



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/13094/2015

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 14 January 2019

Decision & Reasons Promulgated
On 31 May 2019

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

H B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Fitzsimons, Counsel, instructed by Hammersmith & Fulham
Law Centre
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal was first before me on 27 July 2018, when in an Error of Law Decision given orally immediately following the hearing which was subsequently sent to the

parties in writing, I set out the background to this current hearing. Of necessity, much of what I said in that decision will now be repeated below.

2. The appellant is a national of Iran who was born in September 1994. He claims to have entered this country in or around November 2010 when he was 16 years old and he claimed asylum in January 2011. His application for asylum was refused in April 2011 but he was granted discretionary leave as an unaccompanied asylum seeking child until March 2012. He then made an application for further leave on 16 March 2012 when he was about 17½. I presume that it had been anticipated that this would be decided when he was an adult in the usual way with such applications.
3. Unfortunately by the time of the hearing before me in July 2018, his application and now subsequent appeals had been going on for some years. The respondent took a long time to consider his application, eventually writing to him in October 2015 advising him that his application had been refused and giving reasons for that refusal. Subsequently, he appealed against this decision to the First-tier Tribunal and his appeal was heard by Immigration Judge Barker at Hatton Cross on 24 June 2016 but Judge Barker dismissed his appeal. Then the appellant applied for permission to appeal against Judge Barker's decision and although he was initially refused permission, he renewed that application before the Upper Tribunal and in a decision dated 10 March 2017 Deputy Upper Tribunal Judge Chapman granted permission to appeal. The error of law hearing then came before Deputy Upper Tribunal Judge Black on 26 April 2017; although she preserved all the adverse credibility findings which had been made by Judge Barker in relation to the account which had been relied on by the appellant as the factual basis for his claim, in a decision promulgated on 5 May 2017, she nonetheless concluded that there had been a material error of law in Judge Barker's decision, which it is not necessary to go into for the purposes of this decision. The result was that the appeal was remitted back for rehearing at the First-tier Tribunal and that rehearing was before First-tier Tribunal Judge Miles again at Hatton Cross on 22 January 2018.
4. In a Decision and Reasons promulgated on 1 February 2018 Judge Miles again dismissed the appellant's appeal, but the appellant was granted permission to appeal against this decision also, permission being granted by Upper Tribunal Judge Rimington on 12 June 2018. In her very concise reasons, Judge Rimington stated as follows:

"It is arguable that the judge failed to apply the correct standard of proof and arguably erred in law in the speculation of the Iranian government's approach".
5. She added that "All grounds are arguable".
6. The position was accordingly that there was again an appeal before this Tribunal in respect of a decision which had been made nearly three years earlier in 2015 with regard to an application that had been made three years before then in 2012, so we were then over six years on from when the original application had been made.

7. The facts were in a relatively narrow compass. It was now common ground, because the findings of Judge Black to this effect had been retained, that the appellant's original claim lacked credibility in a number of respects and so that claim no longer formed the basis of the appellant's current case. Judge Miles made certain findings included amongst which were that if the applicant was the age that he says he is and he exited Iran illegally, one of the consequences of his not being in Iran is that he was not available to undertake military service which had he been in Iran he would have been required to undertake.
8. The appellant's current case, as advanced before Judge Miles, is that he would be at risk on return to Iran because of a combination of factors. The most important is that he would be treated as a draft evader and because of this would be at risk of being imprisoned on return to Iran. This factor is linked with the second factor which is that he had exited that country illegally. The effect of that is, it was argued, that he would almost certainly be questioned on return and would be likely to be interrogated and that interrogation would of itself result in his incarceration for some period of time. He would also, it was argued, be at risk of imprisonment by reason of his evasion of military service. An additional factor that was argued before Judge Miles was that he would be treated more harshly than he otherwise might be (even though the first two factors alone would put him at real risk) because of his Azeri ethnicity. There were other subsidiary factors that were said to evidence the risk the appellant would face on return, such as that his position would be looked at more closely because he would be returning from London which was a known centre of dissent against the Iranian regime.
9. I did not have to consider all of these matters in detail save insofar as they were relevant to my consideration of whether there been a material error in Judge Miles' decision. One of the grounds of appeal was that the judge in effect, as Judge Rimington considered was arguable, failed to apply the correct standard of proof. Although it is right to say that at paragraph 9.1, when considering the burden and standard of proof, the judge stated, correctly, that "the appellant must establish that he will be at real risk of persecution, serious harm under Rule 339C HC 395, or treatment in breach of his protected human rights if he were now to return to Iran", it was submitted that it is clear from the manner in which he set out his findings that he did not in fact adopt this standard of proof.
10. This was particularly said to be the case with regard to what the consequences would be to the appellant by returning as somebody who had left the country illegally and who had thereby evaded his obligations to undertake military service.
11. There had been expert evidence submitted on behalf of the appellant by Dr Kakhki and there had also been before the judge the Home Office's "Country Policy and Information Note – Iran: Military service (October 2016)" which had been issued on 24 October 2016. At paragraph 10.12, having set out certain of the factors involved, Judge Miles said this:

“He is also liable for military service and on the agreed objective evidence and expert report, will be treated as a deserter rather than a person who has evaded such service. In my judgment the background evidence indicates that the more common penalty for such a person would be for him to be required to undertake the period of service that is appropriate for his age rather than for there to be an additional prosecution and resultant risk of prison or military detention”.

12. What Judge Miles then went on to state, which is part of the judgment that is said to indicate that he applied the wrong standard of proof, was as follows:

“While it is of course possible that the authorities may view his case more seriously because of his illegal exit and ethnicity it is equally arguable, in my judgment, that they may also decide that enlisting a young and fit healthy male into the military would be an appropriate remedy and also a preferable option at this time, given that the army is engaged in operations in Syria, together with the fact that this appellant has not deserted in the conventional sense but was simply out of the country when his liability for service arose”.

13. Judge Miles then, in the same paragraph, said that:

“In the particular circumstances of this case, the likelihood of the appellant facing persecution or treatment in breach of Article 3 ECHR is a possibility rather than a real risk and on that basis therefore the appellant does not qualify for protection either as a refugee or on human rights grounds”.

14. I noted in my earlier decision that it was necessary when considering the statements by the judge to have regard to what is contained within the Country Policy and Information Note referred to above. At paragraph 7.1.1 of this Note which specifically deals with “evasion and desertion” it is said as follows:

“If a person does not report to the authorities within this timeframe, he is considered a draft evader or objector. There is no alternative civilian service in Iran. Conscientious objection is not accepted under Iranian law. **The evasion of military service is punishable under Article 40 of the Armed Forces Penal Law by imprisonment of six months to two years, or an extension of the service**”. [My emphasis].

15. At paragraph 7.2.1, when considering the “consequence of evasion/desertion” an extract is set out from an old (April 2009) Joint Fact-Finding Mission Report of the Danish Immigration Service and the Danish Refugee Council, which had stated as follows:

“A person who deserts from the army will have to continue the military service upon return, if he is under the age of 40. Individuals who are over the age of 40 will not be asked to do military service. If a person has deserted or evaded the military service and returns to Iran after the age of 40, he will receive a financial punishment and possibly imprisonment. This is subject to arbitrary ruling”.

16. Then at 7.2.2 an extract is set out from the December 2013 General Official Report of the Netherlands Ministry of Foreign Affairs which had noted as follows:

“Young men from the age of 18 who are called for military service but do not present themselves to the authorities are considered as draft evaders. There is no alternative military service in Iran and conscientious objection is not recognised. **Draft evasion is liable for prosecution.** [Again, my emphasis] ... If the draftee is absent for longer than three months during peace time (or fifteen days during war), the military service will be extended by six months. Longer draft evasion (one year during peace or two months during war) **may result in criminal proceedings before a military court.** [Again, my emphasis]”.

17. It is noted at 7.2.5 of this Note that:

“Middle East Eye reported that: ‘Between 30,000 and 35,000 people have already been arrested this year for attempting to dodge military service, [General Moussa Kamali, chief conscription officer for the Iranian armed forces] said. ‘The process of identifying and arresting fugitives will be intensified this year’ ”.

18. On behalf of the appellant it was argued that certainly on the basis of this Note there was at the very least a serious argument that could be made that this appellant would face a real, as opposed to a theoretical, risk of being imprisoned on his return, because he is somebody who not only left Iran illegally (which is not now in dispute) but he is also someone who very well may be regarded as a draft evader and the respondent’s own Note suggests that such people do have a real risk of receiving a sentence of imprisonment in consequence of that. With regard to the consequences of somebody being sentenced to imprisonment in Iran, reference is made (and this is common ground between the parties, as it must be) to what was stated by this Tribunal in the country guidance case of *SSH and HR (illegal exit: failed asylum seeker) Iran* CG [2016] UKUT 00308, at paragraph 25 as follows:

“25. We should say at this point that we have no hesitation in agreeing with the submissions of Mr Mills that the evidence shows a real risk of persecution/ill-treatment in breach of Article 3 for a person who is imprisoned in Iran. This appears to be common ground. In his skeleton, Mr Mills quotes from paragraph 3.17.13 of the respondent's Operational Guidance Note: ‘As conditions in prisons and detention facilities are harsh and potentially life-threatening in Iran, they are likely to reach the Article 3 threshold’”.

19. In other words, in this case if there is a real risk that this appellant would be imprisoned because he was prosecuted and sentenced to imprisonment for draft evasion, then he must be regarded as somebody who would be at risk of facing ill-treatment in breach of Article 3 by reason of such imprisonment.
20. It was in that context that this Tribunal considered whether or not the standard of proof applied by Judge Miles was arguably incorrect.

21. Although Mr Melvin submitted on behalf of the respondent that this Tribunal should look at the decision holistically and that the judge was in effect finding - by reference to what was said at paragraph 10.12 that the risk was "a possibility rather than a real risk" - that the risk was not sufficiently high to amount to what might be defined as a "real risk", I considered that this is not what came across from the wording that he actually used. The judge found that it was "of course possible that the authorities may view his case more seriously because of his illegal exit and ethnicity". He did not say that this was just a remote possibility. What he went on to say was that "it is equally arguable" in his judgment that they could decide that it was an appropriate remedy to make him serve in the army. That suggests that the standard of proof which the judge was applying was the balance of probabilities rather than asking himself the question of whether there would be a "real risk", especially as the decision is entirely silent with regard to the extracts from the respondent's Country Policy and Information Note referred to above.
22. I considered that this was a material error, because the real question that should have been asked by the judge was not whether or not it was more likely than not that the appellant would avoid imprisonment but whether there was a real risk that he would be imprisoned. It may be that that was the question which the judge was intending to ask but that is not apparent from the reasoning set out within the decision and accordingly I concluded that the decision must be re-made.
23. Because I was concerned that this appeal had already been remitted once and that this was the second time permission to appeal had been granted (and indeed the second time this Tribunal had found there to have been an error of law in the decision of the First-tier Tribunal) and also this appeal was by that time three years old and was in respect of a decision made over six years ago, and that the facts were not really in dispute (it being now accepted first that the appellant's original core account was not credible, secondly that he had exited Iran illegally, and thirdly, that in consequence he has avoided or not complied with his obligations to undertake military service) I considered that rather than remit this appeal yet again for rehearing in the First-tier Tribunal it would be in the interests of justice to retain this appeal in the Upper Tribunal. I gave directions as to the time in which the appellant was to serve updated evidence, if so advised, and for the respondent if he chose to serve further evidence in reply, following which the appeal was to be listed for a CMR before me. Further evidence was subsequently served on behalf of the appellant, but the respondent chose not to submit further evidence in response following which the appeal was listed before me for hearing on 14 January 2019.
24. I heard this appeal on that date, that is 14 January 2019, following which I considered the representations which had been made, together with all the evidence which had been put before me, and reached a provisional decision. Regrettably, the file was mislaid before my decision was perfected, but the decision which I provisionally reached has not altered. The file having now been located, I have now perfected that decision for promulgation. The Tribunal apologises to the parties for the delay.

The Hearing

25. I heard submissions on behalf of both parties and the appellant also relied on a thorough and detailed skeleton argument which had been settled by Ms Fitzsimons the previous day. The appellant relied in particular on the expert reports prepared on his behalf by Dr Fatah and Dr Kakhki.
26. The appellant's case, in summary, was that he would be at risk on return to Iran because of a combination of three factors; these were first that he had exited illegally, secondly, that he would or could be treated as having evaded the draft, and thirdly, because of his Azeri ethnicity. At the outset, it was accepted on behalf of the respondent, very fairly, that if there was a real risk of the appellant being imprisoned on return, that would carry with it a risk of Article 3 ill-treatment. Accordingly, the issue before this Tribunal was whether as a result of the combination of the three factors relied upon on behalf of the appellant, he would be at risk of imprisonment on return.

Appellant's Submissions

27. The appellant was a 24 year old male, of Azeri ethnicity. He had left Iran in November 2010 aged 16 and had remained in the UK ever since. It was accepted that the appellant's claim to asylum on the basis of distribution of leaflets had been rejected by the Tribunal and no attempt was being made within this hearing to challenge that finding.
28. Reliance was placed within the skeleton argument on the two expert reports and also on the respondent's Country Information which was dated October 2016.
29. The Iranian regime could be volatile and unpredictable, and this should always be borne in mind when considering the expert evidence in this case. Both Dr Kakhki and Dr Fatah were acknowledged experts on Iran. Dr Kakhki was a practising attorney in Iran who held a PhD in Middle Eastern Politics in Law from Durham University. He had given evidence before the Upper Tribunal in *SB (risk on return-illegal exit) Iran* CG [2009] UKAIT 00053 and also *SSH and HR (illegal exit: failed asylum seeker) Iran* CG [2016] UKUT 00308 (IAC). Dr Fatah's expertise is set out at the beginning of his report, and includes the following at paragraph 5:

"Since 2000, I have produced over 2,000 expert reports, which have been commissioned for and cited in a number of immigration appeals, as well as family and criminal cases. In the same timeframe, I have examined a large number of people from the Middle East whose nationality, native language, ethnicity, place of residence is disputed, and have examined thousands of documents from the MENA region. In addition to my deep knowledge of the region's administrative and bureaucratic cultures, my multi-lingual proficiencies allow me to understand, interpret and evaluate official documents in the Middle East and prove me to be ideal for the task. This extensive skill-set has enabled me to produce my own methodology of document authentications".

His CV is clearly impressive, and the respondent does not seek to suggest that either Dr Fatah or Dr Kakhki lack either the necessary experience or expertise to give expert evidence. Their reports must accordingly be regarded by this Tribunal with appropriate respect.

30. It was acknowledged on behalf of the appellant that on current country guidance a person returning to Iran would not be at risk merely because he or she was a failed asylum seeker. In the skeleton argument which she had prepared, Ms Fitzsimons at paragraph 17 set out the head note to this effect of *SSH and HR (illegal exit: failed asylum seeker) Iran* CG [2016] UKUT 00308 (IAC), as follows:

“(a) An Iranian male whom it is sought to return to Iran, who does not possess a passport, will be returnable on a laissez passer, which he can obtain from the Iranian Embassy on proof of identity and nationality.

(b) An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.”

31. However, it is submitted on behalf of the appellant that the Upper Tribunal did recognise that in individual cases a Tribunal would have to assess the individual facts specific to that case and ask whether there was anything in the history of the individual in question which might lead to him being at risk. In this case it was suggested on behalf of the appellant there was a reasonable likelihood that he would be questioned on arrival back in Iran because he would be returning from London having been in the UK for a lengthy period of nine years and also because he had, by not being present in Iran, avoided conscription. In *SSH and HR*, in which Dr Kakhki's evidence had been relied upon by the Tribunal, the Tribunal had accepted (at paragraph 9) “that a person who returned to Iran on a laissez passer will be questioned” and the Tribunal had accepted “that this is likely to be the case”.
32. Dr Kakhki in his report had noted the suspicion felt towards activities in London by the Iranian authorities and reference is also made in the skeleton argument at paragraph 17 to the head note of *SA (Iranian Arabs-no general risk) Iran* CG [2011] UKUT 41(IAC) in which reference was made to the Iranian state “[regarding] London as a centre of separatist activity”.
33. Dr Kakhki had noted within his report that desertion was (technically) punishable by imprisonment, and had also referred to all boys being liable to conscription, although in answer to a question from the Tribunal, Ms Fitzsimons was obliged to acknowledge that there was no example given in either expert report of any specific case where a person who had not commenced his draft at the appropriate age had been treated as a deserter. Ms Fitzsimons asked the Tribunal to note that Dr Fatah had suggested that it was very difficult to get evidence on this, because the Iranian

regime is a very secretive one, and that both experts had indicated that the appellant's failure to attend his conscription at the appropriate age could be treated as evasion of the draft or desertion.

34. Ms Fitzsimons emphasised that Dr Kakhki had been regarded by the Tribunal in *SSH and HR* as having been of assistance and asked the Tribunal to note that in the penultimate paragraph of his report effectively he had stated that at least one of the possibilities was that the appellant on return could be treated as having deserted and be sent to prison. Iran was a closed regime, she submitted, and operates in a way that makes it very difficult for experts to give definitive advice. Both experts were mindful of their task which was to assess whether there was a real risk, and it should be noted that Dr Fatah was especially cautious as to how he advances his opinions.
35. Dr Fatah's report was an extremely balanced one, because he indicated that although being of Azeri ethnicity might be an additional factor, of itself this would not lead to persecution.
36. At page 12 of his report, Dr Fatah had set out certain accepted and uncontroversial facts, such as that (at paragraph 73) the mandatory military service in Iran had been extended from 21 months to 24 months and was compulsory for all Iranian males over 18. It was also noted (at paragraph 75) that, as reported in *The Guardian*, "Some wealthy Iranians pay to get out of their military service; some pay doctors to give a medical reason for their inability to join the army for their mandatory service".
37. At paragraph 76 Dr Fatah noted that "It is reported that all Iranians must report for military service within the year after graduation" and that "failure to report means an extra three to six months of service on top of the 24 months".
38. Ms Fitzsimons then drew the Tribunal's attention to paragraphs 88 and 89 of Dr Fatah's report in which it was stated in the first six months of 2016 it had been reported that 35,000 people were arrested for "dodging the draft" and that "moreover, in one month, over 10,000 people applied to pay fines rather than be conscripted". In the following paragraph, paragraph 89 it is stated that "It was reported that an estimated 35,000 people had been arrested between January 2016 and June 2016 for evading military service", although this appears just to be a repetition of what had been stated in the previous paragraph. In answer to a question from the Tribunal as to whether there was any report of anybody having been sent to prison for evasion of the draft, Ms Fitzsimons referred to paragraph 91 of Dr Fatah's report, in which it was stated as follows:

"91. Moreover, it is understood that each military camp in Iran has its own detention centre. My associate has communicated with an Iranian who has completed their compulsory military service. This person stated that alongside the six months additional service, draft evaders may be detained at these camps depending on their individual behaviour".

It was noted by the Tribunal that this statement was very unspecific and that Dr Fatah had refrained in his report from giving any example, even second-hand of

anybody who had been said to have actually been detained because of evasion of the draft.

39. With regard to whether or not the appellant had exited illegally, the Tribunal noted that this appellant had had a passport and that the highest that this risk had been put by Dr Kakhki was that this might lead to a risk. Ms Fitzsimons accepted that she could not rely on any specific evidence of an individual being imprisoned for illegal exit, but asked the Tribunal always to remember that Iran was a closed society in which all sorts of things could happen which we did not know about. The Tribunal had to have in mind that there was a low standard of proof required in Article 3 cases. Both experts and the country information pointed to general difficulties within Iran. If a person did not attend for his call up, there would be a real risk of being considered as a draft evader, in consequence of which there would then be a real risk of being imprisoned. When one considered also that this appellant had exited illegally, had been in London for nine years and was returning from the UK and was of Azeri ethnicity, taking all these factors together there was a real risk that he would be imprisoned. Although this was a difficult case, nonetheless given the low standard of proof required in such a case, this appeal should be allowed.

Respondent's Submissions

40. It was submitted on behalf of the respondent that this appellant would not be at risk. If one looked at the country guidance given in particular in *SSH and HR*, none of the factors relied upon on behalf of the appellant would be sufficient to put him at risk. There had to be something else. While the respondent would accept that the Iranian regime is paranoid, and makes sporadic attempts at targeting groups of people, the people who are targeted are people who are considered a threat, which this appellant is not.
41. The Tribunal should note that none of the experts answered the question as to whether someone who happens to be a draft avoider would be at risk because of this reason. While a person might be at risk if there was a specific reason, such as a person claiming to be opposed to war, that was not the present case. There had been a finding that this appellant had not engaged in any previous activity against the regime. In these circumstances he failed to show even to the lower standard of proof that he would be at risk on return.
42. Although Dr Fatah in his report (at paragraphs 88 and 89) had referred to the arrest of 35,000 draft evaders, there was no evidence of the imprisonment of any one of them. Neither of the experts had provided sufficient evidence to establish that there was a real risk that on return he would be perceived as a draft evader or that he would be at any real risk of imprisonment on return.
43. In reply, Ms Fitzsimons on behalf of the appellant asked the Tribunal to note that Dr Fatah had raised the possibility of the appellant being sent to a military camp, and that if he was, this would also lead to a breach of his Article 3 rights. Ms Cunha accepted that imprisonment within military detention would reach the Article 3

threshold, although she did not accept that there was a real risk that this would happen.

44. As a final point, although the experts had not been able to refer to any specific example of someone having been put into detention for avoidance or evasion of the draft, nonetheless, this was a real category of risk, and not just theoretical.

Discussion

45. It is common ground that this appeal should be allowed if this Tribunal concludes on the evidence before it that there is a real, as opposed to a theoretical, risk of the appellant being imprisoned on return. It is accepted that there is a theoretical risk, because the penalty for draft evasion does or can include imprisonment. The real question therefore is whether this risk is more than just theoretical.
46. The expert reports are remarkably unspecific. It is acknowledged that the age for compulsory military service is 18 for boys, when of course this appellant was not within Iran but even on a theoretical level, it would not seem that this appellant is particularly at risk. I refer to what is said by Dr Kakhki at page 30 of his report as follows:

“Due to closed-net of Iranian society, detailed information about the punishment of draft evaders and deserters is difficult to obtain. According to one source, draft evaders and deserters are particularly susceptible to face punishment if they have deserted for political reasons, if they have been politically active in the past or if they have deserted previously during the war with Iraq”.

47. What is most notable in this case is that it is clear (given the previous findings with regard to this appellant) that the appellant did not desert for political reasons, that he had not been politically active in the past and that he had not deserted previously during the war with Iraq.
48. Dr Kakhki then goes on to express his opinion that this appellant “would be required to complete his military service” and adds that this would be “with the risk of facing extra service or being imprisoned due to the late commencement of his service”. He also refers to how military officials “may integrate persecutory treatment when allocating tasks for him to complete under his military service obligations” and so on, and gives examples of persecutory treatment “such as forced labour and serving in deprived, hostile areas as a result of his past behaviour”.
49. This Tribunal must place weight on the findings of the Tribunal at paragraph 23 of the current country guidance case of *SSH and HR*, having regard to Dr Kakhki’s evidence in that case:

“23. In our view the evidence does not establish that a failed asylum seeker who had left Iran illegally would be subjected on return to a period of detention or questioning such that there is a real risk of Article 3 ill-treatment. The

evidence in our view shows no more than that they will be questioned, and that if there are any particular concerns arising from their previous activities either in Iran or in the United Kingdom or whichever country they are returned from, then there would be a risk of further questioning, detention and potential ill-treatment. In this regard it is relevant to return to Dr Kakhki's evidence in re-examination where he said that the treatment they would receive would depend on their individual case. If they co-operated and accepted that they left illegally and claimed asylum abroad then there would be no reason for ill-treatment, and questioning would be for a fairly brief period. That seems to us to sum up the position well, and as a consequence we conclude that a person with no history other than that of being a failed asylum seeker who had exited illegally and who could be expected to tell the truth when questioned would not face a real risk of ill-treatment during the period of questioning at the airport. We should add that we see no reason to doubt Dr Kakhki's evidence that there is a special court at or near the airport which considers the cases of returnees but the evidence does not show a real risk of ill-treatment in breach of Article 3 amounting to persecution as a consequence of attending at the court."

50. The difficulty with regarding any "risk" that the appellant might face as real as opposed to theoretical is that neither expert does more than speculate as to the possibility of risk. It is particularly difficult when assessing Dr Kakhki's opinion, just cited at paragraph 48 above, that military officials "may integrate persecutory treatment" and so on "as a result of his past behaviour" to understand how this opinion could relate to this appellant. There has, as already noted, been absolutely nothing about this appellant's past behaviour which would or could be reasonably likely to cause this appellant to be singled out for persecutory treatment. He has not previously criticised the regime (his claim to have distributed leaflets having been dismissed, even to the lower standard of proof) and absent such behaviour there does not appear to be any substantive basis for concluding that this appellant would face a real, as opposed to a theoretical, risk of being imprisoned or otherwise persecuted on return. There might be a possibility of his being obliged to serve an extra period in military service (although even this arguably is a theoretical rather than a real risk) or to pay a fine, but the one uncontradicted fact within this appeal is that neither of these acknowledged experts, who have extensive connections within Iran, have been able to point to a single instance of a person being imprisoned either for draft avoidance or draft evasion. It is highly unlikely, were this to be a common, or even an occasional occurrence, that word of such treatment would not have leaked out to at least one of the informants who give information to these experts.
51. In these circumstances, it is simply impossible to conclude, even to the lower standard of proof that there is any real risk, as opposed to a theoretical risk, of this appellant being imprisoned or otherwise being subjected to persecutory treatment in the event that he were now to be returned to Iran.

Decision

52. For this reason, this appeal must be dismissed.

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:

A handwritten signature in black ink, appearing to read 'Ken Craig', is centered on the page. The signature is written in a cursive, flowing style.

Upper Tribunal Judge Craig

Dated: 24 May 2019