

IN THE UPPER TRIBUNAL
IMMIGRATION & ASYLUM CHAMBER

B E T W E E N

THE KING
(on the application of
HS)

Applicant

-and-

LONDON BOROUGH OF SOUTHWARK

Respondent

ORDER

Before UT Judge Macleman on 16th and 17th March 2023 sitting at Field House
UPON hearing Olivia Beach, counsel for the Applicant, and Joshua Swirsky, counsel for the
Respondent

IT IS DECLARED

1. That the Applicant was an adult upon his arrival in the UK.
2. The age assessment conducted by the Respondent was lawful.

IT IS ORDERED

1. The claim for judicial review is dismissed.
2. The order for interim relief made by Richard Clayton KC dated 20th July 2022 is discharged.
3. The anonymity order made by Chamberlain J dated 1st June 2022 shall remain in force until further order.
4. Permission to appeal is refused.
5. The Applicant shall pay the Respondent's costs on a standard basis to be the subject of a detailed assessment if not agreed; these costs shall not be enforced without the permission of the Upper Tribunal.

6. There shall be a detailed assessment of the Applicant's publicly funded costs.

Hugh Macleman

UT Judge Macleman
5 May 2023



Case No: JR-2022-LON-001110

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

5 May 2023

Before:

UPPER TRIBUNAL JUDGE MACLEMAN

Between:

THE KING
on the application of
H S

Applicant

- and -

LONDON BOROUGH OF SOUTHWARK

Respondent

Ms O Beach, instructed by Instalaw, Solicitors, for the applicant

Mr J Swirsky, instructed by London Borough of Southwark, Legal Services, for the respondent

Heard on 16 & 17 March 2023

J U D G M E N T

1. The issues settled by the parties are “(1) whether the age assessment carried out by the respondent was *Merton* compliant in accordance with *R(B) v London Borough of Merton* [2003] 4 All ER 280 and (2) whether the applicant is his claimed age and therefore was a child when he arrived into the UT as he attests to have been”.
2. The legal principles are undisputed. They are clearly and accurately set out in the applicant’s skeleton argument, dated 17 February 2023, at [11] – [18], and in the respondent’s, dated 6 March 2023, at [15] – [34]. There is no need to rehearse them again.

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3. The applicant says he was born on 3 Dey 1383 in the Iranian calendar, 23 December 2004, and so aged 16 on entry to the UK by boat on or around 5 August 2021; 17 at the conclusion of the respondent's age assessment; and 18 at the date of the hearing.
4. The SSHD declined to accept the appellant's stated date of birth, and assigned a date of 24 December 1997. The respondent's assessment, conducted from 29 March 2022 to 3 April 2022, found him to be an adult with a likely age range of 22 - 24. An order is in place requiring the respondent to accommodate him as a child pending determination of his age.
5. The applicant's skeleton argument at [3] bases the applicant's knowledge of his age on information from his parents, recall of his 16th birthday prior to his departure, and sight of his birth certificate, and submits further on these lines:

[20], prior to his oral evidence at the hearing, he has given a coherent, broadly consistent, and credible account on various occasions;

[20 - 21], reminds the UT of general principles of assessment, with reference also to the Joint Presidential Guidance Note No 2 of 2010 for the propositions that child applicants may be more likely to guess an answer or say they don't know; there may be a power imbalance between adult and child; apparent contradictions may merely indicate lack of understanding; children may be less forthcoming, and likely to require a specific question to elicit information;

[22 - 23], further on consistency;

[24 & 26-27], supportive third-party evidence from several professionals;

[25], conspicuous absence of evidence beyond the age assessment from the respondent;

[28-30], age assessment to be given little weight, due to procedural failings and weak reasons -

- (a) adversarial approach of assessors, pre-determination of dishonesty;
- (b) disproportionate weight on appearance and demeanour; reliance on applicant's "bitmoji" with a beard, when that is a fake image;
- (c) over-reliance on general credibility; in any event, applicant credible;
- (d) third party views; applicant supported by several professionals; failure of respondent to take a holistic approach;
- (e) wrong conclusion reached;

[31] tribunal invited to find date of birth of 23 December 2004.

2. The main points in the respondent's skeleton argument are:

[11 - 13] the *Merton* assessment was made by two experienced assessors, based on:

- (i) inconsistencies in account;
- (ii) independence skills;
- (iii) physical appearance; and
- (iv) demeanour;

[14] credibility concerns:

- (i) unable to say in which year he last celebrated his birthday;
- (ii) gave dates of birth and leaving Iran, but could not state year in which turned 16;
- (iii) told allocated social worker that his father asked him to leave Iran, but at assessment said father killed by Iranian police;
- (iv) at assessment, clean shaven and stated dislike of facial hair, but on "Snapchat" had a beard the day before;
- (v) on social media accounts, uses "bitmoji" with a beard;
- (vi) on 29 March 2022 denied having a Snapchat account, but had used it on 28 March 2022; posted picture of himself clean shaven on 29 March 2022;
- (vii) posted pictures on Snapchat of himself with apparently adult friends, eating in restaurants and smoking shisha; and
- (viii) unable or unwilling to give details of journey, apart from passing through Turkey;

[36] no independent or documentary evidence of date of birth; says he has a *shenasnameh*, but no copy sent from Iran;

[38] relies on views or professionals encountered to support his case, but no witness evidence served;

[39] assessment *Merton* complaint, should be given significant weight;

[41] no evidence of adversarial approach; no suggestion of intervention by, and no evidence from, the appropriate adult;

[42] appearance and demeanour are legitimate considerations;

[43] credibility inevitably to be taken into account;

[44] third party views were part of assessment; witnesses not called;

[46] tribunal invited to find applicant is an adult.

3. A combined bundle was before me, vols I & II, tabs 1 - 18, 374 & 637 pp. Mr Swirsky added one item which had been omitted, the report of an observation of an age assessment by Inas Winstanley, Senior Social Worker, Southwark Children's Services, 7 November 2022.
4. As envisaged by the order of UT Judge Smith, issued on 31 October 2022, all witness statements in the case stood as evidence-in-chief, and the applicant, in absence of cross-examination, was free to submit on the evidence of the assessing social workers.
5. On 16 March, the applicant gave evidence through a Kurdish Sorani interpreter. Ms Beach questioned him on one brief point. Mr Swirsky cross-examined in detail. The cross-examination was entirely fair, with no objections raised, but the applicant showed signs of strain at stages. Three breaks were taken for him to compose himself. He appeared able to answer fully all questions put to him. There was no re-examination.
6. On 17 March, counsel made their submissions. Mr Swirsky asked me to find that the age assessment was *Merton* compliant and to find, as the assessors did, that the applicant was over 18 when it was made, and likely to be aged 22 to 24. Ms Beach asked me to find that the assessment was non-compliant, and that the appellant was born on 23 December 2004.
7. This decision was drafted on 13 April 2023, based on a note made immediately after the hearing. I have not sought to deal with every matter raised in the skeleton arguments and submissions, but to give my reasons for deciding as I have, against the applicant.
8. I attach no adverse significance to the applicant's use of a "bitmoji" with a beard, smoking shisha with friends, use of a different date of birth on a Facebook account, or the level of his skills in looking after himself. Rates of development vary. Youths often wish to appear and act older than they are. Those were all matters which the respondent was entitled to raise, but on which I prefer the submissions for the applicant.
9. The applicant has on many occasions given a consistent account of alleged events in Iran leading to his departure. However, that account is scant in detail and does not make good sense in the contexts of his failure to substantiate his origins and circumstances and of his attitudes and behaviour since he arrived.
10. While demeanour is an uncertain guide, the applicant was a reluctant and defensive witness throughout the hearing. If he has been truthful, that might reflect natural resentment in disclosing a dreadful history and encountering disbelief; but I found it revealing that he was in discomfort

when his evidence was probed for flaws, yet not over the loss of his father, and he showed no real concern over the fate of his mother.

11. The applicant claims to have been brought up as an isolated, uneducated and illiterate child, sent abroad by his uncle after the shocking killing of his father by the authorities, with no means and in fear of contacting his uncle or anyone else in Iran. That does not fit with the fact that within days of arrival he had a mobile phone and no difficulty in using it. He floundered in trying to explain how and why he obtained that phone, and who he used it to contact. He accepted, grudgingly, that he was active within weeks, if not days, of his arrival on Facebook and other sites. Later in his evidence, he denied ever having looked on Facebook for anyone he knew in Iran.
12. Another telling passage of the applicant's oral evidence concerned his and his family's use of phones in Iran. He at first denied having a phone there, but with rather sullen reluctance he gradually admitted to having "a small old-fashioned mobile" with his parents' numbers; that they each had a mobile; and that his father had a landline for his business use.
13. It is not impossible that parents, themselves educated, who are fiercely against the Iranian state and the Farsi language would refuse to comply with their legal obligation to have their child educated, although themselves carrying on business in that language, leaving him illiterate in any language; but that would be an extreme case. In absence of a coherent explanation for such an unusual upbringing, in light of the unsatisfactory state of the rest of the evidence, and of the applicant's readiness to acquire and communicate through a phone, I find it much more likely that he was literate (in at least one language) when he arrived.
14. The applicant claims to have arrived in the UK in ignorance of how that came about and where he was. Such journeys have to be organised and paid for. Traffickers do not take on the trouble of transporting people where they do not wish to go for no reward. If the applicant's uncle took responsibility, I find it highly improbable that he would not have maintained a line of contact to be satisfied of the applicant's safe arrival in exchange for payment.
15. The applicant tried to explain the absence of contact by (a) lack of any means and (b) fear of the consequences for his relatives. I am not persuaded that there is anything in his claims of difficulty in making contact. It is much more likely, given the ease of communications and likely interest in staying connected, that he has ready means of contact with relatives and others in Iran. His evidence has not persuaded me that contact might bring any risk from the authorities. Even if there was such a risk, it would not be hard to try to find out information indirectly. The applicant describes having many contacts in the Iranian Kurdish expatriate community here. If there were truth in his claims, he would be anxious to find out what has happened since he left and, especially, how his mother is. His apparent lack of interest is significantly adverse to his credibility.

16. I am not persuaded that the applicant would have any difficulty in obtaining identification documents from Iran, establishing his age, if he chose to do so. The absence of documentation is adverse to his case.
17. The applicant at one interview is recorded to have remarked, "What if they find out I'm over 18?" (bundle vol I, p.187). When that was put to him in cross-examination, he at first said he did not understand, then gave a long and rather angry answer, without quite denying having said it. Ms Beach submitted that he had implicitly denied the remark, and pointed out that this was an exchange not in English, subject to interpretation. Alternatively, she said this was an insignificant single lapse in his evidence. However, I note that the remark was double-checked with the applicant through the interpreter when it was made. Taken with his response in cross-examination, I find that this was a significant admission against interest which he let slip, and a clear indication that he has been misrepresenting his age.
18. It is also clear that the applicant shaved his facial hair prior to his age assessment interview and made feeble attempts to deny the evidence of social media to that effect, and then to deny having done so to appear younger.
19. The high point of the challenge to the age assessment was that the assessors made too much of the applicant shaving before interview and trying to suppress the relevant social media history. They were said to have treated the matter as outweighing all other evidence. The conclusion in the assessment does perhaps over-emphasise the issue, but the document should be read fairly and as a whole. There is nothing apart from the applicant's over-aggrieved account to bear out the allegations of a hostile or pre-determined approach. Mr Swirsky pointed to the non-intervention of the appropriate adult. I am satisfied that the assessment was professionally and correctly conducted.
20. I have borne in mind that an applicant may be generally not a credible or reliable witness, yet truthful about his age. However, in this case, the causes for concern are at least equally related to the age issue.
21. For all the above reasons, and based on my view of the evidence as a whole, I find that the assessment did comply with legal requirements; the applicant is not generally credible; in particular, he is not credible about his age; and he was an adult when he arrived in the UK.
22. The case involves only the straightforward resolution of a factual issue. It raises no point which merits the attention of the Court of Appeal. Permission to appeal is therefore refused in the order accompanying this judgement. That order also deals with the discharge of interim relief, anonymity, and costs, all in agreed terms.
23. I thank both sets of representatives for their careful preparation of the materials in the trial bundle, and both counsel for their clear and thorough submissions.

24. The application for judicial review is dismissed.

Hugh Macleman

UT Judge Macleman
5 May 2023