



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

Appeal Number: PA/12867/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**Heard on 28 February 2019  
Prepared on March 2019**

**On 14 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**SAJAD [B]  
(Anonymity order not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Georget, Counsel

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Iran born on 24 January 1997. He appeals against a decision of Judge of the First-tier Tribunal Buckwell sitting at Taylor House on 6 December 2018 in which the Judge dismissed the Appellant's appeal against the decision of the Respondent dated 19 October 2018. That decision was to refuse the Appellant's application for

international protection and the Appellant's human rights claim under Article 8.

2. The Appellant left Iran in March 2015 travelling to Turkey where he remained for 15 days. He then travelled through Bulgaria, Serbia and Hungary where he was fingerprinted, and an asylum claim was logged on 8 May 2015. He then travelled through Austria, Italy and France before arriving in the United Kingdom clandestinely on 16 June 2015. On 18 June 2015 he sought a grant of immigration leave by way of protection based upon his claim to be a genuine asylum seeker, the refusal of which has given rise to the present proceedings.

### **The Appellant's Case**

3. The Appellant states that he is a Sunni Muslim of Baluch ethnicity. His father was killed by the authorities for smuggling illegal goods, but the Appellant told the Respondent in interview that he had not encountered problems due to any activities of his late father. The authorities had wanted the Appellant to do national service and he had taken money from the authorities agreeing to go to Syria to fight against ISIS. In further representations it was stated that the Appellant had persuaded his local mosque to pay him to fight in Syria against ISIS. The funds received by the Appellant had been used by him to pay the debts of his late father. When the Appellant failed to present himself for national service duties a letter arrived requiring that he present himself to the authorities, the SEPAH. The Appellant had not been in when they called for him at the family home. The Appellant left his home area to travel to the capital, Teheran, in a taxi where he remained for one week before leaving the country.
4. The Respondent did not accept that the Appellant would have received any advance payment for serving his period of military service. The credibility of the Appellant's claim was undermined, according to the Respondent, by operation of section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 because he had passed through a number of safe countries before arriving in the United Kingdom without claiming asylum on the way. The Appellant stated that he had not been able to claim earlier because he was under the control of an agent.

### **The Decision at First Instance**

5. The Judge set out his findings and reasons at [77] to [93] of the determination. He found the credibility of the Appellant to be critical. In return for taking funds a guarantor had to be provided but the Appellant had not attempted to make contact with his guarantor since leaving Iran. There was no evidence beyond the Appellant's own account to support the claim of offering funds to teenagers. The Judge noted at [80] that his attention had not been drawn to any element of the documentation which referred to contracts being offered to any individuals in Iran with

respect to the form of service which the Appellant stated applied to him. Although corroboration was not a requirement the lack of evidence did not assist the Appellant in establishing the veracity of his account. The Appellant's account was not plausible even to the lower standard, the Judge asking rhetorically "why would any such contract have been offered?" Individuals were liable in Iran to undertake a period of national service unless they were in education. The Appellant would not have been liable for national service until his 18<sup>th</sup> birthday on 24 January 2015.

6. The Judge did not accept the documents supplied to the Appellant by his mother from Iran. The documentation referred to the liability of the Appellant in terms of national service, but he would not have been liable for that until January 2015. Yet the documentation appeared to predate the Appellant's 18<sup>th</sup> birthday. The Appellant was clearly an economic migrant. He may well have had family members who were in a position to fund his travels over a relatively lengthy period but that did not establish his claim. The Appellant said he was taken to the United Kingdom because it was a safe country, but he had passed through a number of safe countries on the way and it was somewhat bizarre, in the Judge's view, that an agent would continue to move the Appellant to another country and incur further costs when the Appellant could have claimed at an earlier point.
7. The Judge held that the Appellant had left Iran when he did because he was liable for military service. The Judge did not accept the Appellant's account of a complex journey involving different agents but rather considered that the Appellant's family had paid for the Appellant to be brought to the United Kingdom perhaps to avoid military service but in any event to enable him to have an opportunity to find economic betterment. He also dismissed the asylum appeal and also dismissed the Article 8 appeal but there has been no onward appeal against that latter part of the determination.

### **The Onward Appeal**

8. The Appellant appealed against the decision to dismiss his asylum appeal arguing that the Judge's reasons for finding the Appellant's documents not to be genuine were unsustainable. The reference in the English translation to "military service" could not be seen as being inconsistent with the Appellant's claim that a specific agreement was made to carry out military service in return for payment. The Judge was wrong to conclude that there was no objective evidence of individuals under the age of 18 being put into military service. The Respondent's COI referred to recruitment of children as young as 15. It appeared that the corroborative evidence was rejected because the Tribunal had already rejected the Appellant's account for want of plausibility. The documents were consistent with the Appellant's core claim to have agreed with SEPAH to perform military service in Syria in return for payment and that SEPAH had taken action against the Appellant when he failed to report as

agreed. Had the documents been properly considered it was arguable that the Appellant's claim was reasonably likely to have been accepted as credible.

9. The second argument made in the grounds related to the Tribunal's approach to credibility in general. There was evidence that Sunni Muslims of Baluchi ethnicity had been sent to fight in Syria and individuals would be enticed by payment to do so. There was nothing in the objective evidence which was inconsistent with the Appellant's account. The Judge had not sought to rely on any internal discrepancies or other issues with the Appellant's various accounts given over the course of three separate substantive asylum interviews. The lack of corroboration alone was considered by the Judge to outweigh any such consistency. The Judge had failed to assess the Appellant's claim fairly and applied too high a standard of proof.
10. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Grant-Hutchison on 1 February 2019. In granting permission to appeal she found it arguable that the Judge had misdirected himself in his treatment of the corroborative documentary evidence submitted by the Appellant. This could have made a material difference to the outcome.
11. The Respondent replied to the grant of permission by letter dated 26 February 2019. The letter commented on [50] of the determination in which the Judge had recorded the Appellant's evidence about the date on which the Appellant had signed up for military service in 2014. The Appellant had said that it had not been for military service as such, but he had signed up that year. This was inconsistent with an answer the Appellant had given an interview that he did not know when he had signed up. It was clear that the Judge had assessed all of the evidence before finding that the Appellant was an economic migrant and not a refugee as claimed. The Tribunal had directed itself appropriately.

### **The Hearing Before Me**

12. In consequence of the grant of permission to appeal the matter came before me to determine in the first place where there was a material error of law in the determination such as to cause it to be set aside and the appeal reheard. If there was not, then the decision of the First-tier Tribunal would stand.
13. For the Appellant, counsel argued that the credibility of the Appellant had been rejected by the Judge because he thought it was implausible that a 17-year-old would have been offered a contract for military service by means of a financial inducement. There were documents to support the Appellant's account which the Judge dealt with at [82]. In the Appellant's bundle there had been a letter from SEPAH referring to national service. The Judge had rejected the documents because they predated the

Appellant's 18<sup>th</sup> birthday. It was not right to find that there was no evidence of individuals under 18 being recruited.

14. Counsel argued that the 2<sup>nd</sup> ground was stronger than the first ground, it was that the Judge had approached the issue of credibility the wrong way around. He found the documents not genuine because children were not supposed to be called for military service. It was not permissible to reach a conclusion on credibility ignoring supporting evidence. The Appellant had not had his account fairly determined. He was given money and then he ran away. The Judge rejected the account because he had already rejected that someone of the Appellant's age would be called up for service. Military service whether paid or unpaid was still military service.
15. In reply the Presenting Officer relied on the rule 24 response. The Judge considered the fact that there was no letter from the Appellant's mother as to how the documents had arrived in the United Kingdom. There was no evidence from the Appellant's guarantor in Iran. The Judge had looked at the oral evidence in which the Appellant had said he was not called up for military service. There was no valid evidence before the Judge, what there was a newspaper article but nothing specifically that someone prior to their 18<sup>th</sup> birthday would be in receipt of funds to fight in Syria. The Appellant had no military experience and there was no evidence that minors would be offered money to fight in Syria. There was no expert evidence provided to indicate that the documents relied upon were genuine. The Judge was entitled to reach the conclusions he did. There was no material error of law in the determination as the Judge had considered all of the evidence.
16. In conclusion counsel stated that there had been no internal inconsistencies in the Appellant's account. There was evidence of people under 18 volunteering for military service. The Appellant was not under a duty to enlist.

## **Findings**

17. This is a reasons-based challenge to a determination. I remind myself that the Judge had the benefit of seeing the Appellant give oral testimony before arriving at his conclusions in this matter. The Judge did not find the Appellant to be a credible witness. Much of the case turned on whether it was plausible that someone under the age of 18 would be offered money to fight in Syria. The Appellant's argument is that there was such evidence but that still left the question whether it applied to this Appellant and whether he had been given money to fight in Syria.
18. The Appellant relied on a number of documents to support his claim which he said he had obtained from his mother in Iran. The Judge was evidently concerned about how the documents had come into the Appellant's possession noting that there was nothing from the Appellant's mother to confirm that she had forwarded the documents or indeed how she had

them in her possession in the first place. The burden of proof of establishing that these were genuine documents rested upon the Appellant. Simply producing such documents was not of itself sufficient for them to be accepted as genuine.

19. The central argument made by the Appellant is that the Judge first of all rejected the Appellant's credibility and then as an afterthought rejected the documents the Appellant relied upon to substantiate his claim. What is apparent from the determination is that the Judge reviewed the documents carefully at [82] of the determination in the context of his overall findings. The documentation referred to the liability of the Appellant in terms of national service. He would not have been liable for that until 24<sup>th</sup> of January 2015 and within a period of up to one month thereafter yet the documentation predated the 18<sup>th</sup> birthday of the Appellant. The Judge's conclusion was that there was no documentation to confirm that individuals under the age of 18 years would have been put into military service. Contrary to the submission made in the grounds, the Judge's problems with the dates on the documentation are easy to establish. The documents predated the Appellant's 18<sup>th</sup> birthday but if the Appellant was not liable for military service prior to that date the documents could not have been genuine. The Appellant himself indicated in oral testimony to the Judge that, contrary to the rest of his case, it was not military service that he was being called up to do. In those circumstances it was not surprising that the Judge viewed the documents with suspicion.
20. The Appellant could have called supporting evidence from his guarantor, Ali Jangi, who he said was needed before the money would be advanced by the authorities. It is not a requirement of an application for asylum that there be supporting evidence but if such supporting evidence could be reasonably obtained and yet it is not, it is open in those circumstances for a Judge to make an adverse credibility finding, see **TK Burundi**. In this case the Judge evidently rejected the Appellant's claim to be in fear of the guarantor and held against the Appellant that there was nothing by way of supporting evidence from either the Appellant's mother who had sent the documents or the guarantor who presumably would be liable to repay the funds that the Appellant said he had received. The Appellant had acknowledged in evidence that the guarantor could have verified the Appellant's account. It was a matter for the Judge to decide and it did not demonstrate any material error of law on his part that he held against the Appellant that such evidence from either prospective witness was not available.
21. What the Appellant had to answer was the rhetorical question posed at [80] of the determination: why would any such contract as the Appellant described have been offered to him in the first place? The Appellant had to show that he was an exception to the rule that national service did not begin until a person's 18<sup>th</sup> birthday. He was unable to show that for the reasons given by the Judge. It cannot be said that the Judge's reasoning

was irrational, irrationality is in any event a very high hurdle for an unsuccessful party to cross. That Sunni Muslims of the same ethnicity as the Appellant have been sent to fight in Syria did not advance the Appellant's case. Nor did it particularly assist the Appellant that individuals could be enticed by payment to fight in Syria. The enticement referred to in the grounds was that Afghan refugees were promised high wages and Iranian citizenship once they completed their service but that would hardly have been an enticement for the Appellant since he already had his citizenship.

22. There were other difficulties with the Appellant's credibility for example the fact that the Appellant delayed claiming asylum even though he had passed through several safe countries where he could easily have claimed. If the objective was to take the Appellant to a safe country, then it made no sense to keep moving the Appellant from one safe country to another. The intention, the Judge surmised, was all along to bring the Appellant to the United Kingdom. The Appellant's lack of credibility in relation to his reason for arriving in the United Kingdom thus further undermined the credibility of the overall claim.
23. It cannot be said that the Judge was looking at matters in isolation. Of necessity he had to set out his conclusions in some form of order but there was nothing to suggest that in doing so he failed to consider all of the evidence before arriving at his conclusion. I reject the argument that the Judge fell into some form of **Mbangi** error. Overall the grounds amount to no more than a disagreement with the conclusions reached by the Judge in this case. They do not demonstrate any material error of law in the determination and I dismiss the Appellant's onward appeal. Although an anonymity order was made at first instance, the appeal having been dismissed does not reveal any public policy reason why it should be continued.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

Signed this 12 March 2019

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Judge Woodcraft  
Deputy Upper Tribunal Judge

**TO THE RESPONDENT**

**FEE AWARD**

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 12 March 2019

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Judge Woodcraft  
Deputy Upper Tribunal Judge