

JH  
Heard at Field House  
On 2 September 2002

APPEAL NO HX/03995/2002  
IM (Article 3-Orthodox Jew-  
Military Service) Russia CG  
[2002] UKIAT 05952

## **IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

08/01/2003

**Before:**

**Miss K Eshun (Chairman)  
Mrs E Hurst, JP  
Mr D R Bremmer**

**Between**

**Ivan Malyutin**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

**Representation:**

For the appellant: Mr C Yeo  
Refugee Legal Centre (London)  
For the respondent: Mr J McGirr, Home Office Presenting Officer

### **DETERMINATION AND REASONS**

1. The appellant, a citizen of Russia, appeals with leave of the Tribunal against the determination of an Adjudicator (Miss J Grimmett) dismissing his appeal against the refusal of the respondent on 15 November 2001 to refuse to vary his leave to enter or remain and to refuse him asylum.
2. The appellant arrived in the United Kingdom on 14 November 1998 and was granted leave to enter as a student. He applied for asylum on 23 June 1999 while he still had leave.

3. The appellant's claim to asylum is that he is a member of the Naturey Karta denomination of Orthodox Judaism. He was called up for military service in 1993 but as he was in hospital following a nervous breakdown, he was told that he would not be called up during peacetime. However, in 1999 while he was in the UK his mother received a letter requiring him to go for a medical assessment for military service. When told that he was out of the country the authorities said he should contact them on return.
4. He said that he has a moral and religious objection to military service as he is a pacifist. There is no alternative to military service in Russia at present and even if there were, he could not undertake it as he would not be allowed to follow his religion in particular and would interfere with holy days, fasting and dietary requirements. He would be imprisoned for failing to undertake military service. The condition and treatment of prisoners in Russian prisons is inhuman and degrading. He would also be at risk because of his religion.
5. The Adjudicator accepted that the appellant belongs to the Naturey Karta. She also found that he has a conscientious objection to military service in view of his religion. However, in light of Sepet and Bubul that is not sufficient to bring him within the 1951 Convention.
6. The Adjudicator found that all of those called up have an 80 percent chance of avoiding military service according to the background evidence. This appellant would appear statistically to have a smaller risk than that as he only has to avoid it for a further 14 months when he will be 27 rather than for the full nine years. It also seems up to him to contact the authorities as that is what they have said to his mother. This suggests that they are unlikely to come looking for him.
7. As to the Adjudicator's findings that the appellant would appear statistically to have a smaller risk because he can avoid it for a further 14 months when he will be 27, we agree with Mr Yeo that we have to decide the appeal as if the appellant were to be removed today, when he is 26 years old rather than look to the future, in fact next year when he will reach the age of 27.
8. The Adjudicator found that in addition the appellant has in the past obtained exemption because of his ill health as he had a nervous breakdown when originally called up. Therefore there is a reasonable chance that that will provide him with further exemption on return as the authorities will be aware of his medical history. She therefore thought that his chances of being forced to undertake military service are small and therefore his chances of facing imprisonment for refusing to undertake it are equally small. Those working abroad can seek exemption as can some who are continuing with their studies. It may be that the appellant can apply now for exemption as his studies will not end until next year when he will be 27. The Tribunal found in

relation to these findings that they were not supported by any independent background material and are therefore not sustainable.

9. The issues in this case are whether as a result of his conscientious objection to military service, the appellant can bring himself within the 1951 UN Convention and/or whether there are substantial grounds for believing that there is a real risk of a breach of Article 3 of the ECHR on his removal from the United Kingdom. Furthermore, whether there is an alternative to military service for this appellant.
10. Mr McGirr submitted BBC News report dated 28 July 2002 which reported that the Russian President had signed a bill into law creating an alternative to military service for conscientious objectors. The alternative service is expected to involve largely menial jobs, often for the armed forces.
11. Mr Yeo however submitted that it is not clear from this evidence that there is an alternative to military service and that the report does not say what the alternative is. If it does involve menial work for the military, it would offend against the appellant who does not wish to have any involvement with the military or military warfare. He submitted that it is possible to get around military service if one paid a bribe or through illegal means but this appellant is not willing to engage in any such means because of his conscience. If he refuses to serve he faces the risk of imprisonment for one to three years, according to paragraphs 4.10 and 4.11 of the April CIPU report. According to an Amnesty International report covering events from January to December 2001, that although the right to conscientious objection is enshrined in the constitution, in practice courts continued to imprison objectors. In light of this Mr Yeo submitted that even though there is now passed into law an alternative to military service, he would argue that the government has not changed its culture and therefore the situation still remains uncertain.
12. Mr Yeo submitted that during his period of imprisonment, the appellant is likely to suffer ill treatment. According to Amnesty International the police continue to torture and ill-treat detainees in their custody. Up to a million people are held in overcrowded conditions that often constitute cruel, inhuman or degrading treatment. Medical care is generally inadequate. Therefore for an orthodox Jew such as the appellant, the conditions would render him vulnerable and, on account of his appearance he would be treated far worse than the general inmates. Mr Yeo however accepted that there is no objective evidence as to how Jews are treated in prison. According to paragraph 4.25 of the CIPU report, correctional labour colonies (ITKs) hold the bulk of convicts. There are educational labour colonies for juveniles (VTKs) but their conditions are significantly better than in ITKs, where torture, beatings and rape still occur. In the light of this evidence Mr Yeo submitted that as an orthodox Jew in prison, the appellant will be in a difficult position and will not be able to observe religious practice. The

prison conditions for him would amount to a breach of Article 3 of the ECHR.

13. Mr Yeo submitted that there is a Convention reason in this case; it is the ill treatment the appellant will suffer, more because of his religion than his ethnicity. Although he would accept that because of Sepet and Bubul the Convention reason just has to be partial and does not have to be the sole reason for his objection to military service.
14. Mr McGirr submitted that there was no evidence before the Adjudicator nor before the Tribunal that the appellant is likely to be called up. What we do know is that as of 28 August 2002 there has been a change in legislation. The BBC News site gives details of the alternative service. The suggestion is put that the appellant would not serve in any capacity in the military. That being the case he will have a non-military option because the BBC News site says that the service is likely to involve doing menial jobs for the military or working as hospital orderlies or carers in orphanages. Furthermore the appellant is going to be exempt on age grounds in the near future. If, indeed, the appellant has a sufficiently strong conscientious objection to military service, he would have contacted the authorities and explained the situation. There is no evidence that the appellant has made such efforts. The objective evidence shows that 80 percent of those who do fall within the required age band do not serve for whatever reason. There is no suggestion that the 80 percent are imprisoned. The appellant is not likely to be called up and even if he is, he has an alternative and does not have to face imprisonment and therefore not face poor prison conditions.
15. As regards Article 3, he would refer us to paragraph 9 of the Adjudicator's determination where she said that Moscow is a relatively liberal city for Jewish people according to the Union of Councils for Soviet Jews. President Putin is committed to fighting anti-Semitism. According to paragraph 5.21 of the CIPU report the 1990s saw a Jewish revival in Russia, as Jewish communities worked to re-establish religious, social and cultural life and to provide for the education and welfare of their people. The focal point of the Jewish renaissance has been Moscow, where almost all international Jewish organisations, numbering over a hundred, are represented, and where numerous religious, academic and social events and programmes have been organised. The Jewish cultural, religious and social revival has been accompanied by a political renaissance. Paragraph 5.22 reports that in July 2000 Russia's Chief Rabbi stated that the Jewish community experienced no more anti-Semitism there than in any other eastern European nation and much less than in some countries. Mr McGirr therefore submitted that this evidence combined with the alternative service suggests that in the Putin era, Russia has changed significantly and it is reforming. The Tribunal decisions in the appellant's objective bundle are concerned with circumstances from an earlier period.

Therefore the appellant will not face military service or ill treatment in breach of Article 3.

16. In reply Mr Yeo submitted that the 80 percent who fail to respond to the call up may not be in prison because there are different reasons for avoiding a call up either through legitimate ways or illegally. Neither option would be available to the appellant as he is not in the position of the vast majority of those called up. The treatment the appellant will receive will be far worse because of his Orthodox Judaism.
17. The objective evidence before the Tribunal says that military service is compulsory for those between 18 and 27 but 80 percent of those called up evade conscription. Although the appellant will be 27 years old in July of next year, we take cognisance of the fact that we are only required to consider the consequences of removal of the appellant as at today. Therefore he is 26 years old and still eligible for military service. The Adjudicator has found that he has a conscientious objection to military service as a pacifist. However as recognised by Mr Yeo, conscientious objection has to be motivated by a Convention reason. In the light of Sepet and Bubul, the Adjudicator rightly found that his conscientious objection was not sufficient to bring him within the Convention.
18. The next argument put forward by Mr Yeo was that the appellant is likely to be imprisoned for a period one to three years if he fails to serve in the military. Given that the appellant does not want to serve in any capacity in the military, the question that has to be asked is whether he is likely to suffer a period of imprisonment. The objective evidence shows that 80 percent of those called up avoid military service. The fact that the appellant is an Orthodox Jew does not, of itself, mean that he will be unable to avoid call up. Furthermore, we have no evidence as to what proportion of this number is actually imprisoned. According to the report from Amnesty International, although the right to conscientious objection is enshrined in the constitution, in practice courts continued to imprison objectors. However it was recognised that this was at a time when there was no law authorising alternative civilian service and courts were often inconsistent in their support for applications from men seeking a civilian alternative to compulsory military service. Such evidence does not lend support to Mr Yeo's argument.
19. Furthermore there is now an alternative to military service that has now passed into law. Therefore the chances of the appellant being imprisoned for failing to undertake military service are remote.
20. According to the BBC News site the service is likely to involve doing menial jobs for the military or working as hospital orderlies or carers in orphanages, though this has not been made explicit by the law. Whilst we accept that this appellant does not want to have any involvement with the military in any capacity, the alternative to military service does

indicate that there is an alternative for doing menial jobs outside of the military, such as working as a hospital orderly or a carer in an orphanage.

21. Accordingly, were the appellant removed to Russia today, there is no reasonable likelihood that he would suffer imprisonment as a result of his conscientious objection and therefore not face imprisonment; nor are there substantial grounds for believing that he would suffer ill treatment of any kind on account of his religion or ethnicity as a result of his refusal to serve in the army.
22. Accordingly, his appeal is dismissed.

**Miss K Eshun  
Vice President**