



IN THE FAMILY COURT

Sitting at the Royal Courts of Justice

[2018] EWFC 55

No. A2/2014/3934

Royal Courts of Justice

Tuesday, 26 June 2018

Before:

MRS. JUSTICE THEIS

B E T W E E N:

(1) Mrs X

(2) Mr X

Applicants

- and -

(1) A Local Authority

(2) Z

Respondents

MS CRONIN (instructed by Goodman Ray) appeared on behalf of the Applicants.

MS CABEZA (instructed by A Local Authority) appeared on behalf of the First Respondent.

MS CAYOUN (instructed by Bindmans LLP) appeared on behalf of the Second Respondent.

J U D G M E N T

Note: This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

MRS. JUSTICE THEIS:

Introduction

- 1 This matter concerns an application for an adoption order relating to a young person called Z, who is now eighteen years old. There is no dispute that this court has jurisdiction to make the order. There is an immigration context to the background of this case, I have rightly been reminded that the two jurisdictions operate under different legal frameworks and apply different tests.
- 2 This court's focus is the welfare of the child who is the subject of the application, that is the court's paramount consideration as set out in s.1 of the Adoption and Children Act 2002 (ACA 2002). The Secretary of State for the Home Department (SSHD) and any subsequent appeals from determinations made by him regarding immigration matters are concerned with welfare, but also have wider considerations which may be relevant in this case as Z has been convicted of a serious offence and is currently serving a seven-year sentence.
- 3 This application for adoption is made by Mr. and Mrs. X in relation to Z whose date of birth was declared by the Upper Tribunal in August 2017 to be date A, so is now eighteen years. Z arrived as an unaccompanied minor in the United Kingdom in January 2015. Z's subsequent asylum application was refused, as were Z's appeals to the First Tier Tribunal and the Upper Tribunal.
- 4 Ms. Cronin, who appears on behalf of the applicants, informs the court that Z was granted leave to appeal the Upper Tribunal determination to the Court of Appeal against the negative credibility findings, but that that appeal has been withdrawn. She considers that that is very likely to be due to the fact that Z has an outstanding application for leave to remain, that application having been issued on 28 October and Z is liable to be served with a deportation notice due to the nature of the offence for which Z was convicted and the length of the sentence. The intention is likely to be that, if required, all outstanding matters will be dealt with in one appeal hearing.
- 5 When Z arrived in this jurisdiction he gave his date of birth as date B (two years younger than date A). By March 2015 the Local Authority had made a date of birth assessment and assessed it as being date C, three years earlier than date B. Until that assessment was overturned by the decision of the Upper Tribunal in t 2017 to be date A, Z was treated by the relevant authorities, including the Local Authority and otherwise, as having been born on date C.
- 6 Z lived with Mr. and Mrs. X for a period of about sixteen months between November 2015 and May 2017 with a three-month period in the middle, after his arrest, when he was remanded in custody prior to a bail determination. Z is now detained at a YOI, having been convicted as part of a joint enterprise in a serious crime concerning a young woman. Following his conviction early 2017 he was sentenced to seven years imprisonment by the Crown Court Judge in late 2017.
- 7 The application to adopt was made a day before his eighteenth birthday. As he was seventeen at the date of the application s.49 (4) ACA 2002 permits such an application to be

made, s 49 (5) permits an adoption order to be made as long as the application is lodged whilst the child is under eighteen years and the young person has not attained the age of nineteen years when the order is made.

- 8 The immigration position is that as Z is over eighteen years of age he will not, if the court makes the adoption order, acquire British citizenship. The British Nationality Act, 1981, s.1(5)(a) makes clear that this change in civil status only occurs when a court in the United Kingdom makes an order authorising the adoption of a minor by a British citizen parent.
- 9 Given Z's extended sentence, it is expected he will be served with a notice stating that he is liable to deportation on "conducive to public good" grounds, under the SSHD's powers under the Immigration Act, 1971, s.3(5)(a). There is a right of appeal against the deportation decision on asylum and human rights grounds which, Ms Cronin submits, are likely to include whether the United Kingdom is in breach of its obligations under the Refugee Convention or if any deportation decision disproportionately breaches Z's right to family and private life under Art.8.
- 10 Z's relationship with Mr. and Mrs. X and their family will be a relevant, though not a decisive factor, in any Art.8 proportionality decision the Immigration Tribunal will make in any appeal.
- 11 This application was listed before me for final hearing in May 2018. At that hearing it became apparent that the SSHD had not been given any notice of this application. This issue had not been considered in any of the previous hearings and was only raised as an aside in the position statement filed by Ms. Cabeza, on behalf of the Local Authority.
- 12 It was submitted to me at that hearing that such notification was not necessary as in the event that the court made an adoption order Z would not acquire British citizenship, as he is over the age of eighteen years. Additionally, that the making of an adoption order does not impair the SSHD's discretion to make a deportation order against Z and that this adoption application falls to be considered with exclusive reference to Z's welfare.
- 13 I was rightly referred to the Court of Appeal decision of *FAS v Secretary of State for the Home Department & Another* [2015] EWCA Civ 951 [2016] 1 WLR 407 in particular, the relevant parts of the judgment of Sales LJ.
- 14 Having considered those submissions, I took the view that the SSHD should be given notice of this application because even though citizenship would not be acquired if the court made an adoption order, I considered the SSHD ought to have the opportunity to be able to consider the way the application was put, whether he wanted to apply to intervene in the proceedings or whether there was any material he wanted to put before this court. I directed that notice was given to the SSHD and made consequent directions that he should notify the parties and the court by a certain date, whether he intended to apply to intervene or attend this hearing or whether he wanted to make any written representations.
- 15 The SSHD notified the court and the parties that he did not wish to intervene in the proceedings but did wish to make written representations. The skeleton argument from counsel instructed, Mr. Waite, is dated 18 June 2018. It confirms the position as was put forward to me at the hearing on 16 May following on from the Court of Appeal decision in *FAS (ibid)*, namely that if the court makes an adoption order this will not have the effect of strengthening Z's immigration status or improving any Art.8 claim relating to his

deportation. Even if it was to have that effect, this would not in general amount to a reason for refusing an application to adopt because this court is governed by s.1 of the Adoption and Children Act, 2002 and the child's welfare is the court's paramount consideration. The relevant paragraphs of the *FAS* decision being paras.30 - 32 and 43.

- 16 Therefore, the written submissions by Mr. Waite are limited to drawing the court's attention to a number of matters that the SSHD felt should be considered. They are the sentencing remarks of the Crown Court Judge and secondly, the decision and the supporting documents around the decision of the First Tier Tribunal decision in 2016 whereby it refused the appeal from the determination refusing Z's asylum application.
- 17 As set out at para 30 in that determination the court rejected the account given by Z of the way he came to Europe from Country G, effectively, rejecting his account that he had left Country G at the age of six to seven, had become separated from his elder brother whom he had left with, had spent some time with a Country G family in Country H for a number of years before coming onwards through Europe and then ending up as an unaccompanied minor arriving in this jurisdiction in early 2015.
- 18 As the skeleton set out at para.10, Mr. Waite said as follows:

"Given the conclusions of the First Tier Tribunal, however, the court may wish to satisfy itself as to the nature and extent of [Z's] family background in [Country G] to the extent that it is relevant to any question before it and indeed, the Secretary of State contends that it would be in the interest of justice for this to occur. There is no reason why such an exercise should not be carried out at least in part with reference to any relevant evidence relating to that subject that was before the First Tier Tribunal."

The list is then given of the documents that were before that Tribunal.

- 19 In the preceding paragraph at para.9, Mr. Waite accepts, and this is agreed by the parties that appear before me, that the principle of *res judicata* including cause of action and issue estoppel does not apply in respect of the First Tier Tribunal's determination because the parties are not identical. He then goes on to say that as a result, the conclusions are not admissible as evidence of the facts so found in these proceedings, but they are, as Ms. Cronin submits, admissible as part of the wide canvas that this court is required to consider when determining matters in relation to welfare.
- 20 The adoption application is supported by the Local Authority and Z who is separately represented in these proceedings. There are no issues about the applicant's eligibility to make the application. They are married, British citizens, habitually resident and domiciled in this jurisdiction. The focus of this application has been the paramount consideration of Z's welfare throughout his life in determining whether the order should be made, having regard to the matters set out in s.1(4) ACA 2002.

Relevant Background

- 21 Z arrived in the United Kingdom unaccompanied in early 2015. He claimed asylum on his arrival and gave his date of birth as date B. In the various documents that were prepared at around that time, Z described leaving Country G at the age of six or seven with his older brother, becoming separated and being accommodated by a country G family in Country H

who required him to work herding their livestock for a number of years. He is then taken by this family on through Europe which resulted in him entering this jurisdiction unaccompanied in a lorry in early 2015.

- 22 His application for asylum was refused, the appeal to the First Tier Tribunal was unsuccessful, with his account being found not to be credible.
- 23 There has been a dispute about Z's age that has caused a further complication in the history of this case. He was assessed as being born on date C by the Local Authority in March 2015, with the consequence he was placed, as a result of that age determination, in independent accommodation, as he was then regarded as being sixteen when in fact, in light of the subsequent determination about his age, he was only fifteen.
- 24 That age determination was challenged by way of judicial review and ended up with a five-day hearing before the Upper Tribunal Judge between April and July 2017, three days in April and two days in July with a long and detailed written judgment being given in mid-2017.
- 25 In the middle of those hearings between April and July, there was a four-week criminal trial in relation to the criminal charges Z was arrested on. The evidence before the criminal trial in 2017 was that at that time Z was eighteen years of age because then his operative age was date C. The Upper Tribunal heard extensive evidence from a number of witnesses, including the applicants, their son-in-law, the social worker, country G interpreters, several of Z's friends, expert medical evidence by Professor M as to Z's mental condition and objective evidence that Z was continuing to grow, albeit at a slower rate.
- 26 On the basis of that evidence the Upper Tribunal reached the conclusion that the Local Authority age assessment was subject to challenge and found that Z's date of birth should be date A. The detailed judgment of the Upper Tribunal judge is in the trial bundle.
- 27 The consequences of that decision was that Z was aged sixteen at the time of the relevant offence and the co-defendants were aged between twenty and thirty-seven. The evidence in relation to the criminal proceedings was that the DNA evidence at the criminal trial showed that Z had been present in the room where the offence took place but did not show him as a perpetrator. His account was that he was not present in the room when the offences occurred, but that was clearly not believed by the jury who returned a verdict of guilty in relation to all defendants.
- 28 Z was sentenced after the age determination, he was sentenced to seven years' imprisonment. The co-defendants were sentenced each to fourteen years. Z was initially detained in an adult prison because they thought he was then eighteen years of age, after the age determination he was then moved to another prison where he remained until April 2018 when he moved to a YOI, which is for eighteen to twenty-one years of age.
- 29 Following the Local Authority age assessment in early 2015 Z was placed in independent accommodation, and in late 2015 was placed with the applicants who were approved supported lodging providers. Their role was to help provide a springboard for people in Z's position to enable them to move on to independent life. They started doing this in 2000, Mrs. X had been a primary teacher for thirty-four years, including undertaking special needs education. Mr. X ran his own business.

- 30 The Upper Tribunal dealing with Z's age challenge accepted the family's evidence concerning Z's immaturity. In the light of the subsequent declaration regarding his age, he was, in fact, fifteen when he moved to them, not sixteen (16 ½) as the Local Authority had then assessed him to be. This accords with their assessment of him, as they describe in some detail in their statement.
- 31 During Z's stay with Mr. and Mrs. X, the Local Authority held very regular review meetings concerning Z and his situation. The frequency of those were every six weeks and Mrs. X kept a daily diary record which was available to the Local Authority.
- 32 In mid-2016, Mrs. X arranged for Z to attend the Red Cross tracing service to see whether there was any prospect of him being able to trace his birth family, in particular his brother. Sadly, those inquiries proved to be unsuccessful, as were their own Internet searches in relation to various websites that provide assistance with being able to put families together in these types of situations.
- 33 In autumn 2016, the defendants committed the crime for which they were subsequently charged, and the DNA evidence was as I have set out above. Z was arrested in late 2016. This event obviously came as a huge shock to Mr. and Mrs. X. Z was remanded in custody until he was bailed to their address in early 2017 following which there was a four-week trial. Mrs. X attended every day with Z who was living in the family home at that time. Following his conviction, he was remanded in custody until the sentencing hearing in late 2017.
- 34 In October 2016 Z applied for further leave to remain. That application remains outstanding and is unlikely to be determined until there is a decision made in relation to any deportation order. There will then be rights of appeal in relation to each of those matters.
- 35 On 18 September 2017 Mr. and Mrs. X applied for leave to commence these adoption proceedings. They needed leave under s.47 as they did not come under any of the relevant categories of applicant entitling them to apply as of right. The District Judge allocated the leave application to the High Court and directed that the Local Authority were given notice. A hearing took place before Moor J on 2 November 2017. He refused leave at that hearing in part supported by submissions by the Local Authority, namely that the s.42(7) assessment would not be possible as it would not be possible to be able to observe the applicants and Z in a home environment.
- 36 Moor J refused leave to appeal his refusal to give leave on 13 November. Two weeks later on 28 November the Court of Appeal allowed the appeal and set aside the decision of Moor J refusing leave and directed that the matter return back to a Family Division Judge. The matter came back before Russell J the following day on 29 November. She gave leave for the applicants to apply for an Adoption Order, the Local Authority by that stage having withdrawn any opposition to leave being given.
- 37 At a further directions hearing before Russell J, on 7 December further directions were made in relation to a final hearing, which was then listed on 3 May. Of note she said as follows in that order under para.6 of the recitals:

*"The second respondent has said that,
(a) he has lost all contact with his parents and has no information as to their present whereabouts.*

(b) he initiated a search for his parents through the Red Cross and this did not uncover any information which might lead to the identification of their whereabouts. (c) there is no information upon which any of the parties could reasonably rely in pursuance of further investigation to identify the whereabouts of his parents and, (d) the Local Authority has assured the court that if it meets with resistance from either of the applicants or the Young Offenders Institute, it is of the view it may not be possible to carry out its statutory duties to investigate the welfare prior to completion of the annex A report directed it will apply to the court to restore this matter for further directions within seventy-two hours."

38 I pause to observe that no such application was made, and the report was completed. The following paragraph of that order at para.7 states as follows:

"Unless and until fresh information comes to light which is capable of leading to the discovery of the whereabouts of either of the second respondent's parents, the court dispenses with the need to serve notice of the adoption application on his parents."

39 That order provided for a hearing on 3 May which could not take place and the matter was listed before me on 16 May. At that hearing I made directions for the application to be served on the SSHD with directions leading to this hearing.

The evidence

40 There is extensive written evidence. The trial bundle is contained in two lever arch files, it includes all relevant material from Z's immigration application set out in section F, in particular, the material that has been provided by the SSHD. Equally as important are the statements from Mr. and Mrs. X, including the attachments to those statements, the statement from Z dated 10 May and from his solicitor dated 10 May.

41 In addition, the court has the benefit of a detailed Annex A report, prepared pursuant to r.14.11 of the Family Procedure Rules 2010 dealing with the matters set out in the relevant practice direction. The report has been compiled by Ms L a senior practitioner and has been a field social worker for over ten years, a senior practitioner for two years. She has set out in her detailed and comprehensive report the inquiries that she has made that have included not only seeing Z on two occasions, namely the family day on 17 January and an individual interview on 18 January, but has also met with the applicants, Mr. and Mrs. X on three occasions, two of which were prior to the family day at the prison. She has also had communication with Mr. and Mrs. X's adult children, contact with the named references that are set out in her report as well as reviewing the detailed social services file dealing with the records in relation to Z's placement with Mr. and Mrs. X going back to late 2015.

42 One matter that was raised within the SSHD's position statement and in the position statement on behalf of Z was the issue about whether the court should consider hearing any oral evidence. That was a matter I did consider but having looked at the extensive material that the court does have available to it and bearing in mind Z's vulnerabilities and the information which is before the court about his current position in the prison he is in, I did not consider that oral evidence was going to assist the court in a material way as, in effect, the information that Ms. Cayoun set out in her position statement is already covered by the information available to the court on the papers. No party has sought to cross-examine Mr. and Mrs. X and no party has sought to cross-examine or challenge any of the matters set out in Ms. L's report, or her recommendations.

Relevant Legal Framework and Discussion

- 43 There is no dispute between the parties regarding the relevant legal framework. This application is governed by the criteria set out in ACA 2002. The applicants submit that all the essential criteria are met. Ms. Cronin in her helpful submissions at para.33 sets out the position in relation to the essential criteria.
- 44 The applicants are a married couple, both over the age of twenty-one and so meet the requirement under s.50(1). They have standing in terms of jurisdiction as they are both domiciled in England and have been habitually resident here for not less than one year prior to the adoption application. Notice has been given to the Local Authority and the Annex A report has been prepared. The applicants have been granted leave to be able to make the application pursuant to the order of Russell J dated 29 November. They have given notice of their intention to apply to adopt Z to the Local Authority and have made their application three months after giving that notice and less than two years after giving that notice. Z was a minor at the date of the application and is now eighteen and unmarried and, therefore, eligible to be adopted.
- 45 No party has taken issue with the fact that the Local Authority have been given sufficient opportunity to make their assessment and they have not taken up the provision in Russell J's order dated 7 December to return back to this court. It is quite clear from the judgment of the Court of Appeal they considered that the determination of whether or not the Authority has had sufficient opportunity to see the young person and the adopters together in the home environment as required by s.42 (7) is a matter to be determined by the trial judge, if leave is given and a full adoption hearing takes place.
- 46 In the unusual circumstances of this case I am able to take into account information that the Local Authority have had access from the social services files dealing with the extensive history of the relationship between Z and the applicants and the Local Authority have not sought to suggest that they have not been given that opportunity. I am satisfied they have had sufficient opportunity as required by s 42 (7) when looked at in the context of all the material that was available to them.
- 47 The final matter concerns the position in relation to Z's parents. Ms. Cronin submits that the correct way to be able to deal with the position is by making a finding in relation to s.52(1)(a) that Z's parents cannot be found. The court has not received any further information that goes behind the position set out in December 2017 order and the court can dispense with their consent on the basis that they cannot be found. The evidence I have seen demonstrates that there has been no suggestion of any additional information that was not before the court when it made its determination on 7 December and nobody has sought to suggest otherwise.
- 48 In terms of the welfare considerations and the welfare checklist in s.1(4) Ms. Cronin relies on the evidence that the adoption is supported by all family members, including Z. She said Z's needs are particularly acute in his current circumstances. The prison has recently put him on twenty-four-hour watch and there is a history of involvement of mental health services support with Z. The evidence demonstrates that the applicants are what is described as a lifeline for Z through the commitment they have made in relation to supporting him since he has been in prison, and he is likely to continue to need their support and care going forward.

- 49 In terms of looking at the likely effect of Z having ceased to be a member of the original family and becoming an adopted person, she submits the evidence points towards showing that from the time of his leaving Country G aged about six or seven he has only known family life following his placement with the applicants in late 2015. He has no knowledge of the whereabouts of his birth family and the applicants have been entirely supportive of him in relation to any step he has taken to try and learn more about his birth family.
- 50 The applicants are aware of Z's background, are respectful of his language and culture and have shown considerable understanding of his needs. Z, she submits, has suffered harm and neglect and is at risk of harm in the future due to the vulnerability of not only his background but also his current circumstances. The evidence, she submits, demonstrates that there is no existing relationship with any relative. Steps have been taken to try and establish contact via the Red Cross and the SSHD through their inquiries, but with no success. The evidence demonstrates that due to the care and support received by the X family, Z is fully accepted into that family who have supported his efforts to try and seek any more information about his birth family.
- 51 Ms. Cronin in her skeleton argument in response to that put in by the SSHD seeks to deal with the points that are raised in the following way. Firstly, in relation to Z's account of his family circumstances, background and journey to the United Kingdom, the SSHD in his written submissions refers to the First Tier Tribunal decision which did not accept Z's account of the circumstances by which he came here. As a consequence, the SSHD submits this court may wish to satisfy itself as to the matrix and extent of Z's background to the extent that it is relevant, although it accepts at para.9 of those submissions that this court is not bound by the findings that were made there.
- 52 The applicants accept features of Zs background and history are relevant to the s.1 welfare consideration the court has to undertake. Ms. Cronin submits that information points to his significant vulnerability and the need for continued family support. In her submission, it supports an adoption order being made. She submits when Z's account is looked at through the wider lens available to this court from the wider material that is available, there is evidence to support Z's account of his age on leaving Country G and his generalised account of his journey in coming to this jurisdiction.
- 53 Ms. Cronin submits that there are flaws in relying only on the First Tier Tribunal decision for the following reasons. Firstly, the First Tier Tribunal makes no reference to country information. It only considered Z's evidence from a narrow perspective, for example, Z's account in the various interviews of leaving Country G at such a young age is supported by a number of matters. She draws on the evidence of his lack of basic knowledge in relation to Country G that his illiteracy and innumeracy supports the fact that he had no formal education, apart from possibly a short period of time at a Country H school and that his immaturity and social dependence all supports childhood separation and lengthy periods alone as an animal herder in Country H.
- 54 Secondly, Z's account of his separation from his brother, she submits, is consistent with country information about family separation in similar circumstances on the Country H/Country J crossing. She relies, in particular, on the report from the UNHCR study of Country G children's journeys through Europe.
- 55 That report also provides some support for Z's description of his journey here from Country G being broken for such a considerable period of time in Country H due to the complex

ways in which these type of arrangements are financed and entered into, and is not inconsistent with the accounts that have been given in that report. She submits when the court stands back, there is evidence to support, in general terms when looking at this wider canvas, Z's account of how he came to the United Kingdom. She agrees with the SSHD in relation to the effect of the First Tier Tribunal decision that is not binding on this court.

- 56 The second matter referred to by the SSHD is the sentencing remarks of the Crown Court Judge. The parties have had that document circulated this morning and have had the opportunity to be able to read it. At p.5(d) it is right that in her sentencing remarks in relation to Z she sets out a number of matters and she does refer to the fact that Mr. and Mrs. X have possibly disregarded the strength of the prosecution evidence against Z, in particular, the CCTV which when closely analysed and the timings are looked at carefully, shows that Z was in very close proximity at all times to events in the street and very clear evidence from the CCTV showing him closely escorting the young woman into the building where the offences took place. Although a little later on that page, the Crown Court Judge does say as follows:

"Notwithstanding those conclusions which as a trial judge I am also in a position to make, I accept that you (that is [Z]) is vulnerable particularly in a custodial setting and there are very real concerns for your mental health and wellbeing."

- 57 Much of what she says is echoed by the observations made by Mrs. X in her statement at para.26 when she states as follows in terms of the way that she and Mr. X have discussed these matters with Z:

"26. We have spoken with [Z] in depth about this terrible incident. He feels deep shame that he has been associated with a crime such as this and is truly remorseful regarding the choices he made including that he drank alcohol and became highly inebriated that night when he was completely unused to drinking. He has vowed never to drink alcohol again. He has also learnt the hard way to be very careful and wise in his choice of friends. We have encouraged [Z] to follow all advice given to him by his prison case worker and to fully engage with any programmes recommended by them."

- 58 That course by them is supported by the wider information that the court has in relation to the commitment that they have shown to Z during his custodial sentence, and the fact that during the majority of his custodial sentence he has had enhanced prisoner status which is as a result of complying with all requirements that are made to him.

- 59 Ms. Cronin liaised with Mr. Waite, counsel for the SSHD this morning. He has seen the skeleton argument that has been filed pursuant to the documents that were filed by the SSHD and he emailed the court copying in the other parties. In that email he confirms that in the light of the other parties' skeleton arguments, which he has now received and read, the Secretary of State does not wish to attend this hearing. He says as follows:

"The purpose of the written submissions was to draw to the court's attention any material which was capable of being relevant to the issues which it was required to decide. The sentencing remarks were passed to the court as one of the applicants chose to address the circumstances of the conviction in her evidence, albeit in brief terms. The Secretary of State is content to defer to the judgment of the court as to

the relevance of the above material and, indeed, the weight which should be attached to it."

- 60 Ms. Cabeza on behalf of the Local Authority fully supports the making of an adoption order. Ms. L's report supports that position as well. As I have said, it is a detailed and comprehensive document underpinned by consideration of detailed written records and meetings with the relevant people she was required to assess. In her written and oral submissions, Ms. Cabeza put the position regarding the submissions made by the Secretary of State for Home Department in simple and stark terms. She submits that its relevance in relation to the background is that it demonstrates and supports that under s.52 (1)(a) the evidence clearly establishes that the parents cannot be found. That is the evidence the court has, and no one seeks to suggest otherwise. Whilst she concedes the argument that the background is relevant to wider questions of welfare she considers the focus and relevance of that evidence is in relation to s.52.
- 61 Ms. Cayoun, on behalf of Z, in her detailed and skilful written submissions supports Ms. Cronin in what she has submitted. She again submits the relevance of Z's background relates to the position in relation to s.52 (1)(a) ACA 2002 and then in turn, one of the relevant considerations set out in s.1.4 namely (f) of the welfare checklist looking at any existing relationships and the impact on that. She submits that the evidence demonstrates that the birth family are not able to provide the security and stability that Z's welfare requires.
- 62 In relation to his conviction, although recognising its seriousness, the fact of it is not of itself relevant in terms of welfare. It is the ability of Mr. and Mrs. X to provide Z with a secure environment in which he can develop. She submits that Mr. and Mrs. X's commitment to Z has been tested and demonstrated in very difficult circumstances over a considerable period of time, withstanding both the pressures of serious criminal proceedings and detailed litigation in relation to the judicial review proceedings regarding age assessment putting them in conflict, at least within those proceedings, with the Local Authority who continued to maintain that the right age for Z was age C. She submits that they have shown unwavering support and commitment to Z in those difficult circumstances and it is not without note that in the Upper Tribunal in August 2017 their evidence in relation to age was accepted.

Decision

- 63 This is, undoubtedly, a difficult and troubling case. The factual circumstances which this court is having to consider raise difficult issues that are tragic and unusual. The criteria for the applicants making this application are not in dispute and it is noteworthy that no party has suggested that this is otherwise than an entirely genuine application by Mr and Mrs X with Z's welfare at the heart of it.
- 64 The lodestar that guides this court in relation to determining whether the application should be granted or not is Z's life-long welfare needs set out in s.1. I am satisfied that Z's life-long welfare needs are met by this court making an adoption order for the following reasons:
1. Firstly, I accept that his parents cannot be found, that is established on the evidence that is available from the SSHD, the attendances and conclusions reached by the Red Cross with the assistance of the applicants and the Local Authority inquiries. I proceed on that basis in relation to s.52 (1)(a) ACA 2002.

2. Secondly, looking at the wider evidence than that which was available and considered by the First Tier Tribunal, I am satisfied that in broad terms, Z's account of his background in coming to this jurisdiction is generally credible. His lack of knowledge of matters in relation to Country G is supported by his answers to questions in interview, his lack of education and literacy and his social immaturity are all consistent with his account in relation to separation at a very early age. Bearing in mind his age when he was interviewed, the court can look at wider information and particularly, the country information and other material that has been relied on in this hearing, for example, the UNHCR study.
3. The uncertainty around his age has increased Z's vulnerability as has been demonstrated by the evidence of Mr. and Mrs. X, which I accept, about how they observed his behaviour when he moved to live with them. They instinctively considered that he was younger than it was said that he was, and their instincts were proved to be correct when considered in the detailed hearing that took place resulting in a determination by the Upper Tribunal in 2017.
4. The fact of Z's conviction of a serious offence and the significant prison sentence that he has received does have an impact on his needs which is a material matter for this court to consider. He will as a consequence require more support. Mr. and Mrs. X have already demonstrated their ability to manage this and support him. No one has sought to suggest that the fact of the conviction makes it less likely that this court will make an adoption order. The analysis for this court must remain welfare focussed. The SSHD will have much wider considerations that he will have to apply, as well as a different test in relation to this aspect of Z's history and the jurisdiction and orders that he will have available to him.
5. The Annex A report by Ms. L is detailed and comprehensive and it supports this application. No one has sought to challenge not only the basis upon which it has been conducted but also the analysis and recommendation that it had made. I am entirely satisfied that I should accept it. Ms L is an experienced practitioner, who has carefully considered each of the requirements she is bound to consider under the relevant provisions that cover these reports. Her recommendation supporting the adoption order stands up to close scrutiny and is very well reasoned.

65 Finally, I am satisfied that Mr. and Mrs. X, as has been accepted by all the parties, are wholly committed to Z's welfare, as are their wider family. They are and have been entirely genuine in relation to their application. They have been described as Z's lifeline. That description is amply supported by the evidence. The information that the court has about the way they have navigated supporting Z through these difficult and extremely turbulent waters underpins the dedication and commitment they have shown, and I am satisfied will continue to show throughout his life, wherever he will be.

66 For those reasons, I will make an adoption order as such an order will meet the lifelong welfare needs of Z in accordance with s 1 ACA 2002.

CERTIFICATE

Opus 2 International Ltd. hereby certifies that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge