroad” and prosecuted under Article 223 following their return to Uzbekistan with expired exit permits. However, those cases involved pre-existing interest by the authorities, association with the events in Andijan in 2005, association with Islamic militant activity, travel to countries other than that authorised in the exit permit or other such distinguishing features.

(5) There is no evidence of prosecutions under Article 223 of the UCC of ordinary returning Uzbek citizens with expired exit permits, including failed asylum seekers, where such individuals had no particular profile or distinguishing features which would otherwise have led to any adverse interest in them. It has therefore not been established that such returnees are at real risk of persecution on return.

(6) The ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan, for which there is no concrete evidence of any fundamental improvement in recent years (Ergashev v Russia [2009] ECtHR 12106/09 ECHR 2249). Therefore, where an Uzbek citizen is likely to be detained on return, Article 3 ECHR will be engaged.

(7) The country guidance given by the Asylum and Immigration Tribunal in OM (Returning citizens, minorities, religion) Uzbekistan CG [2007] UKAIT 00045 is re-affirmed.

DETERMINATION AND REASONS

1. This was an appeal against the determination of an Immigration Judge who dismissed the appellant’s appeal against the respondent’s decision of 30 June 2009 to remove her to Uzbekistan, following a decision that she was not entitled to asylum, humanitarian protection or human rights protection in the United Kingdom.

2. The appellant is a citizen of Uzbekistan, now almost 34 years old. She left Uzbekistan in July 2008 to study in the United Kingdom, and her daughter was born here in March

2009, seven months after the appellant's arrival. Her daughter, now age 3, is the appellant's dependant in this appeal.

3. When her student visa expired, the appellant sought further leave to remain through a third party; her passport was returned to her by that third party, endorsed with a further 'residence permit', which she claims to have believed to be genuine and valid, but which she later discovered was false. Whilst it is now accepted that the appellant's passport is a genuine document, and the Uzbek exit visa endorsed therein was validly obtained, the leave to remain is a forgery.

4. The appellant claimed asylum in June 2009, when her daughter was three months old, claiming to fear that her husband would take the child from her on her return to Uzbekistan, as he was unhappy about her relationship with another man. The respondent refused the asylum application promptly and made removal directions to Uzbekistan. The appellant appealed: at the hearing, she raised for the first time the expiry of her exit visa and her status as a lone mother returning to Uzbekistan. The immigration judge dismissed the appeal in October 2009.

5. The appellant challenged that dismissal, and reconsideration was ordered by the Asylum and Immigration Tribunal (AIT) in February 2010, which took effect as a grant of permission to appeal to the Upper Tribunal. In May 2010, the Upper Tribunal found an error of law and set aside the determination (Appendix A). The appeal was identified as suitable for country guidance on exit visas from Uzbekistan. There was then a considerable delay during which the appeal was prepared for hearing as a country guidance determination, and appropriate expert reports commissioned and served. We regret the length of the delay. The information which we considered when the appeal came before the Upper Tribunal in July 2012 was up to date at the date of the hearing.

The Asylum Claim

6. The basis of the appellant's claim was expanded in her grounds of appeal and in her witness statement for the Upper Tribunal hearing. There were three possible elements to the asylum claim as it was presented, of which only one was relied upon:

(a) The original asylum claim, based upon a claimed fear of persecution by her husband because he was jealous of a relationship she had with an ex-boyfriend. The appellant had a child, born in the United Kingdom shortly after she arrived, and she claimed to fear that on return to Uzbekistan, her husband would take the baby away from her. That part of her claim was not accepted as credible by the judge and has not been pursued further.

(b) A *sur place* claim relating to the expiry, while in the United Kingdom, of the valid exit visa on which the appellant had left Uzbekistan. She argued that she would face persecutory treatment on return because she had overstayed her permitted absence from her country.

(c) There was also a second *sur place* claim, based on the appellant's claimed conversion to Christianity while in the United Kingdom, and her alleged involvement with the Jehovah's Witness community. At the hearing, Mr Vokes for the appellant confirmed that this element of her claim was not pursued and that the only question for the Tribunal was the risk arising from the expiry of her exit visa, and any adverse interest from the Uzbek authorities which that might attract.

7. The judge relied on the country guidance given by the Asylum and Immigration Tribunal in OM (Returning citizens, minorities, religion) Uzbekistan CG [2007] UKAIT 00045, concluding that the appellant had failed to establish that the expiry of her exit permit would put her at risk on return to Uzbekistan. He noted that in OM it was held that it had not been established that Uzbek citizens whose passports had expired could not obtain a renewal from embassies abroad or that returnees who had been abroad for a longer period than permitted by an exit permit were at real risk of disproportionate punishment on return. OM was appealed to the Court of Appeal and remitted to the AIT by consent order on 22 October 2008. OM was the only extant country guidance on Uzbekistan available to the judge: however, the information on which it is based, and which is listed at the end of the determination, is now over six years old, the latest document dating back to September 2006.

8. The grounds of appeal relied upon background information in an Amnesty International report of 28 April 2009, which indicated that Article 223 of the Uzbek Criminal Code punished illegal exit from and entry to the country, including return to the country after the expiry of an exit permit, arguing that the country guidance in OM was out of date and should not be followed. Permission to appeal was granted relating to the arguable risk on return following the expiry of an exit permit and the immigration judge was subsequently found to have erred by failing to consider the evidence provided in the Amnesty International report as to new regulations preventing Uzbek nationals from renewing their exit visas abroad.

Country Guidance Issue

9. The case was identified for country guidance following the decision of the Court of Appeal in LS (Uzbekistan) v Secretary of State for the Home Department [2008] EWCA Civ 909 to remit that case to the Upper Tribunal as a result of subsequent expert evidence from Miss Farquharson; the uncertainty as to the status of the country guidance in OM following its remittal by the Court of Appeal to the Tribunal; and in the light of additional evidence of ill-treatment of returnees by the Uzbek authorities. Directions following the error of law hearing identified a country guidance issue as 'the risk to Uzbek citizens returning to Uzbekistan after illegal exit', but the facts of this appeal do not raise that question and the argument before us was confined to the risk arising from an expired exit visa.

10. The experts were asked to assist the Upper Tribunal in assessing the risk for persons whose exit visas had expired, on return to Uzbekistan (a Muslim country) in the following three situations:

- (a) Failed asylum seekers;
- (b) Persons charged and detained for exit visa offences under the Uzbek Criminal Code; and
- (c) Women with children born in the United Kingdom outside wedlock.

11. At a directions hearing on 20 February 2012, Mr Vokes advised that the risk factor of returning to a Muslim country with a child born out of wedlock was no longer pursued.

Evidence Considered

12. We have before us various documents and country materials and reports. We also received country expert evidence from Miss Marjorie Farquharson and Mr Robert Chenciner, both for the appellant, and we had available to us an extensive report from Asylum Research Consultancy (ARC). The expert evidence is summarised, and the relevant materials set out, in the Appendices to this determination, as follows:

Appendix A Error of Law Decision

Appendix B Documents before the Upper Tribunal

Appendix C Evidence of Marjorie Farquharson

Appendix D Evidence of Robert Chenciner

Appendix E Evidence of Asylum Research Consultancy

Appendix F Background Information

13. We have taken into account all of the materials before us and shall refer to the appropriate parts of it in this determination. The following is a summary of the most important areas of the evidence before us. More detailed summaries appear in the Appendices.

Exit and Entry Procedures for Uzbekistan

14. The exit and entry procedures in Uzbekistan are set out in some detail in the background materials and in particular in the reports from Miss Farquharson and from the Asylum Research Consultancy and can be summarised as follows. Further details are provided in the summary of the individual reports.

15. The rights of Uzbek citizens to leave the country are governed by the "Exit Procedure for Citizens of the Republic of Uzbekistan". According to these procedures, in order to obtain a temporary exit visa, citizens of Uzbekistan must apply to the Department of Internal Affairs in their home area, completing an application form and producing their passport. If granted, an exit visa is valid for temporary exit for a period of two years and

allows the holder to go abroad any number of times within the prescribed two-year period without re-applying.

16. According to current practice in Uzbekistan, once the application is received, the Department of Internal Affairs returns the individual's passport, normally within 15 days, authorising the travel, and in addition to the internal stamp on the passport, a sticker is placed on the back of it. Citizens who do not have a passport are entitled to receive a passport and sticker from their local Department of Internal Affairs, also within a period of 15 days. Throughout the two years of their authorised travel, Uzbek bearers of such passports may freely leave and enter Uzbekistan.

The Uzbek Criminal Code

17. Illegal exit abroad or illegal entry into Uzbekistan is regulated by Article 223 of the Uzbek Criminal Code, which is found in Part 2 of the Code, at Chapter 17, entitled 'Crimes against Public Security'. The basic penalty is 50-100 times the minimum monthly wage (so just over 4-8 years' wages) or 3-5 years' imprisonment. In aggravated circumstances set out in Article 223, the period of imprisonment rises to 5-10 years. As set out in the Uzbek Constitution, Article 223 does not apply to 'foreigners and stateless persons' who are political asylum seekers and entered Uzbekistan without proper entry documents.

18. **Article 223** states as follows:

"Illegal Exit Across the Border or Illegal Entry into the Republic of Uzbekistan.

Exit across the border, or entry into the Republic of Uzbekistan, or crossing of the border in violation of established procedure –

Is punishable by a fine of between 50 and 100 minimum monthly wage, or deprivation of freedom from three to five years.

The same actions committed:

- a) by means of a physical breach;
- b) by preliminary agreement with a group;
- c) by a state employee whose exit abroad requires a special agreement –

are punishable by deprivation of liberty of between five and ten years.

Foreigners and stateless people, who are in Uzbekistan without properly constituted entry documents, for the purpose of exercising the right to political asylum, foreseen by the Constitution of Uzbekistan, are exempt from criminal responsibility."

19. For the appellant, Mr Vokes also sought to rely on Articles 139 and 140 of the Uzbek Criminal Code, in Chapter 6 of Part I of the Code, entitled 'Crimes against Family, the Youth, and Morality':

"Article 139. Denigration

Denigration, that is, dissemination of false, defamatory information committed after a previous administrative penalty for the same action – shall be punished with fine up to fifty minimal monthly wages or correctional labor up to two years.

Denigration through a printed or otherwise copied text or through mass media – shall be punished with fine from fifty to one hundred minimal monthly wages or correctional labor from two to three years, or arrest up to six months, or imprisonment up to six years.

Denigration:

- a) aggravated by commission of a serious or especially serious crime;
- b) that resulted in grave consequences;
- c) committed by a special dangerous recidivist;
- d) from mercenary or other foul motives –

shall be punished with imprisonment up to three years.

Article 140. Insult

Insult, that is, intentional grievous degrading of honor and dignity of a person committed after a previous administrative penalty for the same actions – shall be punished with fine up to fifty minimal monthly wages or correctional labor up to one year.

Insult through a printed or otherwise copied text or through mass media – shall be punished with fine from fifty to one hundred minimal monthly wages or correctional labor from one to two years.

Insult:

- a) in connection with performing by a victim his professional or civil duty;
- b) by a dangerous recidivist or a person previously prosecuted for denigration –

shall be punished with fine from one hundred to one hundred fifty minimal monthly wages or correctional labor from two to three years, or by arrest up to six months.”

20. We return to the consideration of these Articles later in this determination.

The Andijan massacres

21. The materials before us refer to the aftermath of what have come to be known as the ‘Andijan massacres’, on Friday 13 May 2005, when anti-government gunmen in the eastern city of Andijan forcibly released 23 people charged with Islamic extremism. Later that day, thousands of unarmed people gathered in the main square to protest peacefully against the government of President Karimov. Troops opened fire on the protesters, and the international press reported a bloodbath with several hundred civilian deaths. The Uzbek authorities stated that fewer than 190 died.

22. Oppositionists blamed the authorities' brutal determination to crush all dissent. President Karimov blamed fundamentalists seeking to overthrow the government and establish a Muslim caliphate in Central Asia.

Country evidence

23. There is no UKBA Country of Origin Report or Operational Guidance Note in relation to Uzbekistan.

US Department of State

24. The 2011 US State Department Report on Human Rights for Uzbekistan, dated 24 May 2012, noted at Section 2d that:

Foreign Travel: Citizens are required to have a domicile registration stamp in their passport before travelling domestically or leaving the country. The government also requires citizens and foreign citizens permanently residing in the country to obtain exit visas for foreign travel or emigration, although it generally grants the visas. In July the Cabinet of Ministers adopted amendments to exit visa procedures that allowed denial to travel on the basis of “information demonstrating the inexpedience of the travel.” According to civil society activists, these provisions were poorly defined and such decisions could not be appealed. In addition, ostensibly in an effort to combat trafficking in persons, the country introduced regulations that required male relatives of women age 18 to 35 to submit a statement pledging that the women would not engage in illegal behaviour, including prostitution, while abroad.

As in past years, although the law prescribes that a decision should be reached within 15 days, there were reports that the government delayed exit visas for human rights activists and independent journalists to prevent their travel abroad. For example, during the year authorities subjected human rights activists Dmitriy Tikhonov and Vladimir Khusainov, and independent journalist Abdumalik Boboev to such delays, although Tikhonov and Boboev eventually received visas after waiting 10 and four months, respectively. In August the government refused to issue an exit visa to human rights activist Tatiana Dovlatova, citing her January conviction on hooliganism charges.

Citizens generally continued to be able to travel to neighboring states. Land travel to Afghanistan remained difficult. Citizens needed permission from the NSS [National Security Service] to cross the border.

The government requires hotels to register foreign visitors with the government on a daily basis. Foreigners who stay in private homes are required to register their location within three days of arrival. Government officials closely monitor foreigners in border areas, but foreigners generally can move within the country without restriction.

Emigration and Repatriation: The law does not provide for dual citizenship. In theory, returning citizens must prove to authorities that they did not acquire foreign citizenship while abroad or face loss of citizenship. In practice citizens who possessed dual citizenship generally travelled without impediment.

The government noted that citizens residing outside the country for more than six months could register with the country’s Consulates, and such registration was voluntary. Unlike in some previous years, there were no reports that failure to register rendered citizens residing abroad and children born abroad stateless.”

25. The Executive Summary to the 2011 Report supported the appellant's claim that if she were to be detained, conditions in detention and prison were harsh and on occasion life-threatening.

"Uzbekistan is an authoritarian state with a constitution that provides for a presidential system with separation of powers among the executive, legislative, and judicial branches. In practice President Islam Karimov and the centralized executive branch dominated political life and exercised nearly complete control over the other branches of government. ...

The most significant human rights problems included: instances of torture and abuse of detainees by security forces; denial of due process and fair trial; and restrictions on religious freedom, including harassment and imprisonment of religious minority group members.

Other continuing human rights problems included: incommunicado and prolonged detention; harsh and sometimes life-threatening prison conditions; arbitrary arrest and detention (although officials released four high-profile prisoners detained for apparently political reasons); restrictions on freedom of speech, press, assembly, and association; governmental restrictions on civil society activity; restrictions on freedom of movement; violence against women; and government-organized forced labor in cotton harvesting. Authorities subjected human rights activists, journalists, and others who criticized the government to harassment, arbitrary arrest, and politically motivated prosecution and detention.

Government officials frequently engaged in corrupt practices with impunity."

Amnesty International

26. The Amnesty International submission to the UN Human Rights Committee on 28 April 2009 raised issues for consideration in the Committee's third review of measures taken by Uzbekistan to implement the International Covenant on Civil and Political Rights. Amnesty International's position may be summarised in the following excerpt from the Introduction to that submission:

"Since ... March 2005, the authorities have introduced further legislative and judicial reforms aimed at bringing national legislation into line with international standards. Uzbekistan abolished the death penalty in January 2008 and ratified the Second Optional Protocol to the ICCPR in December 2008. Judicial supervision of detention was introduced in 2008 and several imprisoned human rights defenders were released conditionally during the year. The authorities have also continued with numerous, wide-ranging and officially endorsed, national initiatives in the fields of human rights education and reform, such as adopting the National Action Plan on torture in 2004. The government has also increased dialogue on human rights with the international community, in particular the European Union, following sanctions imposed by the EU in November 2005.

Amnesty International regrets, however, that all the above developments have failed to lead to necessary, genuine and wide-reaching systemic reforms. The organization remains seriously concerned at ongoing and persistent human rights violations in Uzbekistan and at the failure of the authorities to fully and effectively implement the state party's obligations under the ICCPR and the recommendations by the Human Rights Committee, as well as other UN treaty bodies and special procedures. ... in spite of the reforms mentioned above, there has been a serious deterioration in the human rights situation especially since, and as a

consequence of, the so-called Andizhan events in May 2005. Hundreds of individuals, including women and children, were killed when security forces opened fire on mostly unarmed demonstrators gathered in the centre of Andizhan, and as they fled. In the aftermath of the events the government severely clamped down on expression and manifestation of dissent and tried to suppress independent reporting on the killings. Hundreds of demonstrators were detained and reportedly ill-treated and witnesses were intimidated. Journalists and human rights defenders were harassed, beaten and detained; some were prisoners of conscience held on serious criminal charges. Following unfair trials, the majority of which were closed or secret, hundreds of people were convicted of "terrorism" offences and were sentenced to long prison terms for their alleged participation in the unrest. The authorities in Uzbekistan have actively sought the extradition of members or suspected members of banned Islamist parties or Islamic movements, which it blames for the Andizhan events.

Amnesty International is dismayed in particular at the authorities' continued refusal to allow an independent, international investigation into the killings in Andizhan in 2005. ...Amnesty International believes that at the roots of the concerns highlighted in this briefing lie a deep-seated culture of impunity for human rights violations and a failure by the Uzbekistani authorities to fully guarantee genuine freedom of expression and association as stipulated by the ICCPR. "

27. As regards civil rights generally, the Amnesty International submission is in line with the US State Department Report evidence; the Uzbek authorities had refused access for verification of their claims that torture in custody was decreasing, or to permit an international investigation of the Andijan massacre. The report cited one instance (in 2007) where a male overstayer had been prosecuted on return and imprisoned for overstaying his exit visa. No details of his political profile or other circumstances were given; he had been released subsequently in the context of an amnesty but remained under a form of house arrest.

Asylum Research Consultancy (ARC) Report

28. The ARC report is a collection of quotations and conclusions from various sources and is not an expert source itself. The report cites cases of Uzbek citizens returning to Uzbekistan with expired exit permits being charged under Article 223 of the Criminal Code, based upon information from various sources. Reference is made to a report of February 2010 from the Uzbek-German Forum for Human Rights in which it is stated that they were aware of two such cases and limited details are provided at page 20. The first involved a student who had graduated from a European university, whose exit permit had expired before the end of the academic term but who had been assured by the Uzbekistan Embassy that she could extend her exit visa once she returned to Uzbekistan, who was then prosecuted on return to Uzbekistan. In that case, the student had travelled to a third country on her way home and was as a result accused of having travelled abroad illegally. The second case involved an Uzbek citizen who had married an American citizen and had lived in the US with him for some time, and who was prosecuted for violating the terms of her exit visa when she returned to Uzbekistan to process the paperwork to give up her citizenship. Both women were amnestied in the end, although they retained marks in their permanent records.

29. The ARC report refers also to a case cited in the Human Rights Watch report of 3 May 2010 of an Uzbek woman who in 2005 fled to Kyrgyzstan, later resettled in Australia and who returned to Uzbekistan in January 2010 after being assured that she could return without fear of reprisal or punishment. She was charged with illegal border crossing and anti-constitutional activity and was sentenced to ten years and two months in prison. Another case cited in the ARC report is also documented in an Amnesty International report of May 2011 and in both cases there were associations with the events in Andijan. The final example given in the ARC report is from the Amnesty International report of May 2010 and cites the same case as in the 28 April 2009 Amnesty International report.

FCO Evidence

30. In response to requests from the respondent, the FCO provided two letters which were broadly in line with the information already summarised about illegal exit and concerning the circumstances in which an exit visa is obtained. In relation to staying outside Uzbekistan after travelling, the FCO position is as follows:

(1) FCO letter from British Embassy Tashkent to Country Specific Policy Team, Home Office, dated 14 December 2009

This letter is a response to questions raised by the UKBA in an email to the FCO dated 27 November 2009, in which the author confirms that they have no reason to doubt the accuracy of the responses which were provided by a Tashkent law firm. The letter confirms that the exit visa system is universally enforced, pursuant to "Exit Procedure for Citizens of the Republic of Uzbekistan" approved as Annex 1 to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan issued on 06.01.1995 No.8, according to which a visa is used for two years. The Ministry of Internal Affairs of the Republic of Uzbekistan has overall responsibility for the maintenance of the passport regime, including keeping records of all exit visas issued. Exit visas must be valid and available for checking at the airport. Exit visas can be renewed at the Uzbekistan Embassy in the United Kingdom and Uzbek passports can be replaced if lost or damaged, or renewed if expired at the Uzbekistan Embassy in the United Kingdom.

An exit from or an entry to Uzbekistan will be considered illegal if an individual does not possess any valid authorisation (visa) to enter or to leave Uzbekistan issued either by the Ministry of Internal Affairs or by a respective Uzbekistan Consulate abroad. Expiry of an exit visa upon return of an Uzbek citizen to Uzbekistan will not be considered illegal as an exit visa is issued to confirm the right to exit only. Expiry of an exit visa before any travel or while travelling abroad does not constitute an administrative or a criminal breach. No penalties are applicable for returning to Uzbekistan if the exit visa has expired, as exit visas are issued to confirm the right of an Uzbek citizen to exit the Republic of Uzbekistan within a specified period. A returnee holding an expired exit visa must produce evidence that he/she had a valid exit visa at the time of leaving the Republic of Uzbekistan, in which case no penalties are applicable.

(2) FCO letter from British Embassy Tashkent to Country Specific Policy team, Home Office, dated 14 December 2010

“...Uzbekistan laws do not require individuals to have a "permission to travel abroad". Uzbekistan laws require individuals intending to leave the territory of Uzbekistan to acquire a permission to leave the territory of Uzbekistan. This kind of permission is given for a two year period and is applied only with respect to the right of an individual to leave Uzbekistan. Once an individual has left Uzbekistan he/she is free to stay abroad for any period desired (provided that other passport regime regulations are satisfied). If an individual has left Uzbekistan within the period of validity of the permission, Article 223 will not apply. If an individual left Uzbekistan without permission it is most likely that he/she would face criminal charges upon his return to Uzbekistan under Article 223. Uzbek nationals do not require any permission to enter Uzbekistan. ...”

31. The evidence is based upon the advice of a Tashkent law firm.

Other international evidence as to the procedure for obtaining an exit visa

32. Whilst we have given consideration to all the documentary evidence listed at Appendix B, only the following additional documents are relevant. The remaining materials listed in Appendix B relate to matters no longer in issue before us.

(a) **UNHCR RefWorld report 21 November 1996: Regulations on Entry to and Exit From the Republic of Uzbekistan for Foreign Citizens and Stateless Persons** which provides details about the process for applications to travel abroad, but adds nothing further to the other reports summarised.

(b) **Uzbek-German Forum for Human Rights report**, submitted to the 98th session of the Committee on Civil and Political Rights (CCPR), informs the Committee about the Uzbek government's adherence to statutes regarding freedom of movement and choice of residence. The report explains the system of “*propiska*” in Uzbekistan, which allows the state to register citizens at their places of residence and controls their movements within the state. It also explains the requirements for the acquisition of exit permits for citizens wishing to travel abroad. The report refers to several categories of citizens who are restricted in their rights to travel abroad for various reasons.

(c) **Australian Government Refugee Review Tribunal: Country Advice Uzbekistan 15 July 2010** provides information on the exit procedures, including security checks, in Uzbekistan, explaining that successful applicants receive a stamp in their passport, valid for two years, authorising travel abroad.

33. These reports are summarised in more detail in Appendix F.

Relevant Case Law

OM (Returning citizens, minorities, religion) Uzbekistan CG [2007] UKAIT 00045

34. The appellant in OM was a citizen of Uzbekistan who had left the country in March 1996 with a valid exit visa to enable her to study in the United Kingdom (for which she had entry clearance); she claimed asylum in July 1996.

35. Mr Craig Murray, a former employee of the Foreign and Commonwealth Office and a former British Ambassador to Uzbekistan, gave expert evidence that someone like the appellant, who had been out of the country for just over 10½ years, without valid reason, would inevitably be the subject of grave suspicion. Her arrival in Uzbekistan would be noted and she would be suspected because she had not kept in contact with the Uzbekistan Embassy while in London. His opinion was that remaining outside Uzbekistan illegally was a criminal offence and that it would be considered as showing that the appellant was not a good patriot.

36. The reviewing Tribunal, however, placed limited weight upon Mr Murray's evidence and, in dismissing the appeal, concluded that:

"It has not been established that Uzbek citizens whose passports expire cannot obtain a renewal from Embassies abroad, or that returnees who have been abroad for longer than permitted by an exit visa, are at real risk of disproportionate punishment on return.

There is no satisfactory evidence that non-Uzbeks face discrimination of such a nature as to amount to persecution, or serious harm, or a breach of their article 3 rights."

37. The case was remitted to the AIT by the Court of Appeal with a consent order dated 22 October 2008. The agreed Statement of Reasons on the remittal made no comment of any kind on the country guidance related aspects of the case. The Secretary of State subsequently granted the appellant indefinite leave to remain. OM still appears on the Upper Tribunal's list of country guidance determinations, albeit the underlying information is now six years out of date.

LS (Uzbekistan) v Secretary of State for the Home Department [2008] EWCA Civ 909

38. The Court of Appeal considered the appeal of LS in July 2008, before the remittal of OM to the AIT in October 2008. The appellant in LS was a 22-year old stewardess with the state airline Uzbekistan Airways, who failed to rejoin her plane to return to Tashkent, claiming asylum on grounds of her sexuality. She also claimed to have lost her passport. The Court of Appeal distinguished the factual matrix in LS from that in OM on the basis there were some potentially important differences.

39. In particular, as a state employee with the national airline, LS's case appears to have fallen within Article 223 (c), in that she was a 'a state employee whose exit abroad requires a special agreement' and there was no indication that she had permission to travel abroad, otherwise than for the very limited purposes of her employment with the airline. The appeal was remitted to the AIT for consideration of whether the appellant was at real risk of being charged on her return to Uzbekistan with an Article 223 (c) offence, carrying a prison sentence of between 5 and 10 years. The judgment does not specifically refer to Article 223(c), but that can be inferred from the context.

Ergashev v Russia - 12106/09 [2011] ECHR 2249

40. The applicant in Ergashev was appealing against an extradition order from Russia to Uzbekistan, alleging that he risked ill-treatment in Uzbekistan. The European Court of

Human Rights (ECtHR) considered allegations that detainees suffered ill-treatment in Uzbekistan, finding that the ill-treatment of detainees in Uzbekistan was a pervasive and enduring problem. The Court concluded on that basis that the applicant's forcible return to Uzbekistan would give rise to a violation of Article 3 of the ECHR.

NM and MM v United Kingdom - 39128/09 [2011] ECHR 320

41. The ECtHR promulgated its decision in NM and MM on 25 January 2011. The applicants relied on a risk of ill-treatment in Uzbekistan both because their exit visas had expired and because they had claimed asylum in the United Kingdom. All other elements of their arguments before the United Kingdom courts were no longer relied upon.

42. The applicants in this case did not allege that the Uzbek authorities had any pre-existing interest in them. The Court cited with approval the decision in OM, noting that:

"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."

43. The Court was particularly interested in the AIT's assessment of the evidence of Mr Murray in OM. Assessing the appellants' appeals, the Court said that:

"63. However, the Court observes that, with the exception of the letter from Mr Murray, 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 Murray'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 Murray'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 Murray'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."

44. The Court had regard to the concerns of Amnesty International that illegal exit abroad, including by overstaying permission to travel abroad, was punishable under Article 223 of the Criminal Code, but considered that there would be no such risk for the applicants who had not alleged that they had left Uzbekistan without valid exit visas, but only that their exit visas had expired.

45. In so concluding, the Court relied upon the FCO letters (also before us) summarising information obtained by the British Embassy in Tashkent from 'a Tashkent law firm', stating that overstaying permission to travel abroad was not punishable under Article 223. The Court rejected the applicants' complaints under Article 3 and declared the applications inadmissible.

The Appellant's Evidence

46. The only evidence before us from the appellant consisted of that given before the First-tier Tribunal and a short written statement, none of which related to the issues now before us. She did not give any oral evidence before us and in fact chose to leave the hearing at the commencement of the proceedings prior to the evidence of the experts and the submissions. Her evidence is not in dispute: she came to the United Kingdom as a student, on a valid exit visa, had a baby here and has not sought to renew her visa at the Uzbekistan Consulate. She has a valid passport with one forged stamp in it.

The Expert Evidence

Ms Marjorie Farquharson

47. Miss Farquharson has worked for thirty years in the field of human rights and the USSR and post-Soviet states, including for fourteen years as Amnesty International's researcher on the USSR, as the Director of an EU project to develop civil society in the Russian Federation and for six years as the administrator of the Council of Europe's human rights programme in the Russian Federation and Ukraine. From 2001 she has been an independent researcher and consultant, and from 2009, carried out a gap analysis of

statelessness in Central Asia for the United Nations High Commissioner for Refugees, in preparation for their naturalisation drive later in 2010, which included a study of legislation on exit, entry and stay in Uzbekistan.

48. She has contributed expert opinions in several asylum cases and, in the light of her expert evidence before the Court of Appeal in LS, as regards the penalties for illegal exit abroad under Article 223 of the Uzbekistan Criminal Code, the appellant's appeal in that case was allowed and remitted to the Tribunal.

49. Miss Farquharson, in her first report of 12 May 2010, referred to several cases of Uzbek citizens, particularly Uzbeks studying abroad, who had been subjected to the tightening of the regulations on travel abroad in 2006, following the Andijan massacres and who faced charges of illegal exit abroad under Article 223 of the Uzbekistan Criminal Code. She relied upon two particular sources for her information, namely the Director of the Ecole des Etudes de Sciences Sociales in Paris and the Le Mans-based "Association for Human Rights in Central Asia". The former reported that since 2006 numerous of his Uzbek students were unable to complete their courses because they were forbidden to leave the country under threat of prosecution for "illegal exit abroad". The latter reported that students and labour migrants were now unable to renew their exit permits as previously in their nearest Uzbekistan Consulate and were instead required to do it in Uzbekistan at the local Department of Internal Affairs which had given them their original documentation.

50. Miss Farquharson referred to one particular case of an Uzbek law student studying in France, who was prosecuted in 2007 under Article 223 of the Criminal Code for failure to renew an exit permit. The student was tried, amnestied and put under house arrest in Uzbekistan. She concluded that the appellant, having no record of political dissension or conflict with the Uzbek authorities, differed from those cases, since they were either associated with the events in Andijan, were linked to Islamist activity and/or had featured in the international or specialist émigré media.

51. In her view, therefore, the question of risk to the appellant hung only on whether her exit visa was legal and the consequences of her return to Uzbekistan as a failed asylum-seeker. At the time of writing the original report, Miss Farquharson had no access to the appellant's original passport, which was said to have been lost by the respondent. From the photocopy which was available, she was unable to form a view on the legality of the appellant's exit permit or on the risk of prosecution on return to Uzbekistan for 'illegal exit abroad'. She considered that an application from the United Kingdom authorities to the Uzbekistan Embassy to re-document the appellant because they had lost her passport, followed by her return to Uzbekistan as a failed asylum-seeker, would draw negative attention to the appellant and could make her liable to the same treatment as described in the other cases to which she had referred.

52. In her second report, the appellant's passport having been located and made available for Miss Farquharson to examine, she considered the passport to be authentic in format and concluded that the exit permit at page 12 of the passport was authentic. However,

Miss Farquharson had concerns about the validity of some parts of the document. The *propiska* did not appear to have been issued by the Samarkand Regional Department of Internal Affairs in Uzbekistan, the authority which had registered the appellant's address and which had issued the passport and should, therefore, also have issued the *propiska*. However, she considered that any anomaly with the *propiska* could be resolved by the appellant formally registering her residence with her parents.

53. Miss Farquharson now considered that, since the appellant had a genuine exit permit authorising her to travel abroad and there was no record of her having or being suspected of any political dissension, she would not be at risk of any of the reprisals faced in the cases described in her previous report.

54. Nor did Miss Farquharson consider that the appellant would be charged with illegal exit abroad under Article 223 of the Criminal Code, since Annex 1 of the 1995 Resolution of the Council of Ministers of the Republic of Uzbekistan 1995 No. 8 stated that no penalties applied to someone returning to Uzbekistan after their exit permit had expired. The loss of the appellant's passport by the United Kingdom authorities would provide her with grounds to justify the delay in returning to Uzbekistan after the expiry of her exit visa.

55. In her oral evidence to us, Miss Farquharson modified her opinion further. Having looked again at the appellant's passport, she no longer believed that the *propiska* was genuine. Also, she considered that the expected exit sticker on the passport, similar to those she had seen during her recent research in Uzbekistan, was missing. Her view now was that the entire passport was not genuine and in oral evidence she stated that in her opinion, the appellant probably possessed another identity document containing a genuine *propiska* in another document. She still considered the exit permit to be genuine.

56. In cross-examination Miss Farquharson stated that she considered the passport itself to be real but that not all the stamps were genuine. The fact that the appellant had not reported the loss of her passport to the Uzbekistan Embassy on the two occasions when she believed that it was lost could be a problem on her return, in particular if it was a sign of having claimed asylum and of UKBA involvement. Further, having a false document might, or might not, be counted against her. Miss Farquharson was unable to help us with the current position for those needing to renew their exit permits outside Uzbekistan and whether facilities for doing so were once again available from overseas Consulates.

Mr Robert Chenciner

57. Mr Robert Chenciner has been a senior associate member of St Antony's College Oxford since 1987, specialising initially in the eastern Caucasus, and since 1991 an honorary member of the Russian Academy of Sciences - Daghestan Scientific Centre. His knowledge extends to the Russian Federation, former Soviet countries, and in particular the Eastern Caucasus, Georgia, Chechnya, Azerbaijan, Crimea, Ukraine, Belarus, Moldova, Armenia and other central Asian countries. He has offered his expert opinion in many

asylum appeals before the Tribunal and was accepted as an expert in the previous country guidance case of OY (Chechen Muslim women) Russia CG [2009] UKAIT 00005.

58. Mr Chenciner's written report related for the most part to the appellant's individual claim as regards her fear of her husband. However, insofar as his evidence related to the issues before us, he was of the opinion that the appellant would be at risk of being charged with insulting the president, under Articles 139 and 140 of the Uzbekistan Criminal Code, as a result of having claimed asylum and that she would be identified as such on the basis of her return from the United Kingdom with a one-way ticket and an out-of-date visa. He referred to cases, not involving asylum claims, of a photo-reporter, a senior journalist and a poet who had been detained in Uzbekistan on grounds of having insulted the president. He stated that there was little detail reported as to how the Uzbek authorities reacted to returnees who had claimed asylum, but referred to the case of an asylum-seeker, Alisher Khakimjanov, whose father had been arrested in Uzbekistan on charges of participating in the events in Andijan, who was facing deportation from the United Kingdom and who was considered to be at risk of imprisonment if he were to return to Uzbekistan. He also referred to two cases of Azizbek Rakhimov and Alisher Ubaydullaev known to the Association for Human Rights in Asia, who were imprisoned on return to Uzbekistan after being deported from the United Kingdom. Mr Chenciner admitted, however, in his oral evidence, that no-one had been able to find any reports about what actually happened to people forcibly returned to Uzbekistan.

59. In an addendum to his report, and in response to Miss Farquharson's concern about the authenticity of the *propiska* stamp in the appellant's passport, he concluded that the stamp was valid.

60. Having had the opportunity of viewing the original passport at the hearing, Mr Chenciner considered that the passport was genuine and he maintained his view, having consulted his friend Mr Hamid Ismailov, the head of BBC Central Asian & Caucasus World Service, that the *propiska* stamp was genuine. His evidence was that the appellant could apply to have her child registered in her passport at the Uzbekistan Consulate in the United Kingdom and that that would not put her at any risk on return. However, his overall view was that the appellant was at risk of being detained as a result of the fake United Kingdom residence permit in her passport bringing her to the attention of the Uzbek authorities and as a result of having claimed asylum in the United Kingdom.

Respondent's Submissions

Skeleton Argument

61. In his skeleton argument, Mr Deller set out the relevant issues and noted that the Convention reason pleaded in the appellant's case was imputed political opinion in relation to her expired exit permit. He submitted that Mr Chenciner, in his report, had gone beyond the agreed parameters of the case by commenting on the credibility and plausibility of the appellant's claim. Mr Chenciner's statement, that claiming asylum would be perceived as insulting the President, was not supported by any evidence of failed asylum seekers being detained and mistreated for that reason alone. His comments

about the appellant's likely treatment on return to the airport in Uzbekistan were speculative, not based on any objective evidence, and should not be accepted.

62. With regard to Miss Farquharson's first report, Mr Deller submitted that the examples given of people being prosecuted under Article 223 of the Criminal Code did not show that that was reasonably likely to happen to those who had no previous political profile, since they related to people linked to the massacre in Andijan or who were suspected of Islamist activities. Mr Deller noted that Miss Farquharson seemed to accept the contention that expiry of a lawfully obtained exit stamp did not entail problems in Uzbekistan, as was the Secretary of State's case, and that the appellant had never claimed to have left Uzbekistan illegally. With regard to the addendum to the report, Mr Deller submitted that whilst Miss Farquharson seemed to question the validity of part of the passport, to which her expertise was not accepted, she did not appear to challenge the validity of the exit stamp. She accepted that the appellant would not be at risk in the way claimed in her first report. Her final opinion was therefore in stark contrast to that of Mr Chenciner.

63. With regard to the ARC document, Mr Deller submitted that the compilers of the report were not country experts and did not profess to give expert opinion. He commented on the examples provided in the report of people detained on return to Uzbekistan, noting that the examples given were of people linked to the Andijan massacres or were too vague.

64. Mr Deller relied upon the FCO letters of 2009 and 2010 and the decision of the ECtHR in NM and MM. He submitted that the AIT's country guidance in OM remained valid and asked the Tribunal to dismiss the appeal.

Oral submissions

65. Mr Deller relied on his skeleton argument. He made no strong challenge to the evidence of the experts and submitted that their credentials were not particularly challenged, although he expressed reservations about their evidence in certain respects.

66. With regard to Mr Chenciner, he acknowledged that he had given evidence with approval in a number of former Soviet Union cases but submitted that he had strayed off to an extent in this case and had dealt with matters that were not in issue. In any event, his conclusions in regard to the risk from the appellant's husband were undermined by the fact that, contrary to his belief, the father of the child was not named in the birth certificate. His conclusion that any asylum seeker would be at risk on return was speculative and was not supported by any evidence. The evidence did not demonstrate that there was a real risk on such a basis. The Uzbek authorities would not know that the appellant had claimed asylum and a one-way ticket would not necessarily mean anything. Whilst there was a suggestion in the background evidence that the United Kingdom and Uzbekistan were not on the best of terms, that was not sufficient to say that a return from the United Kingdom was an exacerbating factor. There was evidence of people being removed to Uzbekistan and, whilst there was no record of what happened to them on return, one would expect there to be reports of problems if such problems had occurred.

67. With regard to Miss Farquharson, Mr Deller did not challenge her expertise in general and acknowledged that her evidence had been accepted before the Court of Appeal in the case of LS. He did, however, express some reservations as to her knowledge of the format of documents relevant to the appellant's individual circumstances and questioned whether it was possible to have a definitive knowledge of formats of documentation over time. In the appellant's case, her passport looked like a genuine one, as all the details appeared to be correct. The exit visa looked like a perfectly good one. Miss Farquharson found nothing wrong with the visa itself but was just concerned about its context.

68. As to the general risk on return, Mr Deller submitted that the references in the expert reports and background material to certain people returning to Uzbekistan indicated that some particular groups might be of adverse interest to the Uzbek authorities, such as those associated with the Andijan massacres, or those with a previous political profile in Uzbekistan. The case of Alisher Khakimjanov was not on all fours with the appellant's situation, since he had links to the Andijan massacre.

69. Mr Deller accepted that the appellant had produced what appeared to be a genuine Uzbek passport containing a genuine exit visa. He referred to the relevant case law, namely OM, LS and NM and MM, with regard to the general risk to Uzbek returnees with expired exit visas. With respect to the latter, he noted that reliance had been placed by the Court upon the letters from the FCO despite the fact that the letters were anonymised, and the Court had not raised any of the concerns that arose in Sufi and Elmi v the United Kingdom - 8319/07 [2011] ECHR 1045 in regard to non-attributable evidence. The evidence now presented was not 'non-attributable' at the level of the anonymised evidence produced in Sufi and Elmi: there was no reason to disbelieve the assertion by the FCO that the source of its information was a reputable law firm in Tashkent. The Tribunal should accept and give weight to the evidence in the letters.

70. Mr Deller accepted Article 223 of the Uzbek Criminal Code was potentially persecutory; the question for the Tribunal was whether it was persecutory as implemented by the Uzbek authorities. The appellant could approach the Uzbekistan Consulate in the United Kingdom to renew any expired endorsement in her passport and if an extension on her exit visa was necessary, she could be expected to take advantage of that facility. Once rectified, she would not have an expired exit visa on return and would be in no difficulty whatsoever. The appellant had not, as required, registered herself with the Consulate, or registered her United Kingdom-born daughter, but remedial powers existed.

71. Mr Deller accepted that the appellant should succeed in her claim if she established that she would be detained at the airport in Uzbekistan on return, given the findings in Ergashev and considering section 55 of the Borders, Citizenship and Immigration Act 2009 and the best interests of her child.

Appellant's Submissions

Skeleton Argument

72. Mr Vokes relied upon various examples in the background evidence, including the Amnesty International submission, of people charged under Article 223 of the Criminal Code for having no exit stamps in their passport, as well as for having remained out of the country after the expiry of their exit stamps. He submitted that as a woman with a young child, the appellant would be subject to increased scrutiny on arrival at the airport. He referred to the report from Ms Marjorie Farquharson who had cited cases where the authorities had had an existing interest in persons who had left the country and remained without authorisation and it was noted that she did not appear to agree with the conclusions in OM. He also referred to the report of Mr Chenciner and to his conclusion that the fact of applying for asylum abroad could lead to charges under Articles 139 and 140 of the Criminal Code.

73. Mr Vokes submitted that the views taken in NM and MM v UK and OM should be re-assessed in the light of the further expert evidence and the background material which, he contended, was sufficient to indicate that a person in whom there was no previous interest by the Uzbek authorities could nevertheless be at risk on return. In the light of the irregular documentation on which she would be returned, this appellant would be stopped and detained at the airport, and the international evidence disclosed a clear risk that she would be subject to ill-treatment in detention. She would be at risk of facing criminal proceedings under the Criminal Code and of a disproportionately heavy penalty pursuant to Article 223.

Oral submissions

74. In his oral submissions, Mr Vokes relied upon the ARC report. The ARC had been recognised previously by the Tribunal in the case of AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 as independent compilers of country research information. At page 5 of that report, ARC referred to the cases of several women who had been charged with violation of the conditions of their exit visas upon return to Uzbekistan. Mr Vokes submitted that there appeared to be a propensity to charge failed asylum seekers with political crimes. Page 7 of the report gave details of suspects being detained, and therefore the problem arose not only for those charged with offences but also for those suspected of such offences. In view of the concession made as to the fact of ill-treatment in detention in Uzbekistan, the relevant question was whether there would be a period of detention.

75. Mr Vokes then turned to Miss Farquharson's report and to her reference to students and labour migrants no longer being able to renew their exit permits in their nearest Uzbekistan Consulates. He relied in particular on her description of the case of an Uzbek student who failed to return home to renew her passport and was sentenced to five years imprisonment on return to Uzbekistan. Uzbek Embassies were actively scanning local media and internet for reference to Uzbeks abroad. If the appellant went to the Consulate

to renew her exit permit and to register herself, that would be recorded by the Uzbek authorities.

76. Mr Vokes accepted that many of the examples of people facing problems on return to Uzbekistan related either to political dissidents or those involved in the Andijan massacres. However, he submitted that the evidence before the Tribunal supported a finding that there was a generalised risk, at least to some returnees with expired exit visas.

77. With regard to Mr Chenciner's report, Mr Vokes noted Mr Chenciner's view that failed asylum seekers were at risk as a result of Articles 139 and 140 of the Criminal Code, which made insulting the president, for example, by claiming asylum, punishable by imprisonment of up to six years. Mr Vokes did not ask the Tribunal to accept such a wide view or to accept that a failed asylum seeker returning within the exit visa period would be identified as an asylum seeker; rather, his contention was that where there was anything in a returnee's documentation that would alert the authorities that they had claimed asylum, the risk under Articles 139-140 would be triggered.

78. There needed to be something wrong or some failure in the documentation, in order to draw the attention of the Uzbek authorities. The fate of the two returnees from the United Kingdom referred to in Mr Chenciner's report ought to be of concern to the Tribunal. There was no information about what had happened to them.

79. With regard to the letters from the FCO, Mr Vokes accepted the submission made by Mr Deller in regard to the Sufi and Elmi point, but argued that the information in the letters could not be treated as reliable, since the Tashkent law firm providing the advice was government-licensed, as were all Uzbek law firms, as confirmed in the ARC report. Further, the evidence in the FCO letters was contradictory, as the statement that the Ministry of Interior kept a record of all exit visas and checked them at the airport on return, was inconsistent with the statement that the exit visa confirmed a right to exit only. Mr Vokes submitted that the reality was that Article 223, and possibly also Articles 139-140 of the Criminal Code existed, and that their application was at the whim of the Uzbek authorities.

80. Mr Vokes submitted that there were two issues for the Upper Tribunal to consider, as set out in the evidence of Mr Chenciner:

- (a) As a failed asylum claimant, would a political opinion be imputed to the appellant, and would she be considered as having insulted the Uzbek State and its President?
- (b) If Uzbek administrative procedures in investigating her return without the correct documents would lead to detention, would that entail an Article 3 risk because of the treatment of detainees and the possible discovery of the appellant's asylum claim and the consequences of that discovery?

81. Mr Vokes submitted that the appellant's case and that of the respondent were not far apart in regard to the character of the country evidence, the nature of the regime and the consequences to perceived oppositionists to that regime. The room for assessment of risk

was very narrow and the question of risk came down to the issue of people with irregularities in their passports.

82. Turning to the particular circumstances of the appellant, there were doubts about her travel documents and it was known for sure that she had one false entry in her passport, namely her United Kingdom residence permit. There were serious doubts about whether her *propiska* was genuine. Before returning to Uzbekistan, she would be required to approach the Uzbekistan Consulate to renew her exit visa and to explain the delay in registering herself and her child with the Consulate. That information would be noted, sent back to the authorities in Uzbekistan and entered into their computer records. Mr Vokes submitted that such information was more than sufficient to place the appellant at risk: she would either be stopped at the airport or picked up at home when the local authorities in Samarkand noticed the large gap between the dates of her entry and exit.

83. In either case, there was a real risk that she would be detained and, even if she were subsequently released as being of no interest to the authorities, the respondent had accepted that she would be ill-treated in detention. The risk was greater for her as a lone woman with a young child; whilst that was not in itself a persecutory risk, she might well be asked to explain what she had been doing while outside the country, and the resultant scrutiny would flag up her overlong absence, as well as the irregularities in her passport.

84. At this point, we sought to clarify if any point were being taken pursuant to RT (Zimbabwe) & Ors v Secretary of State for the Home Department [2010] EWCA Civ 1285, which had been heard in the Supreme Court and in which judgment was awaited. Mr Vokes stated that he did not seek to rely on anything at issue in RT and we have not therefore taken that point any further.

Assessment of the Expert Evidence

Miss Marjorie Farquharson

85. Whilst we accept that Miss Farquharson is an expert in relation to the Uzbek legislation on exit and entry to the country, we do not accept that she is a forgery expert. Her expert evidence in LS was in relation to Article 223 of the Uzbek Criminal Code and the effects of illegal or unauthorised exit from the country, matters clearly within her remit of expertise. However, before us she was seeking to extend that remit and admitted to presenting views based on “informed speculation” in regard to the appellant’s passport.

86. Her views as to the validity of the passport fluctuated to such an extent that we were unable to rely confidently on any of the three, mutually inconsistent views she took of the likely validity of the passport and its stamps. Whilst we accept that Miss Farquharson is an honest and intelligent witness, and had recently seen some of the current passports and *propiska* stamps while researching in Uzbekistan, her knowledge did not amount to expertise, and particularly not as to the past format of such documents and the stamps and endorsements therein. In addition, her view that the *propiska* stamp was not authentic was directly contradicted by Mr Chenciner, who considered it likely to be genuine.

87. The confusion in Miss Farquharson's evidence was crucial to her consideration of risk on return by reason of the appellant's documents. In her second report, she stated as her opinion that the passport was genuine and that, whilst the *propiska* at page 12 was dubious, the appellant would have no problems on return to Uzbekistan in view of the authentic nature of her exit visa. However at the hearing her evidence was that the passport was not genuine and that the appellant may or may not have problems on return to Uzbekistan as a result.

88. Miss Farquharson's evidence on the risk to the appellant as a failed asylum-seeker also evolved over time. Whilst she concluded in her first report that return to Uzbekistan as a failed asylum seeker would make the appellant liable to the same treatment as the individuals described in the cases she had cited, she appeared no longer to have those concerns in her supplementary report. There, she concluded that since the appellant had no record of political dissension or conflict with the Uzbek authorities, she would not risk the reprisals those individuals faced. In her oral evidence, Miss Farquharson returned to her original position, that deportation to Uzbekistan would be profile enough to ensure adverse interest by the Uzbek authorities. We have concluded that her evidence on this point is speculative and that she herself is uncertain what the relevant risk factors are in relation to removal of an asylum seeker with no other adverse factors.

Mr Robert Chenciner

89. We agree with Mr Deller that Mr Chenciner's evidence goes well beyond the parameters of the case, providing opinion as to the risks faced by the appellant from her husband, a matter which is no longer in issue.

90. In relation to risk on return, Mr Chenciner's evidence was that all asylum seekers are at risk on return to Uzbekistan because they would be considered as having thereby insulted the president in contravention of Articles 139 and 140 of the Criminal Code. However, none of the cases he referred to in his report by way of example were asylum seekers *simpliciter*, but were dissidents or persons associated with the Andijan massacre. In his report, he acknowledged that very little detailed information was available as to how the Uzbek authorities reacted to the return of a known failed asylum seeker. The statistics he provided on returns to Uzbekistan were insufficiently broken down to assist with that question. The sole detailed example provided of a failed asylum seeker considered to be at risk on return was that of Alisher Khakimjanov, who risked imprisonment on return to Uzbekistan. However, Mr Khakimjanov has not been returned to Uzbekistan and in any event, as is made clear in the report contained in the appellant's evidence, he was perceived to have links to the 2005 Andijan uprising. The reference to the two cases of Azizbek Rakhimov and Alisher Ubaydullaev was taken directly from the shahidayakub internet article and in turn came from another source, the Association for Human Rights in Asia. None of these provided any details of the cases or confirmed an absence of links to the Andijan uprising.

91. Accordingly, whilst we recognise that Mr Chenciner's expert evidence has assisted the Tribunal in the past, we consider that the value of his evidence in this appeal is reduced by

a tendency to stray into the realms of speculation. We have therefore exercised caution in considering his conclusions in regard to risk on return.

Discussion

92. Detention conditions in Uzbekistan are unsatisfactory.

93. In Ergashev v Russia, the Court said this about the treatment of detainees in Uzbekistan:

“112. As regards the applicant’s allegation that detainees suffer ill-treatment in Uzbekistan, the Court has recently acknowledged that a general problem still persists in that country in this regard (see, for example, *Karimov v. Russia*, no. 54219/08, §§ 79-85, 29 July 2010; *Ismoilov and Others v. Russia*, no. 2947/06, §§ 120-121, 24 April 2008; and *Muminov v. Russia*, no. 42502/06, §§ 93-96, 11 December 2008). No concrete evidence has been produced to demonstrate any fundamental improvement in this field in Uzbekistan in the last few years (see paragraphs 100, 101, 103 and 104 above). The Court therefore considers that the ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan. ...

114. ... Given that the practice of torture in Uzbekistan is described by reputable international sources as systematic, the Court is not persuaded that the assurances from the Uzbek authorities offered a reliable guarantee against the risk of ill-treatment.

115. Accordingly, the applicant’s forcible return to Uzbekistan would give rise to a violation of Article 3 as he would face a serious risk of being subjected there to torture or inhuman or degrading treatment. Therefore, the Court decides to maintain the application of Rule 39 of the Rules of Court.”

94. In the light of that decision and of the support for it in both expert reports, in the ARC report, and country background information before us, it is accepted that where an appellant is at risk of detention on return to Uzbekistan, whether as a result of charges and pending prosecution, or on a short-term basis pending enquiries on the basis of suspicion of illegality, such appellant would be entitled to succeed under Article 3 of the ECHR.

95. The country guidance issue therefore is whether, as suggested to the Court of Appeal in LS (Uzbekistan), the current country evidence supports a finding that Uzbek citizens returning to Uzbekistan from abroad, after their exit permits have expired, are at real risk of detention or of disproportionate punishment on return.

96. Miss Farquharson’s evidence in LS, as in this appeal, principally concerned the application of Article 223 of the Uzbek Criminal Code. The appellant in LS was a flight attendant, leaving the country only for short periods for her work and fell into a different category of penalty under Article 223, reserved for state employees. This appellant is not a state employee.

97. The concerns arising from the Amnesty International report of 28 April 2009 derived from its statement that:

“Illegal exit abroad or illegal entry into Uzbekistan, including by overstaying the permission to travel abroad or failing to renew it, are punishable under Article 223 of the Criminal Code with fines or with imprisonment from three to five years or in aggravated circumstances by up to 10 years’ imprisonment.”

The words “including by overstaying the permission to travel abroad or failing to renew it” clearly suggested that the provisions of Article 223 applied both to illegal exit and to overstaying a lawful exit. If that were correct, then OM would have been wrongly decided.

98. The Amnesty International evidence reported a tightening of regulations for Uzbek citizens travelling abroad, in particular for Uzbeks studying abroad, such that “in some instances”, Uzbek citizens could no longer renew their permissions or exit visas in their nearest Uzbekistan Consulate, being required instead to return to Uzbekistan and renew at the local Department of Internal Affairs which gave them their original permit. Miss Farquharson endorsed that view. However, no details of those new regulations were provided for us, either by Miss Farquharson or by Amnesty International, nor did they indicate what was meant by “in some instances”. We do not consider that we can place weight on this evidence in preference to the terms of Article 223 itself.

99. The Amnesty International report is anecdotal rather than comprehensive, and in particular, does not provide a full account of the cases which led to the stated conclusions, nor give the source of the information underlying those conclusions. The one case particularised in the Amnesty International report appears to be the same as that described by Miss Farquharson in her report, suggesting that the information came from the same sources, which she stated to be the Director of the Ecole des Etudes de Sciences Sociales in Paris and the Le Mans-based Association for Human Rights in Central Asia. The case of a law student on an expired exit permit in France was well known in émigré human rights circles and was reported closely by them, giving the student a public profile that would have drawn her to the attention of the Uzbek authorities. That was not made clear in the Amnesty International report and plainly undermines the conclusions they reached.

100. Amnesty International’s concerns were considered, but not given weight, by the ECtHR in the case of NM and MM. The ECtHR rejected the applications as inadmissible, *inter alia* because the applicants had no profile with the Uzbek authorities and because there was no reliable evidence before that Court indicating that OM had been incorrectly decided on that point. We reject Mr Vokes’ submission that we should give no weight to the FCO letters or, implicitly, to the ECtHR’s assessment, based upon them, that overstaying permission to travel abroad was not punishable under Article 223 and that there were no penalties for returning to Uzbekistan after the expiry of an exit visa.

101. Nor do we agree with Mr Vokes that the expert evidence and background information now before us is such as to lead to a re-assessment of the position in NM and MM. Miss Farquharson’s reports acknowledged that the cases she had been able to find of risk on return concerned persons whose previous brushes with the Uzbek authorities had led them to move abroad and who had past associations with the events in Andijan or

with Islamist militant activities. It is relevant to note that at paragraph 12 of the addendum to her report she concluded that, since the appellant had no record of political dissension or conflict with the Uzbek authorities, she may not risk the reprisals faced by those with a profile of dissent or associations with the Andijan massacre. The same can be said of the examples given in the ARC and Amnesty International reports.

102. Having thus carefully considered all the cases cited as examples of the practice of the Uzbek authorities of charging its citizens with illegal exit under Article 223 of the Criminal Code, following their return to Uzbekistan with expired exit permits, we find that each has particular features distinguishing it, either by way of pre-existing interest by the authorities, association with the events in Andijan, association with Islamic militant activity, or travel to countries other than that authorised in the exit permit. In all of those cases it was, we find, those distinguishing features that led to their exit from Uzbekistan being considered as illegal. There is nothing in the evidence before us to support a finding that Uzbek citizens returning to Uzbekistan from abroad, after their exit permits have expired, are at real risk of detention or of disproportionate punishment on return simply on the basis of having an expired exit permit.

103. We reject the opinions of both Miss Farquharson and Mr Chenciner, that the appellant would be at risk on return to Uzbekistan as a failed asylum seeker, for the reasons we have already given. As regards Mr Chenciner's opinion that a returned asylum seeker on a one way ticket would be at risk of prosecution under Articles 139 and 140 of the Criminal Code for having insulted the President, such view is speculative and unsupported by any background information or evidence, and we are unable to place any significant weight upon it, given our concerns about Mr Chenciner's evidence overall.

104. We have considered whether failure to register either herself or her daughter with the Uzbekistan Consulate in the United Kingdom puts the appellant at any additional risk. In this respect, Miss Farquharson's view, that it was a legal requirement for all Uzbek citizens to register with the appropriate Uzbekistan Embassy on arrival in the foreign country, is contradicted by the information provided in the US Department of State report of 24 May 2012 to the effect that registration with Uzbekistan Consulates abroad was voluntary. That is supported by the opinion of Mr Chenciner that, in effect, the appellant could register herself and her child now, without putting herself at risk on return.

105. The evidence before us does not satisfy us that failure to register at the local Uzbekistan Consulate immediately, or soon after arrival in a foreign country results in adverse attention or problems upon return to Uzbekistan: if that were the case, we consider that there would be specific examples available which could have been cited to us by the experts, or appeared in the US State Department Report. Overall, we consider that the appellant has not demonstrated that periods of residence abroad, whether as an asylum seeker or otherwise, where there has been no pre-existing interest in an individual by the Uzbek authorities, would lead to problems on return.

General Conclusions

106. In the light of all the evidence, submissions, and authorities set out above, we have reached the following general country guidance conclusions:

(1) Article 223 of the Uzbekistan Criminal Code (UCC) makes it an offence for a citizen to leave the country without permission – what is described as “illegal exit abroad”. The basic offence of “illegal exit abroad” is punishable by a fine or by imprisonment for between three to five years.

(2) In specified aggravating circumstances (a physical breach of the border, conspiracy, or the exit abroad of a state employee requiring special permission) the penalty for “illegal exit abroad” under Article 223 of the UCC rises to five to ten years’ imprisonment. It is unclear from the evidence before us whether a fine will also be imposed.

(3) Uzbek citizens are required to obtain an exit permit prior to leaving the country. However, Annex 1 to the Resolution of the Council of Ministers No. 8, issued on 06.01.1995, provides that no penalties apply to someone who returns to Uzbekistan after the expiry of their exit permit. Normally, exit permits can be renewed at the Uzbekistan Embassy in the third country where an Uzbek citizen is living.

(4) There are cases of Uzbek nationals, having left the country lawfully, nevertheless being charged with “illegal exit abroad” and prosecuted under Article 223 following their return to Uzbekistan with expired exit permits. However, those cases involved pre-existing interest by the authorities, association with the events in Andijan in 2005, association with Islamic militant activity, travel to countries other than that authorised in the exit permit or other such distinguishing features.

(5) There is no evidence of prosecutions under Article 223 of the UCC of ordinary returning Uzbek citizens with expired exit permits, including failed asylum seekers, where such individuals had no particular profile or distinguishing features which would otherwise have led to any adverse interest in them. It has therefore not been established that such returnees are at real risk of persecution on return.

(6) The ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan, for which there is no concrete evidence of any fundamental improvement in recent years (Ergashev v Russia [2009] ECtHR 12106/09 ECHR 2249). Therefore, where an Uzbek citizen is likely to be detained on return, Article 3 ECHR will be engaged.

(7) The country guidance given by the Asylum and Immigration Tribunal in OM (Returning citizens, minorities, religion) Uzbekistan CG [2007] UKAIT 00045 is re-affirmed.

The Appellant's Claim

107. We now apply our findings on the issues above to the specific facts of the appellant's case. We have already set out the details of her claim earlier on in the determination. For the sake of clarity, we confirm that the appellant has not sought to challenge the adverse findings of the First-tier Tribunal Judge in regard to her initial claim to fear persecution from her husband and neither is she seeking to pursue the risk factor of returning to a Muslim country with a child born out of wedlock.

108. In addition, Mr Vokes confirmed that her more recent claim, raised for the first time in her latest statement, to be in the process of converting to Christianity and to be involved with the Jehovah's Witness community, was not a matter pursued before us and was not a matter for us to consider, although he was aware that this appeal was a vehicle for doing so, if that argument were relied upon.

109. The only issue to be determined, therefore, is as regards her *sur place* claim with respect to the expiry of her exit permit and any adverse interest the Uzbek authorities would take in her on return as a result. The appellant is a person with no actual or perceived oppositionist or political profile in Uzbekistan and it has never been suggested that she has any links to the Andijan massacre.

110. We do not consider that the state of the appellant's documents, and in particular her passport, are such as to result in problems for her on return to Uzbekistan. We place no weight on the concerns which Miss Farquharson raised at the hearing regarding the validity of the appellant's passport: the respondent has never sought to argue that the passport itself was a forgery, and nor had the appellant, who chose not to give evidence or to remain in the hearing room while the appeal was heard before us. We accept that the passport contains a forged residence permit for the United Kingdom.

111. Miss Farquharson's concerns about the *propiska* (page 8 of the passport) are not within her expertise, and are based upon much more recent passports than that held by this appellant. The evidence of Miss Farquharson and of Amnesty International is that procedures have been refined in recent years. Mr Chenciner disagreed with her, and Miss Farquharson herself said her evidence on this point was speculative. We treat the *propiska* as genuine.

112. The most important consideration is that it is accepted by all parties that the exit permit (at page 12 of the passport) is genuine. Miss Farquharson's conclusion, in particular in the addendum to her report, was that the appellant would not be at risk of being treated as a case of 'illegal exit abroad' since she had a genuine and valid exit permit and that she would not be penalised for having failed to renew it. She did not suggest that the absence of an exit sticker on the outside of the appellant's passport would cause her any problems.

113. Nor do we consider that the failure to register herself and the child promptly at the Uzbekistan Consulate in London is likely to cause the appellant problems on her return to Uzbekistan. On the evidence before us, we find that it remains open to the appellant to

register herself and her child at the Uzbekistan Consulate before returning and that any concern as to the delay in having done so could easily be explained by the fact that her passport had until recently been held by the UKBA. We do not accept that reference to the UKBA would immediately arouse suspicions of an asylum claim, since the UKBA could equally have held her passport in relation to applications for residence on any number of other grounds.

114. In any event, in the light of our general observations on the evidence, we find no grounds for concluding that merely having claimed asylum would place the appellant at risk on return to Uzbekistan. Neither do we find any grounds for concluding that the false UK residence stamp in the appellant's passport would cause the appellant problems on return to Uzbekistan: we consider that even if the Uzbek authorities did notice that the residence permit was false – and we see no grounds for concluding that they would – there is no reason why that should be of any interest to them since it did not involve their own documentation.

115. We find that neither individually nor cumulatively would the above factors, namely the absence of an exit sticker on the outside of her passport, her expired exit permit, her failure to register herself and her child at the Uzbekistan Consulate in London, her forged United Kingdom residence permit or her unsuccessful asylum claim in the United Kingdom, put the appellant at risk on return to Uzbekistan.

116. For the reasons given above, and in the light of our general conclusions, we do not consider that there is a real risk of this appellant being subjected, on return to Uzbekistan, to treatment amounting to persecution or serious harm. For the same reasons we consider that the appellant is not entitled to humanitarian protection and that her removal to Uzbekistan would not breach Article 3 of the ECHR.

117. The findings of the First-tier Tribunal in regard to Article 8 of the ECHR were not challenged by the appellant and did not form part of the order for reconsideration. As such they remain undisturbed. In any event, Article 8 was not pursued before us and no evidence was produced to suggest any departure from the decision of the First-tier Tribunal.

DECISION

118. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision has been set aside. We re-make the decision in the appeal by dismissing it on all grounds.

Anonymity

In order to secure the anonymity of the appellant throughout these proceedings we direct, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, that no report or other publication of these proceedings or of any part or parts of

them shall name or directly or indirectly identify the appellant. Reference to the appellant may be by use of her initials but not by name.

Funding

The Tribunal is satisfied that, at the time the appellant made the section 103A application and for the reasons indicated in the order for reconsideration, there was a real possibility that the appeal would be allowed upon reconsideration. Accordingly it orders that the appellant's costs in respect of the application for reconsideration and in respect of the reconsideration are to be paid out of the relevant fund, as defined in rule 33 of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed

Date

Upper Tribunal Judge Kebede
Immigration and Asylum Chamber

APPENDIX A
ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber)

THE IMMIGRATION ACTS

Heard at Field House
On 13th May 2010

Determination Promulgated

Before

Mr Justice Ouseley
and
Senior Immigration Judge Latter

Between

MS LM

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Zilli of Counsel

For the Respondent: Ms I Isherwood Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a female citizen of Uzbekistan, born in 1978, who came to the United Kingdom in 2008 on a student visa; she claimed asylum and her appeal against refusal was dismissed in a determination dated 29 December 2009 by Immigration Judge Abebrese.
2. The principal issue before the Immigration Judge was the claim that the appellant would suffer abusive treatment from her estranged husband upon return to Uzbekistan. That basis was rejected and has not since been pursued.

3. At the hearing before him a new point was raised with permission. This new point concerned whether the appellant who had left Uzbekistan with the benefit of an exit visa, but whose exit visa had expired while she was in the United Kingdom, would face persecutory or disproportionate punishment on return because she had overstayed her absence from the country. It was contended by the Secretary of State and accepted by the Immigration Judge that the decision of OM (Returnees Citizen-Minority-Religion) Uzbekistan CG [2007] UKAIT 00045 held that it had not been established that Uzbek citizens whose passports expired could not obtain a renewal from embassies abroad or that returnees who had been abroad for a longer period than permitted were at a real risk of disproportionate punishment on return.
4. It was contended on the application for reconsideration that the Immigration Judge had not addressed the evidence provided by the appellant which it was submitted had provided information going beyond that which had been available to the Tribunal in its determination of OM. In particular, he had been provided with an Amnesty International Report which had not been considered in OM, which referred to the offence of overstaying the exit visa, regulations which in some instances prevented nationals renewing their visas outside the country and providing at least one instance of a person sentenced to 5 years imprisonment for illegal exit or overstaying abroad.
5. Reconsideration was ordered by Senior Immigration Judge Latter on 2 February 2010 on the grounds that it was arguable that the Immigration Judge had indeed erred in his legal assessment of the risk of persecution in the light of the expiry of the exit permit. The matter now comes before us in circumstances where the effect of the Procedural Rules and Regulations mean that in effect permission to appeal to the Upper Tier has been granted and it is for this Tribunal now to decide whether what Senior Immigration Judge Latter held was arguable as an error of law is indeed an error of law which has had a material effect on the outcome of the case.
6. We accept Mr Zilli's submission that the Amnesty International Report which he placed before the Immigration Judge sets out a different view of the legal position in Uzbekistan in relation to exit visas from that which was considered by the Tribunal in OM. In OM the Tribunal had concluded, as we have said, that it was not satisfied that it was not possible to obtain a passport renewal outside Uzbekistan. That was a finding as to the state of evidence. The Tribunal also concluded that there was no satisfactory evidence to show that a returnee was likely to be punished for having overstayed his absence. The Amnesty International Report provides chapter and verse in relation to the criminal law in relation to overstaying, and instances a charge and conviction for an offence under it and also provides evidence that new regulations were not allowing nationals to renew their exit visas abroad. The Immigration Judge ought to have considered that evidence and reached a conclusion on its significance for the case he was hearing. We do not accept that it was sufficient merely to refer OM in those circumstances where there was some evidence which cast doubt on what were, at least in one respect, quite tentative findings.
7. We have also been referred to the decision of the Court of Appeal in LS (Uzbekistan) [2008] EWA Civ 909 decided on 30 July 2008, that is to say after the decision in OM and before the decision of the Immigration Judge in this case. LS (Uzbekistan) also concerned an Uzbek female who in that case had exited illegally and had lost possession of her passport, which up until the start of the hearing today, was the position in relation to the appellant's passport here. The Court of Appeal concluded that the evidence of an expert, Miss Farquharson, before the Tribunal in LS "that it is an offence for citizens of Uzbekistan to leave the country without authority and that those who are charged with criminal offences are liable to be ill-treated by the police", meant that the Tribunal ought to have given more detailed consideration to this aspect of the appellant's case, including explicit consideration as to whether there was a real risk of her being charged with an offence and if so, what the consequences might be. The appeal was allowed and the matter was remitted to the Tribunal. No one has been able to discover what happened to LS after it returned to the Tribunal, although Mr Zilli says that a new report from Miss Farquharson refers to the appeal being allowed, but no further details are available. The brief endeavours by the

Tribunal to establish what happened in that case have been fruitless in one sense, but not in another. It appears to us to be the case that, perhaps as a consequence of the decision in LS (Uzbekistan), the decision in OM was remitted by consent to the Tribunal. The outcome of that is likewise unknown. It is perfectly clear that had the Immigration Judge in this case known what had been decided in LS (Uzbekistan), but the case was not drawn to his attention, he would have had to consider the Amnesty International Report as well as what Miss Farquharson was reported as having said in that case, in a way which he did not do. The asserted error of law has been made out. It is also impossible for us to say that the proper consideration of those issues would have made no material difference to the case. We cannot say that the decision in OM must inevitably survive all subsequent evidence.

8. Accordingly, this appeal is allowed to the extent that the decision of Immigration Judge Abebrese is set aside. We cannot proceed to determine the appeal today. The Secretary of State wishes to introduce fresh evidence from Uzbekistan, the appellant wishes to introduce fresh evidence from Miss Farquharson and at the outset of the hearing the hitherto lost passport has emerged at the back of the Home Office file available to the Presenting Officer. We forbear to comment. But this is clearly capable of affecting a number of aspects of the way in which the evidence is considered, in particular of the reaction of the Uzbekistan Consular officials.
9. Accordingly, this case will have to go off for full hearing before the Upper Tribunal. In the light of what appears to have happened to OM and in the light of the uncertainty as to where the decision of the Court of Appeal in LS has left the guidance, it will be for serious consideration as to whether this should be considered as a potential Country Guidance case. We make those comments for the benefit of those who will have to decide such matters within the Tribunal. If it is to proceed as a Country Guidance case it will be listed for mention for directions.

Signed: The Hon Mr Justice Ouseley
(sitting as) Judge of the Upper Tribunal

Date: 4 June 2010

APPENDIX B

DOCUMENTS BEFORE THE UPPER TRIBUNAL

<u>Date</u>	<u>Item</u>
Undated	International Parent Child Abduction Uzbekistan
Undated	Gender Equality and Social Institutions in Uzbekistan
Undated	Uzbek-German Forum for Human Rights: "On the laws and practices of the Republic of Uzbekistan regarding the rights of citizens to free movement and choice of residence."
Undated	Carlton Leisure: Flight results.
Undated	Copy of appellant's passport
Undated	Photograph of the appellant and husband
21 November 1996	UNHCR RefWorld: "Regulations on Entry to and Exit from the Republic of Uzbekistan for Foreign Citizens and Stateless Persons"
2001	United Nations report of the Committee on the Elimination of Discrimination against Women. Twenty-fourth and twenty-fifth sessions
26 April 2001	United Nations CCPR International Covenant on Civil and Political Rights. Human Rights Committee. (71st session)
9 July 2001	Human Rights Watch "Uzbekistan Turns its Back on Battered Women"
July 2001	Human Rights Watch "Uzbekistan: Sacrificing Women to Save the Family"
22 September 2003	Human Rights Watch "From House to House"
26 April 2005	United Nations International Covenant on Civil and Political Rights, Human Rights Committee, 83 rd session
26 August 2005	Country Information on Uzbekistan
6 February 2006	UNHCR RefWorld: Uzbekistan: Domestic Violence; protection available (2003-2005)
25 August 2006	United Nations CEDAW Convention on the Elimination of all forms of Discrimination against Women, 36 th session
2007	Who-Aims report on Mental Health System in Uzbekistan
26 February 2008	United Nations CAT Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 39 th session
2008-9	Appellant's medical records
2009	The Haven Women's Refuge: International Work - Uzbekistan

2009	Amnesty International report 2009: The State of the World's Human Rights (Uzbekistan)
2009	United States Commission on International Religious Freedom. Annual Report 2009
2009	IRIN Uzbekistan: Focus on domestic violence
25 February 2009	US Department of State 2008 Human Rights Report: Uzbekistan
19 March 2009	Appellant's child's birth certificate
28 April 2009	Amnesty International "Uzbekistan: Submission to the Human Rights Committee. 96 th session, 16-31 July 2009 Pre-sessional meeting of the Country Report Task Force on Uzbekistan"
26 October 2009	Psychological Assessment of the appellant, from Dr Eileen Walsh
14 December 2009	FCO letter from British Embassy Tashkent to Country Specific Policy Team, Home Office
7 April 2010	United Nations CCPR International Covenant on Civil and Political Rights. Human Rights Committee, 98 th session
3 March 2010	News article http://uzbekistanerk.com "Uzbek asylum seeker on the verge of being deported to Uzbekistan - and straight into prison"
19 March 2010	News article http://shahidayakub.livejournal.com "Alisher Khakimjanov was granted asylum"
12 May 2010	Expert report of Marjorie Farquharson
May 2010	Amnesty International: "Uzbekistan: A Briefing On Current Human Rights Concerns"
15 July 2010	Australian Government Refugee Review Tribunal Country Advice
12 August 2010	Country of Origin Information Request
4 October 2010	Letter from FCO to Section Registrar, ECHR
4 November 2010	BBC News: Country Profile - Uzbekistan
14 December 2010	FCO letter from British Embassy Tashkent to Country Specific Policy Team, Home Office
9 February 2011	ECHR letter concerning admissibility of <u>NM v UK</u> and <u>MM v United Kingdom</u>
20 February 2011	Addendum to report of Marjorie Farquharson
19 January 2012	Freedom House: "Freedom in the World 2012: Uzbekistan"
22 January 2012	Human Rights Watch "World Report 2012: Uzbekistan"

24 May 2012 US Department of State: "2011 Country Reports on Human Rights Practices: Uzbekistan"

24 May 2012 Amnesty International: "Annual Report 2012: Uzbekistan"

11 June 2012 Form 18 News service, Norway: "Uzbekistan: Imminent expulsion for exercising religious freedom?"

14 June 2012 Expert report of Mr Robert Chenciner

25 June 2012 Asylum Research Consultancy report

APPENDIX C

EVIDENCE OF MISS MARJORIE FARQUHARSON

1. Miss Farquharson provided two reports, the initial report dated 12 May 2010 and an addendum dated 20 February 2011 which was added following the discovery of the appellant's passport, previously believed to have been lost, and with the benefit of examination of that passport.

First Report: 12 May 2010

2. In her initial report, Miss Farquharson confirmed her instructions, which were to give an opinion on three matters:

- The current situation – *de jure* and *de facto* – of failed asylum seekers returning to Uzbekistan upon expiry of their exit permits, taking as a starting point relevant passages of OM (Returning citizens, minorities, religion) Uzbekistan CG [2007] UKAIT 00045
- The risks, if any, facing those who return upon expiry of their exit permit and are charged with in connection with these criminal offences in police custody
- In the light of these answers, to assess what risk, if any, would the appellant face if she were to return to Uzbekistan as a failed asylum-seeker with an exit permit from Uzbekistan that expired in March 2009.

3. Miss Farquharson based her conclusions on the following points:

- The appellant had not registered herself or the birth of her child with the Uzbekistan Consulate in London
- The appellant's passport was not available and she had therefore been unable to check if the appellant had permanent registration at her parents' address in Uzbekistan or to check the stamp of the Department of Internal Affairs that registered it.

The passport and exit permit system in Uzbekistan

4. Miss Farquharson pointed out an error in the case of OM, in that it was stated in that case that all Uzbek passports expired when the holder reached 21 and that Uzbek Embassies abroad issued new passports only on a discretionary basis. In fact, since 1992 the renewal age for Uzbek passports was 25 and 45 years. Further, whilst Uzbek Embassies may issue some replacement passports on a discretionary basis, there were general rules for their issue. At the time the appellant acquired her passport in February 2004 the laws regulating passport issue in Uzbekistan were the Law of the Republic of Uzbekistan "On Citizenship of Uzbekistan" dated 2 July 1992 and a Presidential Decree "On Perfecting the Passport System", No UP 2240, dated 26 February 1999, with two Appendices, Appendix 1 regulating procedures for registering and de-registering residency on the territory of Uzbekistan, and Appendix 2 regulating the rights to residency. These were updated and amended on 4 June 2004.

5. Passports were issued by the Ministry of Internal Affairs and were obligatory for all citizens over the age of 16. They were valid for nine years until the age of 25 years and, on renewal, were then valid until the age of 45. On renewal at the age of 45, they were valid until the bearer died. Passports included records of marriage or divorce and under-age children in the citizen's care and also included details of the address where the citizen was permanently registered in Uzbekistan.

6. Government regulations permitted some travel abroad but those regulations appeared to have been applied more restrictively since 2006, following the demonstrations and problems in Andijan in 2005. Permission to travel abroad had to be applied for, according to the "Procedure for Citizens of the Republic of Uzbekistan to Cross the Border", established by the Cabinet of Ministers. Certain categories of people were ineligible for travel abroad and the Ministry of Foreign Affairs was appraised of lists of those citizens.

7. To travel abroad, an Uzbek citizen had to have permission and an exit permit for their destination country. The applicant would submit their passport and a completed questionnaire to their local Department of Internal Affairs which, within 15 days, returned it with a sticker authorising travel that was valid for two years. Throughout the two years of their authorised travel, Uzbek passport bearers could freely leave and enter Uzbekistan. The Ministry of Internal Affairs notified the Uzbekistan Consulate in the traveller's destination state, which then recorded the citizen's date of entry.

Penalties for Uzbek citizens who violate the passport and exit permit system

8. Citizens who violated these procedures were punishable for "illegal exit abroad" under Article 223 of the Uzbek Criminal Code. Regulation of Uzbek citizens travelling abroad had become tighter since 2006 and Uzbeks studying abroad were one group that had experienced that tightening. Since 2006 numerous Uzbek students were unable to complete their courses because they were forbidden to leave the country under threat of prosecution for "illegal; exit abroad". The Le Mans-based "Association for Human Rights in Central Asia" reported that students and labour migrants were now unable to renew their permits as previously, in their nearest Uzbekistan Consulate, and were required to do it in Uzbekistan, at the local Department of Internal Affairs which gave them their original documentation. Miss Farquharson gave an example of one student, studying in France, who was prosecuted under Article 223 in 2007 for failure to do this, together with examples of other Uzbeks returning to Uzbekistan from the Commonwealth of Independent States (CIS) and facing prosecution for illegal exit abroad. Contrary to the findings in OM, therefore, there were examples of the Uzbek authorities punishing citizens who tried to renew their exit permits while they were abroad.

9. In response to the question of the risks faced by anyone in police custody on a charge related to the expiry of their exit permit, Miss Farquharson gave examples of ill-treatment faced by two women. Miss Farquharson also dealt with the possible risks to the appellant in relation to her fear of persecution by her husband, but that is not a matter being pursued at this stage.

Risks faced by the appellant from the authorities

10. Miss Farquharson noted that the appellant differed from the people in the examples she had given, since those other cases involved people associated with the events in Andijan in 2005 or suspected Islamist militants and the student studying on an expired exit permit in France, albeit the closest to the appellant's circumstances, was known to émigré human rights circles and reported closely by them.

11. Any risk to the appellant hung on whether her exit permit was legal and if she returned to Uzbekistan as a failed asylum seeker. According to Annex 1 of the 1995 Resolution of the Council of Ministers No 8, no penalties applied to someone who returned to Uzbekistan after their exit permit had expired. An exit permit was issued only to confirm the right of an Uzbek citizen to leave the country within a specified time. Therefore the legality of the appellant's exit permit was important. In the absence of legible stamps in the photocopy of the passport, and in the absence of the original passport, Miss Farquharson was unable to form a view on any risk to the appellant of prosecution for illegal exit abroad. However she commented that the written template of the exit permit seemed regular. The appellant's return to Uzbekistan as a failed asylum seeker or any application to re-document the appellant, could make her liable to the same treatment as the individuals in the examples she had given.

Addendum: 20 February 2011

12. Having had the benefit of viewing the appellant's passport, Miss Farquharson concluded that the passport may not be fully valid. The passport conformed to the Uzbek international passport design. The exit permit at page 12 of the passport was appropriately stamped and was authentic. However the template on page 8 was dubious, since the rectangular stamp had not been counter-stamped by a round, double-rimmed stamp in the Uzbek language by the Visa Department of the Regional department of Internal Affairs and did not have a computerised watermark saying "*Propisan*" ("registered"), as in other Uzbek passports she had seen.

Implications if the appellant is returned to Uzbekistan

13. Miss Farquharson did not think that the appellant would automatically be liable for "Illegal Exit Abroad and Illegal re-Entry" under the terms of Article 223 of the Criminal Code, in view of Annex 1 of the 1995 Resolution of the Council of Ministers No 8. The loss of her passport would give her grounds to justify the delay in returning to Uzbekistan. If her *propiska* in Uzbekistan was inauthentic, she could technically be liable for holding an invalid passport. However any possible anomaly could be resolved simply by the appellant and her child using their entitlement to permanent residency and registration at her parents' home. Her permit to travel abroad appeared to be authentic and she may not risk the reprisals faced by the individuals in the examples cited.

Oral Evidence

14. Miss Farquharson said that she noted that the appellant had not registered herself with the Uzbekistan Consulate in the United Kingdom, which was normal procedure and was required by law. She had been struck by how relaxed the appellant was about that and therefore wanted to see the passport again to make sure that her *propiska*/registration was valid. Having seen the passport again that morning, she had doubts about the validity of the registration, since the confirmatory stamp was missing. She was also concerned by the fact that the sticker, that was given in order to exit the country, was not on the passport. It should have been on the outside of the passport, although it could have come off whilst the passport was with the UKBA. Her view, based on informed speculation, was that the passport was not genuine. The appellant must have paid the right people in order to obtain a passport that was so convincing and with which she had managed to get a student visa, and she therefore must have connections which she could use on her return to Uzbekistan by paying again. She must have a *propiska* in order to live in Uzbekistan and it must therefore be in another document.

15. If she had a genuine document which she then lost, she would be able to replace it at the Consulate here. She would have had to report the loss within 15 days and follow the required

procedures to obtain a new passport. However she had not reported her passport lost on the two occasions when she believed that it was lost. That could be a problem when she went back, in particular if it was a sign of having claimed asylum and of UKBA involvement. It was a privilege and not a right to leave Uzbekistan, and it was not permitted to make any adverse remarks about the country. The tightening of the regulations in 2006 occurred at the end of the Andijan massacres and any refugees returning to Uzbekistan who had been involved were arrested on return. Student and labour migrant were previously able to renew their exit permits at local Consulates. However after 2006 the law was restricted and in certain cases they had to return home to renew the visas. Miss Farquharson said that she did not know what the situation was in 2012. She was aware of the Association of Human Rights in Central Asia and she had quoted them in her report as a useful source of information.

16. When cross-examined by Mr Deller, Miss Farquharson said that she had researched the legislation on exit and entry to Uzbekistan in May 2011, for the UNHCR, and her research was published. She was up to date with the format of documentation in 2010 when she wrote her report, although she was not up to date at the current time. The missing sticker should have been on the cover of the appellant's passport. She had the same concerns about the appellant's passport as she did when she wrote the addendum to her report and was concerned about the *propiska*, although the exit permit seemed fine. The passport itself appeared to be real but some bits that had been filled in were not genuine. If the appellant were deported by the British government, that would give her a profile and having a false document may or may not be counted against her.

17. When asked to clarify her opinion about the exit permit, Miss Farquharson said that she did not find anything that concerned her about the exit visa, other than the fact that it would have been issued by the Ministry of Internal Affairs and yet there was no such contribution from the Ministry in the *propiska*.

APPENDIX D

EVIDENCE OF MR ROBERT CHENCINER

First Report: 14 June 2012

1. Mr Chenciner's report, for the most part, relates to the appellant's individual claim with respect to her fear of her husband and her later claim to have become a Jehovah's Witness, and is thus of no relevance to the issues before us. However, insofar as his report relates to the relevant issues, it can be summarised as follows.

2. Insulting the President by claiming asylum

- Articles 139 and 140 of the Criminal Code criminalise denigration and insulting of the President.
- Public insult of the President is a crime punishable by up to five years in prison.
- Applying for asylum in front of a court which involves criticism of human rights in the state is likely to be seen as a public insult of the President.
- Journalists and human rights activist are more likely to be reported about than other victims.
- Following reports that if Uzbek Alisker Khakimjanov were returned from the United Kingdom he would be imprisoned for claiming asylum, he was granted asylum in the United Kingdom on 19 March 2010.

3. Treatment on Arrival

- If the appellant arrived by or via a United Kingdom carrier with a one-way ticket and an out-of-date visa, on her own with a baby, she would likely be detained and violently interrogated at the airport. When they found out that she had claimed asylum, she would be at risk of being charged with insulting the President and of being abroad after her Uzbek travel document had expired.

Addendum: 3 July 2012

4. Commenting on Miss Farquharson's view, in the addendum to her report, that there were problems with the *propiska* stamp in the appellant's passport, in that it should have been over-stamped with a circular stamp, Mr Chenciner said that the Google image for Russian internal passports did not show the rectangular registration stamps as being over-stamped. He suggested that Miss Farquharson was referring to more up-to-date bureaucratic procedures whereby their methods had changed and that in 2004 they would not have had the computerised watermark that she had mentioned. He therefore considered the stamp to be valid. He had noted that the registration stamp was back-dated to 1995 whilst the passport was issued in 2004 and had therefore consulted Hamid Ismailov (referred to in his previous report as the heard of BBC Central Asian & Caucasus World Service) about this and whether it was okay for the registration stamp to be backdated to the original date of registration. The response had been that it was, but that the common practice was to put a stamp with the date of issuing the new document rather than backdating it to the time the *propiska* began. Mr Chenciner's conclusion was that a bureaucratic error had been made in provincial Samarkand.

5. Mr Chenciner commented on the fake United Kingdom residence permit in the appellant's passport, which she claimed had been obtained for her by a friend, and considered that the Home Office would most likely want to stamp it 'not valid', which would then bring it to the attention of the Uzbek border police.

Oral Evidence

6. Mr Chenciner produced an email from Blakemores Solicitors which contained the UKBA's response to their enquiries about the number of removals to Uzbekistan, as follows:

- In 2009 there were 127 removals, 7 of which were asylum removals, 2 of which were AVR (Assisted Voluntary Return)
- In 2010 there were 250 removals, 10 of which were asylum removals, 2 of which were AVR
- In 2011 there were 228 removals, 14 of which were asylum removals, 2 of which were AVR

7. When asked for his views on the appellant's passport, he said that it appeared to be a genuine passport, although some parts required clarification. Having only just had the benefit of viewing the original passport, he had noted the registration stamp on page 8, which was the *propiska*. The word "Samarkand" could be seen in the stamp. The date in 1995 was when the appellant would have turned 18, which seemed unusual when the passport was issued in 2004. However he did not believe that that indicated that the stamp was a forgery, but simply that someone had made a mistake. On the previous day, Mr Chenciner had checked with his friend Hamid Ismailov, who had consulted his contacts in Uzbekistan and had been advised that it was odd, since the date of issue of the passport would normally have been given. It seemed, however, that it was just an administrative error. The electronic registration referred to by Miss Farquharson was a subsequent method used and whilst Tashkent was up-to-date, Samarkand was not and mistakes were often made there. The passport was issued before the new practice and there were no circular stamps at that time. He had Googled Russian *propiskas* by way of comparison, as Uzbek *propiskas* were based on the same system, set up before the dissolution of the USSR. However, the Uzbek authorities would know that the United Kingdom residence permit in the appellant's passport was fake and that would lead to her being detained.

8. In response to our enquiry as to which circumstances would lead to a fine and which would lead to imprisonment on return to Uzbekistan, Mr Chenciner said that that was explained in the December 2009 letter from the Foreign & Commonwealth Office in the respondent's appeal bundle. In spite of the regulations, the Ministry of Internal Affairs had a huge amount of discretion. If a fine was incurred on return to Uzbekistan, that would be a lot of money for a local person.

9. Mr Chenciner said that any person who had claimed asylum was at risk of being detained and ill-treated. An asylum seeker may be noticed as such because they would have a one-way ticket and would be escorted. Under the old Soviet system, a list of passengers would be sent in advance of the aeroplane taking off. There were penalties for people insulting the President and those included imprisonment. Any detention would involve violent questioning. The authorities would also be alerted to the absence of the child's father. The appellant could apply to extend her exit visa and to have her child registered in her passport at the Consulate in the United Kingdom. That would not in itself put her at risk with the authorities, since her child was born here and there was therefore nothing untoward about that. However that would lead to her husband being alerted as he would have bribed the Samarkand authorities for news of his wife. If the appellant applied to extend her exit visa, however, she would need to explain why she had not done so earlier and if

she explained that her passport had been lost, that would lead to questions which would reveal that she had instructed solicitors and that she had claimed asylum. The Consulate here would contact the authorities in Samarkand.

10. When asked about the cases he had referred to in his report of people deported to Uzbekistan, Mr Chenciner said that he had not been able to find out any reports from the Home Office as to what happened to people forcibly returned to Uzbekistan.

11. In response to Mr Deller's enquiry under cross-examination, Mr Chenciner agreed that association with the Andijan massacres was a trigger for the Uzbek authorities to treat people differently, but said that it was not the only one. Being known as an Islamist was another. However, the Uzbek authorities looked out for everyone returning to Uzbekistan as it was a police state, and they were very conscious of their image in the west. Anyone applying for asylum was in a position to be considered as having insulted Uzbekistan, even if the claim was of a domestic nature, as that would be a complaint about the state not taking any action. Merely coming from Samarkand was not a basis for alerting the authorities, as it would be for someone from Andijan.

APPENDIX E

EVIDENCE OF ASYLUM RESEARCH CONSULTANCY

This report, dated 25 June 2012, runs to some 695 pages and is a response to the following research questions:

- Current situation of failed asylum-seekers returning to Uzbekistan upon expiry of their exit permits
- The risks, if any, facing those who return upon expiry of their exit permit and are charged in connection with these criminal offences in police custody
- The risk, if any, the appellant would face on return to Uzbekistan as a failed asylum-seeker with an exit permit from Uzbekistan that expired in March 2009 and with a young child born out of wedlock.

The report draws together information taken from various sources, citing relevant extracts from those sources, but without actually seeking to set out any conclusions itself. The majority of the report consists of copies of the various human rights reports and news items extracted in the summary.

Treatment and situation of returned refused asylum seekers (1. Current situation of failed asylum seekers returning to Uzbekistan upon expiry of their exit permits)

The report commences by stating that limited information documenting the treatment of returned asylum seekers to Uzbekistan was found and only one case was documented where someone forcibly removed was subsequently charged with illegally entering and exiting the country. It then goes on to cite cases of returnees who had been detained upon return to Uzbekistan.

Law and implementation: Exit permit regime (1. Current situation of failed asylum seekers returning to Uzbekistan upon expiry of their exit permits; 2. The risks, if any, facing those who return upon expiry of their exit permit and are charged in connection with these criminal offences in police custody)

The report quotes from the Uzbek–German Forum for Human Rights, February 2010 as stating: *“a citizen of the Republic of Uzbekistan, in accordance with the laws of the Republic of Uzbekistan, has the right to freely travel abroad on private or public affairs, for permanent residence, as a tourist, for study, for work, for medical treatment, or for business. But at the same time, citizens wishing to go abroad are required to obtain a permit which is only valid for a period of two years. The permit is issued in the form of a sticker pasted into the citizenship passport of the applicant, similar to an entry visa. It is commonly called an “exit visa,” which is a term and practice inherited from the Soviet era”*.

The report goes on to refer to the Uzbek–German Forum for Human Rights being aware of at least two cases in which citizens *“returning from long stays abroad, found themselves under criminal prosecution because of delays on their exit visa upon their arrival to their homeland”* and to reports by Amnesty International of other such cases.

Situation and treatment in prison/police custody (2. The risks, if any, facing those who return upon expiry of their exit permit and are charged in connection with these criminal offences in police custody)

The report refers to various human rights reports, including the 2011 Human Rights Watch annual report on Uzbekistan, Human Rights Watch report of December 2011, Freedom House annual reports dated 18 May 2012 and 1 June 2011, the UK Foreign & Commonwealth Office annual report dated 30 April 2012, Amnesty International report for May 2011 and US Department of State report for 8 April 2011, in regard to their reports of ill-treatment in detention.

Situation of a single woman with a child born out of wedlock (3. The risk, if any, LM would face on return to Uzbekistan as a failed asylum seeker with an exit permit from Uzbekistan that expired in March 2009 with a young child born out of wedlock)

The report states that very limited information specific to the treatment of single mothers was found and confirms that according to the sources consulted there is no evidence that women are subjected to punishment for having a child out of wedlock or returning with a child born out of wedlock.

APPENDIX F

COUNTRY OF ORIGIN INFORMATION

Amnesty International

“Uzbekistan: Submission to the Human Rights Committee 96th session, 16-31 July 2009”, 28 April 2009 includes concerns about the liberty of movement – the right to enter one’s own country in Uzbekistan:

“Illegal exit abroad or illegal entry into Uzbekistan, including by overstaying the permission to travel abroad or failing to renew it, are punishable under Article 223 of the Criminal Code with fines or with imprisonment from three to five years or in aggravated circumstances by up to 10 years’ imprisonment. Returned asylum seekers are particularly vulnerable to being charged under Article 223, as many will not have renewed their permission to travel abroad (having applied for asylum abroad). Other Uzbek nationals have reportedly also fallen increasingly foul of the travel regulations while they were abroad, as new regulations, in some instances, have not allowed nationals to renew their permission or exit visas in their nearest Uzbekistan Consulate, but rather have required them to do so in Uzbekistan at the local Department of Internal Affairs which gave them their original documentation. Amnesty International has learned of at least one Uzbek national who was prosecuted under Article 223 of the Criminal Code for failure to do this in 2007, two years after the Human Rights Committee recommended that Uzbekistan “abolish the requirement of an exit visa for its nationals”. This individual was charged with illegal exit abroad upon return to Uzbekistan and sentenced to five years’ imprisonment. Although later released from prison under an amnesty, the individual remains under a form of house arrest and under a permanent foreign travel ban.”

“Annual report 2012: Uzbekistan”, 24 May 2012

“Despite assertions by the authorities that the practice of torture had significantly decreased, and the introduction of new legislation to improve the treatment of detainees, dozens of reports of torture and other ill-treatment of detainees and prisoners emerged throughout the year. In most cases, the authorities failed to conduct prompt, thorough and impartial investigations into these allegations.”

Uzbekistan. A Briefing on Current Human Rights Concerns. May 2010

The report describes continuing persistent allegations of torture or other ill-treatment by law enforcement officials and prison guards and refers to human rights activists and journalists being summoned for police questioning and placed under house arrest or routinely monitored by uniformed or plain-clothes officers. With regard to freedom of movement, the report states that:

“Amnesty International has been particularly concerned about the requirement that Uzbek nationals apply for and obtain permission to travel abroad before leaving the country and that Article 223 of the Criminal Code punishes illegal exit and entry of the country, including return to the country after the expiry of the permission to travel abroad...”

Illegal exit abroad or illegal entry into Uzbekistan, including by overstaying the permission to travel abroad or failing to renew it, are punishable under Article 223 of the Criminal Code with fines or with imprisonment from three to five years or, in aggravated circumstances, by up to 10 years' imprisonment. Returned asylum-seekers are particularly vulnerable to being charged under Article 223, as many will not have renewed their permission to travel abroad. Other Uzbek nationals have reportedly also fallen increasingly foul of the travel regulations while they were abroad, as new regulations, in some instances, have not allowed nationals to renew their permission or exit visas in

their nearest Uzbekistan Consulate, but rather have required them to do so in Uzbekistan at the local Department of Internal Affairs which gave them their original documentation.”

Australian Government Refugee Review Tribunal
Country Advice Uzbekistan 15 July 2010

This report refers to the incident of the demonstration in Andijan in May 2005 and confirms the ongoing interest by the Uzbek authorities in individuals who were participants or mere observers. The report provides information on the exit procedures, including security checks, in Uzbekistan, and states that citizens intending to travel abroad must apply to the office of the Ministry of Internal Affairs and submit their Uzbek passport. The application is processed within 15 days and, if successful, the applicant receives a stamp in their passport that authorises travel abroad. The stamp is valid for two years, during which time the relevant passport-holder can make multiple trips abroad without having to apply to the Ministry for authorisation.

Foreign and Commonwealth Office

FCO letter from British Embassy Tashkent to Country Specific Policy Team, Home Office, dated 14 December 2009

This letter is a response to questions raised by the UKBA in an email to the FCO dated 27 November 2009, in which the author confirms that they have no reason to doubt the accuracy of the responses which were provided by a Tashkent law firm. The letter confirms that the exit visa system is universally enforced, pursuant to “Exit Procedure for Citizens of the Republic of Uzbekistan” approved as Annex 1 to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan issued on 06.01.1995 No.8, according to which a visa is used for two years. The Ministry of Internal Affairs of the Republic of Uzbekistan has overall responsibility for the maintenance of the passport regime, including keeping records of all exit visas issued. Exit visas must be valid and available for checking at the airport. Exit visas can be renewed at the Uzbekistan Embassy in the United Kingdom and Uzbek passports can be replaced if lost or damaged, or renewed if expired at the Uzbekistan Embassy in the United Kingdom.

An exit from or an entry to Uzbekistan will be considered illegal if an individual does not possess any valid authorisation (visa) to enter or to leave Uzbekistan issued either by the Ministry of Internal Affairs or by a respective Uzbekistan Consulate abroad. Expiry of an exit visa upon return of an Uzbek citizen to Uzbekistan will not be considered illegal as an exit visa is issued to confirm the right to exit only. Expiry of an exit visa before any travel or while travelling abroad does not constitute an administrative or a criminal breach. No penalties are applicable for returning to Uzbekistan if the exit visa has expired, as exit visas are issued to confirm the right of an Uzbek citizen to exit the Republic of Uzbekistan within a specified period. A returnee holding an expired exit visa must produce evidence that he/she had a valid exit visa at the time of leaving the Republic of Uzbekistan, in which case no penalties are applicable.

FCO letter from British Embassy Tashkent to Country Specific Policy team, Home Office, dated 14 December 2010

“Article 223 of the Criminal Code deals with two types of situations with two types of applicable criminal charges.

The first category is a fine (appr. 10,000 USD) or imprisonment from 3 up to 5 years, is applied with respect to the following individuals only:

- individuals who have breached the order of leaving the territory of Uzbekistan,
- individuals who have breached the order of entering the territory of Uzbekistan,
- individuals who have breached the order of passing the state border of Uzbekistan.

Uzbek laws do not require individuals to have a "permission to travel abroad". Uzbek laws require individuals intending to leave the territory of Uzbekistan to acquire a permission to leave the territory of Uzbekistan. This kind of permission is given for a two year period and is applied only with respect to the right of an individual to leave Uzbekistan. Once an individual has left Uzbekistan he/she is free to stay abroad for any period desired (provided that other passport regime regulations are satisfied). If an individual has left Uzbekistan within the period of validity of the permission, Article 223 will not apply. If an individual left Uzbekistan without permission it is most likely that he/she would face criminal charges upon his return to Uzbekistan under Article 223. Uzbek nationals do not require any permission to enter Uzbekistan.

The second category in the form of imprisonment from 5 up to 10 years is applied with respect to the following individuals only:

- state officials who were obliged to receive a special permission to leave Uzbekistan, and
- individuals who have unlawfully entered or left Uzbekistan or breached the order of passing the state border by means of:
 - a breakthrough;
 - previous concert;"

Human Rights Watch

“World Report 2012: Uzbekistan” 22 January 2012

“Uzbekistan's human rights record remains appalling, with no meaningful improvements in 2011. Torture remains endemic in the criminal justice system. Authorities continue to target civil society activists, opposition members, and journalists, and to persecute religious believers who worship outside strict state controls.”

UNHCR

Refworld report 21 November 1996

Regulations on Entry to and Exit From the Republic of Uzbekistan for Foreign Citizens and Stateless Persons

This report deals to a large extent with entry and exit regulations for foreign citizens, but in so far as it applies to Uzbek nationals it states, as regards the procedure for issuing exit visas from the Republic of Uzbekistan, that permanent residents in the Republic of Uzbekistan, intending to go abroad, apply to bodies of internal affairs in places of residence with filled in standard application form in 2 copies with attached passport.

US Department of State

“2011 Country Reports on Human Rights Practices: Uzbekistan”, 24 May 2012 states in its Executive Summary:

“Uzbekistan is an authoritarian state with a constitution that provides for a presidential system with separation of powers among the executive, legislative, and judicial branches. In practice President Islam Karimov and the centralized executive branch dominated political life and exercised nearly complete control over the other branches of government...”

The most significant human rights problems included: instances of torture and abuse of detainees by security forces; denial of due process and fair trial; and restrictions on religious freedom, including harassment and imprisonment of religious minority group members.

Other continuing human rights problems included: incommunicado and prolonged detention; harsh and sometimes life-threatening prison conditions; arbitrary arrest and detention (although officials released four high-profile prisoners detained for apparently political reasons); restrictions on freedom of speech, press, assembly, and association; governmental restrictions on civil society activity; restrictions on freedom of movement; violence against women; and government-organized forced labor in cotton harvesting. Authorities subjected human rights activists, journalists, and others who criticized the government to harassment, arbitrary arrest, and politically motivated prosecution and detention.”

With regard to freedom of movement and foreign travel, the report comments:

“Foreign Travel: Citizens are required to have a domicile registration stamp in their passport before traveling domestically or leaving the country. The government also requires citizens and foreign citizens permanently residing in the country to obtain exit visas for foreign travel or emigration, although it generally grants the visas.

Emigration and Repatriation: The law does not provide for dual citizenship. In theory, returning citizens must prove to authorities that they did not acquire foreign citizenship while abroad or face loss of citizenship. In practice citizens who possessed dual citizenship generally traveled without impediment.

The government noted that citizens residing outside the country for more than six months could register with the country's Consulates, and such registration was voluntary. Unlike in some previous years, there were no reports that failure to register rendered citizens residing abroad and children born abroad stateless.”

Uzbek-German Forum for Human Rights

This report was submitted by the Uzbek-German Forum for Human Rights on behalf of an initiative group of Uzbek citizens, which for six months studied the laws and practices of the Republic of Uzbekistan relating to freedom of movement, as well as held 45 non-standardized interviews with citizens of the country. The report was submitted to the 98th session of the Committee on Civil and Political Rights (CCPR). The purpose of the report was to inform the Committee, as well as the world at large about the Uzbek government's adherence to statutes regarding freedom of movement and choice of residence.

The report refers to the institution of "*propiska*", as being a creation and an integral part of the Soviet totalitarian regime, created on 27 December 1932. It established a unified passport system throughout the Soviet Union. The same law also introduced the first compulsory system of "*propiska*." "*Propiska*" allowed the state not only to register citizens at their places of residence, but by introducing an authorization system, placed them and their movements under the strict control of the state. This system was adopted and remains in place almost unchanged by the current government in Uzbekistan since its inception. According to Article 28 of the Constitution, citizens of the Republic of Uzbekistan have the right to freedom of movement across the territory of the Republic, to enter and exit from it with the exception of restrictions established by the law. However, at the same time, citizens wishing to go abroad are required to obtain a permit which is only valid for a period of two years. The permit is issued in the form of a sticker pasted into the citizenship passport of the applicant, similar to an entry visa. It is commonly called an "exit visa,"

which is a term and practice inherited from the Soviet era. The report refers to several categories of citizens who are restricted in their rights to travel abroad for various reasons and gives two examples of women who were faced with criminal charges on return to Uzbekistan.

Other Reports

Shahida Tulaganova (<http://uzbekistanerk.com>; <http://shahidayakub.livejournal.com>)

**“Uzbek asylum seeker on the verge of being deported to Uzbekistan - and straight into prison”
- March 2010**

This article concerns Alisher Khakimjanov, a 28 year old native of Andijan who came to the United Kingdom as a student in 2004 and was in the United Kingdom during the Andijan uprising and massacre in May 2005. His father was arrested in August 2005 on charges of participating in the May demonstrations and whilst his father was in detention the police sent a letter to the family house ordering that Alisher come and speak to them. His father was released in December 2005 after a large bribe was paid but the family’s property was confiscated and they left Uzbekistan. The article claims that, although Alisher had never been involved in political activity, it would be extremely dangerous for him to return to Uzbekistan and that he would be suspected of anti-government activity as a result of his father’s arrest and flight from the country. The article states that the British government ought to understand that being deported after having claimed asylum would be taken by the government of Uzbekistan as grounds for arrest in and of itself and it calls on the British government not to deport him. A further post, dated 19 March 2010, indicated that Alisher Khakimjanov had succeeded in his asylum appeal. The posts were reported by the Uzbek Democratic Party on its website.