Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06224/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26th March 2019	**On 7th May 2019**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Slatter, Counsel instructed on behalf of the Appellant
For the Respondent: Mr Tufan, Senior Presenting Officer

DECISION AND REASONS

Rule 14: Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Background

1. The Appellant, an Uzbek national, appealed against the decision of the First-tier Tribunal, who, in a determination promulgated on the 4th July 2018, dismissed his claim for protection.

2. In a decision made on the 3rd October 2018 I set aside the decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent to refuse his protection claim. It had been agreed between the parties that the decision demonstrated the making of an error on a point of law. The reasons given are set out in the decision of the 3rd October 2018 and the salient parts are reproduced below:

> "13. Mr Walker, Senior Presenting Officer appeared on behalf of the Respondent. There was no rule 24 response from the Respondent. However, he conceded that there were errors of law in the decision of the FtTJ and that as a consequence the decision was unsafe and that it should be set aside and for fresh credibility findings to be made on the evidence.
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> 14. I have taken into account the submissions of the parties when reaching a decision on whether or not the decision discloses the making of an error on a point of law. I am satisfied that the concession was correctly made concerning the evidence and that the FTT's decision is vitiated by an error of law and therefore the decision shall be set aside, and no findings of fact will be preserved.
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> 15. In the light of the concession made it is only necessary to provide a summary of the reasons why I consider that concession was properly made.
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> 16. One of the issues that the judge was required to consider was whether or not the appellant was a genuine convert to the branch of Islam known as Salafi Islam. The decision letter as set out above relied upon on his responses during the interview and reached the overall conclusion that he had given vague and inconsistent evidence which led the Secretary of State to consider that he had not demonstrated that he was a genuine convert. The judge considered those replies at paragraphs [28 to 29] and reached the conclusion at [30] that he was not a genuine convert. However, there was other evidence before the Tribunal which was relevant to this issue; the letter from X Islamic centre and the evidence of the appellant's brother, who had been accepted by the respondent to practice that religion. Whilst the judge made reference to the evidence from the Islamic centre at [30 I] both advocates agree that the assessment of the contents of that letter did not take into account what the letter had said. The judge gave no weight to that letter because the judge considered that it was not clear how the writer had ascertained that the appellant "follows the Salafi way". However as both advocates agree, the letter made reference to having known the appellant for five years and the circumstances in which he had known him. The letter also made reference to having personally known him. The advocates agree that that was a factual error which led to that evidence being given no weight in the assessment overall.

17. Furthermore, it is accepted that the judge discounted the evidence of the appellant's brother at [27] on the basis that as it was a family member he was not "independent and objective" and there was no assessment of the evidence that expressly dealt with the issue of religion within the determination.

18. The appellant himself also gave evidence at his religion and as Mr Slatter submits, whilst the judge relied upon the responses in the interview it was not apparent from the decision what the judge found as to the more recent evidence given about the practice of his faith.

19. It is also the case that there was a relevant country guidance decision in the form of LM (returnees – expired exit permit) Uzbekistan CG [2012] UK UT00390. It appears from the decision that neither advocate before the FtTJ made any reference to this decision nor place it before the judge. As a country guidance decision, failure to take it into account is likely to be an error of law. The decision concerns the position relating to illegal exit and the consequences of failing to have an exit permit. One of the issues before the judge related to the evidence from the appellant relating to his passport and having an exit visa renewed. At [34] the judge, it appears, did not accept the appellant's evidence and expressly found that there had been no background evidence or evidence of the legal position in relation to when exit visas would not be issued outside the country of origin. Whilst it is plain that the judge was considering that in the context of the appellant's evidence that he had been refusing an exit Visa on the basis that he was told to obtain one from Uzbekistan, the country guidance decision did provide material which related to the issues of exit visas. Furthermore, the headnote at paragraph 6 made reference to the ill-treatment of those who are detained and that if someone who is detained on return, Article 3 will be engaged. Furthermore, at headnote five, there was reference to individuals who had a particular profile which would lead to adverse interest in them, which on the appellant's case may be of relevance given the circumstances of his brother. The decision also reaffirms the country guidance decision given some time ago in 2007 in OM (returning citizens, minorities, religion) Uzbekistan CG [2007] UK AI 00045.

20. There were other points raised by Mr Slatter by reference to the determination and in particular, whether the appellant's evidence was in fact inconsistent with the country materials as the judge had so found. One area that he concentrated on related to the findings of fact made as to the lack of interest in the family members at [35] however there had been no consideration of the background material in the context of the family members having been interviewed by the authorities and having reached the conclusion that they should leave the country and having done so obtained residence in the USA. It is not necessary to consider the other points raised on behalf of the appellant given that it is common ground now between the parties that the decision discloses the making of an error on a point of law and should be set aside and I have made reference to the main points relied upon.

21. Consequently, I am satisfied the decision discloses the making of an error point of law and the decision should be set aside with no findings of fact

> preserved. It will be listed as a resumed hearing on date in accordance with the directions accompanying this decision. "

The re-making of the decision:

Evidence:

3. For the purposes of the hearing the Tribunal has been provided with three bundles on behalf of the appellant; bundle A consists of the material that was before the FtTJ, bundle B is the bundle submitted for this hearing, which contains witness statements from the appellant, his brother a witness and written evidence from his parents and brother, messages/chat and translation and a number of reports. The last bundle consists of more recent country materials. The respondent relied upon the bundle provided to the FtT which contained the material supplied by the appellant for this claim, his substantive interview, the country information response dated March 2018 and the decision letter.

4. I have also heard oral evidence from the appellant, his brother, who will be referred to as "B" for the purposes of this decision and a witness called to attest to the appellant's faith. It is not necessary to set out that evidence in full as it is a matter of record and set out in the record of proceedings. I shall refer to the relevant evidence in my analysis of the issues raised by the parties.

5. In addition, I have received a written skeleton argument provided by Mr Slatter and also oral submissions from Mr Tufan which I confirm I have taken into account in considering the context of the evidence before me and in reaching my conclusions. In my analysis I do not refer to every point made but have taken them fully into account when reaching my decision.

The Law:

6. In reaching my decision I have borne fully in mind the relevant law and Immigration Rules, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and the Handbook on Procedures and Criteria for Determining Refugee Status ('The Handbook) (Geneva, January 2000). By Article 1(a)(2) of the Refugee Convention the term "refugee" shall apply to any person who: -

> "Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable, or, owing to such fear, is unwilling to return to it."

7. The provisions of SI [2006] No.2525 "The Refugee or Person in Need of International Protection (Qualification) Regulations 2006" now bring into United Kingdom domestic law the Council of the European Union Directive 2004/83/EC of 29 April 2004 on 'minimum standards' for the qualification and status of third country

nationals or stateless persons as refugees or as persons who otherwise need protection and the content of the protection granted, normally referred to in the United Kingdom as the Qualification Directive. Commensurate changes were made in the Immigration Rules by means of Statement of Changes in the Immigration Rules also taking effect on 9 October 2006.

8. The determination I have made has approached the issues in this appeal from the perspective of the 2006 Regulations and in particular has applied the definitions contained there, in deciding whether the Appellant is a refugee under the 1951 Geneva Convention. I have also applied the amended Immigration Rules. These have permitted me to consider whether the Appellant is in need of Humanitarian Protection as being at risk of serious harm, as defined in paragraph 339C of the Rules. Finally, I have gone on to consider whether the Appellant is at risk of a violation of her human rights under the provisions of the ECHR.

9. The burden of proof is upon the Appellant. The standard of proof has been defined as a '*reasonable degree of likelihood*', sometimes expressed as 'a reasonable chance' or a '*serious possibility*'. The question is answered by looking at the evidence in the round and assessed at the time of hearing the appeal. I regard the same standard as applying in essence in human rights appeals although sometimes expressed as '*substantial grounds for believing*'. Although the 2006 Regulations make no express reference to the standard of proof in asylum appeals, there is no suggestion that the Regulations or the Directions were intended to introduce a change in either the burden or standard of proof. The amended Rules, however, deal expressly with the standard of proof in deciding whether the Appellant is in need of Humanitarian Protection.

10. Paragraph 339C of the Immigration Rules defines a person eligible for Humanitarian Protection, as a person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of suffering serious harm. It seems to me that this replicates the standard of proof familiar in the former jurisprudence and, by implication, applies the same standard in asylum cases.

11. Accordingly, where below I refer to 'risk' or 'real risk' this is to be understood as an abbreviated way of identifying respectively:

    i. whether on return there is a well-founded fear of being persecuted under the Geneva Convention;

    ii. whether on return there are substantial grounds for believing the person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules; and

    iii. whether on return there are substantial grounds for believing that the person would face a real risk of being exposed to a real risk of treatment contrary to Article 3 of the ECHR.

Summary of his claim:

12. The appellant claims to have arrived in the UK in mid- September 2012. He was granted a visa to the United Kingdom on 28 August 2012 as a Tier 4 general student. On 12 August 2013 he applied for leave to remain as a general student and this was refused with a right of appeal on 12 September 2013. The appellant appealed the decision on 20 September 2013 and the appeal was allowed on 15 September 2014. The refusal was re-considered, and he was granted leave to remain as a general student on 23 October 2014 which was to expire on 29 August 2016.

13. On 5 October 2015 he made a claim for asylum. It was stated that he had moved to live with his brother and his brother's friend (hereinafter referred to as "F") in 2012 in United Kingdom and that he started practising Islam and that they provided him with information about the Salafi faith and that he attended the mosque three times per week when he lived with F. He remained living there for a period of less than two months having left the property in early 2013. He did not have any contact with him thereafter.

14. In 2013 his brother's friend F returned to Uzbekistan. According to his witness statement, he claimed that his problems began when he began to practice Islam in the UK. He stated that he was not aware that the government spied on people in the UK and monitored their activities until he received information that F was arrested and imprisoned. He stated that when F returned, he was detained, and it was claimed that literature on his computer was found and details of others in the UK who were being trained.

15. In June or July 2014, the appellant's brother informed him that F had been arrested on account of his practice of the Salafi religion.

16. In June or July 2014, the authorities in Uzbekistan began looking for the appellant's brother. In March 2014, they sentenced him in his absence and the appellant did not know what had been convicted of or how long he had been sentenced to. He could give no details in his asylum interview which took place in January 2016.

17. In August 2015 the appellant's mother permanently left the country.

18. In September 2015 it is claimed that the authorities in Uzbekistan began visiting his family home and asked where the appellant was and told his family that he had to return. They visited the home every three months. The appellant was asked in interview about what his parents had told him about the visits made by the authorities. It was stated by him that his father could not give him details because the authorities put a recording device near the computer and would check the device to see if his parents were giving him information (see AIR questions 164, 173 and witness statement paragraphs 6-7).

19. In March 2015 the appellant claims that he applied to renew his passport and exit visa at the Embassy but whilst they renewed his passport in May 2015 they refused his exit visa in September 2015. He stated that the embassy told him to go back to Uzbekistan to get it renewed and that this was "a trap" (see paragraph 8 of witness statement).

20. Following this, the appellant stated that a spy had contacted his brother and had asked questions about him and that this person had asked his brother to work for them and spy on nationals in the UK and that this showed that they were on a watchlist (paragraph 8 of witness statement).

21. On 5 October 2015 the appellant claimed asylum and was interviewed on 26 January 2016. In 2016, the appellant's father permanently left Uzbekistan.

22. In August 2014 the appellant's brother (hereinafter referred to as "B") made a claim for asylum. He provided to the respondent copies of court documents dated March 2014 (exhibited in the respondent's bundle at E40) to demonstrate that he would be at risk on return. Those documents referenced to his religious beliefs and that he was a follower of the "Salafi" movement and that he was charged under the criminal code. In his witness statement he made referenced to having been charged and convicted in absentia (page 10). He also made reference to F and that he had been convicted and jailed for having religious material and that he had given names of different people involved including himself. He stated that as his brother was living with him and the government would be aware of that fact and will be at risk on return. In his statement he made reference to being contacted "recently" by an agent from the authorities asking him to spy for them (see paragraph 3 of witness statement at page 3).

23. B was granted asylum on 4 January 2018.

24. Since the appellant has been in the United Kingdom, he claims to have practised the Salafi School of Islam and has been a regular attendance of the local mosque. In support of his claim, the chairman of his local mosque and cultural society provided a letter (page 22 and undated) and a witness statement (p3B) which he provided support for the appellants claim to be involved in the practice of Salafi Islam in the UK.

The decision letter of the respondent:

25. In a decision letter of 2nd May 2018, the respondent refused the appellant's protection claim. In relation to his claimed conversion to Salafi Islam, it was considered that he had failed to provide a reasonable explanation for his interest in the religion and that his responses in the interview were vague and lacking in detail given the significance of the event in his life. It was further considered that his responses in interview regarding the core belief of the faith were vague and lacking in detail and that whilst he was able to provide basic information about the praying practices of the Salafi this was only after being prompted for further information. It was considered internally inconsistent than given the importance the religion places on praying that the

appellant could only provide limited information on how he prayed. It was also considered that his responses in an interview failed to demonstrate an understanding of the views of the Salafi and that the account given as to the differences between the religions was inconsistent with the external information. The appellant did not know if the Salafi were linked to any extremist groups nor able to provide names of any notable Salafi. It was considered that his account was inconsistent with the external information which showed that Salafi jihadism had been linked to certain groups. Whilst it was accepted that he was able to provide some basic knowledge of the Islamic faith, it was considered that his account of conversion to Salafism was internally inconsistent, vague and lacking in detail and inconsistent with country information on the religion.

26. The respondent also did not accept that he was wanted by the authorities in Uzbekistan because of his religion. The respondent considered that the knowledge of his brother and his friend's situation in Uzbekistan was vague and lacking in detail. The respondent considered the documents supplied relating to his brother's problems in Uzbekistan noted that they had previously been assessed as genuine but that they did not mention the applicant and did not relate directly to his asylum claim the little weight was placed on them. It was also considered that his account was speculative and that he'd failed to reasonably demonstrate that the authorities were interested in him due to his religious beliefs.

27. As to assessment of risk on return, it was not accepted that he converted to Salafism or that he was wanted by the authorities. Consideration was given to whether he would be at risk on return due to his brother's conviction in his absence by reference to the country materials which was cited. It was noted that he claimed the authorities began to look him in September 2015 which was 18 months after his brother was convicted in Uzbekistan. He was also unaware if his other brother in Uzbekistan had any problems with the authorities. But it was considered that in the light of the delay between his brother's conviction and in the authorities' interest in him, it failed to demonstrate that there was a clear link between the two events. Furthermore, he failed to demonstrate that the authorities were putting pressure on the family in order to locate him based on the information that the police attended the house every three months which was not in line with the claimed treatment families of accused Salafi's face. It was therefore considered that he would not be at risk on return due to his religion or to his brother's conviction.

Submissions of the advocates:

28. Mr Tufan on behalf of the respondent relied upon the decision letter summarised above. He submitted that in terms of his religion, the appellant could not be described as a member of an extremist organisation but as a practising Muslim. He referred the Tribunal to his interview in January 2016 in which the appellant was not aware of the basic fundamental tenants of Islam, as recorded in the decision letter. He submitted that whilst there was no reason to doubt his attendance at the local mosque as evidenced by the witness, he would be considered an ordinary Sunni Muslim.

29. As to whether the appellant had any profile that would place him at risk on return, he submitted that the Secretary of State accepted that B was associated with F and that he had been granted asylum on the basis of the documentation that had been provided. However, there was no risk to the appellant as a family member given that his brother remained in Uzbekistan and no interest had been shown in him.

30. The evidence did not demonstrate that the absence of an exit visa would lead to the appellant being at any risk of harm (see the country guidance decision of LM).

31. As to the evidence given by the appellant's brother in the form of text messages, the evidence was unreliable and not credible. In particular, it was not credible that the authorities would have chosen to use the method of text messages rather than using a telephone call which could not be kept or recorded. Nor was it credible that the B would provide voluntarily details of the appellant including his telephone number.

32. By reference to the background evidence in the country materials, Mr Tufan submitted that the most recent International Religious Freedom Report (dated 2017) made reference to 93% of the population as Muslim and that whilst there were issues that related to those who held extremist views, the appellant did not fall into that category. The recent evidence highlighted a number of positive changes in the country which related to the practice of religion and that the appellant would be able to practice his religion unhindered upon return. He submitted that it was not reasonably likely that the appellant would be on any "watchlist" and that there would be no risk on return on the particular facts of his case.

33. Mr Slatter had provided a full skeleton argument set out in the papers at D1-10. In addition, he made the following oral submissions. He submitted that the appellant was a genuine adherent to Salafi Islam and that whilst issues had been raised as to the level of his knowledge, at that time he did not claim to be as deeply involved. However, applying the principles set out in the case of Dorodian, the leader of the mosque attended, and his evidence was unchallenged. Therefore, it had been established that he followed Salafi Islam.

34. It was submitted that there was evidence of a clear interest in the appellant by the authorities shown by the evidence of the appellant's brother (B) in the form of the recorded chat messages and the evidence from his parents. Furthermore, the appellant's account of the refusal of his exit visa raised the inference that the authorities were aware of his profile.

35. He submitted that he did not seek to go behind the CG decision of LM but that the point he relied upon was set out paragraph 18 of the skeleton argument and that the appellant was likely to be on a "watch list". He relied upon the references of the skeleton argument to the country materials and that the appellant, having been out of the country for an extended period would create a suspicion and a real risk of guilt by association in relation to his brother. He made reference to the ECHR decisions as to systemic ill-treatment of returnees and that the recent evidence had not changed in this respect.

36. Consequently, he submitted paragraph 94 of LM (as cited) was still relevant in determining risk on return and that if at risk of being detained even for a short period this would lead to the appellant being at risk are prohibited ill-treatment for a Convention reason.

37. In the alternative, he had demonstrated to be a genuine adherent to Salafi Islam and given the respondent's own evidence as to how the religion is viewed, this would give rise to a risk on return. He relied upon the matters set out in the skeleton argument in this respect.

Findings of fact:

38. In reaching my conclusions on the credibility of the appellant and the witnesses I have taken into account the decision in **HK v Secretary of State for the Home Department** [2006] EWCA Civ 1037 case at [28]-[30] where Neuberger LJ stated:

> "28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).
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> 29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding Tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:
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> > 'In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability."
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> 30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala -v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account *merely* on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to

> emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear implausible if judged by...Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background".

39. The Upper Tribunal in KB & AH (credibility-structured approach) Pakistan [2017] UKUT 491 (IAC) stated at paragraph 29 ". Reflecting much the same caution, paragraph 5.6.4 of this Home Office Instruction invokes, inter alia, what was said in **Y v Secretary of State [2006] EWCA Civ 1223**:

> "[I]n [**Y**] the Court of Appeal stated that in regarding an account as incredible the decision-maker must take care not to do so merely because it would not be plausible if it had happened in the UK. Again, underlying factors may well lead to behaviour and responses on the part of the claimant which run counter to what would be expected."

40. The reference by Neuberger LJ at [28] of **HK** to the need to consider factors related to plausibility along with "other familiar factors... such as consistency" is also illustrative of the need to avoid basing credibility assessment on just one indicator. We would add that even when focusing just on plausibility, it is not a concept with clear edges. Not only may there be degrees of (im)plausibility, but sometimes an aspect of an account that may be implausible in one respect may be plausible in another."

41. The basis of the appellant's claim is that he is of interest to the authorities. This arises in the following way; firstly, as a result of his relationship to his brother, secondly ,as a result of his interest in Salafi Islam supported by the written evidence of his parents (who state that the authorities had visited their home and asked them about his whereabouts) and thirdly, the evidence of his brother who claimed that there has been interest shown in the appellant supported by text chats from an agent of the authorities.

42. In addition, the appellant relies upon his conversion to Salafi Islam (the "HJ(Iran)" argument set out paragraph 7 of the skeleton argument).

43. I have had the advantage of hearing the oral evidence of the appellant and his brother as to the claimed events and have also had the opportunity to read the written documentation which includes country materials. Having done so, I have found the evidence of both the appellant and his brother and that of his parents to been inconsistent and not credible in a number of important aspects which I shall set out in my analysis of the evidence below.

44. The core of the appellant's claim is that on arrival to the UK he stayed with his brother B and a friend known as "F" who practices Salafi Islam. It is common ground that the appellant lived with F for a short period of two months having left the property in or about early 2013 and has had no further contact with him. According to the appellant's account, F returned to Uzbekistan on a date in 2013 and was later arrested by the authorities on account of his religion and being suspected of being linked to religious extremism having had literature found on his computer. It is asserted that he gave the name of others involved including the appellant's brother.

45. The appellant was interviewed in relation to his claim in January 2016 and was asked a number of questions about F, and his arrest and the surrounding circumstances and his knowledge of events. It is clear from reading the interview that the appellant was not able to give details of what had happened and gave as an explanation that he did not know because his parents could not say anything about this to him on Skype as a recording device had been placed on their computer (see Q139;AIR). He claimed that his father had held up a piece of paper on Skype to tell the appellant of the authorities' adverse interest but could give no specific detail.

46. A number of points arise from this evidence. First of all, I am satisfied that there is no credible explanation as to why his father could not have held up written information to communicate the appellant the circumstances surrounding the arrest of F or at any time thereafter to provide details of why there was an adverse interest in the appellant.

47. Furthermore, the account the appellant gave in his interview in January 2016 which demonstrates that the appellant was unable to give any real detail as to what had happened in Uzbekistan, is undermined by the contents of the written evidence of his father. In that witness statement his father claims to have sent the appellants mother to the UK in December 2014 to "explain everything in detail" to the appellant's brother. It is not credible that if the appellant's mother knew all the details of what happened in Uzbekistan with the authorities and had gone to the UK with the purpose of explaining everything "in detail" that she or the appellant's brother would not have told the appellant of details of everything that had occurred. The appellant's evidence was that he had spent time with his mother between December 2014 – March 2015 when she visited the UK and therefore there was sufficient opportunity for that information to have been provided to him. There is no credible explanation for the lack of detail that he was able to give in his substantive interview which took place in January 2016.

48. The appellant stated in his interview that the Uzbek authorities were looking for his brother in June/July 2014. The documents relied on by his brother in his asylum claim refers to a warrant being issued in March 2014. Against that factual background and in the light of the country materials, I do not find credible that the

authorities would have permitted her exit to the UK as claimed. By this stage, the authorities had an executed warrant against the appellant's brother and it was thought that he was in the UK. The country materials make reference to the issue of exit visas as a way in which the freedom of travel of its citizens is curtailed (see paragraph 19: page 186 AB), and that exit visas have been denied on "politically motivated grounds" to prevent people leaving the country to seek asylum and used as a means of control. The material refers to the denial of exit visas to relatives of dissidents abroad (see paragraph 29: page 188AB). However, the appellant's mother was able to leave the country without any difficulty in December 2014 despite the outstanding warrant issued against the appellant's brother.

49. Furthermore, the country materials refer to the law enforcement agencies harassing or questioning people who return from abroad and that the police require returning travellers, especially women, to undergo interview at police stations to explain where they have travelled and to justify the purpose of their trip (see paragraph 20: page 186 AB).

50. There is no reference in the evidence from either the appellant, his brother or from their parents themselves that she was either prevented from leaving the country or that on return she was questioned about her son or the appellant in the way referred to in the country materials. Whilst the appellant stated in his oral evidence that she had been given a Visa earlier in 2014, this does not satisfactorily explain why she was still able to leave against the factual background claimed and there being a warrant executed against him or why she had not been questioned following her return.

51. The appellant's account is that the authorities began visiting the home/raiding the home in 2015 and the visits directly concerned the appellant himself. The evidence as to when this occurred has not been consistent. His account in evidence was that the authorities began visiting the house/raiding the house after "a few months of her return, approximately April/May 2015". In his written evidence, the appellant claims that the visit happened in September 2015 (see AIR and written evidence). However, in the screening interview at B7, it records his reply that the authorities were looking for him in June/July 2014.

52. Notwithstanding the adverse material held by the authorities in respect of the appellant's family members, it is stated that the appellant's mother was able to permanently leave the country to live abroad in October 2015. I have assessed the likelihood of this occurring against the account of the appellant and in the light of the country materials. Having done so I have reached the conclusion that her ability to leave the country permanently at that time if the appellant was of adverse interest, is not credible. At that time, the appellant's brother had a warrant outstanding in court proceedings which had been commenced against him in absentia. According to the appellant's evidence the authorities had gone to the extent of placing a device on or near the computer to monitor the contact with her son, yet the appellant's mother was able to exit country permanently with no difficulties. It is not suggested in the evidence that there were any difficulties in her leaving or that any steps were taken to either prevent her leaving or even to further question her. When asked questions

in evidence as to why there were no steps taken to stop her, the applicant stated "she was going to see her son and she was an old woman (age 62). In my judgement, that does not credible explain how she was able to leave with no interest shown in her. According to the evidence the appellant's father left the country permanently in early 2016. In accordance with the materials, he would have to have applied for an exit Visa. No explanation is been given as to how he was able to obtain a Visa to leave the country permanently against the factual background that has been given. To obtain a Visa for the country concerned is not a quick process and there has been no explanation as to what evidence was given in support of permanent residence out of the country or what evidence was provided in support of this application.

53. A further inconsistency in the evidence relates to the interest shown in the family members. The appellant's parents' evidence is that the security services were visiting "once a week" whereas the evidence of the appellant was that they were visiting "every three months." Given the importance of this issue, it is reasonable to expect the evidence to have been consistent as to the frequency of the visits.

54. The appellant has a brother remaining in Uzbekistan. He has not been subject to any imprisonment, or any adverse treatment. The evidence given by the appellant is that his brother had previously worked for the government but had lost his job due to the arrest of his sibling and he had been without employment since then. When asked to explain why he had not been treated in the same way as the appellant, the appellant stated that he was not targeted because "he was one of them". However, he has not been employed by the government for the last four years. There is no evidence before the Tribunal that there has been any adverse interest shown in him beyond that claimed. In oral evidence and cross-examination, the appellant's brother said that the authorities had no interest in him because "he is not a threat to them". However, that runs counter to the country materials which refers to interest shown in family members of those suspected of militant or extremist religious views.

55. I have considered the other evidence that has been advanced on behalf of the appellant to demonstrate that he is of interest to the authorities. The appellant relies upon events that he claims took place at the embassy. He stated that he had to change his passport by the end of 2015 to a biometric passport, so he attended at the embassy. According to his evidence (see witness statement: paragraph 8) in March 2015 he renewed his passport, but the authorities refused is exit visa in September 2015. He claims that he was told by them that he had to return to his country of nationality to get this renewed and that this was to "trap him."

56. I have set that account against the country materials before the Tribunal. There is no dispute that the appellant did have a passport issued on xxxxx 2015 and that it does not have an exit visa in it. The country materials refer to the exit Visa system. By decree of the government No 8 of January 6th 1995 a system was established for the departure of citizens travelling abroad and that was they have the right to travel abroad for private and public affairs, residence, as tourists, for work or for medical treatment, they must obtain permission which is valid for only two years. Permission is given in the form of an authorisation sticker in the passport. This is a practice

inherited from the former USSR. Exit permits can be renewed at the Uzbek Embassy in the third country where an Uzbek citizen is living.

57. It is not been argued by Mr Slatter on behalf of the appellant that the CG of LM (returnees – expired exit permit) Uzbekistan CG [2012] UK UT00390, should not be followed or that the evidence that is set out in that decision is undermined by any new evidence.

58. In LM (returnees – expired exit permit) Uzbekistan CG [2012] UK UT00390, the country guidance issue identified in that case, was 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. On this issue the Tribunal reached the conclusion that current country evidence did not. The conclusions reached were set out as follows:

(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.

59. The point made on his behalf is that he was being told to return to obtain an exit visa however, the country materials demonstrate that he would not face any penalty for returning without a renewed exit Visa. Whilst there is no exit Visa in the new passport, there is no evidence to support his account that he went to the embassy to ask for a visa or that it was in fact refused. No copy applications have been provided. Furthermore, no explanation has been advanced as to why he chose to submit an application for a new passport at the time he did. The passport he held prior to this was not due to expire until March 2019. The country materials also make reference to the country introducing new fully biometric passport in 2011 (see page 187;AB), which is inconsistent with the appellant's account that he was told he had to renew his passport for a biometric passport in 2015. Consequently, while the passport does not have an exit Visa in it, I am not satisfied that the appellant has established the reason is because the authorities asked him to return to obtain one.

60. The other evidence relied upon by the appellant is provided by the appellant's brother. In the appellant's witness statement he refers to the following information:-

"recently some spy has contacted my brother and is asking about me. He is also asked my brother to watch for them and spy on Uzbek people in the UK but my brother has refused. It shows that we are on a watch list."

61. I have considered the evidence in the form of written text messages or "chats". In his witness statement dated 6 June 2018 the appellant's brother states:" recently some agent from Secret Service contacted me and asked me to spy for the Uzbek government. The asked for brother's phone number and asked me if brother is applying for settlement in the UK. He has not contacted my brother, but I think he will contact my brother soon. I've enclosed a copy of some of the phone chat here. I can show all of the chat if needed".

62. In June 2018 a document was provided exhibiting the "chat/test messages" (see p.12-16 bundle A). The content of the messages gives the caller's name and occupation; asks him about his brother -if he is married and studying and what course and is he returning or applied for citizenship and asks for his telephone number; Q also asked "are you regularly going to mosque" whenever I have time I go there. Who else do you know who goes (other Uzbeks'). Conversation then ends.

63. The same document was provided by letter dated 2nd of October 2018 from A's solicitors. However, in bundle for hearing further phone chats are set out at p. 41 – 62. This evidence shows that the chat/conversations are recorded in December 2017.

64. I have carefully considered the written evidence on the oral evidence in the context of the decision of Tanveer Ahmed to assess the reliability of that evidence and the weight that I can place upon it.

65. I draw the following conclusions from that evidence in my assessment of the evidence.

i) There has been no supporting evidence concerning the telephone number concerned or from the phone that was used by the appellant's brother.
ii) The chats now set out are different from those originally disclosed. For example, at page 57 there are conversations from the man telling A's brother that he is wanted and asking him if he claimed political asylum, asking him if he is a member of the Salafi movement (page 58) reference also to contacting people who wanted, can you continue communications with us? A's brother gives private details about his occupation. One of the chats (page 59) which is referring to A (is he returning finishing his studies or applying for citizenship) is not the same chat in terms of content as previously disclosed in bundle A as the same chat adds in different questions- is M…. also in London? Who is he? From Dxxxxxx ; who taught you religion .. ?" Therefore, the chats now provided are not the same in content/order as provided previously and no reasons are given as to why they are different in content if they are said to be the same chat messages.
iii) I do not find it credible that someone who had been convicted in absentia would answer calls on a mobile phone in December 2017. At this stage both parents had left Uzbekistan and there was no reason to answer the phone knowing that his brother remained there.
iv) Nor is it credible that he would give an unknown person the appellant's telephone number and personal details. It is recorded in the evidence given previously before the FTT J that his brother had given the information because the authorities already were in possession of it. However, if that were true, and they already had the details they could have contacted the appellant directly. In fact, there is no evidence from any source that the appellant has ever been contacted by anyone either before or since these text chats have taken place.
v) The appellant has not been convicted of any crime in absentia and is not been referred to in any of the documents provided.
vi) More recent chat messages demonstrate the appellant's brother has given information over the phone about his own personal circumstances and his family. I do not find that it is credible or easily likely that he would have done so having obtained a grant of asylum.
vii) I do not find credible that the other party concerned would have used a form of text/chat messages which can be permanently kept by way of a screenshot when it was open to them to simply use the telephone.
viii) In his oral evidence, the appellant's brother was asked in cross-examination why they would send text messages when a record could be kept. The reply was "they are stupid". I do not consider that this is a plausible or credible explanation for the use of this method by those he claims are involved

in convert behaviour. Nor is it consistent with the previous evidence of the family that the authorities had placed a secret device on or near their computer.

ix) It is also the case that whilst both refer to the text messages demonstrating that they have been asked to be "spies", this is not supported by the content of the messages themselves.

x) In cross-examination when asked why he'd been asked to "spy", B said "they know I am innocent and I was to be freed. If I were really involved why would they free me from accusations? They know I am not guilty, and they are trying to convince me that they will close my case if I help them. They told me they would close my case if I help them.". I observed that there was nothing in the content of the chats to support that claim that they told him that they would "close the case" or otherwise help him.

xi) Furthermore, in his oral evidence B stated that he was still trying to "fight my innocence" and that the authorities had told his lawyer that he needed to return. This came from his oral evidence and there was no reference in any previous written or oral evidence when the appeal was before the FTT J. He claimed that his parents obtained a lawyer in Uzbekistan to clear his name and when asked when this had occurred, he said in March 2014. When asked to explain why his parents had not told him that they'd engaged a lawyer he stated, "I don't know I was in a depression; they said stay there and don't worry." He then volunteered that his father had a prominent role and claimed that his parents had only told him about engaging a lawyer in 2018.

xii) I do not find B's evidence credible or consistent. The evidence advanced by the appellant is that his parents left in 2015 and 2016. There has been no explanation as to why, if they had obtained the services of a lawyer to clear B's name why they would have failed to have informed him until 2018. As they had left well before that time there is no credible reason for the late disclosure of any such evidence. Furthermore, no evidence or reference be made to this when giving an account before the FTTJ.

xiii) Having considered the evidence in the round, I do not find the evidence of B and the text message chats to be reliable credible evidence, consequently I attach no weight to that evidence to demonstrate that the authorities have been in contact with B in the UK. Nor is it credible evidence to support the account that the authorities have an ongoing interest in A.

66. In summary, I am not satisfied that there is credible or reliable evidence to demonstrate to the lower standard of proof that the authorities have shown any interest in this appellant. I do not find the evidence given by the parties to be credible or consistent for the reasons given and in my analysis of the evidence. I do not accept that it is been demonstrated to the lower standard of proof that there has been any link shown between the appellant and F as a result of the authorities either becoming aware that they were in contact with each other or on the basis that they are aware that A has become interested in the practice of Salafi Islam. The appellant lived with F for a very short period of time namely two months. None of the written documents make reference to the appellant by name or otherwise and there is no evidence that he has been convicted in absentia. As the interview records set out when questioned

in 2016, three years after he claimed to have lived with F, his answers concerning his practice of Salafi Islam were vague and lacking in detail. His responses demonstrated he was only able to provide basic information about the praying practices and only after being prompted further information (see paragraphs 24 and 25 of the decision letter). He was unable to say if the Salafi sect linked to any other groups and unable to provide the names of any notable members (see paragraph 27 of the decision letter). The reason given for his lack of knowledge and interview set out page 5 of his witness statement and his oral evidence. It claimed that he was "still learning" at the time of the interview and that he had not been on any proper "Islamic course or education" and was "learning the basics". There is also no evidence that anyone knew of his religion at that time.

67. It is common ground that whilst the claim for asylum was made in October 2015 and he was interviewed in January 2016, he did not receive a decision on the claim made until May 2018. I have therefore had more recent evidence from the appellant and witness called on his behalf attesting to his religion.

68. In the decision of **TF and MA [2018] Scot CSIH 58**, was concerned, it was made clear that paragraph 59 that the evidence of church ministers in a conversion case is "a certain type of expert evidence" and this is "extra evidence based on personal observation or sensation" (paragraph 59). The decisionmaker's approach to such evidence

> "should not start with any predisposition to reject the evidence because it does not fit in with some a priori view formed as to the credibility of the Appellant. The evidence should be considered on its merits and without any preconception" (paragraph 15).

69. Second, where a Tribunal might have formed that the Appellant has been dishonest in certain aspects of the asylum claim", then "it is legitimate for the Tribunal to regard with suspicion evidence from church witnesses which is based entirely upon what the Appellant has told them". However, this is not the case "when the evidence from the church witnesses is based in substantial part on their observations on the Appellant when he has been engaging with the activities of the church" (paragraph 60).

70. There is no evidence in the appellant's bundle which makes any reference to Salafi Islam or its practice. Nor is there any reference to that form of Islam in the country materials or how the authorities view that faith. Much of the country materials that relate to freedom of religion relate to Jehovah's Witnesses, the Jewish community, unregistered Christian groups members of the sheer community, Pentecostals evangelical Baptists and Seventh-day Adventists' (see 2017 international religious freedom report). However, in the decision letter at paragraph 27 refers to evidence of them being linked to groups such as IS.

71. There is evidence from his supporting witness as set out in an undated letter (see page 22AB) and in a more recent witness statement. In his oral evidence in chief he confirmed that the appellant had continued to practice Salafi Islam. In

cross-examination, Mr Tufan and behalf of the respondent asked a number of questions concerning the differences between the practice of Salafi Islam and "mainstream Islam". He accepted that the mosque attended by the appellant which he was concerned was not involved in any extremist organisations nor was the appellant. It was not suggested by way of any examples given by either the appellant or the witness called that he had been involved in any form of proselytising or encouraging others to follow the faith that was simply involved in cultural events which involved sporting activities.

72. The witness refers to knowing the appellant's brother for "five years" and following the "Salafi school of thought". No further details were given as to either the general practice of Salafi Islam or importantly how the appellant follows the "Salafi school of thought". He was asked a number of questions in cross-examination and any differences and all he was able to advance was that they are asked to pray five times per day and engage with the community. He gave as an example that they had a cultural event where all religions came to the mosque and that the appellant taught martial arts and took place in sporting activities. He said that "this is the difference for us we believe in rituals and want to affect change."

73. Whilst I am not satisfied that at the time of his interview the appellant could properly be described as someone who converted to Salafism in the way claimed, having considered the evidence in its totality and that three years have elapsed since that interview, I accept that he now practices that faith.

Assessment of risk on return:

74. I have set out my findings of fact in my assessment of the evidence as a whole. It is against that background that I turn to consider the issue of risk on return. For the reasons given, I am not satisfied that the evidence relied upon by the appellant is credible, plausible or consistent to support his account that the authorities have an ongoing adverse interest in him. I have placed no weight on the evidence contained in the supporting written documents from his parents nor on the evidence of the appellant's brother as to interest shown in him whilst in the United Kingdom.

75. It is a matter of fact that the appellant's brother has been granted asylum and it follows that the documentary evidence submitted has been accepted by the UK authorities. Whilst that might be so, it does not necessarily follow that B has given reliable evidence concerning the details in relation to his brothers claim. Notwithstanding my adverse findings on credibility, I have to consider whether there is a reasonable degree of likelihood that the appellant would be detained on return whether by way of questioning or otherwise on the basis of his relationship with his brother. It is submitted and behalf of the appellant that the risk exists irrespective of any non-acceptance that the state authorities have shown interest in the appellant or that he has converted to Salafi Islam.

76. Mr Tufan submits that there is no risk on return on the basis that his brother remains there and that a family connection per se will not lead the authorities to have any adverse interest in him. However, it is argued on behalf of the

appellant that there is reference to "watch lists" in existence, in the CG decision of OM and also material set out in the respondent's bundle at D37 which expressly makes reference to such lists and the risk arising from them.

77. The Upper Tribunal in the decision of OM (returning citizens, minorities, religion) Uzbekistan CG [2007] UKAIT 00045 (23 May 2007) considered the risk on return in the context of the appellant having overstayed her exit visa and in addition to having no current passport. The question posed was whether she would come under suspicion having been away for so long? On the particular facts of that appellant, she had left the country in 1996 and therefore had been absent for a period of in excess of 11 years at the time of the hearing in 2007. Notwithstanding the length of her absence, the Tribunal concluded that there was no evidence in support of that assertion save from evidence emanating from Germany relating to two deportees. No evidence had been provided of their particular circumstances and thus the Tribunal could place no weight on that material. The appellant did not succeed and either the Refugee Convention on human rights grounds.

78. I take into account that the decision was promulgated in 2007 is therefore of some age and since that date there has been a further CG decision and updated country materials. In the decision of LM (as cited above), the Upper Tribunal confirmed that there are cases of those who have been charged with illegal exit and therefore detained but that in their cases it involved a pre-existing interest by the authorities, or being associated with the events in Andijan in 2005, in association with Islamic militant activity, or travel to countries other than that authorised in the exit visa or other distinguishing features. It therefore depends on the profile of the person concerned. On the findings of fact made pertaining to this particular appellant, he would not be associated with the events in 2005 nor has he travelled to countries other than that authorised in the exit permit. However, whilst I have rejected his account of adverse interest shown in him whilst in the United Kingdom based on the evidence relied upon, it is necessary to consider whether he would still fall within the category of a person who could reasonably be described as being associated with Islamic militant activity or that the authorities would have a pre-existing interest in him as a result of his brother's conviction in absentia.

79. I have therefore considered the most recent country materials relating to this issue that are contained in the appellants bundle and also in the respondent's bundle.

80. The first point made by Mr Slatter is that the appellant is likely to be on a "blacklist" on account of being out of the country for a long period of time. The materials themselves do not indicate what length of time would qualify as a "long period". He relies upon material in the respondent's bundle exhibited at D36-D39 which is in response to an information request dated 20 March 2018. The source of the material is a radio free Europe, radio Liberty report dated 27 November 2016 and makes reference to young men being "among a growing number of citizens thought to be living abroad and blacklisted as extremists by authorities in Uzbekistan, according to police also provided one such district

list to RFE/RL's Uzbek service. It quotes that there is an instruction whereby those who are absent from the country for a long time put on a "wanted list". It is stated that this is a "question of security" and that such people face "immediate arrest on their return". However, it is also quoted that it is "it is all but impossible to verify the claim" but that locals contacted via details on one list and interviewed for the report have expressed concern at their own family members presence on the blacklist. The report makes reference to the history of extremist activity including explosions in the capital in 1999 blamed on the IMU group that pledged allegiance to IS in 2015. It also sites that there is ample evidence that citizens fight alongside the Taliban in Afghanistan and Pakistan and that there is evidence pointing to nationals having joined ISO militants in Syria and Iraq and thus it is insisted that measures are justified in pursuit of security and stability and that "the government has taken tough steps to target religious extremism by arresting and persecuting suspected followers and supporters of radical movements."

81. Whilst the report is dated November 2016, Mr Slatter points to other evidence contained in the country materials which supports existence of such a list. In the respondent's own bundle, there is an extract from the HRW report 2018 which makes reference to the government maintaining a "blacklist" made of a thousand of individuals belonging to unregistered or extremist groups. It makes reference to the authorities in August announcing a reduction of the total number of people on the list from 17,582 to 1352 but that despite the move, thousands of religious believers, religious Muslims to practice their religion outside strict state controls, remain imprisoned on vague charges of extremism.

82. Other evidence is contained in the AI report dated 2017 (p85AB) which makes further reference to the review of charges against people detained on suspicion of possessing banned religious or "extremist" materials. The President also called for people who regretted joining such movements to be "rehabilitated". Mr Slatter points to the paragraph which states that the security forces continue to detain dozens of people including labour migrants returning from abroad (see p85) and at page156AB there is reference to treating unregistered religious activity is a criminal offence and the suspected members of banned Muslim organisations and their relatives have faced arrest and interrogation.

83. At page 171, there is reference to the "preventative register" which had over 17,000 persons on it but that the number has now been reduced as part of the reform measures initiated by the president, to just over 1000. It also refers to June 2017, when the President ordered the review of individual cases of detention of persons in custody and at least 6000 people were removed from the register. The special rapporteur welcomed the removal of those people. It was also encouraging to see that the government embarked on a programme of reintegration into the community of its citizens that had been stigmatised or ostracised for alleged religious extremism. At page 172 at paragraph 67 the circumstances of "religious detainees" is referred to further.

84. I conclude from that evidence that the preventative measures referred to have been in place historically and that many state bodies are able to place

individuals on that preventative register and that particular attention is given to advocates of new strains of Islam (see page 171AB). At its peak the register listed over 17,000 people but the material demonstrates that as part of the reform measures initiated by the President it is been reduced to just over 1000. It is also recorded that there were encouraging signs of change having embarked on a programme of reintegration into the community of those suspected. It is however unclear who is remaining on the list or be likely to be added to it. The evidence relied upon by Mr Slatter at page 186 refers to law enforcement agencies also questioning those who return from abroad and that the Uzbek – German forum refer to having interviewed travellers subjected to interview and inspection where officials interrogated them as to their religious practices.

85. Mr Tufan on behalf of the respondent relies on the 2017 International Religious Freedom Report. He submits that 93% of the population are Muslim and that the present circumstances demonstrate positive changes. At page 7 it is recorded that the government-sponsored Muslim board of Uzbekistan plans to open half a-dozen religious education schools in 2018, that the madrassa granted diplomas are considered now to be equivalent to other diplomas, enabling madrassa graduates to continue to university level education and universities provide higher education religious programmes. At p11 he refers to the material which states "President Mirziyoyev took several steps regarding improving relations with the sunny Muslim community; the government cleared 16,000 persons from security watch list of potential religious extremists; dispatched imams to present to begin a course with the religious prisoners; and lifted sanctions on the day-to-day practice of Islam, including public prayer to youth participation in mosques. A dedicated Islamic prayer room with a separate place was opened at the airport for the first time and the government has also announced plans for such rooms in train stations. The authorities recently allowed major mosques to use loudspeakers for the call to prayer for the first time in more than a decade…. In December 7, the President pardoned 2700 convicts, including 763 "religious prisoners", the largest one-time release of prisons of conscience of the country's history." He refers to page 17, whereby Muslims could openly celebrate Ramadan iftars for the first time in recent memory and according to the NGO Freedom House for the first time in many years, the government allowed all night prayers during Ramadan. He further submits at page 19 further positive changes were outlined in that report.

86. However to balance those points, Mr Slatter identifies other evidence in the report at pages 1,2,4 8 and 9, including the authorities continuation post penalties on individuals worshipping outside unauthorised location and that NGO sources reported the government continued physical abuse of persons arrested and jailed on suspicion of "religious extremism" or participating in underground Islamic activity.

87. Whilst Mr Tufan submits that the appellant would be viewed on return as a Sunni Muslim and at its highest would not be in possession of an exit visa, and that those facts by themselves would not lead to any risk of detention or further

questioning, that is not reflected in the material or the evidence. Nor does it take into account any link that is made to his brother. As Mr Slatter submitted the respondent's own evidence at paragraph 27 of the decision letter makes reference to followers of Salafi Islam as being linked to the extremist groups that are listed at paragraph 27. Therefore, it is reasonably likely that those were suspected of being members of such an un-authorised group would be questioned and detained on return. On the facts of this particular case, the UK authorities have accepted that B has been convicted in absentia and therefore there is a real risk that the appellant is like to be questioned on return as a family member of B and as someone who has been out of the country for an extended period.

88. That being the case, Mr Slatter relies upon paragraph 93 and 94 of CG which states as follows:

"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 , 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."

89. Neither advocate submit that this Tribunal should depart from those findings although I observe that there has been more recent country evidence that refers to a number of positive changes brought in by the government. Therefore, having considered the evidence in its totality, I accept the submission made by Mr Slatter that it is been demonstrated that there is a reasonable likelihood that the appellant upon return would be detained and questioned for having been out of the country for an extended period, due to his family links with B and that during questioning his practice of Salafi Islam would be elicited. On the evidence relied upon by both parties, even detention for short time basis would demonstrate a reasonable likelihood of ill-treatment. I therefore allow the appeal.

Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the decision is set aside.

The decision is remade as follows: the appeal is allowed under the Refugee Convention/Article 3.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed **Upper Tribunal Judge Reeds**

Date: 4/5/2019

Upper Tribunal Judge Reeds