



**Upper Tribunal  
Immigration and Asylum Chamber**

**Judicial Review Decision Notice**

The Queen on the application of  
SA

**Applicant**

v

Westminster City Council

**Respondent**

**Before Upper Tribunal Judge Perkins**

**Application for judicial review: substantive decision**

Having considered all documents lodged and having heard the parties' respective representatives, Mr D Greene, counsel, instructed by Instalaw Solicitors, on behalf of the Applicant and Mr M Paget, counsel, instructed by the Government Legal Department, on behalf of the Respondent, at a hearing at Field House, London on 7, 8 and 9 September 2021.

**Decision: the application for judicial review is refused**

- (1) My reasons are set out in the transcript of my extempore judgement attached to and part of this order.

**Order**

- (2) I order, therefore, that the judicial review application be dismissed.
- (3) Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the applicant. Breach of this order can be punished as a contempt of court. I make this order because the applicant is an asylum seeker and is entitled to privacy.

## Permission to appeal to the Court of Appeal

- (6) I refuse permission to appeal to the Court of Appeal because I see no arguable error in my decision.

## Costs

- (7) The Applicant shall pay the Respondent's costs to be assessed if not agreed, this part of the Order not to be enforced without further Order.

Signed: *Jonathan Perkins*

**Upper Tribunal Judge Perkins**

Dated: 16 September 2021

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**Applicant's solicitors:**

**Respondent's solicitors:**

**Home Office Ref:**

**Decision(s) sent to above parties on:** 30 September 2021

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## **Notification of appeal rights**

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

IN THE UPPER TRIBUNAL  
EXTEMPORE JUDGMENT GIVEN FOLLOWING HEARING

JR/1593/2020

Field House,  
Brems Buildings  
London  
EC4A 1WR

9 September 2021

**THE QUEEN  
(ON THE APPLICATION OF SA)**

Applicant

and

**WESTMINSTER CITY COUNCIL**

Respondent

**BEFORE**

**UPPER TRIBUNAL JUDGE PERKINS**

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Mr D Greene, instructed by Instalaw Solicitors appeared on behalf of the Applicant.

Mr M Paget, instructed by the Government Legal Department appeared on behalf of the Respondent.

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**ON AN APPLICATION FOR JUDICIAL REVIEW**

**APPROVED JUDGMENT**

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JUDGE PERKINS: I find that the applicant was born on 10 November 2000. The time-tabling of this case was too generous but that has enabled me to have plenty of time during the course of the hearing to reflect on the evidence and as a consequence of that I find that I am able to give an extempore judgment.

2. With permission granted by Mr Justice Holman the applicant challenges the decision of the respondent on 5 July 2019 that he was born on 10 November 1996 and so is 24, nearly 25 years old. He says he was born on 10 November 2002 and so is now 18, nearly 19 years old.
3. The applicant seeks a declaration that he is his claimed age or at least a child when he arrived in the United Kingdom, that the respondent's age assessment was unlawful and/or wrong in its conclusion and an order quashing the age assessment. I confirm that I have read the documents in the two bundles and the pleasingly few additional papers including the submissions and/or skeleton arguments of Counsel. I also appreciate the efforts of the solicitors. It has been a pleasure to work with documents that are clearly paginated.
4. I remind myself that I must determine the applicant's age as a precedent fact and I must reach my conclusion on an evaluation of the evidence as a whole. Neither party bears a burden of proof. I remind myself that any lies that I find the applicant told are not evidence of his age and that his general appearance and presentation, although relevant, is a notoriously poor guide to his actual age.
5. Several important facts are agreed. The applicant is Kurdish and is a national of Iraq. He arrived in the United Kingdom on about 4 December 2018 when, according to the parties, he was aged either 16 or 22 years. He was apprehended by the authorities on 4 December 2018 and arrested as a suspected illegal immigrant but was accommodated as a putative child. The respondent's age assessment is dated 5 July 2019 and the outcome was communicated to the applicant the next day.
6. It is the applicant's case that on his way to the United Kingdom he had dealings with the Italian authorities and gave them his date of birth. Clearly, the information that he gave might be of interest in this case. On 17 May 2021 Upper Tribunal Judge Norton-Taylor ordered that the applicant consent to the respondent approaching the Italian authorities and seeking

information about their interaction. On 26 May 2021 the order was varied so that the applicant was obliged to ask the Italian authorities for help. There was no evidence before me about the outcome of any enquiries but I was told by Mr Greene, I am sure for good reason, that there has been no meaningful response.

7. Although this does not reflect the order in which the evidence was given I begin by considering the age assessment itself. Mr Greene has criticised this assessment in his submissions. However, it is clear that there was a serious attempt at making a fair and considered assessment. The applicant was supported by an appropriate adult and an interpreter and a formal notice explaining the purpose of the interview was read out to him. It is plain from the assessment of the evidence that there was evidence of several people who doubted the applicant's claimed age. There is reference to his appearing a lot older to the police, for example, and it was not believed by the care worker that he was 16 and the foster carer thought he was over 18 but these things are not explained in any great detail and are on the peripheries of my finding.
8. During the course of his assessment he was asked about his life in Iraq and his reasons for travelling to the United Kingdom. He said he was an only child. He started school when he was aged 6 and left in the summer when he was aged 10 or 11. His father worked as a mechanic and decided it was better for the applicant to help him in the family business than to attend school. The applicant showed no aptitude for mechanics and did not progress much beyond tidying the workshop. He said that he worked with his father for seven to eight years. If that is right and if he left school between his 10<sup>th</sup> and 11<sup>th</sup> birthday he was between 17 and 18 years old when he left Iraq. It is a feature of the applicant's case that he has consistently maintained that he was born on 10 November 2002 and I have borne that very much in mind.
9. Clearly, the chronology that he gave does not work. On readback the applicant said that he worked with his father for four to five years but did not deny saying seven or eight years or

explain why he had given the wrong answer. I find merit in Mr Greene's contention that it is regrettable that this change in the account was not investigated further when it was raised but that is the evidence I have.

10. I note at the end of page 103 the applicant is recorded as saying that his father took him out of school in 2010. That claim fits the evidence of his having worked for his father for seven or eight years better than it fits the claim to have work for four to five years. Later the applicant denied saying that he left school in 2010 and speculated that the interpreter had erred because the applicant's reference to leaving school at 10 years had clouded his mind. That contention is entirely speculative. There is no good reason to doubt the competence of the interpreter and I do not. It follows that I am satisfied that the applicant did say that he left school in 2010 and did say that he worked for his father for seven or eight years.
11. The assessors went on to assess the ages indicated above. I do not follow the reasoning there at all. Mr Paget explained that the assessed age in the middle was in the middle of the bracket identified by the assessors. That much I do understand but although there is reference to the applicant's general air of confidence and competence the boundaries of the bracket are, I find, plucked from the air. I attach little weight to that part of the assessment.
12. I look now at the evidence in more detail, starting with the evidence of the applicant. The applicant presented clean-shaven and neatly dressed in a fashionable shirt and looked to me very much like he did in his photograph at page 71 in volume 2 of the bundles. Subject to the caveat about appearances being unreliable I am happy to note that, initially, I guessed the applicant to be in his early to mid-20s but as I watched the way he carried himself and conducted himself I rapidly lost confidence in that crude preliminary assessment and if I have not made it clear already I make it clear now that that has not been a major feature in my reasoning at all; it is just too dangerous.

13. The applicant gave evidence and, subject to a small and, I found, inconsequential amendment about the location of his home village in Iraq, he adopted his statements dated 28 November 2018, 2 July 2020 and 30 September 2020 as his evidence-in-chief. There he said he was born on 10 November 2002 and he entered the United Kingdom irregularly on 4 December 2018. He said that his parents had told him his date of birth and, although his birthdays were not celebrated in the family, his parents referred to his age from time to time. He recalls that after he left Iraq his mother told him he would be 16 in a couple of months. He also went on to say he had seen his date of birth in his Iraqi identity document the family kept in a safe place in a box in the house. Although he could not read Arabic he could read it enough to identify his name and age.
14. He said that he started his formal education at primary school when he was 6 years old and that he left school after four years when he was 10 or 11, which he thought was 2013 but he was not really sure. He explained he did not realise until it was pointed to him that he had he had not achieved a particular age until the anniversary of his birth and so he might have given incorrect answers simply by adding the number of years he attended school to his age when he started without considering whether he left before or after his birthday. I accept that the applicant comes from a culture where birthdays are unimportant and I accept his explanation for being perhaps one year out when he estimated his age on leaving school.
15. However, he also said he did not remember saying in his age assessment interview that he completed school in 2010. He remembered saying he left school in 2010 and speculated the interpreter got confused. I have already indicated I find that answer unsatisfactory.
16. He left school to help his father in the motor-repairing business, and, as I have already said, he had little aptitude for mechanics, he did not progress beyond tidying the workshop. He said he was an only child and lived with his parents. He said his mother was born in 1963 and his father born in 1961 but

he accepted that at interview he had said that his mother was born in 1961 but that was wrong. He explained how he and his mother, with the help of his maternal uncle, arranged to leave Iraq after his father was kidnapped, they believed, by ISIS. He left Iraq in September 2018 with the help of agents and was separated from his mother when they were placed in different lorries in, he thought, Greece. He arrived in the United Kingdom in December 2018 and made his way to a police station where the officers initiated procedures that led to his being supported by the respondent. He is appreciative of his time in shared housing when he lived with four other young people and was helped to cook and clear the house.

17. He then talked about the age assessment. He confirmed that two social workers and an appropriate adult and an interpreter were present. He stated of the interpreter at paragraph 24 of his statement that "I could understand him well". He understood that his date of birth was assessed as 10 November 1996, making him six years older than he claimed to be. He explained that they had concluded this because they had told him he had worked for his father for seven years. He did not deny saying that but did say he was guessing. He claimed he was unhappy in his present accommodation that he shared with four adult men. He felt intimidated by them. He missed his mum.
18. In his second statement he explained how he had suffered from low mood and that he had benefitted from a counselling service called "Off The Record" and from English lessons with "Young Roots". He delighted in the company of friends aged about 17 when he was able to meet them as part of Eid celebrations. In his third statement he gave details of an occasion when he was lost in London because the taxi driver employed to take him to a review meeting took him to the wrong place. It was clearly an unpleasant experience in his life but I did not find it helpful in determining his age. Most people would have been unsettled by being lost in London if they could speak very little, if any, English. It was pleasing to read how the police had helped him when he introduced himself to them on that occasion.



19. He had made some friends in the United Kingdom and found solace in football. He appreciated the help given by support staff in learning to manage his life.
20. He acknowledged then when he was first given £10 pocket money he spent it on fried chicken and chips, which was a new experience for him that he found "very delicious". This spending might be thought a little irresponsible but it does not help me determine his age; he was enjoying having some spending money for the first time in a long time.
21. He tried to explain the school timeline. He insisted that he left school when he was 10. He particularly remembered his father telling him that he was aged 10 when he finished school and started to help him in his garage. He could not recall saying he left school in 2010, only that he was aged 10. He did recall correcting the assessors in saying wrongly that he left school in 2012 and he speculated that the interpreter had made a mistake. I assume he means the interpreter misunderstood the answers rather than translated wrongly. I accept that he had no reason to doubt the competence of the interpreter except that he did not remember saying he left school in 2010. He accepted that he had no reason to doubt the competence of the interpreter except on that point.
22. He said he was nervous of the interview and his heart was beating very fast.
23. He did not feel comfortable in the present accommodation with people he considered to be significantly older than his own age.
24. He was cross-examined and confirmed he had no identification documents. He denied having his own mobile phone when he left Iraq. He said he did not know his mother's mobile phone number or the number of his uncle who arranged their departure. He claimed to be afraid to contact anyone in Iraq lest that created difficulties for the person in Iraq with the group that is in charge. He claimed not to have details about how to contact his uncle. He repeatedly and unsuccessfully asked his agent for

help. He had asked the Red Cross for help but could not tell them very much.

25. He was asked about his journey to the United Kingdom. He confirmed that he had travelled on the last part of his journey with the men. He was asked why at his age assessment he had told the assessor he had worked for his father for eight years. He suggested he may have made a mistake. He claimed not to know how long he had worked for his father. He could not explain why he had claimed to have left primary education in 2010 and suggested that that was not what he said.
26. Mr Ali Habib gave evidence. He adopted his witness statement at page 152 in the bundle. It is not dated. There he explained he was an Iranian national, lawfully in the United Kingdom and that he was born in 1994. He first met the applicant at a "Kurdish" restaurant in London. He was dining on his own and the applicant joined him. Mr Habib thought that the applicant looked quite young and asked him his age. The applicant said he was 17 but the Home Office did not believe him. Mr Habib accepted the applicant's alleged age at the time and subsequently explained that the applicant prioritised playing video games, eating snacks and looked to him, Mr Habib, for occasional subsidies and clothes. He met the applicant on about twenty occasions and was surprised that his claim was doubted.
27. He was cross-examined. He seemed reluctant to answer questions directly. I recognise there may be cultural rather than disreputable reasons for that but Mr Paget found it hard to conduct his planned cross-examination. Mr Habib said, or seems to have said, that the applicant looks like a child now, which of course he is not. Mr Habib pressed him and said that the applicant did not look like a child now. He was asked to explain why he thought that the applicant looked like a child when he first saw him and he could not develop that answer.
28. He was also pressed to explain how the conversation between them started. He found that difficult but said they were sitting near to each other and both of them said they were sitting on

their own, which might have been an explanation for the two coming together.

29. I asked him if he could explain why he thought that the applicant seemed young when the other people such as the police and social workers thought he seemed older. There were many possible answers to this including the context in which the applicant was seen but, perhaps unsurprisingly, Mr Habib could not illuminate the point.
30. Overall, I found Mr Habib an unsatisfactory witness. I want to be clear; I do not say he was being deliberately unhelpful, still less dishonest, but he was trying to assist his friend by repeating points made in his witness statement rather than answering the questions asked with the consequence that he avoided his evidence being tested.
31. The short point is that he accepts the applicant's claim that he was 17 when he arrived and has given some reasons based on his behaviour to explain it but none of them are compelling or, I find, particularly pressing.
32. Mrs Afsana Aramesh gave evidence, adopting her statement of 27 June 2020. Mrs Aramesh then worked as a senior caseworker with Young Roots. She has recently changed her job. She was allocated to the applicant specifically as a caseworker and had, at different times, rather a lot to do with the applicant. She helped him organise his private life and learn to cope in the adult world. She never doubted his claimed age and certainly never had any reason to place him outside the range of 11 to 25 years that she supported.
33. I also heard from a Miss Hanna Lehikoinen, who was a project coordinator with Football United, a charity that offers young people such as the applicant a chance to play football. She was one of a few people who say unequivocally that her first impressions of the applicant put him into about his declared age. I bear in mind that she saw him taking part in physical

activities and she found that he fitted in well socially and physically with young men around the 18 years mark.

34. Mr Gerhard Boer gave evidence. He is employed as a lead coordinator for Refugee Response projects by Hillsong Church in the United Kingdom. His evidence was similar to that of Miss Lehtikainen's.
35. Each of these three witnesses was transparently honest and independent. However, they have no positive reason to know the applicant's age or to think critically about his claims. Their role was to befriend and support him. Nevertheless, if the applicant is as old as the respondent claims it is remarkable that none of them questioned his claimed age.
36. Overall, there are several examples of the applicant learning to cope on his own and not quite managing. I have indicated he was given small gifts of cash from time to time.
37. It is very difficult to know how to evaluate this strand of evidence. On any version of events, he has come from Iraq in rather dangerous circumstances, which must have been a maturing experience. Quite what life skills he had to adopt into life in the United Kingdom is a matter of considerable speculation and it really does not help very much. All I can say is there is nothing about his efforts to fit in in the United Kingdom that are particularly compelling or revealing. Certainly, there is evidence that he has been willing to listen to advice and respond to suggestions from adults. A flippant part of me suggests that this makes him a bit older than 17 but that is not an entirely considered response. The fact is that he has behaved well. It could be that he was a younger age but I find it is not the reason when I consider the evidence as a whole. Rather, he was taking advantage of the opportunities, responding appropriately to people who were helping him and generally trying to fit in.
38. I did not find him a truthful witness. I cannot accept that there was no plan about how to keep in touch with his mother in

the event of their separation. I find it very unlikely that he had not learned his mother's telephone number. He certainly remembered his claimed date of birth but even if he could not remember one 'phone number he could surely have kept a note or at least remembered enough to have had a stab at it but he could not manage that when he was cross-examined.

39. I do not understand why if all else failed he could not have contacted his uncle in Iraq who helped him leave. I do make the point that this "uncle" was identified as his mother's brother. It was not the word used in a generic sense to describe a friend or as a euphemism for an agent. I see no justification at all for the professed concern that contacting him could create difficulties; it just does not follow but even if that possible route for contact failed for some reason I cannot understand why there was no-one in Iraq who could have been approached with the simple message "have you heard about my mum?". Neither can I accept that his chronology was wrong. Rather, I find he let his guard drop and said truthfully that he had worked for his father for seven or eight years.

40. I have reflected on the lack of education, on Mr Greene's submissions that the applicant's conduct is confirmed by Mrs Aramesh, who gave evidence about him having poor organisational skills and being constantly anxious about where he should be. I have weighed that in but I have to make a decision and I find on reflection that what he said at interview was about right, that he left school when he said and he worked for his father for seven or eight years, and putting those together, I find, as I indicated at the start, he was born on 10 November 2000. This I find reconciles the credible evidence from the support workers about their lack of concern about his declared age with the rest of the evidence before me.