



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

Appeal Number: AA/00113/2014

THE IMMIGRATION ACTS

**Heard at Newport
On 10 July 2014**

**Determination Sent
On 31 July 2014**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**JH
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hoshi instructed by Migrant Legal Project
For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REMITTAL

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

2. The appellant is a citizen of Iran who was born on 8 June 1991. He entered the United Kingdom clandestinely in a lorry and was arrested on 11 November 2013. He claimed asylum. On 10 December 2013, the Secretary of State refused the appellant's claim for asylum, humanitarian protection and further concluded that his removal would not breach the European Convention on Human Rights. On 12 December 2013, the Secretary of State made a decision to remove the appellant to Iran by way of directions as an illegal entrant.
3. The appellant appealed to the First-tier Tribunal. In a determination dated 26 February 2014, Judge Halliwell dismissed the appellant's appeal. On 3 April 2014, the First-tier Tribunal (Judge Reed) granted the appellant permission to appeal. Thus, the appeal came before me.

The Appellant's Claim

4. The basis of the appellant's claim before the First-tier Tribunal was as follows. The appellant was undergoing his military service in Iran with the Sepah. He worked as a driver for an officer in the Sepah, Commander "C". The appellant formed an intimate relationship with C's daughter, "D". He claimed that C discovered their relationship. One day, D went to C's office. There, C accused the appellant of having been with his daughter the previous weekend. The appellant says that he lied because it was a crime to be with D. An argument ensued during which C asked the appellant to swear on the Quran that he had not had sexual relations with D. During this incident, the appellant says that he tore a page from the Quran which is a capital offence in Iran. He managed to flee. He was frightened because he had torn the Quran and he went to a friend's house. He called his father and was told that the house had been searched by the authorities following a complaint by C. The appellant's father told him that the incident had been captured on a security camera. The appellant's father made arrangements for him to leave Iran and he went to Tehran where he stayed for three days before leaving Iran with the assistance of an agent.
5. Since arriving in the UK, the appellant claims that he received a summons and his military book which was sent to him by his family.
6. The appellant fears that if returned to Iran he will face prosecution and punishment for a capital offence arising out of his tearing a page out of the Quran.

The Judge's Decision

7. Judge Halliwell made an adverse credibility finding against the appellant and concluded that the summons and military book had been "created to bolster the case" (para 43 of the determination). The Judge gave a number of reasons for his conclusions.

8. First, he did not accept, as the appellant claimed, that he was undergoing military service in October 2013 (when the incident with C occurred) because the background evidence demonstrated that compulsory military service was undertaken when a person reached the age of 19 (that would have been in June 2010 in the case of the appellant) and lasted for up to two years. Consequently, he could not have been undertaking military service in October 2013.
9. Secondly, the Judge relied upon a change in the appellant's evidence as to the precise date on which the incident with C occurred. In his asylum interview, the appellant said that it occurred on Saturday 26 October 2013. In his witness statement and oral evidence the appellant said that it had occurred 4 days earlier on Tuesday 23 October 2013. The Judge rejected the appellant's explanation for the change in date which was that the incident occurred after the appellant was on leave and the appellant had assumed that was the Friday (as was usual) when in fact the appellant had also been on leave the previous weekend prior to the Tuesday. He had only realised his mistake when he received the summons which was dated Wednesday 23 October 2013. He then realised that the incident had occurred the previous day, Tuesday 22 October 2013.
10. Thirdly, the Judge rejected the documentary evidence, in particular the summons relied upon by the appellant. He rejected an expert report dated 16 February 2014 which stated that the summons was a genuine document. The Judge relied upon the background evidence that summonses from Iran could be forged; that it was remarkable that the summons was issued one day after the allegation; and that a summons was a document issued after an arrest warrant.

The Submissions

11. On behalf of the appellant, Mr Hoshi relied upon the grounds of appeal upon which permission had been granted.
12. First, he submitted that there had been a procedural irregularity because the Judge had relied upon a matter which had not been raised at the hearing. That was in relation to when the appellant could have undertaken his compulsory military service. Mr Hoshi submitted that the background evidence relied upon by the Judge, namely the *Country of Information Report for Iran* (January 2013) at paras 10.01-10.04 did show that prima facie military service began in the year that an individual reached 19. However, he pointed out that para 10.05 (which was not referred to by the Judge) demonstrated that there were a number of situations where an individual might be granted a "deferment". He submitted that the appellant had been denied a fair opportunity to deal with this issue which, Mr Hoshi informed me on instructions, was a matter which the appellant would seek to explain in evidence. Mr Hoshi submitted that the appellant had not done so because the matter had not been raised before the Judge.

13. Mr Hoshi pointed out that the Judge relied upon this (apparent) discrepancy between the appellant's claim and the background evidence as part of his reasoning at paras 35, 42, 43 and 44. He submitted that the prominence given to this issue by the Judge, including taking it into account in para 42 when dealing with the genuineness of the summons, meant that the Judge's error was material to his decision and should be set aside.
14. Secondly, Mr Hoshi submitted that the Judge had failed to give adequate reasons why the summons was not genuine. He failed to give adequate reasons for not following the expert's opinion that it was genuine. Mr Hoshi submitted that the Judge reasoned that either the documents were genuine and the appellant's evidence that the incident occurred on the Saturday was false or that the incident did occur on the Saturday and so the summons was false. Alternatively, neither the appellant's evidence nor the documents were truthful. Mr Hoshi submitted that the Judge had failed to consider a fourth option, namely that the incident did occur on the Tuesday (as the appellant claimed in his statement) and that his explanation was truthful and he only appreciated his mistake when he saw the summons which was a genuine one.
15. Mr Hoshi submitted that, contrary to what the Judge said in para 42, there was no evidence in the *COI Report* to support what he said, namely "that summonses from Iran can be forged". Further, there was no evidence to support the Judge's inference that it was inherently unlikely that a summons would be issued the day after the incident.
16. On behalf of the respondent, Mr Richards accepted that there had been no specific reliance before the Judge on the issue of when the appellant would have done compulsory military service in Iran. Nevertheless, he pointed out that the issue had been raised in para 17 of the refusal letter dated 10 December 2013. Therefore, Mr Richards submitted the appellant had notice and had an opportunity to deal with the apparent inconsistency of his claim with the background evidence but had failed to do so. There was, therefore, nothing unlawful or unfair.
17. In any event, Mr Richards submitted that the Judge had given a number of reasons for ejecting the appellant's account. In particular, at para 42 the Judge gave adequate reasons for rejecting the expert report and concluding that the summons was not reliable. Mr Richards submitted that the Judge had not found that the documents were a forgery but had rather reasoned that they were unreliable. So, the Judge's comment about forged summonses being easily available in Iran did not affect his reasoning.
18. Mr Richards invited me to dismiss the appellant's appeal on the basis that the Judge's reasoning was properly open to him on the evidence and he had not erred in law.

19. In reply, Mr Hoshi accepted that it could be said that the issue of when compulsory military service would be undertaken by the appellant had been raised in para 17 of the refusal letter. But, he submitted, that was too oblique a reference, when taken with the fact that it was not relied upon by the Presenting Officer at the hearing and the appellant was not cross-examined about it, to trigger a responsibility on the appellant to rebut any suggestion that his claim was inconsistent with the background evidence on this point.
20. Further, Mr Hoshi submitted that the Judge had concluded that the summons was not genuine, in other words that it was a forged document.
21. Mr Hoshi invited me to find that the Judge's decision contained a material error of law and could not stand.

Discussion

22. The Judge set out paras 10.01-10.04 of the *COI Report* for January 2013 dealing with military service at paragraph 34 of his determination. That is in the following terms:

"10 MILITARY SERVICE

- 10.1 A submission to the 101st session of the United Nations Human Rights Committee, prepared in December 2010 by Conscience and Peace Tax International (CPTI) stated:

'Recent information on military service in Iran is not easy to obtain. In its initial report under the Convention on the Rights of the Child [CRC], submitted in 1998, Iran indicated that 'every Iranian citizen is eligible for military service as of 21 March of the year he reaches 19 [...] at age 19 Iranian nationals are summoned to the Conscription Office to clarify their draft status [...] those persons found eligible to serve are recruited for military service during the year they have reached the age of 19'. There was no mention of military service in Iran's second periodic report under the CRC, delivered in 2008.

During the war with Iraq, the period of military service was 28 months. This was reduced in 1988 to 24 months. It has subsequently been shortened again and was 18 months in 2006. It was reported that in June 2009 the Majlis approved further, stepped, shortenings of the period of service for conscripts with higher education qualifications, ranging from two months for those with diplomas to ten months for holders of doctorates, which are to take effect from 2011.' **[30a]**

- 10.2 On 1 July 2009, War Resisters' International (WRI) also reported on the reductions to military service to take effect from 2011, stating that:

'According to the latest Majlis ratification, military service for conscripts with a PHD falls [by] 10 months. Master and bachelor graduates will serve 8 and 6 months lesser respectively. The service decreased [by] 4 and 2 months for associate degree and diploma holders respectively....

The new regulation defines the maximum period of military service up to 24 months and the commander-in-chief has authority to change the period.' **[25b]**

- 10.3 A research project by the Small Media Foundation (SMF), published in May 2012, included information on military exemption for gay and transsexual persons. The SMF report also noted that, 'Compulsory military service usually lasts 18 to 24 months and exemption regulations are strict. It is sometimes possible to buy an exemption, but this is risky, expensive and highly illegal. Exemptions are highly prized. The official information concerning the different categories of and reasons for military exemptions is available on Iran's official police website at <http://www.police.ir> [in Persian]. **[108a]**
- 10.4 The Central Intelligence Agency (CIA) World Fact Book, updated 18 April 2012, accessed 23 May 2012, stated that Iran's military service age and obligation were: '19 years of age for compulsory military service; 16 years of age for volunteers; 17 years of age for Law Enforcement Forces; 15 years of age for Basij Forces (Popular Mobilization Army); conscript military service obligation - 18 months, women exempt from military service.
23. As this makes clear, it is usual for an individual to be conscripted into military service in the year in which he reaches the age of 19. The maximum period of military service is up to 24 months although some individuals, depending on their background, may serve a lesser period.
24. Paragraph 10.03, whilst noting the compulsory military service usually lasts between 18-24 months, also points out that the "exemption regulations" are "strict.
25. Paragraph 10.05 of the *COI Report*, which the Judge did not set out, refers to the "surplus of manpower available" and the possibility of "deferment" in some cases:
- 10.5 The CPTI submission dated December 2010 noted:
- 'The army maintains 220,000 conscripts alongside 130,000 regular troops. This compares with well over 600,000 young men reaching "militarily significant age" each year. Clearly, even after medical examination and the exemption of sole family breadwinners and sons and brothers children of "martyrs of the revolution" (ie those killed in the Iraq war), there is a surplus of manpower available. The selection of those who actually serve is thus made by ballot, but it was reported in the 1990s believed [sic] that those not selected were, like students, granted a deferment, rather than exemption, meaning that they might leave the country only in exceptional circumstances, for three months, and on payment of a deposit.'
26. The appellant was born in June 1991 and therefore reached his 19th Birthday in June 2010. At that point, according to the background evidence, he became "eligible" for military service. That service was likely to last for up to 24 months.

27. On the basis of that, the Judge reasoned as follows at para 35 of his determination:

“The appellant is 22 years of age – he becomes 23 on the 8th June this year. He would have become 19 in June 2010, when (according to the COI) he would have been expected to do compulsory military service in Iran for two years. On the basis of that evidence he would have finished his service by about June of 2012. The incident on which he basis his claim to asylum, is said to have arisen in October 2013 – well over a year after he would normally have completed his service.”

28. At para 42, the Judge also relied on this matter:

“I conclude that the appellant has not proved his case even to the low standard of proof required. There is a question mark over his age and how it relates to his apparently late military service starting two years after his 19th birthday.”

29. Again, at para 43 the Judge said this:

“The appellant has not proved, even to the lower standard required in the refugee claim, that he was in the middle of his military service. Given his age the likelihood is that he had completed his military service more than a year before he left Iran.”

30. Finally, at para 44 the Judge said:

“It has not been proved that he left with uncompleted military service. At his age the high probability is that his service had been completed a year or more before.”

31. It is accepted that the Presenting Officer, at the hearing before the Judge, did not expressly rely upon the “apparent” inconsistency between the appellant’s claim that he was undergoing military service in October 2013 and the background evidence that he became “eligible” in the year that he reached 19 which was, of course, in June 2010 and would have completed 24 months service before October 2013. The appellant was asked no questions about this by his Counsel (then, as now, Mr Hoshi); he was not cross-examined by the Presenting Officer and the Judge also did not raise the issue either with the representatives or seek clarification from the appellant.

32. The only reference to this issue in the respondent’s case is at paras 17-20 and, in particular, at para 17 of the refusal letter. Those paragraphs are as follows:

Military Service

17. You claim to have been twelve months into your military service. You were a soldier of zero rank (SI 5.6). You joined military service in November 2012 aged 21 (SI).

10.04 The Central Intelligence Agency (CIA) World Fact Book, updated 22 August 2013, stated that Iran’s military service age and obligation were: ‘18 years of age for compulsory

military service; 16 years of age for volunteers; 17 years of age for Law Enforcement Forces; 15 years of age for Basij Forces (Popular Mobilization Army); conscript military service obligation is 18 months; women exempt from military service (2012)'

18. Further, from your own statements of the time you spent in military service you have described, it is reasonable to infer, an almost casual experience. You were able to carry and answer your mobile phone freely in from of your Commander. You returned home each night and at weekends, you had an active social life able to go out to restaurants at night, often with the Commander's daughter.

19. A COIR dated 1 August 2011 states:

A translated version of an August 2007 article from the Swiss newspaper *Le Temps* stated:

"In the Islamic Republic of Iran, military service lasts eighteen months. According to their educational background and skills, those called up (men only) join various administrative structures belonging to the army, the Pasdanan (Revolutionary Guards), or the Ministry of Defense; in the case of those without university degrees, they go to the barracks in the provinces."

An Iran Global Post article of 15 February 2010 described how doing their compulsory military service, "As part of their service, the Iranian government sends soldiers to small, underprivileged areas to serve its community in different ways. Depending on the service needed, some soldiers become teachers, other work in health clinics, or oversee farming activities." [3a] Whilst a December 2009 Wall Street Journal article on the death of a young Iranian doctor stated, "Like all Iranian males, Dr Pourandarjani was required to complete a 19 month military service. Doctors serve at government hospitals and clinics as part of their military obligation."

20. Your description of your military service is not consistent with the background evidence above. As you have provided no evidence of your call up or partial completion of military service to avoid speculation it falls to be considered under para 339L."

33. Although para 17 refers to the age of compulsory military service (there stated to be 18) and also states that the appellant began his military service in November 2012 when he was aged 21, the paragraphs do not explicitly draw any adverse inference although, perhaps, one can be implied. The reference to the appellant's "casual experience" of military service was, however, one relied upon by the Presenting Officer to doubt the veracity of the appellant's claim at the hearing (see para 34 of the determination).

34. I do not accept Mr Richards' submission that the fact that para 17 of the refusal letter raises the issue of the appellant's age to begin military service is, in itself, sufficient in the circumstances of this appeal to conclude that the Judge was entitled to rely on it without the issue being raised by either representative at the hearing. The appellant was not, in

my judgment, given a fair opportunity to deal with the matter which featured large in the Judge's reasoning leading to his adverse credibility finding.

35. In many cases, where a point is taken in the refusal letter it will be clear that it is being relied upon by the Presenting Officer at the hearing even if the Presenting Officer does not cross-examine the individual on the issue. An appellant's representative will generally have notice that a particular matter is being relied upon and have a fair opportunity to raise the matter with the appellant in his evidence and deal with it in submissions to the extent that he wishes to do so. Where an issue is raised for the first time in the submissions, it may be appropriate to allow the appellant to give, to the extent he wishes, evidence on the matter even at that late stage. Generally, in such circumstances it is enough for the Judge to leave to the parties the evidence which they wish to lead or cross-examine on providing the issue is clearly raised and relied upon. The Judge will generally, at least, be entitled to take into account what evidence has been given (if any) on the issue and to reach reasoned conclusions on it without himself raising it with the parties.
36. Where an appellant is unrepresented, and a Judge considers that an important point arises in the evidence which is likely to feature in his reasons for reaching an adverse finding, it may well be incumbent upon the Judge to raise the matter at the hearing otherwise the appellant may not be seen to have a fair opportunity to deal with an issue relevant to the outcome of his appeal.
37. Here the appellant was represented but the issue of the age at which he started military service was not clearly raised or relied upon before the Judge. The bare reference to the usual age for compulsory military service in the refusal letter at paragraph 17 was not sufficient to make clear to the appellant and his representative at the hearing that this issue was one relied upon by the respondent given that the Presenting Officer placed no reliance upon it in cross-examination or in submissions at the hearing. By contrast, it is clear that the Presenting Office did rely upon that part of paras 17 *et seq* of the refusal letter dealing with the appellant's experience of military service in the sense that it was too "casual" to be believable. In doing so, and by not referring to the issue of the appellant's age at which he undertook military service, the Presenting Officer must have left the impression that the respondent's case, in relation to the military service, was focussed only on the "casual" nature of the experience. That could only, in my judgement, confirm the reasonable onlooker's view that the Secretary of State was not relying upon the issue referred to in para 17 of the refusal letter.
38. Yet, this issue featured significantly in the Judge's reasons for finding the appellant's account not to be credible. The Judge could (and should) have raised it if he considered it important but he did not. As a result, the appellant was not given a fair opportunity to deal with the issue of the age at which he undertook compulsory military service. As para 10.05 of the

COI Report makes plain, but which I repeat was not referred to by the Judge, there are circumstances in which an individual may obtain “deferment”. The background material refers to an individual becoming “eligible” for military service “as of 21 March of the year he reaches 19” (para 10.01). It also notes that there is a “surplus of manpower available” such that the “selection of those who actually serve is thus made by ballot” (at para 10.05). The Judge made no reference to para 10.05 which recognised that, in fact, not every individual did actually begin their compulsory military service in the year after they reached 19. Mr Hoshi informed me that the appellant does have an explanation why he did not begin military service in that year. However, that evidence was never adduced before the Judge because the issue was not raised at the hearing.

39. Given the importance placed upon this issue by the Judge, as evidenced by his several references to it, the appellant was, in my judgement, not given a fair and proper opportunity to deal with the issue in his evidence or in submissions by his representative. I am satisfied that this was a material error in his decision to dismiss the appellant’s appeal. It was, as Mr Hoshi pointed out, also referred to by the Judge in paragraph 42 dealing with the reliability or genuineness of the summons. That said, in any event, there are flaws in the Judge’s reasoning concerning the summons and its genuineness.

40. The Judge dealt with the summons at paras 42 and 43 as follows:

“42. I have given all the evidence careful scrutiny, but I conclude that the Appellant has not proved his case even to the low standard of proof required. There is a question mark over his age and how it relates to his apparently late Military Service starting 2 years after his 19th birthday. An Appellant’s first account of his claim normally carries appreciable weight – especially if it is given soon after the relevant events. However, if the evidence then starts to vary over time, the evidence starts to carry less weight and uncertainty is engendered over the initial account. In this case the Appellant was reciting, in interview, events that had supposedly occurred but a few weeks earlier. There was no reason to confuse dates, there is no supporting evidence that he was unduly stressed at interview. Viewing the interview as a whole it is fluent. I have come to the conclusion the summons and military book have been procured to bolster a claim. If the events occurred at all – it is remarkable that a summons issued the next day. The first process according to the COI evidence would be an arrest warrant – a document which would not be left with the family. A summons would be a later document – and that may – under the conditions described in the COI – be left with the family. I note the Solicitors’ Report which considers the document to be a genuine summons. However it does not appear that the Solicitor who prepared the Report was appraised of the issue over the dates – and in particular whether in fact a summons would, or even could, be issued within one day of an allegation. It bears date 23rd October – the day immediately following the day on which the events are – in the revised account – said to have occurred. This issue is not addressed in the Report – and this is at the core of the case. It is possible the Summons is on the correct form, but it has not been proven, even to the low standard, that it

is what it purports to be – namely a contemporaneous document relating to the Appellant, issued the day after the asserted incident. I note from the COI the ease with which summonses from Iran can be forged.

43. I find that the Appellant’s evidence is not to be relied upon and I reject his account of the ‘Quran’ incident. For the reasons given I reject the Summons and Military Book, I find they have been created to bolster the case and the conflicting dates, and consequent changes to the Appellant’s account, serve to make his evidence unreliable and suspect. It has not been proved, even to the low standard, that the summons or military book are genuine original documents.”
41. It seems to me plain that the Judge found the documents, in particular the summons not to be “genuine”. His reference in para 42 to the ease with which “summonses from Iran can be forged” can only be relevant to a finding that the document is not “genuine”. I accept Mr Hoshi’s submission, which was not doubted by Mr Richards, that there is no basis in the *COI Report* for the Judge’s statement that forged summonses are easily obtainable in Iran. The Judge refers to the section of the *COI Report* for January 2013 at paras 11.49-11.50, 11.57 and 11.59 at paragraph 33 of his determination. It is unnecessary to set those out in full here. It suffices to say that nothing in those extracts supports the Judge’s view that forged summonses are easily obtainable in Iran.
42. In addition, the Judge took into account that it was, in effect, unlikely that a summons would be issued a day after the appellant’s claimed incident with C occurred. Again, there is nothing in the *COI Report* to which I was referred, or which was relied upon by Mr Richards, to demonstrate that it was unlikely, and therefore implausible, that a summons could be issue within a day of an incident. The Judge appears to link that conclusion with his view that, in any event, an arrest warrant would have to be issued before a summons. That is, in fact, dealt with in para 11.49 of the *COI Report* set out by the Judge at para 34 of his determination. Unfortunately, it sets out the sequence of events differently. There it states:
- “The consequence of non-attendance after issuing an ‘Ehzariyeh’ would usually be the issuing of an arrest warrant and an absentia verdict if the person is not found”.
43. The reference to an ‘Ehzariyeh’ is, as para 11.49 of the *COI Report* states, to a “summons”. Therefore, the background evidence contradicted the Judge’s view that there would first be an “arrest warrant” and that a “summons” would be a later document”.
44. Both this and the unsupported assumption that a summons could not be issued within a day of an event, fatally flaws the Judge’s reasoning to doubt the genuineness of the summons relied upon and which the expert concluded was “entirely genuine”. The Judge was wrong to rely on the fact that the expert had not taken into account whether a summons could be issued within one day of an allegation since that was not a matter upon

which the Judge had any background evidence to suggest that it was unlikely or impossible.

45. Whilst I accept that the Judge had to assess the appellant's evidence both written and oral, including his explanation of why he had mistakenly thought the incident occurred on the Saturday rather than the Tuesday. In relation to that, Mr Hoshi's submission that the Judge failed to appreciate a fourth possibility, namely that the appellant's account and explanation was true and the document was genuine appears to have led the Judge only to consider possibilities which involved either the appellant not telling the truth or the documents not being genuine. He does not appear to have left open the possibility most favourable to the appellant. But, in any event, the assessment of the appellant's evidence was, in my judgement, necessarily affected by the Judge's conclusion that the appellant's account could not be true because he could not in October 2013 have still been undertaking military service.
46. For all these reasons, I am satisfied that the Judge erred in law in reaching his adverse findings which led him to dismiss the appellant's appeal.

Decision

47. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of a material error of law. That decision cannot stand and is set aside.
48. In those circumstances, both representatives invited me to remit the appeal for a *de novo* hearing before the First-tier Tribunal. That, in my view, is the appropriate course given the nature and extent of the fact finding required and applying para 7.2 of the Senior President's Practice Statement. It follows from the procedural irregularities in the First-tier Tribunal's decision.
49. The appeal is remitted to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Halliwell.

Signed

A Grubb
Judge of the Upper Tribunal

Date: