



IAC-BH-PMP-V1

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

Appeal Number: AA/08251/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 26th January 2016**

**Decision & Reasons Promulgated
On 4th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**ABDELAZIZ HASSAN MOHAMMED GHASHLAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Barnfield of Counsel instructed by Halliday Reeves
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. At the first hearing of this appeal in the Upper Tribunal before me on 26th October 2015 I reached the conclusion that the decision of the First-tier Tribunal contained a material error on a point of law such that it should be re-made in relation to the limited issue of claimed evasion of military service by the appellant. However, I also

concluded that the First-tier Judge's rejection of the main element of the appellant's claim to fear persecution as a result of an argument with a person who lent him money, should stand. My reasons for those conclusions are set out in a separate decision, the relevant part of which I now quote below:

- “1. In a renewed application to the Upper Tribunal, permission was granted on 15th July 2015 to the appellant to appeal against the decision of Judge of the First-tier Tribunal Place in which she dismissed the appeal on all grounds against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant, an adult citizen of Egypt.
2. Upper Tribunal Judge Norton-Taylor granted permission on the basis that the judge's conclusions about the appellant's claim to fear persecution because of an unwillingness to perform military service was flawed. However, it was concluded that there was no arguable error in relation to the other ground raised in the application, namely, that the police were looking for the appellant because of his fight with a person from whom he had borrowed money called Mahmood.
3. Judge Norton-Taylor noted that the appellant's case had been put not only on refugee grounds but also humanitarian and human rights protection grounds particularly applying Article 3. Thus, the appellant's argument that any failure to undertake military service would result in a year's imprisonment and consequent ill-treatment could have been considered on that basis. Further, although the judge stated that there was no objective material to support the appellant's claim that he would be imprisoned, there was such evidence before the judge in an Australian Refugee Review Tribunal document (page 33 of the appellant's bundle).

Error on a Point of Law

4. At the hearing before me Mr Lane submitted a skeleton argument which confirms the background I have summarised in the previous paragraph. Additionally, it is argued that the judge also erred in failing to consider evidence that the appellant was refusing to perform military service for moral reasons, the Australian document showing that conscientious objection was not a reason for exemption. There was also clear evidence in the respondent's Operational Guidance Note (pages 21 to 24 of the appellant's bundle) that prison and detention conditions in Egypt fell below the Article 3 threshold.
5. Mr McVeety argued that the judge had correctly concluded that the appellant had never refused to perform military service but had simply 'skipped' it. He also pointed out that the details of imprisonment on page 33 of the appellant's bundle originated in a 1998 document from War Resisters International and so was out of date and did not give any examples of such imprisonment. Further, the Australian report shows that exemption from military service can be applied for as in the case of family breadwinners. Thus, he submitted, there was no evidence to show that the appellant would be imprisoned. However, in drawing attention to

paragraph 5 of the appellant's statement (page 4 of the bundle), Mr McVeety had to concede that the appellant had claimed not to be the main breadwinner in his family and had raised an issue of conscientious objection instead of simply wishing to avoid military service.

6. Mr Lane concluded his submissions by drawing attention to information which showed that alternatives to military service were no longer available. He argued that there was evidence that the appellant would be treated as a draft evader. Although he suggested that if an error in relation to military service was found the matter should be remitted to the First-tier Tribunal. However, I reminded Mr Lane of the provisions of the Practice Statement of the Senior President at paragraph 7.2 which would not allow for such a remittal if there was only a limited judicial fact-finding exercise involved in re-making the decision. At the end of the hearing I reserved my decision.

Conclusions

7. The decision of the experienced First-tier Judge is comprehensive and well written. There is clearly no error in the judge's rejection of the main element of the appellant's claim to fear persecution as a result of an argument with the person who lent him money. Cogent reasons are given for the judge's negative conclusions in this respect including the conclusion that the appellant's main motivation for leaving Egypt was economic – particularly bearing in mind that he had spent three years in Italy and France without claiming asylum.
8. However, the judge's conclusions about the military service claim are based upon the conclusion that the appellant would not be imprisoned if prosecuted for avoiding military service for whatever reason. In reaching that conclusion the judge appears to have overlooked the information contained in the Australian report on page 33 of the appellant's bundle. Although that information is sourced from a document produced in 1998 and so might not be regarded as a reliable indication of the present situation, it was incumbent upon the judge to examine that information and other objective material put before her which suggested imprisonment for draft evasion and the risk of serious harm in prison. On that basis the decision shows an error on a point of law which is material to the judge's conclusion that the appellant was not entitled to humanitarian or human rights protection.

Decision

9. The decision of the First-tier Tribunal shows an error on a point of law in relation to the judge's conclusions about the claimed evasion of military service by the appellant. To that extent the decision should be re-made, although such re-making should continue before the Upper Tribunal where the matter can proceed by way of submissions only drawing upon objective material relating to risk on return for evasion of military service in Egypt."

Resumed Hearing

2. Prior to the resumed hearing Mr Barnfield handed to me a 30 page bundle of objective material consisting of:
 - (i) A BBC report.
 - (ii) An Al-Monitor report on Egypt's "draft dodgers".
 - (iii) A Global Voices report on the campaign against compulsory military service.
 - (iv) European Asylum Support Office (EASO) report of October 2015.
3. In addition to the above documents Mr Barnfield also indicated that he would rely upon the respondent's Operational Guidance Note of 2013 to be found on page 5 of the appellant's original hearing bundle which contains information about the harshness of prison conditions in Egypt (from paragraph 3.14) and information about restrictions to travel abroad for those who have not completed compulsory military service (paragraph 2.3.6). He also made reference to the Australian RRT research response from page 27 of the bundle which, at paragraph 3, contained the information on the treatment of persons opposed to military service containing information dating from 1998.
4. Mr Barnfield reminded me that the appellant had not performed military service as required for a person of his age and that the appellant would therefore be at real risk, having left Egypt illegally without performing such service, of imprisonment and harsh treatment.
5. Mr McVeety emphasised that there was no current objective evidence to specify exactly what would happen if there was a failure to perform military service and he also stated that it had been found that the appellant had avoided service because he did not wish to fight but not for an obvious reason of conscience. In particular he emphasised that the question of what would actually happen to the appellant if he returned had not been answered. As to the BBC News report he pointed out that this was dated 2005 so was before the regime changed in Egypt. He also pointed out that the high profile objector referred to on page 5 of the Al-Monitor report was clearly a high profile objector. He commented that the EASO report showed that there were options for military service (page 20). The appellant might simply have to pay a fine or just do the service he should have performed. The appellant might also have avoided such service in the first place because he could have been regarded as a sole breadwinner (although this appeared to be inconsistent with the appellant's claim in paragraph 5 of his statement (page 4 of the original bundle) that he was not the main breadwinner in his family).
6. Mr Barnfield concluded his remarks by emphasising that the appellant would immediately be drawn to the attention of the authorities on return as he had illegally left the country without the stamp in his identity card showing performance of military service.

Conclusions and Reasons

7. The issue for me to decide is whether the appellant has shown, to the lower standard, that he will be punished for failing to perform military service before leaving Egypt and that such punishment will involve a period of imprisonment where, it is clear, he will suffer harsh treatment which will reach the level of severity proscribed by Article 3. His asylum claim has failed so I do not consider humanitarian protection.
8. My first step is to examine the appellant's attitude to the performance of military service. He is not, I conclude, a conscientious objector to military service but a person who does not like the idea of such service because he is averse to the thought of having to fight for his country. The First-tier Judge reached this reasoned conclusion although omitted consideration of the 1998 Australian report which indicated that refusal to perform military service was punishable by a year's imprisonment and a fine and, possibly, a prolongation of military service for up to three years. There is also the possibility that a draft evader who had fled abroad could not renew his passport but, in my conclusion, the appellant will not be seen as a draft evader as such but an economic migrant from his country.
9. The latest objective material put before me does not, I conclude, show, to the lower standard, that the appellant will suffer imprisonment as opposed to a prolonged period of military service and, possibly, a fine. The BBC report of 2005 relates to an individual who had been sentenced to two years for evading military service but it is not clear what the circumstances of his specific offence were. The Al-Monitor report of 2015 only suggests that a conscientious objector might be imprisoned. Ahmed Hassan, a 20 year old law student and secretary of the Conscientious Objector Movement states "If I have no choice but being imprisoned or travelling abroad, I will leave". I cannot draw the conclusion of likely imprisonment for the appellant on that basis because the statement is neither conclusive nor is the appellant a conscientious objector. The Global Voices report focuses on a person taken into military custody for failing to perform military service but who was then granted a medical exemption of military service because of a "character disorder". So that report is of limited relevance save to indicate that an exemption from service may be possible.
10. As to the EASO COI query and final answer given on 9th October 2015 this reports under the heading "General Information" that applications can still be made for exemption to military service which is otherwise of a mandatory nature. The punishment for desertion referred to would not appear to be relevant because the appellant cannot be said to have deserted from military service which he has not commenced. The report of imprisonment and fine for a refusal to perform military service is, unfortunately, a repeat of the information provided in 1998. Whilst in response to question 3, there is the suggestion that those who were over the age of 30 who have deliberately skipped the examination process for military recruitment might receive a sentence of imprisonment for up to two years and a fine, that does not cover the appellant's situation as a person who could still return and perform military service even if he does not like the idea of it. Therefore, I am unable to draw conclusions from the EASO report that there is a real risk of imprisonment in the appellant's situation as opposed to a requirement to perform military service, even if prolonged, on return. In reaching that conclusion I bear in mind that the appellant is

still under the age of 30 and there is nothing to suggest that he cannot physically perform military service.

11. Whilst the respondent's Operational Guidance Note makes it clear (paragraph 2.3.6) that the appellant would be a person who would draw the attention of the authorities on the basis that he may have left the country illegally because he failed to perform military service, I have to bear in mind that he is still of an eligible age to perform that service. Thus, the conclusion I reach is that on return, the appellant will certainly be required to perform military service. Bearing in mind that there is no indication that the appellant has actually taken deliberate steps to evade military service whilst in Egypt, I cannot conclude that he has shown that he will suffer punishment in the form of imprisonment and consequent ill-treatment. Therefore, I am unable to conclude that his Article 3 rights will be infringed. No general human rights claim was put before me.

Notice of Decision

The decision of the First-tier Tribunal to dismiss the asylum and humanitarian protection claims stands.

I dismiss the appeal on human rights grounds.

Anonymity

Anonymity was not requested nor do I consider it appropriate in this appeal.

Signed

Date

Deputy Upper Tribunal Judge Garratt

TO THE RESPONDENT **FEE AWARD**

As this appeal has been dismissed there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Garratt