

**Upper Tribunal
Immigration and Asylum Chamber**

JR/4027/2019

Field House,
Breems Buildings
London
EC4A 1WR

Heard on: 12 to 14 November 2019

BEFORE

UPPER TRIBUNAL JUDGE KEITH

Between

The Queen (on the application of FS)

Applicant

v

Secretary of State for the Home Department

Respondent

Ms R Moffatt, instructed by Duncan Lewis Solicitors, on behalf of the applicant
Mr A Campbell, instructed by the Solicitor, London Borough of Croydon

**APPLICATION FOR JUDICIAL REVIEW
JUDGMENT**

- (1) I gave this judgment and reasons orally at the end of the hearing on 14 November 2019. These written reasons are the approved record of those reasons given orally.

The application

- (2) The applicant applied on 18 April 2019 for judicial review of the respondent's decision of 31 January to refuse to re-assess the applicant's age; and, amongst other things, for a declaration that the

applicant's date of birth is 1 July 2002, rather than his date of birth as assessed by the respondent of 1 July 2000 (the 'assessed date of birth'). The respondent had made its decision on 2 May 2018 that the applicant had the assessed date of birth, following assessment interviews on 8 and 18 December 2017 and 19 February 2018.

The proceedings

- (3) Following the respondent's May 2018 decision, the applicant's solicitors wrote to the respondent on 22 January 2019 making further submissions. These included a new age assessment, which they said was compliant with the well-known 'Merton guidelines,' conducted by two independent social workers, with the date of assessment being 23 November 2018; and the conclusion for which was that the applicant had the date of birth as he claimed. The further submissions also included witness statements from volunteers who had known the applicant at the Old Hamptonian's cricket club; workers with the 'Refugee Cricket Project' or 'RCP', including an adviser with the Refugee Council childrens' section ; emails from the applicant's uncle in the United States; and a translation of a Taskera, purporting to indicate the applicant's age, which was consistent with his claimed date of birth.
- (4) Despite the further submissions, the respondent replied on 31 January 2019, asserting that the documentation provided did not identify significantly material evidence to warrant a review or reassessment. In particular, the respondent did not accept any independently commissioned age assessment as the respondent had its own qualified age assessors.
- (5) There followed a letter before action from the applicant's solicitors dated 26 February 2019, enclosing the previous the material; reciting the applicant's claimed background history; and asserting that the respondent had failed to consider the new evidence. Whilst the respondent appeared to have disputed the reliability of the applicant's Taskera, the applicant had asked for the return of the original in order to authenticate it, which the Secretary of State for the Home Department ('SSHHD') had refused. On the one hand, the respondent asserted that they were unable to carry out verification of the Taskera; but on the other hand, the respondent did not accept its reliability and placed no weight on it. The applicant had been denied the opportunity to verify it, through no fault of his own.
- (6) The applicant further asserted that the respondent failed to consider the additional evidence, noting the report of the two independent social workers and their assessment that his date of birth was as

claimed. The applicant's solicitors also referred to the written testimony of those who had worked with, or volunteered alongside, the applicant and who had testified as to his youthful and relatively immature behaviour, which was consistent with his claimed date of birth.

- (7) The respondent replied to the letter before action on 19 March 2019, the gist of which was: to attach only very limited weight to the Taskera, noting that they could not assess its authenticity and in any event, the year of birth was stated in the Taskera as being based only on the applicant's physical appearance; to assert that the applicant had been given the opportunity to acknowledge that he understood the interpreter and the role of other professionals during the assessment interviews; and that the applicant's answers and manner of answering questions had led the respondent's assessors to doubt his credibility. In response to the applicant's evidence, the fact of his interaction with younger people was still consistent with the assessed date of birth; his 'moods', lack of engagement and lack of independence could be explained by cultural challenges; and that some of the supporting witnesses had limited direct involvement with the applicant.
- (8) The applicant applied for judicial review in the High Court on 18 April 2019. Her Honour Judge Evans-Gordon gave initial directions on 29 April 2019 and the respondent filed an acknowledgement of service on 14 May 2019. Her Honour Judge Coe QC granted permission to proceed to a full hearing, without the need for a litigation friend, in a decision sent on 23 May 2019, in which she also transferred proceedings to the Upper Tribunal. Upper Tribunal Judge Coker gave further directions on 19 September 2019 at a case management hearing, which included that there would be no cross-examination of assessing social workers; but the fact that such assessors were not called to give oral evidence did not mean that the applicant was unable to make submissions on the assessors' contemporaneous notes; witness statements; or age assessment report.

The applicant's account

- (9) The applicant is a citizen of Afghanistan, who claims to have fled Afghanistan, on a precise date which he is unable to confirm, but which is in or around May 2017; due to feared adverse interest from Daesh or the Taliban, who sought to recruit him. He has a separate appeal against the SSHD's refusal of his asylum and human rights claims which is before the First-tier Tribunal ('FtT'), but the FtT proceedings are stayed, pending the conclusion of these judicial review proceedings. In the context of his protection and human rights claims, he has attended a screening and substantive asylum interview.

- (10) The claimed adverse interest began around two years prior to the applicant leaving Afghanistan, when his paternal uncle, whom I will refer to as 'MS', also fled Afghanistan's because he too feared adverse interest, as a result of having acted as an interpreter for US forces and contractors for many years. MS is now living in the United States, claiming to have been granted asylum and having left Afghanistan in May 2015. Around a year later in May 2016, having been approached, on the applicant's account, either via letters or through face-to-face contact, or both means, to join the Taliban and having refused, the applicant's father then disappeared. The applicant feared that his father had been abducted by Daesh/the Taliban.
- (11) The approximate nature of the above dates is illustrated by the fact that the Taskera, which the applicant says that he obtained when he was present with his father, from local government offices, was produced on 30 May 2016, and in his witness statements he said that his father disappeared around either a year after his uncle left Afghanistan (which would date his disappearance to around May 2016); or in oral evidence to me, a month or two after he got the Taskera, which would date his father's disappearance to anywhere between June to August 2016.
- (12) The applicant claims that after his father's disappearance, he was then approached by Daesh/the Taliban on his school journeys. Fearing that he too would be abducted, his mother and maternal uncle arranged for his passage from Afghanistan. He travelled clandestinely through a number of third countries; was encountered and fingerprinted in Slovenia on 2 August 2017, as recorded in Eurodac results; and claims to have entered the United Kingdom clandestinely in early November 2017; and attended the SSHD's offices in Croydon on 6 November 2017, presenting his Taskera, which was reviewed by the SSHD who informed him that based on what was recorded, he then claimed to be 15 years' and four months' old.
- (13) The applicant also relies on a subsequent medical report of Dr Dosani which diagnoses him as suffering from a post-traumatic stress disorder ('PTSD') and a major depressive episode with anxiety symptoms, which is said to corroborate his account and also to explain any possible inconsistencies in the recollection of events and dates.
- (14) In his judicial review application, the applicant asserts that he could be expected to be aware of his age (contrary to the respondent's assertions), having attended school for seven years until he left Afghanistan at the age of 14; he was literate and it was plausible that he had been made aware of his age by his parents. There was no

inheritance plausibility in the SSHD's interpreter attributing a westernised day and month to a translation of an Afghan date which had been given as a year in the Taskera, noting that birthdays are not celebrated in Afghanistan.

- (15) Whilst there might be deficiencies in the regional and central records of Taskera registration, which appeared to suggest that there were no records for the applicant's Taskera, the records had not been checked the local district level.
- (16) There was no evidence to undermine the applicant's claimed age. The assessors' assertions that he was unable to state the precise ages of non-family members in his home village needed to be seen in the context of his ability to give his siblings and parents'.
- (17) The applicant also asserts that physical appearance, which the respondent's assessors had also taken into account, was notoriously unreliable when assessing age. The assessors' assertions that the applicant was untroubled by answering questions, which was said to support the older, assessed age, was belied by the contemporaneous notes that he was upset and tearful during the interviews.
- (18) The assessors had also been concerned that the applicant had been aware of what other children, who were claiming asylum, were receiving by way of weekly allowance in the UK and had therefore failed to disclose all of his contacts and associates in the UK. In response, the applicant say that he had been clear in interviews that his friendships were via the two cricket clubs in which he played. The statements of support from the RCP and Old Hamptonian Club members was based on far greater contact with the applicant than the assessors, which had been for a limited period.

The respondent's case

- (19) The primary case for the respondent is that the applicant is not a credible or honest witness; that the internal inconsistencies in his account undermine his credibility and explain why his father obtained either a fake Taskera and one which was not accurate about his age. This, coupled with what the respondent's assessors regarded as his mature demeanour and physical appearance; and his willingness to provide what the assessors regarded as scripted answers to questions, supported the older, assessed date of birth of 1 July 2000, rather than 1 July 2002. In particular, while the applicant claimed to know his own age, he had displayed a limited and confused concept of others' ages. He had described dramatic and distressing events without displaying the emotional responses which would be expected of someone of his

claimed age. He had a mature understanding personal finances including making choices as to where to shop; and an ability to organise his laundry; clean his accommodation; and could iron.

- (20) In terms of the claimed inconsistencies, the applicant had been inconsistent about how he learned to shave; had given an incoherent explanation about learning to tie shoelaces; had not been candid about how he learnt, and from whom, what weekly allowance he was entitled to; claimed to know the location of his immediate family members despite claiming the opposite on other occasions; and he had been inconsistent about when he was approached by Daesh/the Taliban.
- (21) In terms of the witnesses in support of the applicant, these had been in the context of a specific social setting, ie. playing cricket and even then, their evidence was not inconsistent with the assessed age of 1 July 2000.

The hearing

- (22) As well as considering the witness statements of assessing social workers, Lorraine Gregory and Simon Wade; and their departmental manager, Mr Waseef Harron, (who had not conducted the assessment himself but provided a commentary on the assessment) I heard evidence from the following individuals, who spoke to their witness statements and also provided additional oral evidence: -

The applicant: When giving oral evidence, the applicant had the assistance of an Afghan Pashtu interpreter, noting that he claimed to have difficulties with previous translators during age assessment interviews where the translator had been a Pakistani Pashtu speaker. I was conscious that even in the context of his disputed age, even on the respondent's case, the applicant was a young person, who was said to be suffering from PTSD and anxiety and I treated him as a vulnerable witness. In doing so, I asked him to indicate at any stage if he didn't understand any of the questions put to him or needed any breaks. He appeared able to engage at all stages with the questions put to him and asked questions of his own. I was satisfied that he was able to participate adequately in the proceedings before me and that Mr Campbell cross-examined the applicant in a courteous, professional and sensitive way.

Anoop Jaijee: Mr Jaijee is a long-standing member of the Old Hamptonians Cricket Club, and around 2 years ago became involved in working with Refugee Cricket Project, as a volunteer. Mr Jaijee played around 10 matches and met with the applicant around 15 times during the summer cricket season in 2018; and for fewer occasions in 2019 when the applicant played

on only a couple of occasions. Mr Jaijee's dealings with the applicant involved not only speaking to him directly but also observing him over a number of hours. He has never claimed to have any professional social work experience or qualifications in age assessments, but has regular interactions with other young people in the age range spanning the claimed and assessed dates of birth for the applicant, ie, those aged between 16 and 18, in 2018.

Charmaine McGusty Khoumeri: Ms McGusty Khoumeri was a personal adviser employed by the respondent and is now a fast track trainee social worker, albeit no longer employed by the respondent. She had dealings with the applicant as his personal adviser from 9 July until 17 October 2018. She did not claim to have age assessment training, but she had worked in a variety of roles with young people from 2000, including with the people with ages within the disputed age range.

Robert Curtis: Mr Curtis is a youth caseworker with the South London Refugee Association, who once again does not claim to have any specialist age assessment training, but has worked with the applicant since May 2018 in three capacities: initially as a volunteer with the Refugee Cricket Project from late July 2018; from July to October 2018 as a full-time caseworker with the same project; and since October 2018 with the South London Refugee Association. During each of the periods, Mr Curtis has been able to observe the applicant and has had dealings with him, albeit in different capacities and the nature of his interactions has varied over time, but which has included supervised immigration advice.

Shahernaz Kargar: Ms Kargar is a professional adviser and youth worker for the Refugee Cricket Project. She also does not purport to have a specialist age assessment training, but has worked with young people for a number of years including the RCP since 1 August 2018; prior to that as a children's adviser of the Refugee Council and as an educational coordinator of the Afghanistan and Central Asia Association. She advises on immigration and welfare issues including age disputes and is qualified to OISC level 1. She has previously given oral evidence in age disputes before the Upper Tribunal. She became the Refugee Council caseworker for the applicant in October 2018 and also assisted him, albeit unsuccessfully, in a British Red Cross tracing referral.

Aleisha McKenzie: Ms McKenzie was the applicant's personal adviser from June 2019 but has recently ceased that role as she is leaving the respondent's employment shortly. She met the applicant 2 occasions on 8 July and 17 July 2019 in the context of his raising concerns about his accommodation and threats by a fellow resident.

Sufyan Khan: Mr Khan is the captain of the Old Hamptonian's '3rd 11'

cricket team and also does not have any formal experience in age assessment or any social work experience, but has known the applicant since March 2018 and played with the applicant regularly over the course of the summer 2018 season, albeit far less so during 2019, when the applicant was promoted to the '2nd 11' team.

Discussion

- (23) The purpose of this judgment is to decide, as a fact, the applicant's date of birth. There is no burden of proof on either party and the standard of proof is on the balance of probabilities. In reaching my decision, I have considered all of the evidence, whether I refer to it specifically or not, as well as the written skeleton arguments and oral submissions of the parties' Counsel. Both Ms Moffatt and Mr Campbell made clear, focussed and helpful submissions which greatly assisted this Tribunal in reaching a decision.
- (24) While I have considered all of the evidence holistically, I started with an assessment of the applicant's credibility, noting with caution that the issue of credibility is only one part of the my assessment of his date of birth.

Credibility – the applicant's appreciation of age

- (25) One of the challenges to the applicant's credibility was identified by Ms Gregory in her witness statement at § [10], page [H4] of the applicant's bundle ('AB'), as being that he had a limited and confused concept of age. On the one hand, he was unable to give the ages for those children in his home village who were younger than him; on the other, he gave a specific age bracket for those people older than him; and he was unable to distinguish between a child and an adult. She describes his understanding of age as biased and possibly also scripted. In common with her co-assessor, Mr Wade, Ms Gregory's witness statement does not refer to any particular part of her age assessment report in making these comments, so I considered the reports and typed records, such as they were available, in full. In doing so, I accept Ms Moffatt's submission that I should approach what the applicant is reported as having said in the report and typed records with some caution, as only partial handwritten notes have been disclosed; that the typed written notes were from an unidentified author, did not appear to be contemporaneous, or consistent with the contemporaneous handwritten notes; and the final report was also, in some respects, inconsistent with the handwritten notes.
- (26) The assessment report at [E6] AB records the applicant as able to describe the age of his siblings. The applicant was asked if he was the

oldest child in the village and [E6] records:

"He stated that 'they were younger than me' and the next oldest 'were all men, 20-25.' These comments show that the applicant has a limited concept of age - is not able to give an age for those he sees as younger than him but is able to age those older than him using specific numbers."

- (27) Contrary to the report, in my view, the applicant's answers do not support an assertion that the applicant was inconsistent in his ability to assess age. The report does not suggest that the applicant was asked about the specific ages of people, but merely whether he was the oldest child in the village, and he did, providing comments in general terms. The fact that he provided an age range for those older than him, but not for those younger than him, does not demonstrate any inconsistency in an appreciation of age. In terms his visibility to distinguish between children and older people, at [E7], he described certain roles as being age-specific, for example when somebody could begin to work on land because they were strong enough. He described differentiators as including men having beards and their bodies being different. He also described children having more limited knowledge about matters but he was able to provide the nuanced comment that apparent mental development could also depend on someone's intelligence.
- (28) Contrary to the assertion that he had an inconsistent appreciation of age which undermined his credibility, his comments as recorded in the report indicated a nuanced and consistent appreciation of age, which was also consistent with his oral evidence before me. In his oral evidence, he described the education system in Afghanistan. While he stopped attending school at the end of year seven when he left Afghanistan, he explained that not everyone in year seven was of the same age, as if people did not perform satisfactorily, they were held back in school years. Similarly, very clever children could jump year-groups. He was also able to explain that in the UK, when he had attended school on an ESOL course, it was a specialist unit within the school, with other pupils of varying ages.
- (29) A second criticism was that the applicant was unable to explain the context of how his parents had informed him of his precise age. This again this was referred to by Ms Gregory in her witness statement § [11], page [H5] AB, although once again, she does not cross refer to any particular documents. However, the report at [E12] AB does not make such a criticism. It merely states that the applicant had been asked his age, to which he responded and indicated that he had provided proof with a Taskera, which was based on what his father told him. The report refers to the fact that the SSHD did not accept the reliability of

the Taskera. The report does not go on to suggest that the applicant had been asked about, and was unable to explain, the context in which the applicant had been told about his age by his father. In contrast, I accept and take judicial notice of the fact that birthdays are not celebrated culturally in Afghanistan and that the applicant will have relied on what he was told when he accompanied his father to obtain his Taskera. In summary, the claim that the applicant was unable to answer questions about the circumstances in which he knew of his age was not supported by the age assessment report or the evidence before me.

The applicant's lack of emotional response

- (30) The applicant's credibility was further challenged because of his lack of an emotional response to dramatic and distressing events, once again reported by Ms Gregory in her witness statement at § [11], page [H5] AB. This is briefly referred to in the assessment report at [E8], when the applicant was asked about seeing people die as he transited through various countries on his journey to the UK. That section of the report did not suggest that the applicant was calm and apparently unaffected, so as to corroborate the assessed date of birth. In contrast, Ms Moffatt referred to the contemporaneous notes which described the applicant as being upset and asking for a break, as he was tearful. I accept that the assessment report does not attempt to capture every detail, but the assertion of a general impression of somebody who has been calm and, to a degree, calculating and evasive in his questions, does not accurately reflect the distress which at times the applicant clearly displayed. Moreover, I would, in any event, be cautious about prescribing a lack of emotional response to age-related maturity when, as in this case, the applicant was said to be suffering from post-traumatic stress disorder, so that any lack of a response could, at least in part, be unrelated to age and instead be the result of disassociation, which is a common symptom or facet of PTSD.

Shaving

- (31) The assessment report refers at [E10] AB to the applicant explaining that he was able to shave in the UK as he watched his father shaving in Afghanistan. The applicant is criticised for being inconsistent about whether he shaves or not. However, on a full review of what the applicant is recorded as saying in the report, it is clear that the applicant immediately qualified his initial statement that he did not shave, with a further comment that he only shaved on his upper lip. Mr Campbell suggested that whilst it was perfectly possible that the applicant's father may have shaved in front of the applicant in a small home in Afghanistan, there would have been no reason for the

applicant to have watched his father shaving with sufficient closeness, when he was not of an age to need to shave himself. I do not accept that submission, which I regard as no more than speculative. It is perfectly possible that a child's curiosity in his father may result in a distinct memory of shaving, noting that at a young age, the father may be a central focus of a child's life. To the extent that there is any inconsistency about whether the applicant began shaving during his journey to UK or subsequently on his arrival, I do not find that any inconsistency is material.

Shoelace-tying

- (32) The assessment report takes issue at [E10] with the applicant indicating that he had been taught by his mother to tie shoelaces in Afghanistan. It was suggested that because he had indicated that he wore open-toed shoes or sandals in Afghanistan that this was somehow damaging to his credibility, as these would not have laces. The applicant's response was simple, namely that he had not been asked whether he also wore shoes in Afghanistan. Ms Moffatt urged me to consider that it was perfectly plausible that he wore shoes as well as sandals in Afghanistan, bearing in mind that temperatures drop to well below zero in Afghanistan during winter months, as opposed to the hot summer months when sandals may be worn. Once again, I accept Ms Moffatt's submission that the applicant cannot be criticised for failing to answer a question that he was never asked and that it is perfectly plausible that he wore both shoes and open-toed sandals in Afghanistan at different times of the year.

Unwillingness to disclose associations and friendships

- (33) The assessment report also suggests at [E10] that the applicant was aware of his entitlement to his weekly allowance but was quoted as saying that he was unable to say where he obtained this information from and as a result, the respondent's assessors believed he had more friends and associates than he had previously stated, including, potentially, adults. The report indicates the applicant said that he had many friends but was unable to say how he knew those friends. I accept Ms Moffatt's submission that the manuscript notes, even only the parts provided, directly contradicted that assertion. At page [I284], following a passage about the applicant explaining about the weekly allowance he believed he was entitled to, he stated that he knew a lot of people whom he had met while playing cricket:

"All of them were under 18, aged between 13, 14 and 16 there were also many

Afghans in school, they have my phone number, talk to each other daily. When asked how they got to know more about him, explained that all them come to the cricket club."

- (34) Not only did the applicant provide a contemporaneous explanation, but his explanation was consistent with the evidence of the RCP witnesses who explained the large number of young Afghan males who played cricket under the auspices of that project.

Contact with family members

- (35) The respondent's case records, (albeit not contemporaneous or claiming to be verbatim, but in summary format only) stated at [I26] AB, on 25 January 2018, that:

"The applicant said that he knows where his immediate family members are and will contact them when ready. He said that he does not require the support of Red Cross tracing service and has an uncle in the USA with whom he is used to contacting via mobile and who is able to pass information about his family members welfare."

- (36) Mr Campbell submits that this contradicted his subsequent claim that he had lost contact with his immediate family members. In response, the applicant explained that having arrived in the UK in November 2017, he was initially hopeful that he would be able to be in contact with his mother and maternal uncle in Afghanistan as he had their mobile telephone numbers. However, he later attempted to contact them and was unable to do so.
- (37) I had concerns about the applicant's credibility on this point, particularly in relation to his plausibility. On the one hand, he has mobile telephone numbers for his family but on arriving in the UK and claiming asylum, he claims not to have promptly sought to make contact with them, to let them know of his safe arrival. I also had concerns that he gave oral evidence that his maternal uncle and mother were in regular discussions, following his father's disappearance, with his paternal uncle, MS, in the US, about the father's disappearance. MS was noticeably vague in his statement at [J209] about the timing and circumstances of the applicant's father's disappearance and the applicant's journey to the UK. Whilst MS suggests that he lost contact with the applicant's mother and maternal uncle in late 2017, he does not explain the breakdown in contact in any detail.
- (38) On the other hand, I accept Ms Moffatt's submission, for purpose of this age assessment only (as opposed to a subsequent assessment of his asylum claim, which I am not engaging with) that the applicant cannot be blamed for not adducing evidence which his lawyers might

otherwise have been readily able to provide, e.g. a fuller witness statement from MS about how he maintained contact with the applicant's mother and uncle in Afghanistan and the records of such contact, particularly when Ms Kargar gave evidence that she had obtained MS's witness statement, following telephone calls with him. Ms Kargar's evidence, which I accept, is that she had not asked MS about any detail concerning the timing and circumstances of the applicant's father's disappearance, which might also explain the lack of detail about any ongoing contact and loss of contact in 2017. She described having been provided with a list of questions by the applicant's solicitor, and she limited herself to those questions. I also accept Ms Kargar's evidence that she did subsequently attempt to assist the applicant with a Red Cross tracing enquiry, through a block booking with a number of clients of the Refugee Council, but unfortunately the Red Cross were unable to assist, given the security situation in the region in which the applicant's family lived.

- (39) In summary, my concerns about the lack of detail in the applicant's account of family contact is mitigated by Ms Kargar's evidence that she limited her questions of MS; and her evidence of subsequent tracing enquiries, although my concerns about the plausibility of the applicant not seeking to make contact with his mother and uncle by January 2018 remain.

Adverse interest from Daesh/the Taliban

- (40) The respondent also asserted that the applicant had been inconsistent about when he was the subject of adverse interest from Daesh/the Taliban; either claiming this was at the beginning of 2017; or 2015, as recorded in the respondent's refusal of the asylum claim at [J145]. I accept Ms Moffatt's submission that there is no such inconsistency and that the respondent has confused the adverse interest which prompted the applicant's paternal uncle to leave Afghanistan in 2015, with the adverse interest towards the applicant at the beginning of 2017.

Other issues of consistency

- (41) Mr Campbell submitted that in his oral evidence, the applicant was also inconsistent. In particular, the applicant asserted that having escaped from the lorry by which he gained clandestine entry to the UK, he walked all of the way to the SSHD's offices in Croydon as opposed to an alternative explanation of travel by train and then by foot. I accept that the applicant's answers were not consistent and that Mr Campbell had carefully and precisely asked his questions to the applicant as to whether he travelled entirely on foot, to which the applicant initially indicated that he had.

- (42) I also accept Mr Campbell's submission the applicant's subsequent assertion that he had not intended to leave the train journey at Croydon, but had left the train early because he feared discovery by ticket inspectors and he had not purchased a ticket, and so alighted at the train station next to the SSHD's offices purely by coincidence, was so implausible that it was not accurate. I do not accept that the implausibility of that explanation could be explained by any difficulties in recollection because of the applicant's PTSD, anxiety or his relative youth. It was a clear attempt by the applicant to avoid the issue of how he was able to travel from the lorry to the SSHD's offices, and was an intentionally untruthful answer. Whilst possibly an untruth which it did not serve him well, Ms Moffatt asked me to consider, in the alternative, that his attempt to conceal the nature of his movements was explained because he had been told to conceal them by his traffickers. That explanation must be speculative and regardless of motive, it is clear that the applicant is, on occasion, willing to provide untruthful evidence, where he is concerned that to tell the truth might not assist his case, or get him or others into trouble.
- (43) In cross-examination, Mr Campbell has highlighted an occasion when the applicant has attempted to mislead; and I had concerns about the plausibility of the lack of attempted contact between the applicant and his maternal uncle and mother between November 2017 and January 2018.
- (44) However, despite those two aspects of concern, the broad thrust of the respondent's criticisms as to the applicant's credibility are not sustained. For the purposes of these proceedings, there remains broad consistency in most of the applicant's core account (noting the missing details in MS's witness statement). The timings of events, albeit not precise, are just about internally consistent and importantly, the sequence of events with MS's departure to the US; the applicant's father obtaining the applicant's Taskera; the applicant's father disappearing; and the applicant himself subsequently becoming the focus of adverse attention; is consistent.

Other age-related attributes and evidence

The Taskera

- (45) In relation to the Taskera document, Ms Moffatt and Mr Campbell agreed that the Taskera was of limited evidential weight in terms of the claimed or assessed age. One hand, there was an expert report of Professor Giustozzi which suggested that the central records in Afghanistan showed no record for the applicant's Taskera; on the other

hand, the applicant's representatives pointed out that there had been no search at local office level, and the level of bureaucratic inefficiency was such that was perfectly possible that the applicant's Taskera, while registered locally, had not been registered centrally.

- (46) Even if the document were genuine, the point was made that it merely described the applicant's age, at [D36] AB, as follows:

"As per physical appearance his age is determined the 14 year as at 2016"

- (47) Just as age assessors and Tribunals exercise significant caution when assessing age on the basis of physical maturity, an assessment by the Afghan authorities on a similar basis must have very limited weight attached to it. Whilst I make no findings to whether or not the Taskera is a fake document, even if it were genuine, its contents cannot be considered reliable.

Finances and demeanour

- (48) Separate from the issue the applicant's credibility and the Taskera, factors said to be relevant to his age were his ability to budget and juggle his finances; and the maturity of his interaction with those around his claimed age and those of an older age.
- (49) In relation to finances, Mr Campbell invited me to consider that because the applicant was spending the limited funds he had on food, rather than on any superfluous items, his struggle in feeding himself and maintaining a budget was explained either by the very limited amount of money that he received, or in the alternative because he could not cook and therefore had to resort to buying fast food. Neither was inconsistent with his assessed age. Moreover, in his dealings with his personal advisor, when he had lost a pre-paid supermarket card, he was able to 'negotiate' a replacement card. In particular, Ms McGusty Khoumeri described in her witness statement at at § [14], page [H14], meeting with him on 30 July 2018. Ms McGusty Khoumeri explained that the 'negotiations' comprised the applicant saying that he would prefer a replacement card, rather than dry food which he would need to cook.
- (50) Without criticising Ms McGusty Khoumeri in any way, who I found to be an honest witness, she confirmed that her contact with him was limited; and that her comment about his ability to manage financial matters was limited to her interaction about what foodstuffs or food vouchers he would wish to have. She accepted the in other areas such as his concerns about accommodation on 10 September 2018, whilst he had put forward matters clearly, and in a manner she described as

'mature,' her notes in the respondent's case record at I51 AB emphasised that he was upset, albeit he later calmed down; and she accepted that his ability to convey clear concerns about his accommodation were in untypical circumstances, ie. he claimed to have been threatened by a fellow resident with a knife and therefore would have had little choice but to have reported the incident, regardless of his age.

- (51) In relation to maturity in relation to financial matters and an ability to cope, both Ms Kargar and Mr Curtis regarded the applicant as 'needier' than someone of the assessed age. While they have no formal age assessment experience, both had significantly greater exposure to the applicant than the age assessors and personal advisers and their honesty in giving evidence was accepted. Mr Curtis, in oral evidence, described the applicant as appearing neglected, completely withdrawn and struggling with the transition from social worker support as a 'looked after' child to an adult, in a way that in his experience was not typical. Mr Curtis described that even if part of his difficulties with coping could have been caused by the limited amount of money that the applicant received each week, nevertheless, this was not the full explanation and had to be contextualised in the applicant's presentation as neglected, withdrawn and struggling to the extent that Mr Curtis believe the applicant to be at real risk of not having his needs met. Mr Curtis was clear on the stark contrast between how the applicant might behave the formal setting, as withdrawn or disengaged, whereas more he might be more emotional in other settings.
- (52) Ms Kargar explained in oral evidence that the applicant really struggled with basic concepts, which she had to explain in very simple terms, even needing to go and get the applicant's Oyster card with him as he was unable to do so; that he could be very emotional with her.
- (53) I attached particular weight to the evidence of Mr Curtis and Ms Kargar, not because I had any concerns about the honesty or integrity of the other witnesses; (save for the applicant which I have outlined); but because of the careful witness evidence of Mr Curtis and Ms Kargar, when they were willing to concede points which were not necessarily in the applicant's favour. For example, each confirmed that attributes and behaviours could exist on 'a curve' within a range of ages. One might have an immature 19-year-old as opposed to mature 17-year-old; and in Ms Kargar's case she accepted the limited nature of her questioning of MS.
- (54) Nevertheless, both had spent a significant period of time, with direct contact with the applicant, over a regular period; in Ms Kargar's case,

300 hours in total, with a frequency of sometimes two or three times a week including direct advice to him about his accommodation, college bursary and liaison with his personal advisers with whom she attended meetings; and in Mr Curtis's case, in various roles up to 6 hours each week, not only at cricket events and but also in direct discussions at Mr Curtis's office.

- (55) Mr Curtis gave compelling evidence in distinguishing between those of the applicant's claimed age, who would be experiencing trauma or difficulties during the transition process by coming to his offices, even if not to speak, simply to be around him; as opposed to those of the older, assessed age, who in contrast, when experiencing trauma or difficulties, might typically disengage by simply not turning up to meetings and becoming difficult to contact. Whilst Mr Curtis recognised that there could be a range of individual responses, he was able to give this detailed and credible example of why, after a lengthy period of time in dealing with the applicant, he believed the applicant was of the claimed rather than the assessed age.
- (56) The compelling evidence of Mr Curtis and Ms Kargar was consistent with those outside a professional setting who also had significant experience of observing, talking to, and interacting with the applicant generally, namely the Old Hamptonian Cricket Club volunteers, Mr Jaijee and Mr Khan. Both have had regular dealings with him over the summer of 2018, in particular. Whilst neither have professional experience as social workers, both have substantial experience in interacting with children and young adults of the contested age range. Both were willing to accept that there were individual levels of maturity across the age range and that there might be different behaviours because of language barriers and cultural background, but nevertheless both regarded the applicant as displaying an immaturity of behaviour more consistent with the claimed age. Examples were given of the applicant seeking to bat without a helmet, when he knew he must. Another example was the contrast of how an older person would react, when becoming impatient with the performance of fellow team members. If an older person made an inappropriate remark, Mr Khan, as captain, would indicate that such behaviour was not acceptable, which they would readily acknowledge and change their behaviour. In contrast, younger children would continue to be moody or display negative attitudes towards fellow players, whose performance they faulted. No example was determinative, but each observation of Mr Khan and Mr Jaijee, observed over a long period of time albeit with less direct contact than Mr Curtis and Ms Kargar, tended to be supportive of the claimed rather than the assessed age.
- (57) In contrast, whilst I do not question the integrity of the respondent's

witnesses, Mr Haroon did not have any direct dealings with the applicant, but merely reviewed the completed age assessment process. Ms McGusty Khoumeri gave honest and considered evidence but nevertheless her interactions with him were limited to 3 single occasions over a very limited timeframe between 30 July and 10 September 2018. Ms McKenzie had even more limited dealings with the applicant, meeting him on two single occasions on 8 and 17 July 2009 in the context of the unusual circumstances of threats to the applicant and she herself conceded that she did not have an opinion on the applicant's age. I have already referred in large part to the points raised by Ms Gregory in her witness statement.

- (58) Mr Simon Wade, co-author of the original assessment, also provided a witness statement at [H15] to [H19]. He raised the issues of the applicant's physical maturity and apparent inconsistency about shaving, with which I have dealt; and he made the general point that the applicant did not have the overall demeanour or presentation of somebody who claimed to be (then) 15 years' old, albeit this was put in general terms; he responded that any difficulties with interpreting had not been raised and on the contrary the applicant had been given the opportunity to say if he did not understand all the questions put to him. On balance, I find that the applicant did have some difficulties with the language interpreter during the age assessment process, albeit this did not cause the claimed inconsistencies. As I have already identified, I do not accept, for the most part, that the applicant was inconsistent, as alleged. Nevertheless, I am prepared to accept, in the basis of Ms Kargar's contemporaneous knowledge and oral evidence (and her honesty has not been challenged) that the applicant did complain to her at the time that he was experiencing difficulties in understanding everything that was said to him in the age assessment interviews, because the interpreter was a Pakistani Pashtu interpreter as opposed to an Afghan Pashtu interpreter. Particularly in light of the concerns I had over the extent to which the assessment report and typed notes reflected accurately everything that the applicant said and whether he was upset, I do not accept as reliable the generalised statement in the assessment report at [D7] that the applicant understood everything that was said; and instead I find that there will have been elements of what was said to and by him that was not conveyed by the interpreter. I accept as plausible that the applicant himself may, having initially raised concerns over difficulties, subsequently have become resigned to the interpreter with whom he was provided, as he assumed that he had to 'make do' with a partially adequate interpreter. That being said, the issue of difficulties in interpreter is not central to my assessment of the applicant's credibility, given my findings that his answers were broadly credible.

Decision

- (59) I have already identified what I regard as the weaknesses in the respondent's criticism of the applicant's credibility. There is also the difficulty about the limited nature of the respondent's disclosure of handwritten contemporaneous records; and the disclosure such as it is, suggests that comments in the age assessment report do not reflect some of the applicant's specific comments, for example in relation to how he explained his knowledge of the weekly allowance to which he believed he was entitled.
- (60) Standing back from the weaknesses in the respondent's criticism of the applicant, and looking at the totality of the evidence, both for and against applicant, I have come to the conclusion that it is more likely than not that the applicant is telling the truth about his age. The positive aspects of his case outweigh the negative aspects.
- (61) Against the applicant is a lack of credibility in certain aspects of his evidence, where I conclude that he has chosen not to be frank, in particular the circumstances in which he travelled from the lorry in which he had been carried clandestinely to the SSHD's offices in Croydon. I do not hold against the applicant that MS does not appear to have provided a full account of the circumstances of the applicant's father's disappearance, in circumstances where the statement was provided in response to direct specific questions from Ms Kargar. While I also have concerns about the plausibility of the applicant's account not to have tried to contact his mother and maternal uncle between November 2017 and January 2018, this does not, in my view, strike at the heart of his claim about his age.
- (62) The positive aspects include the broad consistency of the applicant's account of fleeing Afghanistan, albeit noting the limitations in that account; the circumstances in which the applicant was likely to know his age, being somebody with education and who was able to adequately differentiate various ages; the powerful evidence of Ms Kargar and Ms Curtis, the caseworkers from the Refugee Cricket Project, who are professionals and whose integrity was not questioned and who, whilst not having age assessment qualifications, were able to give detailed and specific reasons for why they believed that the applicant was more likely to be of his claimed age, having observed him for a far greater period of time than either the age assessors or the applicant's personal advisers; and whose evidence was corroborated by the Old Hamptonian Cricket Club volunteers, who once again had regular dealings with people of the contested age range and were able to give specific examples.

- (63) I attached no weight to the Taskera, whether in support of the claimed or assessed age, in light of its contents being based on physical appearance.
- (64) I find that the applicant is more likely than not to have been born on 1 July 2002.

J Keith

Signed: _____

Upper Tribunal Judge Keith

Dated: **20 November 2019**