



**In the Upper Tribunal
(Immigration and Asylum Chamber)
Judicial Review**

In the matter of an application for Judicial Review

The King on the application of
HA
(anonymity order made)

Applicant

versus

Coventry City Council

Respondent

ORDER

BEFORE Upper Tribunal Judge Frances

HAVING considered all documents lodged and having heard Mr Buckley of counsel, for the applicant and Mr Alomo of counsel, for the respondent at a hearing on 20 June 2023

AND UPON the Upper Tribunal hearing oral evidence from the applicant

IT IS DECLARED THAT:

The applicant was born on 1 January 2002

IT IS ORDERED THAT:

- (1) The application for judicial review is refused for the reasons in the attached judgment.
- (2) The applicant's challenge to the respondent's age assessment dated 9 March 2022 is dismissed.
- (3) The applicant is to pay the respondent's costs to be subject to a detailed assessment. The applicant having the benefit of cost protection under section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the amount that the applicant is to pay shall be determined on an application by the respondent under regulation 16 of the Civil Legal Aid (Costs) Regulations 2013. Any objection by the applicant to the amount of costs claimed shall be dealt with on that occasion.
- (4) There be a detailed assessment of the applicant's publicly funded costs.

- (5) Permission to appeal is refused because there is no arguable case that I have erred in law or there is some other reason that requires consideration by the Court of Appeal.

Signed: J Frances

Upper Tribunal Judge Frances

Dated: 3 July 2023

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 03/07/2023

Solicitors:

Ref No.

Home Office Ref:

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 point 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).



Case No: JR-2022-LON-001852

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

3 July 2023

Before:

UPPER TRIBUNAL JUDGE FRANCES

Between:

THE KING
on the application of
H A
(anonymity direction made)

Applicant

- and -

COVENTRY CITY COUNCIL

Respondent

Carl Buckley
(instructed by Bhatia Best Solicitors) for the applicant

Richard Alomo
(instructed by Coventry City Council) for the respondent

Hearing date: 20 June 2021

J U D G M E N T

Judge FRANCES:

1. The applicant challenges the respondent’s age assessment completed on 9 March 2022. The respondent assessed the applicant’s age to be over 18 years old. The applicant claims his date of birth is 1 January 2006.

Issues

2. On 30 November 2022, permission was granted by Upper Tribunal Judge Mandalia who directed the application be set down for a fact-finding hearing. The issues to be determined are:
 - (i) The credibility of the applicant's account of his age and date of birth;
 - (ii) Whether the respondent's age assessment process was procedurally fair and the weight to be placed upon it;
 - (iii) The applicant's age and date of birth.

Agreed facts

3. For the purposes of this hearing, the following facts are agreed: The respondent carried out an assessment of the applicant's age on 9 March 2022. The applicant was interviewed in the presence of two social workers, an interpreter and an independent person from SERCO. The applicant was offered breaks during the assessment if needed and he accepted a break at the midpoint of the assessment.
4. The applicant is an Iraqi National, from Chakhmaka village and his first language is Kurdish Sorani. He is illiterate. As far as he is aware he has no family in the UK. His mother is Layla Aziz, and his father, now deceased, was Wahab Ahmad. The applicant has an uncle called Farhad Ahmad.
5. The applicant arrived in the UK on 10 November 2021. He has not provided the Home Office or the respondent with any identification documentation to confirm his nationality or date or place of birth. He has been assessed to be over 18 years old by the Home Office. He has claimed asylum and his claim remains outstanding. The applicant is currently provided with support and accommodation by the Home Office.

Applicant's case

6. The applicant's case is set out in the statement of facts and grounds and his witness statement dated 9 March 2022. The applicant was born in Chakhmaka village where he lived with his mother until he was about 10 years old. His mother remarried and the applicant went to live with his uncle. He has no memory of his father who died when he was young. He has never had any written record of his date of birth, but he would not have been able to read any such document. His mother told him his date of birth as he was about to leave Kurdistan.
7. The applicant left Kurdistan because he was mistreated by his uncle. His uncle would not let him go to school and he stayed at home all the time playing with Akhan, his uncle's son. His mother arranged his journey with an agent who collected him by car just after celebrating Eid. He did not recall the date when he left and he did not know how old he was. He did not know where he was going or if his mother paid for the journey.

8. The journey was long and distressing. The applicant travelled on foot, in cars and lorries and slept outside. The agent did not tell him anything and he walked a lot through the jungle. There was little or no food and he was often ill. The applicant was stopped in one country, taken to the police station and fingerprinted. He was kept in custody for about 10 days.
9. The applicant arrived in the UK on 10 November 2021 by boat and was stopped by the police/border authorities. He claimed asylum and stated his date of birth was 1 January 2006. He was extremely tired from the journey and anxious about the procedure which he did not understand. He was told his age was not believed and he was taken to a hotel with other adults.
10. The applicant instructed solicitors who asked the respondent to conduct an age assessment. The respondent interviewed the applicant on 9 March 2022 ('the interview'). He was offered an independent person but declined because he did not understand. The process was short and the applicant felt under pressure. He was again told that he was not believed. He was not aware he could comment on this decision and believed he could do so through a solicitor.
11. The applicant never celebrated his birthday with his mother or any other family member in Kurdistan. He only celebrated his birthday once on 1 January 2022 in the hotel. The applicant celebrated Eid twice a year and never fasted because he was too young.

Applicant's oral evidence

12. The applicant relied on his witness statement dated 9 March 2022 as evidence in chief save that he no longer lived in a hotel but was in shared accommodation with three other people in Manchester. He was then tendered for cross-examination.
13. In summary, the applicant remembered being interviewed by the Home Office on 16 November 2021 and was referred to the Initial Contact and Asylum Registration Questionnaire ('ICARQ'). He confirmed he had used a different date of birth, 01/01/2002, when he was fingerprinted on his journey to the UK because the agent told him to. He was told he was too young and 'they' would keep him until he was 18. He accepted he was content to lie about his age because he thought it would help the situation. He denied lying about his age in the UK.
14. The applicant's life was at risk in Kurdistan because his uncle treated him badly and he was present when a militia group, Hashed Al Shaabi, raided his uncle's farm land and made threats. His uncle did not allow him to go to school and forced him to work on the farm. If he disobeyed, his uncle would beat him up or not let him eat. The raid by the militia was not in his statement because he was not asked about it.

15. The applicant was referred to the answer to question 3.3 of the ICARQ which stated, "On 20 September 2021 he left the country on foot and car." The applicant stated in oral evidence that he remembered the date because he was present when his mother discussed leaving on that date with the agent. Neither the applicant nor his mother wrote the date down. The applicant was able to remember it.
16. The applicant requested help from the Red Cross by phone because he was desperate for help. He wanted to move somewhere more appropriate with people the same age. The date of birth recorded in the respondent's notes, 05/01/2006, was incorrect. His solicitors also got the date wrong when they referred to 03/01/2006. He has always said his date of birth is 01/01/2006. He arrived on 10 November 2021 and was placed in children's accommodation until the first age assessment. He did not tell the Red Cross he claimed asylum on 10 November 2021. He did give them his mobile phone number and the Red Cross provided an interpreter.
17. The applicant was referred to the respondent's age assessment conducted on 9 March 2022. He remembered the interview which took place at the hotel. There was a Kurdish Sorani interpreter present throughout and he understood the dialect. He was asked if he was hungry and confirmed he had eaten. It was explained to him that he could take a break at any time. He was asked if he was well and said yes. He remembered being asked if he wanted an independent person present but he did not understand and said no. He was not told of the role of the independent person. One of the staff members from the hotel was present. She was called Monica and she left half way through. Another young female was present.
18. The applicant confirmed the social workers introduced themselves and explained their roles. He was told he could ask questions at any time and stop if he did not understand anything. He said he was 16 years old. His mother told him his date of birth and he knew it too. He never said he celebrated his birthday with his mother. He was not sure if he was asked about the Iraqi calendar and he was not asked if he knew his birthday in any other calendar. He has never seen any documents stating his age and date of birth. He did not have any brothers and sisters and never knew his father.
19. The applicant was 10 years old when his mother took him to live with his uncle. He knew his age even though he did not celebrate his birthday. His mother could not read or write and he had not been able to contact her from the UK. He was asked the date on which he left Kurdistan and he said 20 September 2021. He denied stating he did not know the date during the age assessment interview and claimed he has always said he left on 20 September 2021. He was asked about the weather and if he left before or after any festivals.
20. After a short break, the applicant stated that he lived with his uncle for about 5 years from the age of 10. He said in the interview that he did not know how long he lived with his uncle because he was not sure. He was only 10 years old at the time. He said he lived with his uncle, his uncle's wife and kids. He was the same age as Akhan, his uncle's son and they played with other children but

he did not know their names. He did mention a girl who was Akhan's friend. She would come and play and go to school with Akhan.

21. The applicant confirmed he never celebrated his birthday with his mother. He thought he was 15 years old when he left Kurdistan but he did not know the year. He knew he left on 20 September but he did not know exactly how old he was, i.e., 15 years but not how many months. He did not know if his mother paid the agent.
22. The applicant stated there was no discussion with the agent about where the applicant was going. His mother said the agent would take him to a safe place but the agent would not tell him where. He did not ask before he set off but he did ask the agent during the journey. He only knew where he was going when he arrived in the UK. He arrived by boat from France. He was scared to get in the boat and was forced in by the agent. They were 30-35 others. Some were Kurds but he did not ask where they were going. He stayed in the jungle in France for 2 weeks but did not speak to anyone about where he was going.
23. The applicant remembered being asked in the interview about the days of the week and months of the year. He did not have an understanding of these things at the time and said he did not know the months or the years. He did not own a mobile phone. He did not mention the work on the farm in the interview because he only worked once a month for about an hour. He was not asked about this and could not remember it at the time. He did not give the exact date of arrival in the UK because he was not sure about the question he was being asked; whether it was the date of arrival or the date he claimed asylum.
24. The applicant was asked about his witness statement and stated that Akhan's friends would stay over at his uncle's house and go to school together. He did not know what made him think his uncle had other children. He did not mention the raid on the farm because he was not asked. When asked why he had not given the date of 20 September 2021 as the date he left Kurdistan he stated there was a misunderstanding. He was not sure how old he was but he has always said the date was 20 September. He was asked why the only reference to this date was in the ICARQ and the applicant stated he had said this date and did not know why it was not recorded in other documents.
25. In response to a question from me, Mr Alomo asked about question 1.2 of the ICARQ. The applicant stated he was asked, "What is your date of birth?" He denied giving the date 01/01/1998 and stated he had replied 01/01/2006. He stated that when he was asked why he came to the UK he said because his age and date of birth was not accepted and he stated 01/01/1998 was the date of birth given to him.
26. In re-examination, the applicant confirmed that 01/01/1998 was the date given to him as his date of birth by two African ladies who conducted the age assessment. He was asked if this was the one at G113 of the bundle or another. He said the initial age assessment in the hotel. He accepted he was asked about his age in a previous age assessment in which he was assigned the date of birth 01/01/1998.

27. The applicant stated he did not go to school before he moved to his uncle's house and he had never been. He was not taught how to read and write. He did not have a mobile phone but he had a SIM card which he put in his friend's phone to make calls. He gave the phone number on the SIM card to his solicitors and his friends in the hotel might have it.
28. The applicant confirmed he had given the date of birth 01/01/2002 and that it was incorrect. He accepted he lied because he thought it would help. He said he was not going to do that again. He was a truthful witness because he had no reason to lie. This case had been going for a year and he would have given up if he was not telling the truth.

Respondent's evidence

29. The respondent relies on the age assessment report dated 9 March 2022. The report concluded that the applicant was over the age of 18 years and the applicant did not challenge the social workers when reasons for the decision were provided. The report stated that:

"In this instance, following the assessment above undertaken by two Social Workers, Ms Warner and Mr Ball and based on physical appearance and demeanour of [the applicant]. [The applicant] is viewed in the category of being over 18 years of age."

Respondent's submissions

30. Mr Alomo relied on his skeleton argument and submitted the applicant was not credible because his account given in the documentary evidence was inconsistent with his oral evidence. There was no document recording the applicant's date of birth. Taking the applicant's case at its highest, his mother told him his date of birth and she was unable to read or write.
31. Mr Alomo submitted it was surprising the applicant could not remember the date when he left Kurdistan in the interview or in his witness statement. He stated that he did not know the date or how old he was. The applicant had not mentioned 20 September 2021 in any other interview record or documents after the ICARQ.
32. The applicant's credibility was further undermined by his evidence that he was content to give a different date of birth to gain an advantage and to protect or improve his situation. The applicant must have been aware of his age when he left Kurdistan if he was able to give a false date of birth on his journey to the UK.
33. The applicant did not mention the raid on his uncle's farm in the interview or his statement. There was no logical explanation for why this was not part of the applicant's account prior to him giving evidence in court. It was not credible the

applicant did not know he was coming to the UK given he spent 2 weeks in 'the jungle' in France.

34. The applicant's account of his journey to the UK given in the interview and his statement lacked detail because the applicant was not truthful about his background and his circumstances. The appellant's account was not credible.
35. The age assessment report was reliable evidence of the applicant's age. It was clear from the applicant's oral evidence and on the face of the report that the applicant was given a full opportunity to express himself. The information he gave was consistent with that in his witness statement prepared with the assistance of his solicitors. The applicant was not put under pressure and was aware he could take a break at any time. The applicant could have submitted evidence to rebut the conclusions in the age assessment report but he did not do so. There was no procedural unfairness.
36. The applicant was supported in the UK and was able to seek help. There was no substance in the assertion that the social workers were not sensitive to the applicant's needs and respondent failed to consider the applicant's trauma.
37. Mr Alomo submitted there was no legal requirement that an appropriate adult be present in the age assessment interview, but in any event the respondent provided one. It was not credible the applicant was not told why an independent person was present in the interview. The applicant accepts he was asked about this and declined their assistance.
38. The respondent considered the applicant's physical attributes alongside the information the applicant provided. There was nothing unfair in recording what the social workers observed. They were not unduly influenced by the applicant's demeanour and concluded the applicant was not a child on the basis of the contradictory information he provided. The issue was whether the applicant is a child and qualifies for support under the Children Act 1989. There is no principle that the applicant is given the benefit of the doubt.

Applicant's submissions

39. Mr Buckley relied on his skeleton argument and submitted the applicant is a child. He submitted I should exercise an element of caution in assessing the applicant's credibility in the context of social and cultural norms and lack of education.
40. The applicant accepted he had previously lied about his date of birth and volunteered this information in his ICARQ. This point supported rather than undermined the appellant's credibility. The discrepancies in the applicant's account should be considered in the light of his lack of education and the failure to put to him the reasons why he was not believed.
41. The age assessment report was not verbatim and the information recorded was open to mistakes and interpretation, for example the information about the

applicant's uncle having one child. The applicant had adequately explained why he raised matters for the first time in oral evidence. There was insufficient evidence to find the applicant not credible. The applicant gave the same date of birth at the outset and has maintained it throughout the proceedings.

42. The age assessment was not *Merton* compliant and was procedurally unfair. Although a formal 'minded to' process was not required in every case the report failed to comply with the guidelines in *Merton*. A theoretical possibility to respond was not enough to meet the requirements because it amounted to no opportunity at all. The applicant was unaware he was able to challenge the findings in the age assessment because he did not understand and was not able to explain or expand on his evidence. There was no reference to the applicant being told he could respond.
43. The procedure was contrary to ADCS guidance because the social workers failed to appreciate the applicant's experiences which gave rise to him leaving Kurdistan. It was too simplistic to suggest there were no obvious signs of trauma.
44. Mr Buckley accepted there was no legal requirement that an appropriate adult is present at the interview but whether one is required is case specific and not a general proposition. In this case the respondent deemed it appropriate for an independent person to be present and was therefore obliged to appoint someone in accordance with the guidance. The respondent failed to adhere to the guidance and the independent person from SERCO was not an appropriate adult.
45. Mr Buckley submitted that appearance is notoriously unreliable when assessing age and the authorities referred to in the applicant's skeleton argument supported this submission. The age assessment report attached too much weight to appearance and demeanour and the applicant should be given the benefit of the doubt. Taking all these factors cumulatively, the decision was procedurally unfair. The applicant was under the age of 18 years old.

Conclusions and reasons

46. The issue for me to resolve is the applicant's age and date of birth. I make no determination whatsoever on the merits of the applicant's protection claim. Any finding or observation regarding the credibility of the applicant's account is in the context of the limited issue of dispute between the parties: the applicant's age and date of birth.
47. The relevant legal requirements are set out in the grounds of application at [26] to [41], the applicant's skeleton argument at [3.1] to [3.17], the respondent's summary grounds at [10] to [16] and the respondent's skeleton argument at [8] to [10].
48. In summary, it is for the Tribunal to determine the applicant's date of birth as a matter of fact and the Tribunal's role is inquisitorial. There is no burden of proof

on either party and it is open to the Tribunal to reach a conclusion that is different from both the claimed age and the assessed age. The Tribunal should conduct a holistic assessment and decide the applicant's age on the balance of probabilities. The Tribunal should follow the *Merton* guidelines and should give the applicant the benefit of the doubt.

49. In coming to my conclusions, I have taken into account all of the evidence before me and considered it in the round. I have considered the applicant's evidence with care making allowances for the traumatic experiences he is likely to have suffered in travelling from Kurdistan, Iraq to the UK. I have considered the applicant's own evidence, the information set out in the contemporaneous records that form the backdrop to the age assessment completed by the local authority, and the background material. I have also made allowances for the fact that a child or young adult may have problems giving a coherent account of their history. It is agreed that, in the absence of documentary evidence of the applicant's age, the appropriate starting point is an assessment of the applicant's age on the basis of the credibility of his own evidence.

Applicant's credibility

50. I do not find the applicant to be a credible witness because he accepts has lied about his date of birth, he has embellished his account and his accounts were inconsistent. The applicant stated that he gave a false date of birth when he was stopped and fingerprinted on his journey to the UK. He stated that he lied because he thought it would help his situation.
51. The applicant made no mention of working on his uncle's farm or the raid by militia on the farm land in his witness statement. I do not find his explanation that he was not asked about this to be credible. The applicant was specifically asked in his ICARQ, 'Why is your life at risk?' and he failed to mention the raid in the ICARQ, the age assessment interview or his witness statement. I find the applicant embellished his account in oral evidence in an attempt to support his claim.
52. In the age assessment interview and in his statement, the applicant stated he did not know the date he left Kurdistan or his age at that time. In oral evidence he stated it was 20 September 2021 and he gave that date when asked about it. This date is not referred to in the age assessment report or the applicant's statement. Nor is his evidence that his mother discussed this date with the agent in his presence before he left Kurdistan. The applicant was clearly aware of this date having given it in his ICARQ. There was no plausible explanation for his failure to mention it in his age assessment interview or witness statement.
53. The applicant gave inconsistent evidence about whether he celebrated his birthday with his mother in Kurdistan. The applicant denies having stated he celebrated with his mother and there was no explanation for this discrepancy. I find his evidence that he only celebrated his birthday in the hotel in the UK was contrived to support his case.

54. I attach no weight to the inconsistent evidence about the applicant's uncle's children and give the applicant the benefit of the doubt that this was a misunderstanding of what the applicant meant.
55. The applicant agreed with the majority of what was said in the age assessment report. He disagreed with the date on which he left Kurdistan, celebrating his birthday with his other and not having the role of independent person explained to him. For the reasons given above I do not find the applicant credible and I do not accept he gave the date of 20 September 2021 in the age assessment interview and I do not accept the role of the independent person was not explained to him.

Respondent's evidence

56. I attach weight to the age assessment and conclude it was *Merton* compliant for the following reasons. The applicant's oral evidence at [17] above supports the respondent's case that the respondent considered the applicant's vulnerability and trauma. The applicant accepted he was asked if he wanted an independent person to be present and, notwithstanding his refusal, an independent person was present. I do not accept the applicant was not told the role of the independent person given he accepted all the other evidence in the age assessment report relating to the explanation of procedure.
57. I am satisfied on a proper reading of the age assessment report that the applicant's physical appearance and demeanour was considered with all the other evidence and was not determinative to the conclusion that the applicant was not a child. The conclusion quoted at [29] above supports my finding.
58. The applicant was given an opportunity to respond to the conclusion that he was an adult. If he misunderstood, as he claims, that he could respond after the conclusion of the age assessment interview, then he could have addressed the reasons given in the age assessment report in his witness statement. He did not do so. The evidence in his witness statement was largely the same as that in the age assessment report. I find there was no procedural unfairness in the conduct of the age assessment.

Summary of conclusions

59. The task of the Tribunal is not simply to choose between the credible attempts to assess the applicant's age, but to reach my own assessment, informed by all of the evidence. There is no hurdle which the applicant must overcome, and I have to decide whether, on a balance of probability, the applicant was a child when he arrived in the UK.
60. Looking at all the evidence in the round, I do not accept the applicant's year of birth is 2006 as he claimed because his account is not credible. I attach weight to the age assessment report and find that the applicant was not a child when he arrived in the UK.

61. The applicant's evidence about the date of birth given in the ICARQ was unclear. His evidence that 01/01/1998 was the date of birth given to him was inconsistent with his answer to the following question in which he was asked if he had used other dates of birth and he replied 01/01/2006 and 01/01/2002. However, the applicant's age was assessed before he attended the ICARQ interview and it is possible that 01/01/1998 was the date of birth assigned to him. It was not possible to obtain this evidence and it formed no part of these proceedings.
62. For the reasons given above, I find it more likely than not that the applicant's date of birth is 01/01/2002.
63. It is determined that the applicant's date of birth is 1 January 2002 so that on arrival in the United Kingdom on 10 November 2021, he was 19 years of age.
64. There was no application for permission to appeal to the Court of Appeal. I refuse permission to appeal to the Court of Appeal because there is no arguable case that I have erred in law or there is some other reason that requires consideration by the Court of Appeal.
65. The parties were invited to make written submissions on costs by 4pm on 29 June 2023. The parties submitted an agreed draft order. The circumstances do not justify a departure from Bahta v SSHD [2011] EWCA 895 and M v Croydon BC [2012] EWCA Civ 595 that the unsuccessful party will pay the costs of the successful party. The respondent is entitled to her reasonable costs.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the applicant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the applicant, likely to lead members of the public to identify the applicant without his express consent. Failure to comply with this order could amount to a contempt of court."

J Frances

Signed: _____

Upper Tribunal Judge Frances

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