



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13222/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 03 May 2018

Decision & Reasons Promulgated  
On 01 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

RH  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Butler instructed by Birnberg Peirce & Partners  
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Iran, appealed to the First-tier Tribunal against a decision of the Secretary of State of 30<sup>th</sup> November 2017 to refuse his application for asylum in the UK. First-tier Tribunal Judge Oxlade dismissed the Appellant's appeal in a decision dated 2<sup>nd</sup> February 2018. The Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Cruthers on 6<sup>th</sup> March 2018.
2. The background to this appeal is that the Appellant claims that he avoided undertaking compulsory military service in Iran by not completing the forms and that he worked as a bodybuilding trainer until 2012. He says that he was then employed as a bodyguard by the Revolutionary Guard and undertook some voluntary work with the Basij as a cook. He claims that in 2014 he was employed by the Ettela'at Sepah

Intelligence Organisation of the Revolutionary Guard on their arrest squad. He was advised that he had to undertake military service and it was arranged that he would have to undertake training in the Special Forces. He claims that his problems began on 30<sup>th</sup> November 2015 when he and a group of men he had trained with were advised by their senior officer that they, as part of a force of 400, were being posted to Syria in the next 48 hours and on completion of this posting they would have completed their military service. They were told that they would be defending a shrine which is the burial place of the Prophet Mohammad's granddaughter and is a battle ground between Shi'ite and Sunni Muslims. The Appellant claims that he told his colleagues that he refused to take this training because it would be defending something that he did not believe in as he claims that he had ceased believing in Islam around the age of 18. He claims that he eventually agreed to go to Syria on the condition that he saw his family first. He was escorted to his family home but on the way from there he threw himself from the car on the motorway and escaped. He travelled to the Turkish border and travelled onwards to Greece by boat, then to Germany where he claimed asylum and travelled onwards to France where he stayed for three and a half months and arrived in the UK in May 2016 when he claimed asylum.

3. The First-tier Tribunal Judge did not find the Appellant's evidence to be credible or reliable. The judge considered the reports of Professor Saad Jawad and from a stuntman, Jim Dowdall. The judge did not consider the Appellant's claimed method of escape from detention to be credible. The judge was not satisfied as to the Appellant's evidence in relation to his absence of religious belief. The judge considered issues in relation to Section 8 in relation to his journey to the UK. The judge concluded that the Appellant had not satisfied her that the account is credible or that he is at real risk of persecution or breach of his human rights on return to Iran.

### **Error of law**

4. There are four Grounds of Appeal. It is contended in the first ground that the judge made an erroneous approach to credibility. It is noted in the grounds that the judge's reasons for dismissing the appeal centred solely on the Appellant's credibility, treating the Appellant's account of his deferred military service and his reaction to the order to go to fight in Syria as key issues of credibility. It is contended that the judge allowed her own speculative assumptions about individual behaviour and the Iranian state practices to colour her conclusions.
5. There are a number of specific allegations. It is contended that at paragraph 37 the judge appears to misunderstand the background evidence and the facts of the Appellant's case.
6. The Appellant's evidence about military service is contained in his witness statement. At paragraph 2 of his witness statement the Appellant said:

“After I left school, like any other Iranian male, I was due to report for military service but instead of being conscripted straightaway, I just did not complete the form that I received to undertake military service as my father was very ill at the time with a heart condition. I think that because of this I was not on the system for military service and so no-one looked for me. Instead I started working. As I

had been an accomplished athlete growing up, I became a bodybuilding trainer and started selling bodybuilding nutrients”.

At paragraph 3 of his statement he said:

“In 2011 I went on a one and a half month training course run by the branch of the Revolutionary Guard called Ansar Sepah to become a bodyguard. I was not a member of Ansar Sepah or the Revolutionary Guard. In 2012 I obtained employment as a bodyguard. I obtained this work through the person who trained me and he arranged for me to be hired although I had not done my military service. He was on the ‘inside’. He arranged for me to work as a bodyguard for a man ...”.

7. The Appellant went on to say at paragraph 4 of his statement that at the same time he was doing official voluntary work which leads to a partial exemption from military service for a period of time. He said at paragraph 5 that he was offered a job with the Secret Service part of the Ettela’at and became a member of their arrest team and he said “I could do this without doing military service first because I had done over six months’ Basij, although I would still be required to do military service at some stage”. He said at paragraph 6 that he knew that at some time he would have to do his military service and that technically he should have done it when he was 18 and that he knew that once he started military service he would have to spend a few more months at the end effectively as punishment for not having done it at the time he should have done. He said that in the spring of 2015 he was advised by one of his superior officers in the Ettela’at that he should do his military service in order to progress. He said that the usual period was two years but his superior officer arranged that he would have to do just six months because of the training he had done before with Ansar Sepah and Ettela’at Sepah and because of his time in Basij. Although the Appellant says that he expected he would have to do a couple of months extra at the end because he had started late he never found out exactly how much extra, if any, he would have to do believing that he would be told at the end of the six months.
8. The judge considered that the Appellant's evidence was not plausible in light of the background evidence. The judge referred to the Refworld Iran Report which indicates that the length of service depends on the geographical location of the conscript. It also states that the duration of military service ranges from eighteen months in combat and in secure regions to 24 months in government offices. In the middle of paragraph 37 the judge, referring to Refworld and other evidence, said;
 

“...the background evidence...does not admit of a delayed (save for students), tailored, or drastically shorted version (the least being eighteen months). The Appellant has adduced no background evidence to support his case that it is possible to side-step military service without enforcement or payment of fines – by simply not replying to any forms – nor to shorten it below eighteen months by agreement or service within the Basij”.
9. The judge went on to say that none of the evidence “suggested it could be anywhere near as short as six months, none listed the accepted ways of evading (other than paying to delay doing it), or seeking an exemption”. At paragraph 38 the judge went

on to say that she did not find it credible that during checks for his employment with Ettela'at or for his employment as a bodyguard for a minister "which would have inevitably have been made about him - he would be exposed as not having done military service and without having sought an exemption/paid a fine" [38].

10. However, the Appellant's evidence in his witness statement referred to above is that his work with the Basij led to a partial exemption from military service (paragraph 4), that he had been employed as a bodyguard despite having not having yet undertaken military service (paragraph 3), and that, although he was employed by the Secret Service in 2014, he could do this without doing military service first because he had done over six months' Basij although he would still be required to do military service at some stage (paragraph 5).
11. Ms Butler relied on the Country Policy and Information Note (CPIN) on Iran on military service which was referred to in the Home Office reasons for refusal letter. The CPIN sets out that exceptions to military service can be made, inter alia, in circumstances where a man who is the only child in a family; a man who is the only male in the family where his father is over 65 years old; a man who is a sole caretaker for a parent, a minor or ill sibling; and students in second school or university are exempt as long as they are attending classes. It is also stated that exemptions may be possible for those who work in industries vital to the government or military. Ms Butler submitted that the judge failed to take account of the fact that there are a number of deferments and exceptions to military service. She submitted that it is speculative of the judge to conclude that military service would only begin at 18 and that there was no flexibility.
12. Ms Butler submitted that the judge made a material error at paragraph 37 where she referred to there being no evidence that the period of military service could be anywhere near as short as six months. She pointed out that in the reasons for refusal letter the Secretary of State accepted at paragraphs 37 and 39 that the Appellant had claimed to have begun his military service in June 2014 and that by June 2015 he had just six months left to complete.
13. In his submission Mr Nath contended in relation to paragraph 37 that the judge had looked at the background information which noted that there were ways around military service and the judge looked at the circumstances in this case in the context of the background evidence and looking at it in the round the judge concluded that she did not believe that the Appellant had avoided all military service until the stage he agreed to undertake six months' military service. He said that the judge is not saying that it is not possible to do what the Appellant did but the judge considered the background information and evidence and made a finding open to her.
14. There is some merit in Mr Nath's argument in that there are arguably some clear findings in paragraph 37. However, in my view it is difficult to be certain that what appear to be clear findings located among more speculative findings, have not been influenced by those speculative findings. I also accept that the it appears that the judge may have made a material mistake where she stated that the Appellant's case is that the military service to be served was for six months, whereas in fact the case that he

put was that the six months being discussed was an extra period of six months added on to what he had already done.

15. Ms Butler submitted that the judge made a material error at paragraph 40 in relation to the Appellant's claim that he was told that he would have to go to Syria to guard a shrine there. She contended that the judge engaged in speculation as to how the Appellant would have reacted to this news at paragraph 40. She contended that the judge erred in engaging in speculation as to how someone in a different country would have reacted to these events. It was contended in the grounds that the assumptions made by the judge at paragraph 40 are all based on her own conjecture about how unknown people in a non-familiar culture might act.
16. Mr Nath submitted that the finding was open to the judge. He referred to a sentence in the middle of paragraph 40 where the judge said:

“In light of the background evidence, I simply do not find it credible that the Appellant would openly disobey the orders of the CO in this way, nor that the CO could be talked down from requiring his arrest – whether or not the Appellant had previously enjoyed a good relationship with him”.

He submitted that that alone is a clear finding that was open to the judge to make.

17. However, I read that sentence in the context of the entirety of paragraph 40. The judge said:

“It was not the Appellant's case that he just blurted out his instant reaction to the news; rather he went off to find the CO after ten minutes and so this is a considered response in which he could just have said that his father was ill and tried to talk around it”.

The judge went on to say:

“Nor do I find it credible that the Appellant would be explaining to friends in the presence of non-friends who were clearly ‘baying for his blood’ his position – thereby exposing his views (which would be seen as anti-Islam and anti-state) – and who in his friend’s absence tried to hit and threaten him. Nor do I accept that the CO turned a blind eye and would permit him to fight, where he was not committed a cause, in light of the dangers of issuing weapons to someone who had expressed such views”.

18. Whilst I acknowledge that in the middle of that sentence there is a clear finding that the judge did not find it credible that the Appellant would openly disobey the orders of the commanding officer, this is couched amongst speculative reasons for that finding. In these circumstances I cannot be satisfied that the speculative findings did not influence the judge’s conclusion in relation to this part of the Appellant's account.
19. Ms Butler made some criticism of the judge’s treatment of the report of Professor Jawad at paragraph 39. However, in my view there is no error in the judge’s approach to this evidence in that the judge acknowledged that there were some defects with this

evidence including the fact that it was not related specifically to this Appellant and that it did not specifically refer to sources and in any event, the contents of that expert report did not go to the heart of the judge's findings.

20. Ms Butler contended that the judge made material errors in paragraphs 42 and 43 in relation to her consideration of the Appellant's account of his escape from detention. In my view, the judge engaged in speculation at paragraph 42 where she said:

"I do not find it credible that the Appellant – having been sent with bodyguards, so that he could not escape – would be subject to no restraint at all; nor that it was so easily possible for him to cause the doors to be unlocked to release himself, by pressing a button, when there were two other passengers to prevent him leaving".

The judge went on to say:

"Nor, that if he were to use such a desperate measure as to throw himself out of a moving vehicle – but survive because of his training – that he would not be able to say more accurately what speed he was doing. In order to survive such an incident, there would have to be careful consideration of the speed he was doing, the ground conditions, and prepare himself for the fall and then momentum. I do not consider as credible his claim that he was able to do so from a 'wild guess'. The Appellant says that he projected himself out of the vehicle, head first and tumbled, and then went onto the central reservation, which in oral evidence did have a metal barrier down the middle and cemented in. I do not accept as credible his claim that he could do this and not sustain more significant injuries".

21. The judge referred to the report from a stuntman Jim Dowdall at paragraph 43 but raised questions as to the information the stuntman would have had in preparing the report. The Appellant submitted further evidence under a Rule 15(2A) application in advance of the hearing. I admitted that evidence and that evidence contained a further statement from Mr Dowdall to clarify the instructions he had in preparing the report. However, as this was not before her, I have not taken those into account in considering the judge's treatment of the report at paragraph 43.
22. It is clear from reading the report that the stuntman does not appear to have met the Appellant. The judge's conclusions as to the gaps in the instructions to the stuntman were open to her on the basis of the evidence before her. Although the supplementary statement from the stuntman suggests that additional factors were taken into account by him, I must bear in mind that this was not before the judge.
23. Ground 2 contends that the judge erred at paragraph 46 where she noted that the Appellant did not claim asylum in Greece, Germany or France. It is contended that this is based on a material error because the Appellant did in fact claim asylum in Germany. According to the Appellant's witness statement he did claim asylum in Germany but he was taken to a camp and did not want to stay in a camp and left immediately and spent one week travelling to three cities in Germany to find somewhere to stay. He believed he would not be safe in Germany, and then he found a lorry driver to take him to "the Jungle" and he spent three and a half months there.

Whilst the judge may have made an error in concluding that the Appellant had not claimed asylum in Germany it is not in dispute that the Appellant did not remain in Germany and, although he may have claimed asylum there, he did not claim asylum in Greece or France and he did not pursue his asylum claim in Germany. Accordingly it was open to the judge to find that it affects the Appellant's credibility that he failed to claim asylum in the first safe country in which he arrived.

24. The fourth Ground of Appeal contends that the judge failed to show anxious scrutiny in her consideration of the Appellant's appeal. I do not consider that this ground has been made out because the judge has considered all of the evidence before her in some detail and in my view the Appellant has not demonstrated that the judge has failed to consider the Appellant's claim with anxious scrutiny.
25. In conclusion, some of the grounds of appeal have not been made out. However, it is my view that the speculative findings at paragraphs 37, 40 and 42 where the judge engage in speculation as to what the Appellant may have done in particular circumstances, and engaged in an assessment of plausibility, amount to material errors in the judge's approach to the credibility assessment. Further, the mistake of fact at paragraph 37 where the judge misunderstood the Appellant's claim as to the length of military service he was to undertake, amounts to a material error as this matter is central to the Appellant's case. As these material errors go to the heart of the assessment of credibility I consider it appropriate to set the decision aside in its entirety.
26. The nature and extent of the judicial fact finding necessary for the decision in the appeal to be re-made is such that, in light of the Presidential Practice Statements and having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is appropriate to remit the case to the First-tier Tribunal.

### **Notice of Decision**

27. The decision of the First-tier Tribunal Judge contains a material error of law.
28. I set the decision aside.
29. The appeal is remitted to the First-tier Tribunal for hearing afresh.

### **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 or any member of his family. 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  
Deputy Upper Tribunal Judge Grimes

Date: 29<sup>th</sup> May 2018

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there is no fee award.

Signed  
Deputy Upper Tribunal Judge Grimes

Date: 29<sup>th</sup> May 2018