



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

JR/458/2021

In the matter of an application for Judicial Review

The Queen on the application of

S (by his litigation friend Helen Johnson)

Applicant

versus

Kent County Council

Respondent

ORDER

UPON consideration of all documents lodged by the parties

AND UPON hearing Ms A Benfield, Counsel, instructed by Instalaw for the applicant and Mr J Swirsky, instructed by Invicta Law, at a hearing on 30 November and 1 December 2021

AND UPON the handing down of the substantive judgment in this claim for judicial review at a remote hearing on 17 January 2022

IT IS DECLARED THAT

1. The applicant's date of birth is 11 August 1998 and he is now 23 years old;
2. The applicant was 21 years old when he arrived in United Kingdom on 18 June 2020;

IT IS ORDERED THAT

1. The applicant's claim for judicial review is refused;
2. The Order for interim relief granted by Mr Tim Smith on 25 March 2021 is hereby discharged.

Costs

3. The applicant is to pay the respondent's reasonable costs, to be assessed if not agreed.
4. The order for costs shall not be enforced without a determination by a cost judge of the amount which it is reasonable for the applicant to pay, if any, in accordance with section 26(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and regulations 15 and 16 of the Civil Legal Aid (Costs) Regulations 2013, or such other provisions as may from time to time apply.
5. There shall be an assessment of the applicant's publicly funded costs.

Permission to appeal to the Court of Appeal

1. There has been no application for permission to appeal to the Court of Appeal. In any event, I refuse permission.

Signed: H Norton-Taylor

Upper Tribunal Judge Norton-Taylor

Dated: 17 January 2022

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): **17 January 2022**

Solicitors:

Ref No.

Home Office Ref:



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

JR/458/2021

In the matter of an application for Judicial Review

The Queen on the application of

S (by his litigation friend Helen Johnson)
(anonymity direction made)

Applicant

versus

Kent County Council

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

For the applicant: Ms A Benfield, Counsel, instructed by Instalaw

For the respondent: Mr J Swirsky, Counsel, instructed by Invicta Law

JUDGMENT

Background

1. The applicant is a citizen of Afghanistan. He claims that he was born on 5 January 2005 and is, at the date of this judgment, 16 years old. The respondent disputes both the claimed date of birth his claimed age. It has attributed to the applicant a date of birth of 11 August 1998, currently making him 23 years old. This judgment is the determination of the factual questions of how old the applicant is and when he was born.

2. The applicant arrived in United Kingdom on 18 June 2020 and claimed asylum. On initial impressions the respondent did not accept the claimed age, but nonetheless proceeded to treat him as a child and put appropriate care provisions in place. On 28 September 2020, the respondent began an age assessment process, which comprised three meetings between the applicant and two age assessing social workers (“the age assessors”) on 28 September, 30 September, and 23 October (the last being a “minded-to” meeting). The resulting age assessment concluded that the applicant was not of the claimed age and did not have the claimed date of birth. Rather, the age assessors took the view that the applicant was significantly older and in fact was born on 11 August 1998. The decision giving effect to the age assessment was provided to the applicant on 20 November 2020. An immediate consequence of the decision was that the support being provided to the applicant as a putative child was withdrawn.
3. The judicial review claim which underlies the fact finding exercise with which I am concerned was made on 22 February 2021. In essence, the proposed challenge argued that the age assessment was flawed by virtue of procedural unfairness arising from the failure to gather and consider the opinion of others and that its conclusion on the applicant’s age was wrong. The respondent resisted the challenge in its entirety, contending that there were numerous and significant inconsistencies in the applicant’s evidence.
4. On 25 March 2021, permission was granted by Mr Tim Smith, sitting as a Deputy High Court Judge. He ordered that the claim be transferred to the Upper Tribunal in line with the usual practice in cases such as this. In addition, he granted interim relief requiring the respondent to provide the applicant with age-appropriate accommodation pending the outcome of the substantive claim. Once the case entered the Tribunal’s system, relevant case

management directions were issued and the matter proceeded efficiently with both parties liaising with each other and the Tribunal in order to ensure progress and preparedness for the fact-finding hearing. In compliance with directions, the parties held a round table meeting the day before the hearing began. It was confirmed that no settlement of the core factual issue would be forthcoming and the questions of the applicant's age and date of birth remained in dispute.

The hearing

5. The fact-finding hearing took place on 30 November and 1 December 2021. At the outset Ms Benfield made an application to a substitute a new litigation friend in place of the previous individual who was on leave. A certificate of suitability of litigation friend was provided. Mr Swirsky had no objection to this course of action and I approved the substitution.
6. The applicant attended the hearing on both days. The first day was taken up entirely by the applicant's oral evidence. This was provided with the assistance of a Pashtu interpreter, with whom, I was satisfied, the applicant was able to converse without any material difficulty throughout proceedings. Before the oral evidence began, I gave a full introduction to the applicant, urging him to listen very carefully to all of the questions, to ask for anything he was not sure about to be repeated, and to feel free to state that he could not remember something or simply did not know the answer to a question. The lengthy oral evidence was interspersed with breaks. Having kept a careful eye on the applicant's manner during his evidence and bearing in mind the fact that he could at all times have been a child, I was satisfied that he understood the questions, was able to appropriately provide his responses, and that the hearing was conducted fairly.

7. The second day of the hearing was taken up by submissions only. It was agreed at the end of the first day that the applicant would not require the assistance of the Pashtu interpreter on the second day. Instead, the applicant was content to have submissions conveyed to him through an interpreter provided by his solicitors.

The evidence

8. The documentary evidence consisted of:
 - (a) an agreed core bundle of documents, indexed and paginated 1-185 (“C1”);
 - (b) a supplementary bundle, indexed and paginated 8-1009 (“SB”);
 - (c) additional materials from the respondent, A1-A185 (“A1”);
 - (d) additional materials from the appellant, 1-31 (“A2”);
 - (e) emails relating to the non-attendance of two witnesses on the applicant’s behalf, Mr Gregory Berrigan and Ms Michelle Mather, dated 26 October and 1 November 2021.
9. There were no witnesses on behalf of either party in this case. Witness statements were provided by the age assessors, Ms Michelle Appiah and Ms Zahraa Adam, in addition to the age assessment itself.
10. The applicant’s written evidence consisted of two witness statements, signed and dated 18 February 2021 and 21 June 2021. The oral evidence was lengthy but, in the circumstances of this case, necessarily so. Both Counsel should be commended for the careful and sensitive way in which they went about their respective questioning.
11. The oral evidence provided on the first day of the hearing is a matter of record. I do not propose even to summarise it here. The better course of action is to refer to relevant aspects of it when setting out my analysis and findings, below.

The law

12. Both parties were in agreement that there were no controversial points of law arising in this case. The basic framework is very clearly set out in the respective skeleton arguments (paragraphs 8-20 of Ms Benfield's and paragraphs 19-37 of Mr Swirsky's). In the circumstances, I need not set out any of the authorities or the well-known propositions arising therefrom.

13. What I do intend to do, however, is to state a number of principles relevant to the assessment of the evidence:

- (a) there is no burden on the applicant to "prove" his case;
- (b) I adopt a holistic approach, taking account of both the oral and written evidence;
- (c) I effectively leave to one side physical appearance and demeanour as aids to the assessment of age;
- (d) I consider the age assessment itself on its merits - there is no presumption that it should carry significant weight;
- (e) I take account of cultural differences: whilst not an easy task, one seeks to place oneself in a different cultural/geographical/religious context when considering issues of consistency and, in particular, plausibility;
- (f) I adopt what may be described as, within limits, a "sympathetic" assessment of the applicant's evidence;
- (g) it is entirely possible that an individual will be untruthful about a number of matters but truthful about others, including, for example, their age. Young people may be "fed" stories by others in order to create or embellish a claim and this can apply to questions of age as much as those relating to protection issues;
- (h) it is possible that an individual will be untruthful about the question of claimed knowledge of age and/or date of birth, but may nonetheless still in fact be a child. I bear in mind that chronological age is of minimal importance in many cultures;
- (i) what the applicant himself has said must be considered in light of what other relevant people have described in relation to the issue of age;

- (j) in this case it is common ground that the applicant made a long and difficult journey from Afghanistan to the United Kingdom, as well as having experienced difficulties whilst in Afghanistan. I bear in mind the possibility that difficult or traumatic experiences may have had an effect on the evidence he has provided in this case. In this regard I have taken account of all references in the evidence to his emotional well-being and any stress exhibited to others which may potentially have had a material bearing on the evidence;
- (k) ultimately, I am making my own decision as to the applicant's age and date of birth, based on the evidence as a whole. I am not bound to agree with either party's position.

Submissions

14. Concise and clear submissions were made on day two of the hearing. As with the oral evidence, these are a matter of record. The parties' respective positions can be pared down to the following essential summary. The respondent argues that the applicant's evidence is so undermined by inconsistencies and implausibilities that nothing he says can be considered reliable. In contrast, the age assessment should carry significant weight. It must, in the circumstances of this case, follow that the applicant is not the age he claims to be. I should prefer the date of birth and consequent age ascribed to him by the respondent.
15. On behalf of the applicant, Ms Benfield's submissions incorporate many, if not all, of the propositions I have already set out at paragraph 13, above. She emphasised that despite some difficulties with the applicant's evidence, he has been consistent on the core issue in this case, namely his age (specifically, at the point he left Afghanistan) and date of birth, that being 5 January 2005. No professional who has had interactions with the applicant has stated

that he is in fact 23 years old or has expressed any real concerns that he is significantly older than his claimed age. The reality of the matter is that the applicant has, notwithstanding limited education and cultural differences, done his best to calculate his age at material times. Alternatively, even if the applicant does not in fact know his age or date of birth, the evidence as a whole supports the view that he is indeed a child aged around 16 or 17.

Analysis and findings

16. In the final analysis I find that the central argument put forward by the respondent in this case as to the overall unreliability of the applicant's evidence reflects the true position. Notwithstanding the various principles of assessment stated previously in this judgment, I find that the applicant has not told the truth about virtually all material aspects of his account relating to his claimed age and date of birth. Applying those same principles to the alternative contention that an untruthful account still leaves room for a favourable finding on the claimed age (or an alternative age close thereto), I find that this is not the case here: the unreliability of the evidence put forward is such that I am unable to accept that it is more likely than not that the applicant is in fact 16 or 17.
17. I now set out my analysis and reasons for the core finding stated in the preceding paragraph. Clearly, I must provide a structure for what follows, but it is crucial to appreciate that this is a holistic assessment, with all aspects essentially interlinked. No single aspect has played a decisive part and my ultimate findings have only been reached following an evaluation of all other matters.
18. This is a case in which there has been no supporting evidence from witnesses. It is of course true that the age assessors did not attend the hearing, but that is in line with the current practice in age assessment cases. On the applicant's side, Mr Berrigan and Ms

Mather did not provide witness statements. I will deal with what these and other individuals have had to say about the applicant later in this judgment. However, it is clear that this is one of those cases in which a great deal depends on the assessment of the applicant's own evidence.

19. It has been the applicant's case that he was specifically told his actual date of birth by his mother whilst still in Afghanistan and that this information was provided to him shortly before he left the country (104 C1). At the same time, he was told that the date of birth meant that he was then 14 ½ years old. His mother actually wrote down the age and date of birth on a sheet of paper. This was apparently done because of the importance to the applicant of knowing the information during or at the end of the journey he was about to undertake. On the basis of that account, as set out in the first witness statement, significant concerns arise.
20. Firstly, it is apparent that on the applicant's evidence he came from a village in a rural area with limited access to even basic utilities. Access to education even for boys was, on the applicant's case, limited. On any rational view, the environment was culturally and religiously traditional/conservative. In light of this, it is extremely likely that the Applicant's mother would not have had any meaningful education and was, to all intents and purposes, illiterate. It is, in my judgment, inconceivable that (a) his mother would have known the precise date of birth and/or (b) that she would have been able to write it down in Pashtu.
21. Secondly, given the applicant's evidence as a whole, including the acceptance in oral evidence that birthdays were never celebrated and that "we had nothing to do with dates", it is extremely unlikely that his mother would have had an appreciation of dates of birth in general. It is only marginally less unlikely that she would have known the applicant's age to the extent of him

being 14 ½, as opposed to, for example, 14 or near to 15, or suchlike.

22. Thirdly, the account in the witness statement suggests that the information was given to the applicant because he was about to leave Afghanistan and needed it. However, in oral evidence the appellant did not confirm this, but rather seemed to suggest that it was done simply because he was a “big boy” and deserved to know his age.
23. The next issue follows on from the last. Although not consistent throughout his evidence as to his knowledge of a Taskira, he eventually accepted that one existed. If this was the case and if indeed his mother was providing him with a date of birth and/or age because it was important once he left Afghanistan, it is wholly implausible that she would not also have handed possession of that document to him prior to departure. On the basis that it would have contained an accurate date of birth, or at least an age, the significance of having the Taskira would have been obvious to his mother, even as an uneducated individual: it would have helped to show not simply her son’s age, but his identity. In this regard, the applicant’s evidence is materially problematic.
24. Beyond the evidential problems identified above, the applicant’s oral evidence was in direct contradiction to the witness statement. In examination-in-chief, the applicant resiled from fundamental aspects of that statement. For example, he denied that his mother had written anything down, claiming that this was done by his father. That not only contradicted the statement, but clearly did not fit in with the stated chronology as to when his father died. He also denied that he had taken any piece of paper with him when he left home.
25. In cross-examination, the applicant got himself into all sorts of difficulties when responding to perfectly proper questions as to how and why he had found out about his date of birth and/or age whilst

in Afghanistan. He eventually stated that neither his mother or anyone else provided him with his date of birth, orally or in writing, and that he had calculated the date himself after arriving in the United Kingdom. He instead reverted to repeating that his mother had simply told him that he was 14 ½ years old shortly before he left Afghanistan. The glaring inconsistency with the written evidence is all too apparent.

26. The applicant appeared to accept that he had said what was written in his witness statement (which he had signed after it was read to him in Pashtu), but suggested that he had not perhaps properly understood what was being said or recorded. I do not accept this explanation for such an important inconsistency. Firstly, I was satisfied that the applicant had properly understood the questions being put at the hearing. Secondly, I am satisfied that the witness statement was indeed based on what the applicant had in fact said and that it had been properly read back to him in Pashtu before he signed it as an accurate record of his evidence. In my judgment, there is simply no sensible way in which the clear evidence contained in the witness statement can be reconciled with what the applicant said in oral evidence and there has been no reasonable explanation for the discrepancies. In saying this, I have taken account of all the relevant principles of assessment highlighted earlier.

27. The applicant's evidence on the question of his precise date of birth suffers from additional significant problems. On his changed account, the applicant asserts that he in fact calculated the date of birth after arriving in this country. That claim is, to be blunt, far-fetched. Firstly, the applicant has repeatedly stated 5 January 2005 as being the actual date of birth in the Gregorian calendar. This is not a case in which he has simply stated a year of birth whilst accepting that he could not be more precise than that. To resile from that position represents an inconsistency. Secondly, on his own

evidence (or at least one version of it), the applicant had only ever received very limited education (I will say more about this aspect of his evidence, below). He would not, I find, have had any prior knowledge of the Gregorian calendar or of how to calculate precise days of a month and months within years: indeed, in oral evidence he appeared to accept this. Thirdly, the applicant's journey from Afghanistan to the United Kingdom was lengthy and complicated in the sense that it involved passing through a number of countries, stopping off for various periods of time (this aspect of his evidence too has been inconsistent and I will return to it, below). Given these circumstances, it is very unlikely that the applicant would have been in the position after having been in this country for a short time to calculate a precise date of birth armed only with having been told he was 14 ½ shortly before he left home. Fourthly, even this aspect of the applicant's changed account does not stand up to scrutiny. The date of 5 January 2005 was provided not sometime after the applicant had resided in this country, but when he was first encountered by the authorities on arrival here on 18 June 2020 (325 SB). I fully appreciate that the applicant had only very recently arrived at Dover following what must have been an arduous journey across the English Channel. If only vague dates or an age had been provided at that point more could be said as regards a reasonable explanation for an absence of detail or the existence of errors. However, it is clearly the case that a precise date was stated at that point. That fact completely undermines the claim to have calculated the date of birth after arrival.

28. In the initial port interview referred to above, the applicant stated that he was at that time "just 15". Whilst not of any great significance, this does not fit with the claimed date of birth: the applicant would have been 15 years and approximately five months old when encountered at Dover.

29. In his first witness statement, the applicant denied having any knowledge as to the existence of a Taskira (105 C1). As mentioned previously, in oral evidence he then confirmed that he did know of the document, but had not apparently been shown it. Later on, he told me that he had in fact seen it, but had not been given it. Ordinarily I would not regard such a discrepancy as being of particular importance. However, in the context of this case it does bear significance. It is more likely than not that the Taskira contained an accurate date of birth, or at least an accurate age, for the applicant. Given the applicant's belated acceptance that he had in fact seen the document, it is more likely than not that he knew, either through understanding the date/age himself (the problems with his evidence surrounding his claimed education are discussed below), or through the assistance of another person, what his true date of birth or age was. If that date of birth or age meant that the applicant was in fact an adult when he left Afghanistan, it would provide a rational explanation as to why he did not take the Taskira with him and/or why his evidence as to his claimed date of birth and age has been so inconsistent, and/or why he felt the need to create additional Facebook accounts after his original account came to light.
30. The issue of the applicant's claimed education is relevant not because the existence or absence of formal schooling somehow increases or decreases the likelihood of the claimed age being accurate, but because in this case it represents a further example of multiple internal inconsistencies and because it does have a bearing on the applicant's knowledge of dates, as alluded to above. His evidence on this issue has varied considerably.
31. Originally, the applicant stated that he had attended a madrassa for a year between the ages of 10 and 11. Following this, he had attended a "normal" school for 3 to 4 months at the age of approximately 13, finishing when he had turned 14 (106 C1). The

oral evidence was fairly consistent in terms of time periods. However, elsewhere in the documentary evidence very different periods of time were provided by the applicant. For example, he stated that he had attended school for “3-4” years and had last attended about 1 ½ years before leaving Afghanistan “just before my father died” (337 SB). Subsequently, he stated that he had attended “formal school” until year 6 (485 SB). Beyond these inconsistencies, I find it to be highly implausible that the applicant would, on his account within the space of only a few months, have been taught English in addition to a number of other subjects, as he has claimed. Indeed, it is difficult to accept that the applicant was in a position to have learned to read and write Pashtu in such a short period of time. His oral evidence to the effect that he took it upon himself to do additional learning outside of school struck me very much as an attempt to ameliorate an evidential problem thrown up previously. The applicant’s evidence as regards the gap between his father’s death, an event which I am prepared to accept did take place, and any schooling undertaken and then in turn the departure from Afghanistan, gives rise to yet more inconsistencies, although these are not as significant as several others.

32. If the applicant had in fact attended school for as long as he said at certain points in time (i.e. for a number of years rather than months), this could in some way go to explain other aspects of his evidence relating to, for example, social media and/or an ability to understand date of birth or age stated in the Taskira. The overarching point here is that his evidence as a whole is rendered unreliable by the cumulative effect of inconsistencies and implausibilities.

33. The applicant’s evidence regarding his journey to the United Kingdom has shifted over time. In his first witness statement, the applicant stated that he left Afghanistan in the “latter half of 2019” and that he was 14 ½ years old when he set off (106 C1). In oral

evidence he stated that the journey to the United Kingdom had taken between 6 and 7 months. However, on further interrogation the applicant extended certain periods of time during the course of this journey (for example, in respect of stays in Iran and Turkey). In and of itself, this would be of little consequence. Yet it does attract some significance in this case because, on one version of his account, the applicant has said that he used the duration of his journey to the United Kingdom in order to calculate his age and date of birth when he arrived in United Kingdom. There is merit in Mr Swirsky's submission that the difference in the periods of time making up the entire journey from Afghanistan to the United Kingdom is of at least some relevance.

34. The next issue is of very real significance. There is evidence of Facebook accounts belonging to the applicant and one apparently belonging to a friend. The evidence surrounding these is highly problematic and damaging to the overall reliability of his account.

35. The name on the first account is "Khan Khan". It states that the account was created in April 2019, the holder had resided in Kabul in 2019, that their date of birth was 11 August 1998, and that a particular phone number was linked to the account (1006 SB). Paragraph 19 of the applicant's first witness statement contains the following:

"The first profile was created in Afghanistan and has the name Khan Khan. I just put a random age to make sure I could open the account, as I wasn't sure if I would be old enough to make a Facebook account. I now know I would have been old enough as I was fourteen at the time, and you need to be thirteen to make an account. A lot of people put older ages on their Facebook accounts anyway though."

36. The difficulties this first Facebook account poses for the applicant's case are readily apparent and Ms Benfield sought to meet the issue head-on in examination in chief. The applicant

responded by accepting that the account was his, but that it had not been created in Afghanistan. Rather, it had been created whilst he was in Calais and this had been done by a “friend”. The applicant then suggested that his solicitor had mis-recorded what he has said when the witness statement was being prepared. He made the same suggestion in cross-examination.

37. I do not accept that the applicant ever told his solicitor (or whoever else might have assisted in preparing the witness statement) that the Khan Khan Facebook account had been created in Calais. The witness statement is precise and clear. There has never been any complaint or explanation put in writing as to the preparation of the witness statement. The numerous “errors” which the applicant sought to “correct” at the outset of his oral evidence reflected poorly on him and not his legal representatives. In light of this, I find that there is an obvious and material discrepancy between the witness statement and the oral evidence as to where and when this particular Facebook account was created.
38. The screenshot of the Khan Khan account clearly shows that the account holder was, or at least said they were, living in Kabul in Afghanistan in 2019. There has been no explanation, reasonable or otherwise, from the applicant as to why this information is stated if indeed the account was created in Calais.
39. The stated date of birth on the Khan Khan account is said in the witness statement to have been a “random age” put in by the applicant himself. However, in oral evidence he changed this and asserted that the “friend” had made the date of birth up. Again, I do not accept the applicant’s evidence on this issue and I find this to be another significant inconsistency. I find that it was the applicant himself who put the date of birth in. There was no need to put in a false date of birth, and it is entirely possible that it was in fact accurate and that the applicant knew his date of birth from the Taskira. In fact, at one point in cross-examination the applicant did

state that “he [the “friend”] asked me my age so he could put it in there [the Facebook account]” So even if the account had been created by the “friend” in Calais, the date of birth stated (11 August 1998) is likely to have been that conveyed by the applicant.

40. There is no evidence before me as to whether false dates can be inserted when creating a Facebook account or thereafter, whether false posts can be inserted into an account (for example, relating to where an individual is at any point in time). Taking the evidence as a whole, I find that the Khan Khan account was in fact created in April 2019.

41. The existence of the Khan Khan Facebook account is indicative not only of significant inconsistencies in the applicant’s account overall, but also the very distinct possibility of him being caught in a lie, as it were. In other words, a Facebook account genuinely created with accurate information at some time in the past has come back to haunt the applicant and he has been required to attempt to construct a means round this problematic evidence.

42. The Khan Khan account also throws up the oddity of a Serbian telephone number being linked to it. The applicant denied any knowledge or connection to this, but I accept that the number is in fact Serbian. This demonstrates that the applicant has been less than candid about aspects of his journey through Europe and/or means of communication at various stages.

43. The second Facebook account is in the name of “Baghani Halak” (this is spelt as “Baghani Halek” in the applicant’s witness statement, but it makes no difference). Paragraph 19 of the applicant’s first witness statement provides as follows:

“This account was made during my journey to the UK. A friend of mine, who used to come and socialise with us opened the account for me using his phone, after I asked if I could make an account. I wanted to make another account because I forgot the login details of the first account. My friend opened the account using his phone

but he did not enter my correct details, we just wanted the account open. I don't know what age he put. As long as the account could be used I didn't care."

44. This account is evidentially problematic for at least two reasons. Firstly, whereas the witness statement asserts that the account was made "during" the applicant's journey to the United Kingdom, in oral evidence he stated that it was created after he had arrived in this country and that he created it himself. Secondly, the date of birth for this account is 5 June 2005, not January of that year. When this was put to the applicant, he responded that he did not know the names of the months. That response of course did not sit well with the clearly articulated date of birth presented at other times.
45. There is a second account with a very similar name: "Baghlani Halak" (11-25 A2). The applicant told me that he had created this one as well, although there has been no reasonable explanation as to why this was done. It is unclear to me why this account has a picture not only of the applicant but another individual (pictured standing next to someone dressed up as Mickey Mouse) on the profile page.
46. The final Facebook account is entitled "Malang Pa Dova Rang". This was said not to be the applicant's account, but that of a friend who, apparently lives in the United Kingdom despite the account stating that he lived in the United States. This account, like other aspects of the evidence, threw up more questions than it answered, not least the fact that the profile page contains a picture of the applicant, not the friend whose account it apparently is. I found this particular aspect of the evidence to be bordering on the bizarre.
47. It transpired in oral evidence that there were apparently other Facebook accounts which had not been referred to previously and not disclosed by way of documentary evidence. This revelation did

nothing to enhance the reliability of the applicant's evidence as a whole.

48. The overall picture here is of, in my view, an attempt to manufacture additional accounts to give the impression of the applicant being younger than he is and to attempt to explain away the highly damaging Khan Khan account. This aspect of the applicant's evidence is, I am bound to say, extremely poor.
49. I turn now to the age assessment. Before considering its contents as they relate to the evidence provided by the applicant himself, I address the criticism made on his behalf to the effect that there was a failure to take account of the opinions of other individuals before reaching the overall conclusion.
50. The first individual is applicant's former foster carer Ms Kiruthi. She provided an observation report, dated 29 September 2020 (597 SB). This was not specifically referred to in the age assessment. In their joint witness statement, the age assessors respond by stating that in their view the information provided by Ms Kiruthi was of limited value. In all the circumstances, I agree, although it would have been better to have expressly dealt with this evidence in the age assessment. The observation report is made up of a series of boxes in which the individual (here, Ms Kiruthi) can provide observations on issues ranging from social interactions to self-care skills to interactions with others in the setting. I do not doubt Ms Kiruthi's good faith in providing the information she did. Having said that, it is fair to say that the observation report is brief in its content. In the box to which specific reference has been made in support of the applicant's case, it is stated only that he was "very polite" and "does not act older or younger than 15". I acknowledge the fact that, at the time of the report, the applicant had been living with her for about three months. This would obviously have involved a good deal of interaction. I note that there were two other young

people in the same setting; one being 15 years old and the other 20 years old. With respect, the very brief entry in the relevant box in the report does little to elucidate how a 15 year old would act and why the author was seemingly adamant that he did not act older than a person of a similar age. The absence of any concerns as to the appropriateness of the setting does not in my view add much to the applicant's criticism of the age assessment itself: another resident was 20 years old and, in the absence of any notable inappropriate behaviour on the applicant's part, I do not regard the absence of any concerns as being of real significance.

51. I have noted the references at paragraph 26 of Ms Benfield's skeleton argument in which she quite properly places Ms Kiruthi's observations in the context of other materials, all of which indicate that there have been no concerns as to the appropriateness of placements and the applicant's overall behaviour. This does represent a body of evidence which is potentially supportive of the applicant being 16 or 17 years old and I have taken account of it as such. It does of course have to be placed in the context of the evidence as a whole and an absence of express concerns as to appropriateness is not perhaps the same as, for example, evidence of actual concerns indicating that an individual is too old for a setting. I also take account of the fact that Ms Kiruthi has not provided a witness statement.

52. The second individual is Helen Downs the Independent Reviewing Officer. She provided an observation report, dated 8 October 2020 (675 SB). I bear in mind her statutory function and the fact that it involves an assessment of evidence beyond simply any meetings with the child/young person concerned. Again, I fully accept that she provided information in good faith. It is apparent that Ms Downs had not met the applicant in person and had only spoken to him via Skype on two occasions. This was always going to have a somewhat limiting effect on her ability to provide certain

types of relevant information. From the information she gleaned from other materials, Ms Downs was only able to state that the applicant had not demonstrated particular behaviours which were inconsistent with his given age, but she had “only heard what he said as there was no sight of him.” The observation report as a whole does not provide evidence of real substance.

53. The third individual concerned was the applicant’s allocated social worker, Gregory Berrigan. Mr Berrigan had provided an observation report, dated 7 October 2020 (671 SB), which was followed by an updated observation report, dated 17 June 2021 (996 SB). The first observation report was in fact referred to in the age assessment, albeit briefly. Mr Berrigan confirmed that he had only had one face-to-face meeting with the applicant and that he had doubts as to whether the applicant was 15 years old: his belief was that the applicant was likely to be approximately 17 years old. The updated observation report did not add anything of substance to the first. I take account of Mr Berrigan’s experience and his particular role with the applicant. Mr Berrigan declined to provide a witness statement in this case. Overall, I do not regard his evidence as attracting significant weight. He himself had doubts as to the applicant’s claimed age. Beyond that, there was very limited interaction between the two.

54. Taking these matters as a whole, I do not regard the absence of any detailed consideration of the three individuals opinions within the age assessment to significantly undermine its evidential value. I say this entirely independently of the views of the two age assessors themselves. For my part, I would emphasise the importance in general of setting out and evaluating as much of the information gathered within an age assessment report as possible.

55. Ms Benfield has emphasised the importance of the evidence emanating from Mr Alex Stringer, a highly experienced social worker who completed a unique unaccompanied child record on 19 June

2020, the day after the applicant's arrival in the United Kingdom (333 SB). Ms Benfield submitted that if the applicant had presented as someone then aged approximately 22 years old, Mr Stringer would have provided his opinion to that effect and expressed obvious concerns as to any placement with children. Mr Swirsky contended that Mr Stringer's assessment was in truth by way of triage only and did not represent a full assessment. In my view, this item of evidence rests somewhere in between the two positions. I accept Mr Stringer's expertise and that the record was something more than simply a triage, although it was clearly based on limited interaction and did not represent a detailed assessment. I note that the report does not support the applicant's claimed age of 15 at that point in time. The fact that Mr Stringer concluded that the applicant presented "very similarly to young people accommodated at our reception centres (accommodation for males 16-17-year-olds)" is of some significance and does support an age lower than that attributed by the respondent. It does form part and parcel of the body of evidence which has not raised any concerns that the applicant was too old to be accommodated with 16 or 17-year-olds. In addition, it supports Ms Benfield's submission that no professionals who have interacted with the applicant have stated that they believe him to be, for example, 22 years old.

56. I turn then to the body of the age assessment. As mentioned earlier, this was produced following three meetings between the age assessors and the applicant. At certain points in the applicant's oral evidence, it appeared as though he was criticising the conduct of one or other of these meetings; there was the suggestion that he had been in some way badgered or that they had mis-recorded what he had said. I reject any such suggestion. There was no witness statement from the applicant which addressed any concerns or allegations about the conduct of the meetings. From my reading of the age assessment and the accompanying notes, I see nothing

approaching any unfair or otherwise inappropriate questioning or conduct of the meetings. To the contrary, in my view the age assessors went about their task in an entirely appropriate manner.

57. The first relevant section of the assessment relates to physical appearance and demeanour. I take no account of this for the purposes of my assessment of the applicant's evidence. The next section on the interaction of the applicant during the assessment has no real significance one way or the other. The subsequent sections of the assessment disclose numerous evidential problems which relate to matters I have already set out. Given the length and detailed nature of the age assessment, I propose only to refer fairly briefly to the salient points.
58. Social history and family composition. The applicant confirmed that his mother had told him his month and year of birth: this was of course contradicted in oral evidence. The applicant stated that his journey to the United Kingdom had taken 5 months, in contrast to the 6 or 7 months stated in oral evidence.
59. Developmental consideration. The applicant stated that he had only attended school for one month, which contrasted with his other evidence. This section also deals with the Facebook accounts. There is an accurate description of what the account profile includes. It is noteworthy that the applicant told the age assessors that he had made up the date of birth of 11 August 1998, not the "friend" to which this act was attributed in oral evidence. The applicant also told the age assessors that the Khan Khan account had been "made" whilst he was in France, in contrast to his witness statement.
60. In the education section it is recorded that the applicant stated he had started school when he was about 14 and not 13, as stated elsewhere. There is a reference to him having studied English at school and that he had only attended for 1 ½ months. Even if the

reference to “months” should have read “years”, this evidence is still inconsistent with what has been said elsewhere.

61. In respect of the health and medical assessment section, the applicant confirmed that he had no medical conditions and scored himself as “10/10” in terms of being happy.
62. As stated previously, the “minded-to” meeting was thorough and covered all relevant matters. There can be no suggestion of any procedural unfairness in respect of that stage of the process. The following points arising from the assessment are of most relevance for present purposes:
 - (a) there are further inconsistencies as to the length of time the applicant had attended school in Afghanistan;
 - (b) he asserted that he had never seen any identity documents whilst in Afghanistan, in contrast to his oral evidence;
 - (c) in respect of his ability to read and write in Pashtu, the applicant added in for the first time that his father had helped him;
 - (d) the age assessors calculated a timeline which put the applicant at nearly 15 years old when he left Afghanistan, to which he simply repeated that he was 14 ½ years old when he left;
 - (e) on the Facebook issue, the applicant appeared to continue to provide evidence which was in direct contradiction to that set out in the witness statement. He was unable to provide any further explanations when the difficulties with his account were put to him.
63. In summary, I do not regard the omission of any or any detailed assessment of the information provided by other relevant individuals as constituting a basis for reducing the weight I would

otherwise place to any meaningful extent. The assessment is in my view a detailed and considered document and one which, in this particular case, attracts significant weight. I am satisfied that the two age assessors were experienced social workers and brought their respective expertise to bear during the course of the three meetings with the applicant. Unlike a number of age assessments I have considered in the past, the one prepared by the age assessors contains a thorough “minded-to” process in which all relevant matters of concern were fairly put to the applicant. I find that the applicant’s evidence provided at the meetings was accurately recorded and that the meetings were all conducted in an appropriate manner. I find that the evidence provided by the applicant during the assessment process further undermines the overall reliability of his entire account as it relates to his claimed age and claimed date of birth.

64. Ms Benfield has placed reliance on the observation report, dated 17 June 2021, from Michelle Mather, the applicant’s keyworker at Bridging the Gap (1001 SB). As with the other individuals referred to previously, I have no doubt that she provided the information recorded in an entirely honest manner. I do take account of the fact that there has been no witness statement from her, although this has been explained by her with reference to “issues” caused with young people when those they interact with (such as Ms Mather) provide evidence in age assessment cases. Notwithstanding this, it is a fact that her observations have not been the subject of interrogation.

65. In any event, the observations contained in the report do not in my judgment provide significant support for the applicant’s claimed age. Whilst it is the case that no concerns are raised as to the appropriateness of interactions between the applicant and others, this of itself is not a strong indicator. Nor is the fact that the applicant had always behaved in a polite and respectful manner

towards staff and his “peers”. The observed behaviours might be consistent both with the applicant being his claimed age and that put forward by the respondent.

66. I have considered the weekly placement reports provided by Bridging the Gap over the course of approximately four months during 2021 (991-1037 SB). This evidence is in keeping with Ms Mather’s observation report. As with certain other aspects of the evidence in this case, it certainly has the potential of being supportive of the applicant’s claimed age, but I find that when considered in the context of the evidence as a whole it is outweighed by the significant adverse matters described elsewhere in this judgment.
67. There is no medical report in this case. I accept that there are some references to the applicant being stressed and frustrated at times. In my view, this does not assist greatly in my overall assessment of the core issues. I am however satisfied that the applicant has not and does not suffer from any recognised mental health conditions which might have had a material impact on his ability to recollect past events and/or present his evidence to his legal representatives, the Home Office, the respondent, or indeed to me at the hearing.
68. That the applicant had in fact left his home country at some point and made what was on any view a difficult journey to the United Kingdom (including a perilous crossing of the English Channel) is relevant to the assessments of credibility, as I have highlighted previously. Having said that, the evidence which I have evaluated covers a relatively prolonged time frame, the applicant has had competent legal representation for a considerable period, and, in all the circumstances, I do not find that the difficult experiences to which the appellant will have been exposed in the past have had a significant bearing on his ability to present his evidence.

69. Three further aspects of Ms Benfield's submissions are to be noted. Firstly, it is essentially correct that the applicant has consistently repeated his claim to have been 14 ½ years old when he left Afghanistan. In principle, that could be supportive of what he says about his age and date of birth. Whilst almost always relevant, consistency is not, in and of itself, necessarily a strong indication that an individual is telling the truth: after all, a lie can be consistently repeated throughout a claim. Consistency, much like plausibility, must be placed in the context of the evidence as a whole and in this case that context is very much adverse to the applicant's assertions on age.
70. The second point is that no one except for the age assessors have attributed an age to the applicant commensurate with a date of birth of 11 August 1998. I appreciate that there is a fairly wide margin between 16 and 17 years old on the one hand and 23 years old on the other. In a sense, this is probably the strongest underlying point in favour of the applicant's claim to be a mid-range teenager. If other aspects of the evidence were perhaps on a more equal footing, this would be of much greater assistance to him. However, the evidential problems I have highlighted thus far are, when combined, so significant that this factor of itself or combined with other potentially favourable matters is insufficient to persuade me that he is of the age claimed, or indeed slightly older.
71. The third point follows on from the last. Essentially, it is said that there is no real foundation for believing that 11 August 1998 represents the applicant's true date of birth. Within this, the implication might be that if the applicant is almost entirely uneducated, how would he have ever been able to know a precise date of birth? Having regard to my analysis of the evidence as a whole, I reject this position. Firstly, I find that the Taskira contained accurate information on the applicant and it may well be the case this included the date of birth of 11 August 1998. Secondly, the

Khan Khan Facebook account clearly gives this date of birth and it is more likely than not that the appellant used this because he knew it to be accurate and, at the time the account was in fact created in April 2019, he had no inclination to try and portray himself as a child. Thirdly, the state of the applicant's evidence as to his education is poor. If it was only minimal, it is likely that others could have told him of the date of birth. Alternatively, he may have received a good deal more education, something which would in fact fit in with certain aspects of his evidence provided over the course of time.

72. In the same vein, the applicant may have lived in Kabul for a time before leaving Afghanistan. Whether he did in fact do so is in a sense beside the point, given the overall unreliability of his evidence.

73. A final factor to which I have had regard is the manner in which the applicant gave his oral evidence. By this I certainly do not mean that I have taken account of his physical appearance and demeanour as such. Rather, it is the benefit of seeing and hearing an individual responding to questions which, in my view, I am entitled to consider. Having been satisfied that the applicant understood the questions put, that those questions were all appropriate, and that he was able fully to present his evidence fairly and effectively, I gleaned the overall impression that three interlinked themes permeated the testimony: firstly, a realisation on his part as the hearing progressed that his account really did not "hang together" when scrutinised; secondly, that the constant refrain of "I was 14 ½ years old when I left Afghanistan" was employed as an attempt to distract from the significant evidential problems; and thirdly, a tendency to blame others (either expressly or by implication) for "errors" in previous evidence. In making the second point just described, I would refer back to what I have already said about consistency in an account. I make it clear that I

do not regard the factor set out in this paragraph as being particularly significant.

74. Bringing all of the above together, I make the following core findings of fact:

(a) I do not accept that the applicant was ever told by his mother or anyone else that he was born on 5 January 2005 and/or that he was 14 ½ years old at the time of his departure from Afghanistan;

(b) I do not accept that the applicant was in fact born in 2005;

(c) whilst there exists a possibility that the applicant has been untruthful about numerous matters but is nonetheless a child, it is more likely than not that the untruths have emerged as result of an attempt to disguise his true age and to fabricate an account of a claimed age;

(d) it is more likely than not that the applicant was in fact born on 11 August 1998.

75. It follows that the applicant was not a child when he arrived in the United Kingdom in June 2020. In turn, his claim for judicial review must be refused.

Signed: H Norton-Taylor

Upper Tribunal Judge Norton-Taylor

Dated: 17 January 2022

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): **17 January 2022**

Solicitors:
Ref No.

Home Office Ref: