Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09970/2013
AA/09971/2013

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
on 12th December 2014	**On 10th April 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ABSALUTDIN BENNATOV
NAIDA DAIBOVA
(Anonymity direction not made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Pickering instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent: Mrs Petterson – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. On the 15th July 2014 the Upper Tribunal heard the appellants cases in relation to the allegation First-tier Tribunal Judge Duff had made a material error of law in his determination promulgated on the 27th March 2014 in which the Judge dismissed the appeals against the direction for removal from the United Kingdom to the Russian Federation which accompanied the rejection of their claims for asylum or any other form of international protection.

2. It was found that the only ground on which permission was sought which had arguable merit was that the country expert had asserted that a number of factors meant the appellants will be recognised on return as failed asylum seekers from the UK, which is perceived by the Russian authorities as a haven for North Caucasus terrorists, such as to place them at risk. It was found this element had not been considered as a freestanding issue or, if it was, that adequate findings were not made.

3. Direction were given that the adverse credibility findings of Judge Duff shall stand and that the scope of this hearing shall be limited to considering the issue of risk on return to a national of Dagestan who is no more than a failed asylum seeker returning from the United Kingdom. Following the hearing, as the assessment of real risk has to be based upon the individual circumstances of an appellant, the issue is being considered by reference to the specific facts of these appellants.

4. During the hearing the country expert, Robert Chenciner, asked whether this tribunal was also reconsidering the decisions in relation to other areas of this region such as Chechnya but this is not the purpose of the hearing.

Background

5. The appellants are both citizens of Russian. The first born on 17th June 1981 and the second, his mother, on 31st October 1957. They arrived in the United Kingdom on 28th June 2013 having flown from Spain and claimed asylum on 9th July 2013.

6. The basis of the claims were problems the appellants claimed to have relating to the father of the first appellant and husband of the second appellant, who was a government employee holding the rank of Major in the militia and who provided security to the head of the government of Daghestan. He investigated the murder of Shamil Abidov and discovered a link to the special forces of Spetznaz or the FSB. As a result he was accused of kidnapping and sentenced to a term of imprisonment of 12 years. He was been arrested on 9th August 2000.

7. Following the arrest the family home was searched and after about two years the second appellant was assaulted when entering their apartment block when she was struck over the head from behind after which she required hospital treatment and then went to live with her parents elsewhere.

8. The first appellant travelled to Germany in either 1999 or 2000 and claimed asylum on 23rd November 2000 in another name and claiming to be of Chechen ethnicity. The claim was rejected on 7th July 2003. In 2004 the appellant returned to Daghestan to marry. He returned to Germany in 2006 with his wife where on 19th May 2006 they both claimed asylum.

9. By 2008 the first appellant had travelled to Sweden where he made a further claim for asylum although on 2nd June 2008 the Swedish authorities asked Germany to deal with the claim which was accepted and the first appellant returned to Germany. On 18th November 2006 the claim was refused by the German authorities and on 1st June 2011 the appellant returned to Russia where he was joined by his wife and their child.

10. The first appellant's father had been released from prison in February or March 2011 and the family re-united.

11. The first appellant claimed that on 5th September 2011 he was kidnapped by members of FSB and detained and tortured regarding involvement with a person suspected of a murder. He alleged he was asked to work for the authorities and inform on Islamists who used his mosque. He claims he was given two day to consider the request and released. The family went to live in his wife's parents village and they left for Spain shortly thereafter via Moscow airport. It was said a friend of his father had arranged for them to obtain passports and made the necessary arrangements.

12. Judge Duff found that the claims had been fabricated in an effort to achieve status in the UK and that the first appellant was, in particular, "a wholly unsatisfactory witness who sought to evade answering perfectly straightforward questions and who contradicted himself in his evidence on a number of occasions". Contradictions between his evidence and that of the second appellant were noted and the first appellant's history of false claims and deceptive behaviour was found to be significant.

13. Judge Duff found the claim the first appellant's father had been falsely accused and imprisoned not proved and the claim by the first appellant that he himself had been imprisoned and tortured originated from the two appellants accounts with no corroborative evidence and with elements of the claim being found implausible. The claim was rejected.

14. Judge Duff made two positive findings based upon the evidence which is that the appellants are of the ethnicity they claim and that the first appellant's father holds or has held a position with the police.

15. The appellants stand to be retuned as no more than failed asylum seekers with no proven adverse profile.

The country material and expert reports

16. Robert Chenciner has provided four reports dated 6th January 2014, 17th January 2014, 19th September 2014 and 10th December 2014. He is a Senior Associate

Member St Antony's College Oxford 1987 and Hon Member Russian Academy of Sciences, Daghestan Scientific Centre 1990 - .

17. His specified areas of study and expertise are since 1983, studied ethnography, cultures, human rights and current affairs of, initially, the Caucasus, and subsequently all other Former Soviet States, excluding the Prebaltics. Country experience includes USSR 1983 - 1991; Former Soviet States 1991 - 2004 and is assisted by people working locally on special topics i.e. corruption, religion.

18. Robert Chenciner gave evidence to the Tribunal in OY (Chechen Muslim women) Russia CG [2009] UKAIT 00005, in October 2008 and has served as an OSCE Election monitor in Azerbaijan in October 2003 and Russia in March 2004.

19. Daghestan forms part of the geographical and politic area known as the Russian North Caucasus. The map below shows its geographical relationship to Chechnya and the Russian Federation.

20. 

21. The US State Department report 2010, at page 2 stated:

> The conflict between the government and insurgents, Islamist militants and criminal forces in the North Caucasus led to numerous human rights violations by all parties, who reportedly engaged in killing, torture, abuse, violence, and politically motivated abductions with impunity. In Dagestan and Kabardino-

Balkariya, the number of attacks on law enforcement personnel increased markedly.

22. In February 2010 Moscow appointed as the president of Daghestan, Magomedsalam Magomedov, the son of a previous president. The country did not show any decrease in insurgency or repression and was plagued by increased violence which escalated in reaction to the killing of a militant leader by the authorities who was alleged to have masterminded the twin female suicide bombers on the Moscow Metro. It is a country with a long history of violence.

23. On 23rd January 2013 President Vladimir Putin dismissed Magomedsalam Magomedov from what the BBC described when reporting the event as being from "Russia's most troubled region where an Islamist insurgency is raging" and moved him to a job in the Kremlin. Dr Ramzan Abdulatipov, an MP from the ruling United Russia party was appointed as acting president until elected to be president by the local parliament in September 2013.

24. Terrorist violence from Daghestan against the Russian Federation continued. A report dated 16th November 2013 reports that a husband of a suicide bomber who killed six people in Volgograd died after a stand off with the police.

25. A comparative between Chechnya and Daghestan provided in support of the argument that the situation in Daghestan is worse than in the entire remaining parts of the North Caucasus refers to:

    i. anti NGO laws passed by Moscow that require all Russian NGO's with foreign funding to make a detailed declaration and apply for registration, which was thought to be an attempts to crush human rights and other perceived oppositions, especially those working in the North Caucasus. It is said independent NGO's have been subject to repression for several years with many investigative journalists and editors being killed with impunity.

    ii. The killing of the owner of the only uncensored publication in Daghestan in December 2011, which reported on rebel activity and state corruption. The killing is widely thought to have been organised by the state security services. It is said a 'hit list' of eight journalists including the man killed has been circulated in 2009.

    iii. 2011 and 20012 killing and wounding in Daghestan. The situation within Daghestan is more repressively controlled than in other parts of Russia. The conflict between the state and rebels claimed 400 lives and over 400 seriously wounded in 2011 in a population of 3 million. One third of the casualties were rebels, one third police and the other third civilians.

> For the first even months of 2012 Daghestan was the prime base for insurrection in the North Caucasus with 262 terror related crimes, 42 more than for the whole of 2012. In April 2012 there were reconciliation meetings between the Salafi and Sunni Muslims in the main Mosque which proved ineffective. The authorities sent military reinforcements to Daghestan from Chechnya and seven special detachments of Interior Ministry troops were set up in Daghestan to fight the insurgence. Officials admitted that the army was being used to fight the rebels as the police had proved ineffective.

26. An article published by the Jamestown Foundation : Lack of Conflict Resolution Mechanisms and State Interference in Religion Seen as Destabilizing Dagestan; Eurasia Daily Monitor Volume: 11 Issue: 186 contains the following:

> "Religious driven conflict in the North Caucasus are caused by the government's interference in religious matters, according to Enver Kisriev, a Moscow based expert of Daghestan origin "I do not understand, why the political leadership of Russia think that it will be able to establish some sort of Russian Islamic organisation that will, so to speak, faithfully serve the government, be loyal to the authorities and, at the same time, be highly popular among Muslims who will sincerely believe that the leaders of this pseudo-church are indeed exceptional, devout Muslims", he said. "These two things cannot be combined. Since this is a hopeless task, I have no idea why the government puts such immense effort into it, pushing the people out from the belief in God. People now are forced to join opposition forms of Islam, because they do not accept the policy of establishing a religious organisation sponsored by the government."
>
> …….
>
> It appears that the ongoing insurgency and counter-insurgency campaigns in Dagestan have created complex relationships involving the economic and political interests of various groups in Dagestan. Since Moscow has blocked the normal political process in the republic, politics has migrated to the semi-legal space of special operations, insurgencies and a fight over economic resources. Religion has partly channeled social protest, but even religion is no longer an acceptable form of protest for the state. The Russian government is, in essence, attempting to establish a totalitarian society in part of its territory and targeting the adherents of one religion.

27. Section 3.2 of the 10th December 2014 report contains a number of items of news for the period 6-10 December 2014, some of which relate to the same matter, as evidence that anti-terrorism killings and resistance continues.

28. It is noted the Boston marathon bombers were ethic-Chechens from Daghestan.

29. The report also refers to a meeting at Chatham House and a conversation with a named source who agreed with Robert Chenciner that the country guidance on human rights in Chechnya should also apply to Daghestan and that Russians do

not distinguish between Chechens and Daghestanis. The Russian army had ceased conscription in Daghestan because they reportedly did not want a significant Muslim presence in the army.

30. It is also said:

> "Any Chechen Daghestani and other north Caucasian returnees are in addition at risk of being accused of links with ISIS. There are many theories about whether the Caucasus Emirate has made a deal with IS, including a video of Daghestani emir of Vilayat Daghestan (one of the four districts of the Caucasus emirate) which appeared on the 27 November 2014 had sworn allegiance to IS, was in fact a fake to smear the Daghestani rebels. It is not clear how many Chechens and Daghestanis have joined IS in Syria with figures estimated to be between a few hundred and 1500. It is also not clear if any have officially returned. Bearing in mind Russia is Assad's most important ally, any suspected IS returnees could expect harsh treatment."

31. It also said that Chechens are fighting on both sides of the conflict in Ukraine.

32. It is said that return from the UK is an additional factor as President Putin thinks the UK is a safe haven for Chechen/North Caucasian terrorists and so any Chechen/North Caucasian returnees from the UK has suspected links with the London "terrorists". The Russian authorities and public do not differentiate between Chechen and others from the North Caucasian region, especially if a female is wearing a hijab and a man a beard which are part of Russian terrorist profiling. It is said the authorities would send them to the secret services in Daghestan after violent questioning them about why they travelled to the UK without a visa and without permission unless they were a supporter of the pro-Russian Kadyrovtsi Chechen militia.

33. It is said the names of both appellants and their son are recognisable to Russians and the Russian authorities as Islamic names of people from the North Caucasus i.e. Daghestan and non-Russian.

34. Robert Chenciner has seen photographs of the appellants and from the same states they have recognisable features of a typical north-Caucasian/Daghestan face – black hair, long nose, sallow complexion, large eyes, non-Russian cheekbones, face shape. It is also said that when speaking to the appellants by telephone he detected a Caucasian accent when speaking Russian which is recognisable from both Russian and other Caucasians.

35. The 14th January 2014 report comments upon likely treatment on return at the airport. The appellants had left Daghestan on 25th June 2012 and flew to Madrid where they remained for three days before flying to London. They used their own Russian Federation Passports issued in Makhachkala in May 2012 with tourist visas obtained by the first appellant's father's friend. The passports were destroyed on arrival in London, as it was claimed the agent in Daghestan had

instructed, to prevent return on arrival. It is said the appellants will be unable to obtain a replacement passport and so will be returned with an extraordinary travel document issued by the Russian Embassy in London.

36. It is specifically stated that:

> "The appellant was not likely to be stopped when he left in 2012 because he had not been charged with a crime and there was no all-Federation 'wanted' notice posted for him. On the other hand on return, because he has 'black' /*chorny* Caucasian features, recognisable Islamic Russian names and if of military age - 32/33 he would be likely to be detained by border police and or FSB and violently questioned in a verbally unpleasant manner with physical violence about why he had gone to the UK and why he had stayed for a long time as opposed to a student visit or other visit. Under such pressure he would be likely to tell his story in detail. With regard to police violence at the airport, I heard a personal story told in confidence of a person from Daghestan being beaten up at Moscow airport c 2007 for no reason other than he was a Muslim from Daghestan.
>
> Russian Federation is an anti-Caucasian racist police state. Daghestan and Chechnya are part of the Russian Federation and police abuse and corruption are the same throughout the Russian Federation which includes Russian airports. He would be asked these types of questions as part of their anti terrorism activities and to fulfill their quota of suspected terrorists, as described in note 5, section 3.1 of my first report. They would suspect that he had claimed asylum because he is an ethnic-born Caucasian evidently deported from the UK and extract his story or obtain an enforced confession as in the April 2014 example below, suspecting that he had been in contact with Russian Caucasian terrorists while in the UK and detain him as a suspect for being a member of an illegal formation and/or linked to his 2011 interrogation in Daghestan. If he had an Internal Passport but never had an International passport and left Russia illegally, then he would be forced to explain why he left illegally. He would need an ETD to enter.
>
> In my opinion it does not matter if his history was fabricated, as the Determination found, he and any other (rare, i.e. easily noticed as he stands out from other the passengers, please see section 2.1.2 below) Caucasian Russian citizen men of fighting age who are identifiable and return from UK especially after a long stay are automatically suspected of being foreign-financed rebel extremists terrorists. This appears to be similar from the country point of view to Chechen males profiling in RM (Young Chechen Male – Risk – IFA) Russia CG [2006] UKAIT 00050.

37. The need to secure an ETD from the Russian Embassy in London would also alert the local Daghestan police that he was about to return and they would routinely be likely to inform the airport border police as would the embassy in London that someone with an ethnic north Caucasian name was being returned from the UK. In relation to the availability of information the report at 2.1.3, section 2, para 7 states:

> "Russia appears to be a xenophobic police state and any travellers returning are recorded for Russian security services on flight passenger lists, especially from countries who host refugees whom the Russian authorities consider to be terrorists (section 2.5.3 original report and section 2.5 below) such as UK. Few ethnic north Caucasian returnee detentions are reported as they are not high profile and/or not of interest to the Russian press. Two 2014 examples are as follows. 1. The first describes in some detail what happened at the airport. As reported by a lawyer from the respected leading Russian Human Rights Centre "Memorial", on 27 March she went to Shermetievo airport to collect her cousin an almost 21 year old Chechen martial arts athlete who was being trained in martial arts in Thailand and was expected to return for a holiday, but failed to appear on his scheduled flight. The lawyer went to the airport border office of the FSB who said all passengers had come out. Shortly after she was approached by two plain clothed officers who asked her if she was waiting for him. She was asked to go to an interview room and questioned about his religious and political views. They said that there was nothing to worry about, they just needed to fix a few problems on his passport. Next day she discovered that he had been arrested on a fabricated charge of participation in the Chechen National Liberation Movement (i.e. a perceived terrorist). He was taken to court at 7.30am without a lawyer. During interrogation which continued until 3.00 am he confessed his participation in illegal armed organisations. As a result the court decided to detain him for about nine weeks until May 28 in preparation of a complaint (to open a case). (*Returning Chechen arrested in Moscow,*4 April 2014, Waynakh Online Chechen rebel website) In my opinion to have coerced a false confession would indicate that he was both verbally and physically abused. 2. This is an example of Moscow and Daghestan police cooperation linked to perceived terrorists. On March 11 2014 five Daghestanis arriving on a flight from Cairo Egypt, where they had spent two months were arrested by Daghestan security forces without charge to clear potential links to jihadist groups in Egypt. In early January 2014 some rumours emerged that two suspected suicide bombers wanted by the authorities in Moscow were living in Egypt.

Discussion

38. Robert Chenciner referred to case law relating to Chechnya in relation to which there are a number of cases. The evidence regarding the physical appearance and accent above is not a new matter as a similar argument was made by Mr Chenciner in the cases below.

39. In RM (Young Chechen Male - Risk – IFA) Russia CG (2006) UKAIT 00050 the Tribunal said that a young Chechen male will not as such be at real risk of persecution or a breach of Article 3 either on return to Russia, or on the rail link to Chechnya, or in Chechnya, and, as an alternative, has a viable internal relocation option in Ingushetia. However a Chechen, who is recorded as wanted by the Russian authorities in connection with or for supporting the rebels in Chechnya, will be at real risk on return at Moscow or St Petersburg Airports, and anywhere else in the Russian Federation. He will not however be a refugee if his own conduct is enough for Article 1F to exclude him. This decision

replaces MR (Chechen – Return) Russia CG [2002] UKIAT 07562 as current country guidance on these issues.

40. However, in OY (Chechen Muslim women) Russia CG (2009) UKAIT 00005 the Tribunal indicated the position had changed somewhat since RM. The Tribunal found, despite the existing country guidance cases, there are circumstances in which a female Muslim Chechen may be at risk and may not be able to relocate within Russia. In this case the appellant was of predominantly Chechen but part Russian ethnicity and a Muslim. Her husband was of Russian ethnicity. She had been detained in 2002 and again in 2006 and she was ill treated during each detention. The Respondent relied on AV (IFA – Mixed Ethnicity Relationship – Russian/Chechen) Russia CG (2002) UKIAT 05260 and argued that the option of internal relocation was available. The Tribunal had before it evidence from an expert Mr Chenciner who said that the appellant's family name would, in Russia, indicate that she was of the Muslim faith and from the Caucasus. If she tried to change her name and was able to do so this would be recorded with her earlier name and the rest of her history. Ethnic Russians would look at her and conclude that her facial features were not those of an ethnic Russian. They were likely to conclude that she came from either Chechnya or somewhere in the Northern Caucasus. Many Russians would describe her with the pejorative word "Chorny" which means "black". Russians apply this to Caucasians. Many Russians would view a woman wearing a headscarf as linked to Wahibi terrorists. Moderate, devout Muslim women who wear hijab or headscarves are often targeted as Wahibi extremist terrorists by the Russian authorities. It was clear that another Russian would recognise her as having a Caucasian accent. Mr Chenciner indicated that she would be seen as a potential threat because she would be perceived as a Muslim woman trying to settle in non-Islamic Russia and because she would be returned from the United Kingdom which the Russian authorities perceive as a hotbed of Islamic terrorism. As she would be travelling on a one way ticket the likelihood was that she would stopped at the airport. If a perception arose of any connection with Chechen insurgents, then she was likely to be detained for a lengthy period and suffer further serious ill-treatment. If she was fortunate enough to be able to pass through the airport on arrival it was not likely that without an internal passport she would be able to travel to Chechnya without being stopped, identified and detained with the same outcome as if she had been stopped at the airport. Even if she was able to reach Chechnya she would be at risk from the Russian supported authorities. Such an individual would not be able to live in Chechnya with a husband or partner of Russian ethnicity because he would be at constant risk from the authorities who, whilst they are supported by the Russian central government, are also Chechen in outlook and attitude. He would also face a real risk of death at the hands of the Chechen population. If she lacked an internal passport it would be unduly harsh to expect her to attempt to relocate. She would not be able to live anywhere in Russia for any length of time without running a real risk of being stopped, identified as Chechen, having the lack of a registration document discovered and being forced to return to Chechnya.

41. In EM LM (IFA-Chechen) Russia CG (2003) UKIAT 00210 the appellants were citizens of Russia, settled in Chechnya, who had suffered considerable problems when the conflict there broke out. Their father, an army officer, and the first Appellant's husband, also a soldier, had been killed by Chechen rebels. They had lost contact with their mother, who was half Chechen and half Russian, and the second Appellant, who was unmarried, had inherited distinctly Chechen features. The appellants were together when they were raped by Russian soldiers. The Tribunal noted that, according to the CIPU report something in excess of 250,000 people including almost the entire Russian, Armenian, and Jewish population had left Chechnya as a result of the conflicts there. The Tribunal acknowledged that the appellants could not live safely in Chechnya because they were not Chechens. The Tribunal also noted a report by Robert Chenciner, a Senior Associate Member of St Antony's College Oxford, who explained the difficulties the appellants would have in the event of their return to Russia. Firstly they had to get into the country. To do this they would have to reveal their links with Chechnya. They would attract attention for two reasons. Their name was "recognisably Islamic" rather than Russian and they would have temporary travel documents issued by the United Kingdom. They would be questioned. If they said they came from Chechnya it would be assumed that they were returned asylum seekers and they would be treated as suspected Chechen collaborators and terrorists. Mr Chenciner explained that ethnic Russians from Chechnya, particularly those of mixed ethnicity, were treated with great suspicion and contempt and they tend to be ill treated. The Tribunal bore in mind that Russia was not a free country. To travel within it people needed an internal passport and this would show their names (Islamic) and the nationality of their parents. Every time that they had dealings with officials they would risk opprobrium or worse and they would have to meet many officials. The expert had recognised that many displaced people from Chechnya have been given refuge in Ingushetia, but the refugee camps there are controlled by the Russian military forces. The expert said that there was a risk of the appellants' detention and transfer to a filtration camp because they would be assumed to be Chechen. There they would be a risk of torture or death. There was nowhere obvious for them to go in Russia. The other internally displaced persons were not well treated. The Tribunal concluded that it would be unduly harsh to expect them to relocate.

42. The most recent case examining this issue is I v Sweden (Application no 6129-04/09 ECtHR September 2013). The court noted the situation in Chechnya, the ongoing disappearances, arbitrary violence, ill treatment in detention facilities, particularly with regard to certain categories of people such as former rebels, their relatives, political adversaries, journalists and others who had complained to international organisations: but found that the unsafe general situation was not sufficiently serious to conclude that the return of Chechen applicants to Russia amounted to a violation of Article 3 though all the facts of an individuals case had to be considered.

43. The judgment is as follows:

1. General principles

54. The Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, amongst others, *NA. v. the United Kingdom*, cited above, § 109).

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

56. In determining whether it has been shown that an applicant runs a real risk of suffering treatment proscribed by Article 3 the Court examines the foreseeable consequences of sending an applicant to the country of destination, bearing in mind the general situation there and his personal circumstances. It will do so by assessing the issue in the light of all material placed before it, or, if necessary, material obtained on its own initiative (see *H.L.R. v. France*, 29 April 1997, § 37, Reports 1997-III, and, more recently, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 116, 23 February 2012). The assessment of the existence of a real risk must necessarily be a rigorous one. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *Saadi*, cited above, §§ 128-129 and *NA. v. the United Kingdom*, cited above, § 111).

57. The Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see, *NA. v. the United Kingdom*, cited above, § 119).

2. The general situation for Chechens returning to the Russian Federation

58. Having regard to its case-law concerning disappearances and ill-treatment in Chechnya (see, among many others, *Bazorkina v. Russia*, no. 69481/01, 27 July 2006; *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-XIII (extracts); *Luluyev and Others v. Russia*, no. 69480/01, ECHR 2006-XIII (extracts); *Baysayeva v. Russia*, no. 74237/01, 5 April 2007; and *Akhmadova v. Russia*, no. 25548/07, 3 April 2012) and having regard to the recent information on the human rights and security situation in Chechnya, the Court is well aware of on-going disappearances, of arbitrary violence, of impunity and ill-treatment in detention facilities, notably with regard to certain categories of people, such as former rebels, their relatives, political adversaries of Ramsan Kadyrov, journalists, human rights activists and individuals who have lodged complaints with international organisations. The

Court is also aware of the reported interrogations of returnees and of harassment and possible detention and ill-treatment by the Federal Security Service or local law-enforcement officials and also by criminal organisations. Nevertheless, the Court considers that the unsafe general situation there is not sufficiently serious to conclude that the return of the applicants to Russia would amount to a violation of Article 3 of the Convention (see, for example *Bajsultanov v. Austria*, no. 54131/10, §§ 64-72, 12 June 2012 and *Jeltsujeva v. the Netherlands* (dec.), no. 39858/04, 1 June 2006).

3. The applicants' individual situation

59. Turning to the applicants' individual situation, they maintained that they had been ill-treated by the "Kardyrov group" and were at risk of being ill-treated anew upon return to the Russia, because the first applicant took photographs and wrote reports about numerous crimes committed by the State against Chechens between 1995 and 2007.

60. The Government have questioned the applicants' credibility and pointed to various inconsistencies in their stories. The Court accepts that, as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individuals concerned (see *R.C. v. Sweden*, no. 41827/07, § 52, 9 March 2010). But at the same time it acknowledges that owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, among other authorities, *N. v. Sweden*, no. 23505/09, § 53, 20 July 2010).

61. In the present case the national authorities did not as such question that the first applicant had been subjected to torture. They stated, however, taking into account that victims of torture cannot be expected to provide completely coherent and consistent statements, that even though the evidence supported his statements that he had been subjected to torture, the first applicant had not established with sufficient certainty why he had been subjected to it and by whom. Notably, as to the first applicant's explanation that he was a key figure and wanted by the Russian authorities with a significant price on his head because he had carried out journalistic work to their detriment, the Migration Court pointed out that his statements had been remarkably vague and that although he claimed that he had collected material for twelve years, he had not been able to provide any concrete examples of what he had done or been able to provide any form of evidence of his work. Thus, the Migration Court found reason to question the credibility of the first applicant's statements.

62. This leads to the crucial question of whether the isolated fact that a person has been subjected to torture suffices to demonstrate that he or she, if deported to the country where the ill-treatment took place, will face a real risk of being subjected again to treatment contrary to Article 3. The Court is aware that in *R.C. v. Sweden* (quoted above, §§ 50 and 55), it found that since the asylum seeker in that case

had proven that he had been subjected to torture, the onus rested with the State to dispel any doubts about the risk of his being subjected again to treatment contrary to Article 3 in the event that the expulsion were carried out. However, leaving aside deportations to countries where the general situation is sufficiently serious to conclude that the return of any refused asylum seeker thereto would constitute a violation of Article 3 of the Convention, the Court acknowledges that in order for a State to dispel a doubt such as mentioned in *R.C. v. Sweden*, the State must at least be in a position to assess the asylum seeker's individual situation. However, this may be impossible, when there is no proof of the asylum seeker's identity and when the statement provided to substantiate the asylum request gives reason to question his or her credibility. Moreover, as stated above, the Court's established case-law is that in principle it is for the person to be expelled to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts about it. Accordingly, the Court considers that where an asylum seeker, like the first applicant, invokes that he or she has previously been subjected to ill-treatment, whether undisputed or supported by evidence, it may nevertheless be expected that he or she indicates that there are substantial and concrete grounds for believing that upon return to the home country he or she would be exposed to a risk of such treatment again, for example because of the asylum seeker's political activities, membership of a group in respect of which reliable sources confirm a continuing pattern of ill-treatment on the part of the authorities, a pending arrest order, or other concrete difficulties with the authorities concerned (see, *inter alia*, *H.N. v. Sweden*, no. 30720/09, § 40, 15 May 2012; *Yakubov v. Russia*, no. 7265/10, §§ 68 and 83-94, 8 November 2011; *H.N. and Others v. Sweden* (dec.), no. 50043/09, 24 January 2012; *Panjeheighalehei v. Denmark* (dec.), 11230/07, 13 October 2009); *Jean M. V. Hakizimana v. Sweden* (dec.), 37913/05, 27 March 2008; and *Fazlul Karim v. Sweden* (dec.), no. 24171/05, 4 July 2006).

63. In the present case, the applicants' case was thoroughly examined by both the Migration Board and the Migration Court, before which the applicants were heard and represented by counsel. There are no indications that the proceedings before those domestic authorities lacked effective guarantees to protect the applicants against arbitrary refoulement or were otherwise flawed**.** Both instances found reason to question the credibility of the applicants' statements (see paragraph 11 as to the Migration Court's reasoning) and they thus concluded that the applicants had failed to establish that they should be regarded as refugees or aliens otherwise in need of protection within the meaning of the Aliens Act.

64. The Court finds, in agreement with the Swedish authorities, that there are credibility issues with regard to the applicants' statements, notably as to the first applicant's alleged twelve years of journalistic activities, which he claimed was the main reason for the ill-treatment of the applicants by the FSB and Kadyrov's group. As to the Court's request for documentation or evidence of the first applicant's work, the Court received a compilation of incidents allegedly documented by the first applicant during the period from 1995 to 2007. He did not develop on the link between his work and the compilation of incidents.

Moreover, he submitted only one example of an article (see paragraph 20) allegedly based on his reports, but he contended that he was not in possession of any articles where his name was mentioned. The Court notes in addition that the first applicant did not submit any articles written by him either, whether unsigned or written under a pseudonym, nor did he point to one single photograph taken by him and published by one of the many well-known sources or media which he claimed had used his material. In these circumstances, the Court must conclude that the first applicant have failed to present any documents or information which would lead it to depart from the domestic authorities' conclusion that there are reasons to doubt the applicant's credibility.

65. Consequently, it agrees with the domestic authorities that the applicants failed to make it plausible that they would face a real risk of being subjected to ill-treatment upon return to the Russian Federation because of the first applicant's alleged journalistic activities.

66. As stated above, the Court is aware of the reported interrogation of returnees and of harassment and possible detention and ill-treatment by the Federal Security Service or local law-enforcement officials and also by criminal organisations. Nevertheless, it considers that the general situation is not sufficiently serious to conclude that the return of the applicants thereto would constitute a violation of Article 3 of the Convention. The Court emphasises that the assessment of whether there is a real risk for the person concerned must be made on the basis of all relevant factors which may increase the risk of ill-treatment. In its view, due regard should also be given to the possibility that a number of individual factors may not, when considered separately, constitute a real risk; but when taken cumulatively and when considered in a situation of general violence and heightened security the same factors may give rise to a real risk (see, for example, *NA. v. the United Kingdom*, cited above, § 130).

67. The Court notes that in their decisions of October 2008 and July 2009, the Migration Board and the Migration Court did not make a separate assessment of this specific risk in the applicants' case, notably that the first applicant has significant and visible scars on his body, including a cross burned into his chest. The medical certificates stated that his wounds could be consistent with his explanation both as to the timing (October 2007) and the extent of the torture to which he maintained he had been subjected, and in their judgment of 15 July 2009 the Migration Court contended that the first applicant's injuries had probably been caused by ill-treatment resembling torture.

68. Thus, in case of a body search of the first applicant in connection with possible detention and interrogation by the Federal Security Service or local law-enforcement officials upon return, the latter will immediately see that the first applicant has been subjected to ill-treatment for whatever reason, and that those scars occurred in recent years, which could indicate that he took active part in the second war in Chechnya. His situation therefore differs significantly from, for example, the applicant in *Bajsultanov v. Austria* (cited above) or from returnees of Chechen origin who took active part in the first war in Chechnya only, and who are therefore not as such at risk of being persecuted by the present authorities (see paragraph 37 above).

> 69. Taking those factors into account cumulatively, in the special circumstances of the case the Court finds that that there are substantial grounds for believing that the applicants would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention if deported to the Russian Federation. Accordingly, the Court finds that the implementation of the deportation order against the applicants would give rise to a violation of Article 3 of the Convention.

44. The first applicant has a history of attempting to secure asylum in Europe. His claims in Germany failed and he was returned to Daghestan with no evidence of the type of adverse attention mentioned by Robert Chenciner occurring. It is also noted that in 2011 he was able to approach the Russian embassy in Germany and secure a new passport and exist visa subsequently.

45. The claim to have suffered persecution and to have been arrested and detailed in Daghestan was found by Judge Duff to lack credibility. There is no evidence of adverse interest and the appellants are no more than failed asylum seekers.

46. Country evidence relating to risk has been provided by Robert Chenciner who was found by Mr Justice Collins to have produced a speculative report on Ukraine in Venediktov v SSHD [2005] EWHC 2460 Admin but whose evidence was accepted by the Tribunal in the above cases.

47. The factor present in this application that was not present previously is that the appellants will be returned from the UK.

48. As Robert Chenciner states, it matters not that the claim made was found to lack credibility. It is the perception of the appellants in the minds of their alleged persecutors that is the relevant factor. The evidence given is that the factors particular to these appellant will identity their place of return and ethnic origin. Mrs. Petterson did not adduce country material to demonstrate the expert's opinion was incorrect or speculative or succeed in discrediting the same in cross-examination. The situation in Daghestan is clearly unstable with active conflict between the authorities and Islamic grounds viewed by the state as terrorists. The view expressed of the UK in the evidence by the Russian authorities is plausible and mirrors statements made by President Putin in interviews.

49. The appellants have nothing to hide in relation to their claims which were found to be fabrications. At the point of return it is plausible to the lower standard applicable that the border police will be aware of their return. The submission by Mrs. Petterson that there is no real risk as the first appellant is returning with his mother and family but this has not been shown to eliminate any such risk, especially as a number of suicide bombers have been women. If the authorities have concerns, which is likely on the evidence, the appellants face a real risk of being detained at the airport for questioning as to their movements. Roberts Chenciner describes the nature of such questioning which is likely to involve

both verbal and physical interrogation. The evidence shows that the threshold for the engagement of Article 3 is likely to be met in such circumstances even if the authorities eventually accept that there is no involvement with the rebels and release the appellants and allow them to return home. Based upon the cumulative effect of the factors relevant to these appellants, and notwithstanding the rejection of the core aspects of their asylum claims, the appeals are allowed on Article 3 ECHR grounds.

Decision

50. **The First-tier Tribunal Judge materially erred in law. The decision of the First-tier Tribunal has been set aside. I remake the decision as follows. These appeals are allowed.**

Anonymity.

51. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed…….
Upper Tribunal Judge Hanson

Dated the 3rd April 2015