Upper Tribunal
(Immigration and Asylum Chamber) **A**ppeal Number: PA/03383/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 August 2019	**On 23 October 2019**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

A.A.
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. B. Hawkin, Counsel, instructed by Fadiga & Co
For the Respondent: Mr. L. Tarlow, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Stedman ('the Judge'), issued on 20 May 2019 by which the appellant's appeal against the decision of the respondent to refuse to grant him international protection was refused.

© CROWN COPYRIGHT 2019

2. First-tier Tribunal Judge Murray granted the appellant permission to appeal by way of a decision dated 20 June 2019.

3. Consequent to the hearing Mr. Hawkin filed and served a 'Note' seeking to clarify submissions presented. I have received no objection from Mr. Tarlow and therefore have considered the contents of the Note.

Anonymity

4. The Judge made an anonymity order and neither representative before me applied for it to be set aside. Therefore, unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any formal publication thereof shall directly or indirectly identify the appellant or close members of his family. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I re-affirm the direction so as to avoid the likelihood of serious harm arising to the appellant from the contents of his protection claim being made public.

Background

5. The appellant is an Iranian national who was born in 1985 and is presently aged 34. He asserts that he refused to complete military service and when aged around 24 he was arrested by the authorities for such failure and detained for some 15 or 16 days, during which time he was tortured. He states that his father provided funds for his bail and he was released. He then left Iran in 2009 and travelled to the Netherlands where he claimed asylum.

6. He details that he decided to return to Iran in 2010 and travelled through Belgium, France, Italy, Greece and Turkey in order to reach Iran. He states that he did not use an agent and simply travelled across various borders by train. At Q45 of his interview he confirmed that he was not asked to produce any documents on his journey. He further details that having arrived in Rome, he travelled to Italy's border with Greece so as to continue his journey [Q52].

7. The appellant confirms that he experienced no adverse treatment upon his return to Iran until his arrest in 2015 for evading military service, at which point he was detained for 2 or 3 days. His father paid a bribe to secure his release and he left Iran with the assistance of an agent.

8. He details that he arrived in the United Kingdom clandestinely in March 2015 and claimed asylum on 7 April 2015. He was interviewed on 25 February 2019. The respondent refused the application for international protection by way of a decision dated 22 March 2019.

9. The appellant relies upon medical evidence as supporting his claim of possessing a well-founded fear of persecution at the hands of the Iranian authorities: a medico-legal report authored by Dr. Phyllis Turvill MBBS, MRCS, DMJ (clinical), on behalf of the Helen Bamber Foundation, dated 21 November 2018.

Hearing before the First-tier Tribunal

10. The hearing before the Judge took place at Hatton Cross on 8 May 2019. Upon preliminary consideration, the Judge decided to treat the appellant as a vulnerable witness within the terms of the Presidential Guidance Note, No. 2 of 2010: 'Child, vulnerable adult and sensitive appellant guidance'.

11. The Judge found various aspects of the appellant's evidence difficult to reconcile with a genuine claim to fear the Iranian authorities on account of a failure to complete military service. A number of adverse credibility findings were made, and the Judge concluded that the appellant did not possess a genuine fear of persecution for a Convention reason. The appeal was dismissed.

Grounds of Appeal

12. The appellant relies upon seven grounds of appeal dated 3 June 2019. When granting permission to appeal, JFtT Murray made observations as to what she identified to be the core grounds:

> *'The grounds assert that the Judge erred in refusing to adjourn the appeal in view of the fact that the appellant had a pending complaint in relation to the conduct of his asylum interview and in view of the respondent's subsequent acceptance that the decision should be withdrawn; made undue criticisms of the medical evidence that he was not qualified to make; made errors in relation to the assessment of credibility as a result of the treatment of the medical evidence; failed to consider the background evidence properly and failed to make a clear finding on whether the appellant had completed his military service.*
>
> *It is arguable that although the Judge did not have the benefit of the letter from the respondent withdrawing the decision in the appeal prior to promulgation, that this and the treatment of the medical evidence amounted to an error of law rendering the credibility findings unsafe.'*

Decision on Error of Law

13. Mr. Hawkin, the author of the appellant's grounds of appeal, confirmed before me that he relied upon all seven grounds. He was unable to identify which ground or grounds he primarily relied upon, indicating that he would present them in the order as drafted.

Ground 1 – Failure to adjourn hearing

14. On the morning of the hearing before the Judge, the appellant sought an adjournment. The Judge records at [8] -]9]:

> '*Mr. Hawkin also referred me to a complaint raised by the appellant regarding the conduct of his asylum interview, which was said to be 'unprofessional and insensitive' in the light of the appellant's mental health. While the letter did not detail any specific allegations, plainly the appellant was unhappy with the way the interview was carried out. Mr. Hawkin submitted that I might need to adjourn the hearing to await a response from the Secretary of State and, potentially, a reconsideration of the case by him. But, of course, there was no telling when, or even if, a response would ever be forthcoming, or indeed that it would alter the decision made in any way. Mr. Wain noted that this matter had not been raised at a recent case management review hearing.*
>
> *I did not adjourn the hearing. There was no risk that by proceeding the appellant would be deprived of a fair hearing. I would approach the interview with caution and be open to any specific matters the appellant wished to raise in relation to it. No separate issues were raised at the hearing as to the accuracy of the answers recorded at either of the appellant's asylum interviews.'*

15. The case management hearing referred to was a paper hearing conducted by JFtT Grant on 24 April 2019, two weeks before the oral hearing. The appellant's solicitor, when completing a reply form to be considered at the case management hearing, confirmed at [3] that no more time was required for preparation, and at [4] that there were no new matters to be raised. I observe that the complaint was made to the respondent by way of a letter dated 8 April 2019, some 15 days before the reply form was completed. The Judge was therefore reasonably permitted to rely upon the position recently stated to the Tribunal by the appellant's solicitors that the matter was ready to proceed. There was no mention by the solicitors of seeking to adjourn the oral hearing so that the respondent's complaint process could be completed.

16. Mr. Hawkin contends that the Judge failed to take into account the matters raised in the complaint. This argument is unsustainable as it is clear that the Judge had read the document and had expressly stated that he would approach the interview with caution and, indeed, indicated at the outset of the hearing that he would be open to any specific matters of concern the appellant was to raise in relation to the interview. I am satisfied that the Judge was mindful of the overriding objective to deal with cases fairly and justly, as required by rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, and lawfully considered the positions of both parties through the prism of fairness.

He was satisfied that the appellant could address issues of concern before him and there was no requirement to await the respondent's consideration of his complaint. Ultimately, the consideration of evidence provided at an interview, and subsequent findings of fact, can be fairly and lawfully considered by an expert Tribunal.

17. Mr. Hawkin further contends by way of his grounds of appeal, at [4]:

> *'This is all the more relevant, because following the hearing the Secretary of State on 15 May 2019, i.e. prior to the promulgation of the Judge's decision, accepted that in principle his decision dated 22 March 2019 should be withdrawn 'for full reconsideration in light of the information not considered.''*

18. On the morning of the hearing before me Mr. Tarlow made enquiries as to this assertion. I was provided with several documents which confirm that Fadiga & Co wrote a letter to the First-tier Tribunal at Hatton Cross on 17 May 2019 detailing, *inter alia:*

> *'We had previously made a complaint to the Secretary of State in light of the fact that the evidence and further submissions had not been considered by the Secretary of State.*
>
> *In light of this Counsel representing the appellant asked for an adjournment on the day of the hearing, however this was refused by the Judge.*
>
> *We have since received correspondence from the Secretary of State confirming that as the previous evidence submitted was not considered, the decision dated 22 March 2019 will be withdrawn and a new decision will be made within three months and herewith enclose a copy of the correspondence for the Judge's information.'*

19. The appellant's legal representatives therefore informed the Tribunal that the underlying decision had been withdrawn. This reflects correspondence between the respondent and the appellant's solicitors prior to the drafting of the letter, in which I observe that by way of an email from a senior caseworker dated 15 May 2019, sent at 12.11, it is expressly confirmed that '*it IS the intention of the Home Office to withdraw the decision for full reconsideration in light of the information not considered. Are you happy to inform [the] Tribunal … and I will deal with the administration at our end. The intention is to ensure that a decision is completed and served within three months …*'

20. I was informed by Mr Tarlow that ultimately the decision letter of 22 March 2019 was not withdrawn because the caseworker had not been aware that an appeal hearing had been conducted and a decision of a Judge was expected. The Judge cannot be criticised as erring in law for not taking into account a document received before he

promulgated his decision where the contents of that letter are subsequently established to be incorrect.

Ground 2 – Undue criticism of medical evidence

21. Mr. Hawkin complains that at [39] - [50] of his decision the Judge embarked on a lengthy and critical consideration of Dr. Turvill's medical report. It is said that the Judge was unduly critical of the report that had been prepared under great pressure by a hard-pressed charity. It was further asserted that the Judge did not possess the expertise to make such criticisms. My attention was particularly drawn to [42] - [43] and [47] - [48] which follow consideration by the Judge of Dr. Turvill's assessment of scarring upon the appellant's body, his concern as to a failure to mention the age of such scarring and also a simple repetition by Dr. Turvill of the appellant's statement that he was 'hit' in detention:

> *'42. In my judgment these are significant omissions in the report and therefore the weight I can give to the conclusions are far more limited. The appellant's record of S1, as gleaned from his GP notes, is that the scar was caused by a knife injury. No mention of this is made in the report and it damages the appellant's credibility in terms of providing a consistent account. I also have to be careful in giving appropriate weight to a report that fails to date or seek to date an injury and fails to offer an opinion on particular causation. It is wholly unclear therefore how the opinion that the injury to the appellant's chest at S1 is 'highly consistent' with the appellant's attribution (to her) of being hit by 'sticks, gun butts and barrels.' Indeed, I would venture to say that even to the untrained mind, and on a reading alone, the description of the scar 'curved, raised, white scar; (as described at paragraph 40 above) is not compatible with being beaten with hard but blunt instruments, but rather with a sharp object (such as a knife).*
>
> *43. I also have concerns about the psychological examination in which Dr. Turvill concluded that the appellant was suffering from moderate to severe depression and severe post-traumatic stress disorder, based on a CORE assessment. At the same time Dr. Turvill opined that the appellant was fit for interview or questioning in court. To my mind it is difficult to reconcile with a diagnosis of severe post-traumatic stress disorder, at least without some explanation, given that exposure to cues that might resemble or symbolise the traumatic events may well cause psychological distress in an individual with severe PTSD and potentially disturb any treatment program. Neither*

was there any application to limit the scope of cross examination in line with the guidelines for vulnerable witnesses which I would have ordinarily expected to be the case with an individual with that diagnosis.'

...

'47. It appears that the appellant was offered counselling when he first explained his difficulties to his GP and was placed on antidepressants, but there can be no question however that, for the following three years, the dominant problem was his headaches. I find it surprising that, notwithstanding the history given to the GP and the lack of any consultations over this period regarding his mental health, that the appellant had not been referred to a mental health team or indeed for cognitive behaviour therapy or other trauma-based therapy. Indeed, the failure to refer him may itself be viewed either as failure to follow established NICE guidelines or a recognition of his GP that his mental health state may not have been a significant as it is now being suggested or portrayed.

48. In terms of the conclusions of Dr. Turvill's the report itself, and with the greatest respect to her experience, I make the following observations which cumulatively impact upon the weight I give to the report.

- *Firstly, the NICE guidelines do not state that 'all doctors diagnose, if not treat PTSD' (para. 101 of her report. In fact, the NICE guidelines states: '... a primary care physician with appropriate training and experience may be able to confirm the diagnosis. However, in most cases, referral to a mental health specialist with expertise in managing post-traumatic stress disorder is required.'*
- *Secondly, I see no explanation of how Dr. Turvill finds that the appellant meets the diagnosis criteria for ICD10. The psychological examination is extremely brief and the conclusions general and predicated solely on the results of the CORE assessment. The report is completely inadequate in explaining how the appellant meets the diagnostic criteria.*
- *Thirdly, the report fails to make clear that the opinion provided is from a general practitioner and not a specialist. Instead, the report merely appends a biography. A diagnosis of PTSD is normally made by a clinical psychologist or a psychiatrist, which Dr. Turvill is not, and this*

should be far more transparent throughout the report.

- *A clear example of a general opinion can be found at paragraph 114 of the report and demonstrates the danger of a general opinion which is based on research and studies, and not a conclusion based on a clinical assessment of this appellant. The statement made by Dr. Turvill at [114] is essentially this: those with PTSD show increased suicidality; ergo, this appellant's risk of suicide would increase if returned. I place very little weight on this opinion. It is a general opinion which, unless read carefully, gives rise to a picture which, not being clinically justified in this case, may well not be accurate.*

- *Fifthly, Dr. Turvill then suggests (as she is unable to make a referral herself) that the appellant's GP consider 'referral for psychotherapy and any other help such as English lessons, exercise etc.' There is no specific request for cognitive behaviour therapy (CBT), exposure therapy (ET), or trauma-focused psychological treatment, for example eye movements desensitisation and reprocessing (EMDR) which ought to be routinely requested in such cases and especially for those with severe PTSD.'*

22. The general position is the remit of a medical expert is limited to making findings relating to an appellant's physical or psychological condition and establishing whether it is consistent with the claimant's account of events. It is for a judge to assess the appellant's credibility in the light of all the evidence including the medical report: *HH (Ethiopia) v. Secretary of State for the Home Department* [2007] EWCA Civ 306; [2007] Imm. A.R. 563. Ultimately whether an appellant's account of the underlying events is or is not credible and plausible is a question of legal appraisal and a matter for the Tribunal judge, not the expert doctors.

23. The fact that a medical expert is 'hard-pressed' as to time, or is working through a reputable charity, does not lessen a judge's role in assessing credibility.

24. It was not an error for Dr. Turvill to rely upon the appellant's evidence and it is appropriate to observe that a medical report is evidence that is independent of the appellant's evidence, and its independence is not lost even where a medical expert relies heavily on an account given by an appellant. However, inappropriate or uncritical reliance on such evidence alone may reduce the weight that can be attached to it.

25. It is appropriate to recall the observation of the Court of Appeal in <u>*SA (Somalia) v. Secretary of State for the Home Department*</u> [2006] EWCA Civ 1302; [2007] Imm. A.R. 236 that one of the tasks a medical report is tendered to perform is 'to corroborate and/or lend weight to the account of the asylum seeker by a clear statement as to the consistency of old scars found with the history given.' When preparing a report, a medical expert is required to bear in mind that when an advocate wishes to rely on their medical report to support the credibility of an appellant's account, they will be expected to identify what about it affords support to what the appellant has said and which is not dependent on what the appellant has said to the doctor: <u>*HE (DRC, credibility and psychiatric reports) Democratic Republic of Congo*</u> [2004] UKAIT 000321 and <u>*JL (Medical Reports: Credibility: China)*</u> [2013] UKUT 145 (IAC); [2013] Imm. A.R. 727.

26. In this matter, the Judge was entitled to undertake his judicial role and critically assess Dr. Turvill's evidence insofar as it was required for the purpose of his credibility assessment. He was required to consider that the appellant attributed to his GP that a scar was caused by a knife whilst in consultation with Dr. Turvill attributing in the same scar to being beaten by an instrument. This is a significant discrepancy, in circumstances where he makes no allegation of being cut by a knife to Dr. Turvill. I observe that Mr. Hawkin did not seek to assert that the GP records were not contradictory to the appellant's account presented to Dr. Turvill. On the face of the evidence, Mr. Hawkin was correct not to do so. This is the raised white scar (S1) that is 9cm in length and 0.5cm at its widest, that Dr. Turvill considers 'highly consistent' with the appellant's account of being beaten. Whilst she accepts that there may be other medically plausible and possible causes, such as an accidental injury in a road accident or in a fight, she does not specifically address whether it was consistent or highly consistent with being caused by a knife. In such circumstances, when assessing the weight to be given to the medical report, the Judge gave cogent and careful reasons for taking into account an important material difference in accounts given to different medical practitioners: <u>*SS (Sri Lanka) v. Secretary of State for the Home Department*</u> [2012] EWCA Civ 155.

27. As for the Judge's consideration of Dr. Turvill's psychological examination, it is appropriate that at least some weight be given to a GPs regular contact with persons suffering with PTSD. It is well-established that the evidence of an expert witness is not to be rejected lightly: <u>*Karanakaran v. Secretary of State for the Home Department*</u> [2000] Imm AR 271. However, it is appropriate that a judge consider whether a medical practitioner is an expert in a field that will enable him or her to reach an informed conclusion on the issue(s) arising in a particular appeal. A skilled witness must demonstrate to the court that he or she has relevant knowledge and experience to give either factual evidence, which is not based exclusively on personal observation or sensation, or opinion

evidence. Where the skilled witness establishes such knowledge and experience, he or she can draw on the general body of knowledge and understanding of the relevant expertise: _Myers v. The Queen_ [2015] 3 WLR 1145.

28. I observe that Dr. Turvill relies upon some 80% of her patients experiencing depression and having been on the Approved List of Medical Practitioners of the North Thames Health Authority. However, she possesses no medical qualification in psychology and details no specific training in mental health assessment. In the circumstances, the Judge was entitled to assess that Dr. Turvill was not a specialist in this field and therefore could reasonably subject her opinion to close scrutiny to consider whether she was capable of drawing upon a sufficient general body of knowledge and understanding, and in undertaking such assessment he could lawfully expect an adequate explanation as to how the appellant met the diagnostic criteria. Dr. Turvill's psychological assessment runs to six paragraphs of her report of which seven lines specifically relate to the appellant at [104] - [106]:

> *'104. [Mr. A] suffers from anxiety, low mood and reduction of energy. His concentration and libido are reduced. His self-esteem is poor as is his sleep.*
>
> *105. In my clinical opinion, [Mr. A] is suffering from Moderate-to-Severe Depression and this is corroborated by his clinical score of 23 on the CORE2 assessment.*
>
> *106. As he has also recurrent memories of his problems in flashbacks and nightmare, he is also suffering from PTSD. He scored 80 out of a possible 88 on the Impact of Events (revised) scale indicating severe PTSD.'*

29. The Judge's observation that *'the psychological examination is extremely brief and the conclusions general and predicated solely on the results of the CORE assessment. The report is completely inadequate in explaining how the appellant meets the diagnostic criteria'* cannot be criticised in the context of the report, where very limited relevant reasoning is provided.

30. The Judge was also reasonably entitled to take into account as part of his assessment the fact that for some three years, the appellant's primary contact with his GP was in relation to headaches and not depression. This was a factor that could be lawfully relied upon in the credibility assessment and appropriate weight was given to it.

31. Further, the Judge has not strayed into asserting medical expertise as contended by Mr. Hawkin. A judge sitting in an expert Tribunal that regularly considers medical reports concerned with PTSD is capable of identifying issues which he or she may expect to be addressed or evidence that they may wish to consider. Having read the decision, the Judge has not closed his mind to issues. Rather, when making his

assessment, and having reasonable concerns as to elements of the appellant's evidence, he was entitled to draw upon his experience as to evidence that may have aided the appellant but was not present. In all of the circumstances this ground must fail.

Ground 3 – Unlawful undermining of medical evidence

32. This ground is in essence the second limb of Ground 2, with Mr. Hawkin asserting that in [44] - [47] the Judge held unrealistic expectations of what an NHS General Practitioner, as opposed to a doctor like Dr. Turvill with experience of torture and trauma, could do for an asylum seeker, and to have wrongly used those preconceptions to undermine and side-line the medical evidence.

33. The Judge observes at [44] that the appellant's medical history reveals very little in terms of his mental health from 2015 until his consultation with Dr. Turvill in 2018, with any stress he was suffering appearing to relate to his migraines 'which clearly have been a significant, if not debilitating problem at times for him.' The Judge was reasonably entitled to place weight on the fact that the appellant was willing to approach his GP for help and care on health issues and did not raise issues as to his mental health, and inappropriate weight was not placed upon it in the assessment.

34. The Judge notes at [45] that the appellant was referred to an NHS mental health team in August 2018, following a letter from Dr. Turvill to the appellant's GP. The Judge further details there was no discussion with the GP as to anxiety or depression prior to Dr. Turvill's letter. He also records in this paragraph the appellant's explanation to his doctor as to how he sustained a knife wound on his chest. The observations made by the Judge are reasonable in the circumstances.

35. At [46] the Judge notes a review of the appellant's medication by his GP in September 2015 and the prescription of a moderate dose of Mirtazipine. The Judge reasons, 'I find the paucity of any evidence relating to a mental health problem (as distinct from stress caused by his headaches) to be very telling in this case, particularly as the appellant was clearly fully engaged with his GP and made frequent visits over a period of three years'. Such reasons are lawful in circumstances where the medical notes evidence regular contact between the appellant and his GP, the regular receipt of medication, and silence as to the mental health concerns that were raised with Dr. Turvill some 3 years after the appellant first registered with his GP.

36. Whilst the observations at [47] are general in nature they do not undermine the previous findings as to the appellant's interaction with his GP and his silence as to his mental health concerns. The Judge was reasonably entitled to rely upon such silence when assessing the

medical evidence before him. He was not holding 'unrealistic expectations of what an NHS General Practitioner could do for an asylum seeker.' Rather, the Judge lawfully and adversely noted that it was the appellant who was being silent on the issue in circumstances where his GP had proved willing to help him on other medical issues, including his recurrent headaches. In the circumstances, this ground must fail.

Ground 4 – Consequent to grounds 2 and 3, there was a failure to lawfully consider credibility

37. This ground is entirely rooted in the appellant being successful on grounds 2 and 3. He has not been successful as to establishing errors of law as to the Judge's approach to the medical evidence that impacted on the Judge's consideration of credibility and so this ground fails.

Ground 5 – Failure to assess credibility in light of country background material

38. Mr. Hawkin contends that in rejecting the appellant's evidence from [52] onwards of the decision, the Judge clearly failed to evaluate the credibility of the appellant's account, and the risk to him, in light of the country background evidence. It is stated that there was no proper consideration of the current situation in Iran, and specifically military service, at all. Reliance is placed upon the well-known dicta of the Immigration Appeal Tribunal in *Horvath v. Secretary of State for the Home Department* [1999] INLR 7, at [21].

39. Tribunal decisions are not required to slavishly follow a particular form. Whilst the findings were made in the absence of express consideration of objective country evidence, the Judge gave a number of sustainable reasons for finding that the account had not been proved to the requisite standard. In reaching such conclusions the Judge was permitted to rely upon clear inconsistencies in the appellant's account and the limited detail provided on core issues. There is no express challenge to the appellant having been very vague and highly evasive when asked about his brother, [52]; his inconsistency as to the circumstances regarding what he did after receiving a letter telling him to report for service, [53]; the appellant's inability to explain in light of his being so fearful of the authorities the steps he undertook to change his daily activities so as to evade their attention, [53]; as to how he avoided arrest for 5 years when he worked in his father's shop, walked in the streets and frequented shops, [53]; his inability to provide even approximate dates for his first detention, [54]; and his failure to give a coherent answer as to why having travelled to the Netherlands in fear of his life and claimed asylum, with a purported background of serious ill-treatment, he would return to Iran after a few months, [55]. There is no express challenge to the Judge's reasoning as to the latter issue,

'*that fact alone and by itself, is completely at odds with the behaviour of someone in genuine fear of their life.*' I further note that there is no express challenge to the finding at [56] that cumulatively the appellant was able to avoid the interests of the Iranian authorities for some five years, whilst working in his father shop and later living for the most part at the family home.

40. These are adverse findings of fact that are lawfully capable of being made in the absence of country objective material and it was reasonably open for the Judge to determine that they fatally undermined the appellant's claim of possessing a well-founded fear of persecution. As observed by the Judge at [58]:

> '*While I accept that an individual may take certain risks which might potentially expose them to being captured by the authorities in order that they might not entirely relinquish their freedom, I find it highly unlikely that if the appellant did not wish to come to their attention (at least when he went back home in 2010) that he would have returned to his home area, specifically to his family home and have gone to his father's shop where he was previously arrested. Those actions are a far cry from the actions of an individual who is living in fear.*'

41. In such circumstances, this ground fails.

Ground 6 – Failure to make a clear finding as to whether military service had been completed

42. It is appropriate to consider two paragraphs of the decision before embarking upon this ground:

> *32. Mr. Hawking … posited that the respondent's decision had a fault line. It was never suggested that the appellant had actually completed military service. The account was binary: the appellant has either done military service or not. If he had not, then as a matter of background evidence he had evaded the authorities and his claim might succeed. The written evidence was consistent from the outset. This was evidenced, as an example at 2.2 of the screening interview where the applicant stated that he did not have a passport because he had not served in the army. His somewhat 'less than informed answers' underlined the fact that he had not done military service and strengthened his case.'*
>
> *…*
>
> *62. Finally, I should address a point made by Mr. Hawkin when he invited me to embark on a chain of reasoning which would lead inexorably to the conclusion that,*

looking at the way the respondent put the case, or has failed to put the case, the appellant had simply not undertaken military service – a claim that he submitted was consistent. I do not agree that I need to undertake that analysis. As I am unable to rely on the appellant's evidence for the main reasons I have given, I cannot say whether this appellant has completed military service or not. Even applying the lower standard, there is no truthful matter on which I can pin any such conclusion. I do not believe that the appellant has been arrested and detained and tortured by the authorities in Iran. What I do know and I am able to conclude, is that he left Iran on at least one occasion, and quite possibly two occasions, with a view to seeking to remain in another country, and does not wish to return to Iran.'

43. Mr. Hawkin relies upon [27] - [28] of the respondent's decision letter of March 2019 as evidencing the respondent's position that the appellant had never undertaken military service:

'26. *You claim that you were sent a letter informing you that it was time for you to be drafted into the army when you were aged 18 or 19 (AIR 46-47). You were asked if the government makes any public announcements when it is time for the draft to occur (AIR 45). You state 'no, it's not like that because it may be time for me to serve or not others.' External country information sourced in Country Policy and Information Note: Military Service version 1.0 October 2016 (4.5.1) notes that:*

Call-up procedures

ACCORD's COI July 2015 compilation on Iran, citing the Netherlands Ministry of Foreign Affairs (Ministerie van Buitenlandse Zaken, BZ) December 2013 'General Office Report on Iran' reported that:

'... all men, upon reaching the age of 18, are called up as part of their military service duties. They must report to the military authorities within one month after the start of the Iranian calendar year in which they turn 18. Announcements are made via the media (including newspapers, radio and television) calling upon men born in a given year to report to the local conscription bureau.'

27. It is considered that, given this, your account is externally inconsistent. You are asked in (AIR 145) to explain why you were not aware of this, you responded 'even I knew I didn't want to go I didn't want to go and serve in the army.' It is considered that you have failed to explain why you were

> *evidently not aware of this, given the reasonable expectation for you to be aware being an Iranian national. This damages your credibility as an applicant.*

44. Mr. Hawkin contends that the Judge was required to make a clear finding as to whether the appellant had completed his military service, because the refusal to carry out military service was the central issue in the appeal. At the hearing before me he sought to rely upon [26] and [27] of the decision letter as evidencing the respondent's position that actually the appellant had not undertaken military service because he lacked sufficient knowledge about the system.

45. The appellant's evidence before the Tribunal as to the core issues of his claim was entirely rejected. It is not the role of a judge to speculate as to the possible history of the applicant in such circumstances. A Judge is required to consider the individual circumstances of the claim advanced and consider whether a well-founded fear of persecution has been established: *GM, YT and MY (Eritrea) v. Secretary of State for the Home Department* [2008] EWCA Civ 833. The fact that the appellant advanced an unmeritorious application before the respondent, and in doing so gave inadequate answers as to military conscription, does not by itself establish that he has not undertaken military service. His claim was advanced on a specific basis, which has been found to be incredible. His evidence as presented to the respondent in interview has been found to be incredible. He has presented no evidence acceptable to the Judge that could establish his own personal history of having avoided military conscription for some 12 years before his arrival in this country. The fact that the respondent criticises the evidence presented is not by itself sufficient to establish such evidence as being acceptable for judicial consideration. In essence, Mr. Hawkin required the Judge to engage in speculation and for lawful reasons he refused to so proceed. This ground has no merits and must fail.

Ground 7 – Failure to lawfully consider the article 8 claim

46. Mr. Hawkin concisely asserts that the Judge's conclusions at [68] - [69], regarding paragraph 276ADE(1)(bi) and article 8, are fundamentally flawed.

> *'68. The appellant did not argue article 8 at the hearing or any additional arguments on the grounds of his private and family life in the UK. I find that the reasoning in the refusal letter at paragraphs 76 to 90 is comprehensive and sets out the reasons why the appellant cannot meet the requirements of the Immigration Rules or otherwise argue that there are exceptional or very compelling circumstances.*

> *69. Mr. Hawkin said that 276ADE(1)(vi) might apply, but I do not see how, in view of my finding on the protection claim, that the appellant can show that there would be very significant obstacles to his reintegration. I find that the appellant could return to Iran, to his home area and to any family as may remain there, and continue with his life in much the same way as he did up to 2015 when he left for the second time. He is young and in relatively good physical and mental health and would be returning to his own country where he had lived and worked for the majority of his life and where he is familiar with the language and culture. I can see no distinct area, nor was any advanced by his advocate, as would impact on his ability to integrate. There is no risk of a breach of his private life rights.'*

47. It is somewhat unusual for a ground of complaint to be based upon an argument that was not advanced with great vigour at the hearing before the First-tier Tribunal and at the hearing before me Mr. Hawkin accepted that this ground hinged upon my assessment as to the medical consideration. I have found no error of law as to the Judge's consideration of the medical evidence before him, nor as to his rejection of the appellant's claim. Consequently, there is no material error of law in the Judge's consideration of the appellant and very significant obstacles under paragraph 276ADE(1)(vi).

<u>Notice of decision</u>

48. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law. The decision of the First-tier Tribunal is upheld.

49. The anonymity direction is confirmed.

50. The appeal is dismissed.

Signed: D O'Callaghan

Upper Tribunal Judge O'Callaghan

Date: 21 October 2019

<u>**TO THE RESPONDENT**</u>

<u>**FEE AWARD**</u>

No fee was paid and so no award is payable.

Signed: D. O’Callaghan

Upper Tribunal Judge O’Callaghan

Date: 21 October 2019