JR-2022-LON-001108

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

In the matter of an application for Judicial Review

The King on the application of
HG
(Anonymity direction in force)

Applicant

versus

London Borough of Hammersmith and Fulham

Respondent

ORDER

BEFORE Upper Tribunal Judge Stephen Smith

HAVING considered all documents lodged and having heard Mr D. Gardner of counsel, instructed by Instalaw, for the applicant and Mr H. Harrop-Griffiths, of counsel, instructed by the London Borough of Hammersmith and Fulham Legal Services, for the respondent at a hearing on 1, 2 and 6 February 2023

AND UPON handing down judgment on 3 March 2023

IT IS DECLARED THAT:

1. The Applicant's date of birth is 28 January 2002 such that she was 19 years of age upon entry to the UK on 8 June 2021, for the reasons given in the judgment handed down on 3 March 2023.

AND IT IS ORDERED THAT:

2. Costs shall be determined by the Tribunal based on submission on the papers. The Applicant shall file and serve submissions, limited to 2 pages, within 7 days of being sent this order. The Respondent shall file and serve its submissions, limited to 2 pages, within 7 days of service of the Applicant's submissions. The Tribunal shall determine costs on the papers thereafter.

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

PERMISSION TO APPEAL

4. There was no application for permission to appeal to the Court of Appeal. I have considered of my own motion whether to grant permission to appeal. I refuse permission. There is no arguable case that I have erred in law or there is some other reason that requires consideration by the Court of Appeal.

Signed: Stephen H Smith

Upper Tribunal Judge Stephen Smith

Dated: **7 March 2023**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): *8 March 2023*

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

Case No: JR-2022-LON-001108

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

3 March 2023

Before:

UPPER TRIBUNAL JUDGE STEPHEN SMITH

- -

Between:

THE KING
on the application of
HG
(ANONYMITY DIRECTION MADE)

Applicant

- and -

LONDON BOROUGH OF HAMMERSMITH AND FULHAM

Respondent

- -

Mr D. Gardner
(instructed by Instalaw), for the applicant

Mr H. Harrop-Griffiths
(instructed by Hammersmith and Fulham Council Legal Services) for the respondent

Hearing date: 1, 2 and 6 February 2023

- -

J U D G M E N T

- -

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

No-one shall publish or reveal any information, including the name or address of the applicant, likely to lead members of the public to identify the applicant. Failure to comply with this order could amount to a contempt of court.

Judge Stephen Smith:

1. HG arrived in the United Kingdom on 8 June 2021 and presented herself to the authorities as an unaccompanied asylum seeking child. She claimed to have been born on 28 January 2004. That claim is disputed by the respondent council, which, by an age assessment dated 7 December 2021, concluded that her date of birth was 28 January 1992. The purpose of these proceedings is to find the applicant's probable age and date of birth.

Factual background – the applicant's case

2. The applicant claims to be a citizen of Eritrea. Her case is that her mother told her her age, and that she grew up always knowing her date of birth. She cannot remember the first time when her mother told her, but she thinks it was when she was quite young. Although she did not, as a general rule, celebrate her birthdays, she did celebrate her tenth birthday. On that occasion her mother presented her with some shoes as a gift and there were family members in attendance. They had a "coffee ceremony" as part of the celebrations.

3. The applicant claims to have left Eritrea for Ethiopia with her mother when she was around three years old, in about 2007. Her father had died when she was very young, in around 2005. Her mother died in 2016 following a period of illness. She was looked after by a male relative called Nahom.

4. The applicant's case is that in 2018 she went to live in Sudan with Nahom. She worked in a restaurant and she and Nahom lived on site. In 2021, Nahom told her that they were flying to Europe in a week's time. They flew together from Sudan to France, and she used a passport Nahom provided for the purposes of the journey. She did not look inside the passport and Nahom took it back upon their arrival in France. She does not know if she used any other travel documents; Nahom made all the arrangements. She cannot remember the airport they flew into, but she can recall making her way to Calais with Nahom. They stayed there, in 'the jungle' and sleeping rough, for a few weeks before she boarded a small boat to the UK. Nahom couldn't join her on the crossing. He told her that he didn't have the money. He stayed behind and they lost contact. She thinks her journey was paid for by her church, but she doesn't know the details. Nahom dealt with everything.

5. The applicant claims that she attended a church school in Ethiopia until 2015, when her mother became ill. After she had left school, she taught herself mathematics and related disciplines using a tablet provided by her church. She also taught herself some English by watching music videos. She wants to be an engineer, or to work in fashion.

6. Upon her arrival in the UK, the applicant was assessed by the Home Office to have been born on 28 January 1996. She claimed asylum and was transferred to accommodation for adult asylum seekers. On 28 June 2021, the applicant's solicitors challenged the respondent's failure to take the applicant into its care following a referral. Consequently, on 5 July 2021, the respondent conducted an abbreviated assessment of the applicant's age, described as the *Child and Family Assessment*, in which the social workers were unsure of her age and decided to treat her as a child pending a full *Merton*-compliant assessment. That led to the applicant being provided

with accommodation and support under sections 17 and 20 of the Children Act 1989 ("the 1989 Act").

7. The respondent conducted a full age assessment of the applicant on 12 and 29 October 2021, followed by a clarification meeting on 19 November 2021. The final age assessment ("the age assessment") was dated 7 December 2021; as stated above, that assessment concluded that the applicant was a 29 year old woman, with a date of birth of 28 January 1992. In response to that assessment, the respondent withdrew its support under the 1989 Act and the applicant was returned to Home Office accommodation.

Procedural history

8. On 25 March 2022, the applicant brought judicial review proceedings against the age assessment in the Administrative Court. On 12 July 2022, Susan Alegre (sitting as a Deputy High Court Judge) granted permission to the applicant to apply for judicial review and transferred the proceedings to the Upper Tribunal. There has been no order for the applicant to be granted interim relief.

9. It was against that background that the matter came before me for a fact-finding hearing on 1, 2 and 6 February 2023. I reserved my decision.

The hearing

10. The hearing took place at Field House on a face to face basis. I heard evidence from the applicant through an interpreter. I established that she was able to understand and communicate through the court interpreter when she gave evidence. I also heard oral evidence from the applicant's witnesses Tina Kibrom, Peter Odei and Ngqabutho Siwela. Ms Kibrom and Mr Odei gave evidence remotely, at their request.

11. I heard detailed submissions from both counsel, and also had the benefit of helpful skeleton arguments from each. I record my gratitude to both counsel for the quality of their written and oral submissions.

The issues

12. The parties agree that the central issue for my determination is the applicant's probable age. They also agree that in determining that issue, I may consider the applicant's knowledge of her claimed age, her credibility, and the weight to be attached to her evidence, the evidence of others concerning their understanding of the applicant's age, based on their interactions with her. I may also consider the weight to be attached to the respondent's age assessment.

The law

13. In *R (A) v London Borough of Croydon* [2009] UKSC 8 [2009] 1 W.L.R. 2557, Lady Hale held that the issue of whether a person is a child or not is a question of fact, for the court to decide upon an application for judicial review. Having considered the value judgements made by local authorities when addressing that question, she said, at paragraph 27:

> "But the question whether a person is a 'child' is a different kind of question. There is a right or a wrong answer. It may be difficult to determine what that answer is. The decision-makers may have

> to do their best on the basis of less than perfect or conclusive evidence. But that is true of many questions of fact which regularly come before the courts. That does not prevent them from being questions for the courts rather than for other kinds of decision-makers."

14. She added at paragraph 32:

> "The word 'child' is undoubtedly defined in wholly objective terms (however hard it may be to decide upon the facts of the particular case)."

15. In *R (B) v London Borough of Merton* [2003] EWHC 1698 (Admin); [2003] 4 All ER 280, Stanley Burnton J (as he then was) held that where an applicant does not produce any reliable documentary evidence of their date of birth or age, the determination of their age will depend on the individual's history, their physical appearance, and their behaviour: see paragraph 20. See also paragraph 28:

> "Given the impossibility of any decision-makers being able to make an objectively verifiable determination of the age of an applicant who may be in the age range of, say, 16-20, it is necessary to take history from him or her with a view to determining whether it is true. That will enable the decision-maker in such a case to decide that the applicant is a child."

16. Neither party bears the burden of proof. As this Tribunal held in *R (AM) v Solihull Metropolitan Borough Council (AAJR)* [2012] UKUT 00118 (IAC) at paragraph 12:

> "There is no hurdle which the claimant must overcome. The court will decide whether, on a balance of probability, the claimant was or was not at the material time a child. The court will not ask whether the local authority has established on a balance of probabilities that the claimant was an adult; nor will it ask whether the claimant has established on a balance of probabilities that he is a child."

17. In *MVN v London Borough of Greenwich* [2015] EWHC 1942 (Admin), Picken J recorded the common ground between the parties that many of the principles applicable to the assessment of asylum claims should apply to the determination of age assessments: see paragraphs 27 and 28. I adopt and apply those principles to these proceedings: all evidence should be taken into account, including background materials and expert testimony; credibility should not be assessed in isolation, but in the context of the background materials; expert evidence should form part of the credibility assessment; credibility should be assessed "in the round"; allowances should be made for the inherent difficulties likely to be faced by asylum seekers when seeking to give their history in a different language and culture.

Findings of fact

18. I do not propose to set out the entirety of the evidence I heard and the submissions that were made but will refer to them to the extent necessary to reach and give reasons for my findings. Naturally, I did not reach any findings until I had considered the entirety of the evidence, in the round, to the balance of probabilities standard.

19. I commence my analysis with the following preliminary observations.

20. First, it is not my role to reach findings concerning the applicant's claimed nationality or determine her claim for asylum. However, some aspects of the credibility of her pre-UK narrative are capable of being relevant to my findings, in particular those relating to the overall chronology of her pre-UK life and schooling. Mr Harrop-Griffiths submitted that there were "missing years" in the applicant's narrative. I consider that it is necessary to examine those submissions, since I accept that they go to the central issue of the applicant's age. Similarly, if the applicant's evidence concerning her journey to Europe lacks credibility, that may be relevant to her overall credibility.

21. Secondly, the respondent no longer relies upon the conclusions reached by the age assessment. Mr Harrop-Griffiths did not invite me to find that the applicant was born in 1992. Nor did he expressly rely on the reasoning that featured in the age assessment. In my judgment, the age assessment and the accompanying handwritten notes are primarily relevant as a record of an account given by the applicant of her age, for the purposes of assessing her consistency. The reasoning and conclusions of the age assessment itself are less persuasive. It is difficult to see how the applicant could now be, as she must on the age assessment's findings, 31 years old. The assessment attracts little weight.

22. Thirdly, the applicant's physical appearance is inconclusive. While the age assessment concluded that the applicant's physical appearance was that of a mature woman, others who have spent time with the applicant reached the opposite conclusion, including officials of the respondent during a *Child and Family Assessment* conducted on 5 July 2021. That assessment states, at page 3, that while photographs of the applicant appeared to show that she has darkened patches under her eyes that could imply that she was older than her claimed age:

> "…looking at her physically sitting on her bed during the visual screening gives the impression that she may be the age she says she is or slightly older than her claimed age of 17."

The *Child and Family Assessment* concluded that it was not possible to tell whether the applicant was, in fact, a minor based on her physical presentation. Having had the benefit of the applicant giving evidence before me, and observing her sitting through two further days of hearings, I share those views; on the basis of her physical appearance, the applicant could be her claimed age (which is now 19), albeit an older looking 19 year old, or she could be older.

23. I therefore turn to the applicant's "history" and the evidence of those who know her well, or who have had the benefit of seeing her about her daily life in a context other than the somewhat artificial environs of a formal age

assessment or court room. None of the applicant's witnesses from her time in the UK had discussed her journey to the UK with her in any depth or were able to speak to her circumstances in Africa and France prior to her arrival here. I will therefore commence my analysis with the applicant's evidence concerning that part of her narrative, before turning to the evidence of the witnesses. I stress that I have considered all evidence in the round.

24. I accept that there have been elements of consistency in the applicant's account of her age.

25. However, I nevertheless have a number of credibility concerns arising from the applicant's history.

26. The applicant introduced significant details in her case for the first time during her oral evidence, in particular the fact she celebrated her tenth birthday. Those details were not in her witness statement prepared for these proceedings. Nor did they feature in any other summaries of how she knew her age, whether to the social workers preparing the *Child and Family Assessment*, or the assessing social workers who conducted the age assessment. The tenth birthday account was at odds with what she said during the *Child and Family Assessment*, namely that she did *not* celebrate her birthdays. Under cross-examination, the applicant said that what she meant in the *Child and Family Assessment* was that she did not celebrate *birthdays* in the plural, not that she had never celebrated *a* birthday, in the singular. I consider that explanation to lack credibility; she had every opportunity prior to these proceedings to give an account of having celebrated her tenth birthday but did not do so. It is a significant omission, and its absence from her witness statement is telling. There is force in Mr Harrop-Griffiths' submission that it has been introduced to bolster the applicant's case.

27. There is also force in Mr Harrop-Griffiths' submission that there are "missing years" in the applicant's narrative. The applicant's claim to have left school in 2015 aged (on her case) 11 lacks credibility, especially since she enrolled on a BTEC Level 2 Engineering course in London in September 2021. Her teacher on that course was Mr Siwela. He explained that the engineering course was roughly equivalent to a GCSE qualification, and that there were three levels. Level 1 was for students with no or limited maths ability. The applicant took a pre-course test and was deemed capable going straight to Level 2, attending a course primarily alongside 16 – 19 year olds, with some in their early 20s, and others older still. Under cross-examination, Mr Siwela accepted that it was surprising although not unheard of for someone with so little formal education to be able to commence at that level. The applicant was progressing well at Level 2. She did not complete the course at the time, as a result of the 7 December 2021 age assessment.

28. In my judgment, the applicant's evidence that she was able to go straight from leaving school in Ethiopia in 2015, aged 11, having been taught in Amharic, to a Level 2 engineering course in 2021, in English, bypassing the Level 1 maths introduction, with no formal education in the meantime, lacks credibility. I struggle to accept that the applicant would have been able to resume formal education, for the first time in six years, at that level, with no intervening formal education. I found the applicant's evidence about being self-taught in the intervening period using a tablet provided by her church

to be vague and to lack details. Her explanations that her church downloaded videos for her to watch did not, in my judgment, give the full picture of a wider course of self-taught education sufficient to bypass the Level 1 course and start straight at Level 2, in English. I do not consider that I have been given the full picture of the applicant's pre-UK history. This is relevant because it goes to Mr Harrop-Griffiths' "missing years" submission. It is entirely possible that the applicant was schooled for far longer than she claims in Ethiopia and Sudan. Of course, that is not dispositive of her age; she could have remained in full time education until shortly before her arrival, and still be her claimed age. However, the account provided by the applicant in this respect lacks credibility, when considered alongside the remaining evidence in the case.

29. I also have credibility concerns arising from the applicant's claimed journey to France. These concerns are relevant because they go to her overall credibility. The applicant claimed to have been able to fly, on a commercial flight, from Sudan to France, without ever having owned or applied for a passport in her name, or a visa. While I accept that it may, in theory, have been possible for her to fly using a false passport, or a passport in the name of another person, her evidence relating to the passport was inconsistent. She claimed in her witness statement and her evidence in these proceedings that Nahom provided her with a passport. By contrast, in her asylum witness statement at paragraph 10 she claimed that "a man" – not Nahom, whose separate role was mentioned elsewhere in that statement – provided her with a passport. It is difficult to see how both accounts could be true. The asylum statement was unsigned, but it was relied upon by Mr Gardner as having been proffered by the applicant to clarify aspects of what she said in her initial asylum screening interview.

30. Further, in her asylum screening interview, the applicant claimed that the travel documents were not in her name, yet in her asylum witness statement, and her written and oral evidence in these proceedings she said that she had not looked inside the travel documents. Under cross-examination she said she did not know whose name they were in, or whether they were in the name of another. It is difficult to see how both accounts could be true. Either the passport was in her name, in which case it throws the applicant's claim never to have been issued with any formal documentation in her name into sharp relief, or it was in the name of another person, as she had claimed at the asylum screening interview.

31. The applicant also said in her screening interview that the documents were taken from her by the "man" she travelled with and were thrown away after the journey, whereas in her statement prepared for these proceedings, she said that Nahom took them from her, with no mention of the documents being destroyed or disposed of. It is difficult to reconcile both accounts.

32. Of course, asylum screening interviews are often moments of great anxiety for a person seeking asylum, and a degree of caution is necessary before ascribing weight to discrepancies between a screening interview and a later account given by the individual. The applicant's understanding, as revealed during her oral evidence, was that her immigration solicitors had sought to correct what she said in the asylum interview. In my judgment, notwithstanding the "correction", the discrepancies are matters to which some weight can be attached. This is not a case of the applicant *omitting*

to mention something in a screening interview that she later sought to rely upon; it is a case of her providing an entirely credible, contemporary explanation for having evaded or deceived French immigration controls upon her arrival from Africa only weeks earlier, on one of the first occasions she was asked by a British official about her travel and immigration history, namely that she used a passport bearing the details of another person. That contrasts with her present case never to have looked inside the passport, and that she does not know whether it was issued to another person.

33. None of the 'corrections' made by the applicant to her asylum screening interview explained why she had given different accounts. In my judgment, the account the applicant gave in her asylum screening interview about having used a passport bearing someone else's details has the ring of truth about it and has the advantage of being the first account that the applicant gave to any authority concerning this issue. I prefer the account she gave on that occasion, namely that the travel documents were in the name of another, to the vague and changing accounts she has subsequently given. In turn, that gives rise to more questions, and suggests that the applicant knew more about the circumstances of her journey from Africa to Europe than she has been prepared to admit.

34. I also note that journeys such as those undertaken by this applicant are costly affairs; indeed, the applicant's evidence was that Nahom had to remain in France because he could not afford the crossing from Calais. Her evidence also recognised that such journeys need to be funded, as she claimed that her church had paid for it. I do not understand there to be any dispute between the parties as to the general costly nature of making (on the applicant's case) a journey without the proper travel documents to Europe, followed by an irregular small boat crossing to the UK. The applicant's evidence is vague as to whether it was her pre-2018 church in Ethiopia or her post-2018 church in Sudan that funded the crossing. Her statement simply states that her "church congregation" paid for the crossing (para. 23), without specifying which one. In her oral evidence, she said that the church in Ethiopia did not send any money to her once she had moved to Sudan, and that she never had any money while living in that country. One is left with the distinct impression that key details have been omitted by the applicant in her account of life in Ethiopia and Sudan, and her journey to Europe. Again, this goes to the "missing years" submission advanced by Mr Harrop-Griffiths.

35. While I accept that one should be careful before recharacterising the experience of an asylum seeker from a very different culture and context as reasonable or otherwise (as to which, see *MVM* at para. 29), the applicant's evidence that she had not made any attempts to contact her church since her arrival in the UK, even through social media (it is accepted that the applicant has a Facebook account, which she claimed to have opened in April 2022), lacks credibility. On the applicant's case, her lengthy, dangerous, and expensive journey had been funded by her church congregation. It is striking, therefore, that the applicant claims not to have made any efforts to contact whichever congregation(s) funded her crossing; under cross-examination, she said that she did not want to attempt to use social media to contact the church because she was not close to them (the word used by the interpreter was "intimate"; there was no objection from

the applicant's private interpreter who was in court at the time). That explanation is at odds with the applicant's broader narrative that her journey was funded by the church, following years of (on her case) assistance with her self-taught home-schooling. If that were so, I would expect the applicant to have attempted to make some contact with them, if only to let them know that she had arrived, and that the considerable investment the church had made in her journey had come to fruition. Her failure to do so gives rise to further credibility concerns.

36. I turn now to the evidence of the applicant's witnesses. I found all three oral witnesses to be credible and to have given evidence in a manner that sought primarily to assist the tribunal. As observed above, however, none of the three witnesses appear to have discussed this applicant's history concerning her claimed age or journey to the UK in any depth.

37. For example, Ms Kibrom said that she had never discussed the applicant's life in Eritrea, Ethiopia or Sudan with her. Nor had she discussed Nahom, or her crossing over the English Channel. She said that those matters were private to the applicant and that she did not wish to discuss them with her. These factors do not diminish Ms Kibrom's remaining evidence, which provides a helpful insight into the applicant's presentation and demeanour among friends and at church, but they do mean that her views as to the applicant's age have been reached without considering key strands of the evidence of which I have had the benefit of considering.

38. Ms Kibrom, who was born in 1992, had known the applicant for approximately a year before giving evidence in this case. The applicant had told her that she was 17 when they met, and that she would shortly be turning 18. That is consistent with the applicant's case as to her claimed age. In her witness statement, Ms Kibrom said that the applicant clearly didn't have the knowledge that an older person would develop through being exposed over time to different people in different situations (para. 6). She wrote that she could see similar patterns of behaviour between her own five year old daughter and the applicant, such as curiosity, being nervous, wanting to learn, listening to authority and being eager to please (para. 8). Her evidence in that respect contrasted with her oral evidence, in which Ms Kibrom said that the applicant presented as a mature 19 year old. She later maintained that there are parallels between the applicant and her own five year old daughter, based primarily on the bond that the applicant is said to have forged with her daughter, and the fact she draws in a similar way.

39. I found Ms Kibrom's evidence to be neutral in relation to the issue of the applicant's age. While she has had the benefit of seeing and interacting with the applicant in the relative informality of their church and friendship circles, her evidence at times contradicted itself. She maintained that the applicant presented with the traits of a much younger person, while simultaneously contending that she was a mature 19 year old. In my judgment Ms Kibrom's evidence merely highlights the difficulties inherent to assessing a person's age on the basis of their appearance and behaviour. Ms Kibrom was confident that the applicant was not her own age, namely 30, but other than that (and with the greatest of respect to Ms Kibrom) I did not find her evidence to be of significant assistance in my overall analysis.

40. I heard from Mr Odei. Mr Odei works as a teacher and has considerable experience of working with young people from a variety of backgrounds; at para. 3 of his statement, he writes that he has a good understanding of what it is like to be a teenager as he is constantly surrounded by young people under the age of 18. As well as his role as a teacher, Mr Odei works on the leadership team of one of the churches the applicant attends, where his responsibilities include welcoming newcomers. That is how he knows the applicant. Mr Odei believes the applicant to be her claimed age.

41. Mr Odei's oral evidence was consistent; he considers the applicant to be her claimed age on the basis of the way she presents herself and interacts with others, on the basis of his experience with working with people of her age, both as a teacher and at his church. This evidence attracts weight. Mr Odei said that the applicant had "not really opened up" about her life in Africa, although they have spoken in general terms about her overall "journey in life". He said that at church it is not the practice of the leadership team regularly to ask people how old they are, but that he was aware of the applicant's age. He said he was also aware of how she had been let down by friends, and that she was expecting help from her family, which she had not received in the past. While I accept Mr Odei's evidence to be credible, it is limited in how far it goes; the general impression the applicant has given him of her age is a factor that counts in her favour. But against that, Mr Odei has not had the benefit of discussing with the applicant significant details relating to her circumstances in Ethiopia and Sudan, her schooling there, and her journey to France. I will return to this issue.

42. The final live witness I heard was Mr Siwela. His evidence, too, was credible. I accept that his genuine belief is that the applicant is her claimed age, and that he has formed the view on the basis of his experience working with young people at a further education college. His impression of the applicant has been formed through the more formal relationship dynamic of student and teacher; he had not stayed in touch with the applicant following her departure from the college, and it was only at the last minute that the applicant's solicitors were able to establish contact with him and arrange for his attendance at the tribunal. Those factors all combine to underline the credibility and the impartiality of Mr Siwela. Under cross-examination, Mr Siwela accepted that the applicant's age at the time he taught her in late 2021 could have been 17 or 19 but was adamant that it could not have been in the region of 29 or 30.

43. The evidence of Mr Siwela attracts weight. I accept, as did the social workers who prepared the *Child and Family Assessment*, that the applicant's physical appearance is capable of being regarded as being in the region of her claimed age. Mr Siwela had no reason to doubt that his new student was anything other than in the age range of those in the classes he taught, which typically ranged from those aged 16 to their early 20s, with the majority being 16 to 17. But again, Mr Siwela reached that view without having considered the broader narrative advanced by the applicant, and in circumstances when he had no reason to dwell at any length on how old she was. On any view, the applicant's age is within the age range of those taught by Mr Siwela.

44. The applicant also relied on two further witnesses who were not able to attend the hearing in person, or otherwise participate remotely. Dr Tibebu

Habtewold is on the leadership team of one of the churches attended by the applicant. He provided a statement dated 18 March 2022, three months after he had met the applicant. During that period, he met with the applicant on a one-to-one basis, usually weekly, for around 40 minutes to 1 hour. He has never asked the applicant her age but wrote (para. 6) that it was clear to him that she was "on the younger side". He was shocked to hear that the respondent had assessed the applicant to be 30 years' old; his own experience as a father of children aged 14 to 21, and his general experience, suggested that she was much younger. The applicant, he wrote, needed much spiritual and general guidance. She was shy, and very much in the developing stages of her adolescence. She would gravitate towards younger people in social settings, and generally behaves as one would expect of an 18 year old girl. Dr Habtewold was unable to attend the hearing due to overseas commitments. This evidence is capable of attracting some weight.

45. The applicant also relied on a letter from a Chris Adewoye, another of her teachers on the Level 2 Engineering course. His firm view, based on the applicant's topics of conversation, music interests and academic ability, is that she is 18 years old.

46. There is no suggestion by the respondent that I should not take Dr Habtewold's statement or Mr Adewoye's letter as being genuine representations of their views and beliefs concerning the applicant's age. However, since they had not attended the hearing, their evidence necessarily attracts less weight, as there has not been the opportunity for it to be tested and explored under cross-examination. Further, taking their evidence at its highest, they had not discussed the applicant's age with her, or otherwise engaged with her narrative.

47. I now draw the above analysis together. The picture painted by the genuinely held beliefs of the applicant's witnesses is one of a 19 year old woman, based on her appearance and demeanour, formed over a number of interactions in different contexts. That evidence attracts weight and elements of it have some compelling qualities to it: Mr Gardner urged me to follow the observations of the Vice President in *Solihull* at paras 19 to 21 concerning the weight attracted by the evidence of those, such as teachers, who are able to speak to an individual's consistent attitudes and "supporting instances" over a period of time.

48. Set against that are the clear credibility concerns arising from the applicant's "history", in particular Mr Harrop-Griffiths' "missing years" submissions.

49. I find that the ostensible consistency in the applicant's history of her age, and the impression of the same formed by her witnesses, is thrown into sharp relief when viewed in the context of the credibility concerns set out earlier in this judgment. The consistency that otherwise featured in the applicant's account was undermined by the "missing years" in the applicant's narrative, and her attempts to introduce a significant new strand to her evidence for the first time at the hearing, namely the celebration of her tenth birthday.

50. I have considered whether there may be reasons not connected to her age why the applicant has not provided me with the full picture and have set that possibility alongside the evidence of her supporting witnesses. In my judgment, the credibility concerns with the applicant's narrative I have set out above are not outweighed by the weight attracted by the evidence relied on by the applicant. I conclude that the reason the applicant has not given me the full picture of her history is because, if she did so, it would reveal that she is older than she claims. She has not spoken about her age with her supporting witnesses to any significant extent, and one feature shared by each of the witnesses' evidence was an absence of any detailed discussion with the applicant about her age. I got the impression from Mr Odei, as with Ms Kibrom, that the details of the applicant's pre-UK life and her journey to the UK were not something that would be discussed and were regarded as private by the applicant. While, in their eyes, the applicant presents as her claimed age, that is not determinative, when viewed alongside the remaining evidence in the case, in particular the examination of her history. I find that it is more likely than not that the applicant was not born on 28 January 2004.

51. As to the applicant's probable age and date of birth, she was plainly not born as long ago as 1992, as concluded by the age assessment. Nor do I consider her to have been born in 1996, as originally assessed by the Home Office. In my judgment, the truth lies between the Home Office's 1996 assessment, and her claimed year of birth, 2004. Adopting the most benevolent approach to the applicant I can, I find that she was born in January 2002. That would make her 21 at the date of the hearing, and 19 upon arrival. It is a figure consistent with her physical presentation, and within the age range in respect of which an objective determination based on appearance and demeanour alone would otherwise be impossible (as to which, see *Merton* at para. 28). It is therefore consistent with the impression that has been formed of the applicant by those who know her well; although they consider her to be aged 18, that age lies within the range of ages which are very difficult objectively to determine, meaning that a person genuinely thought to be 18 could, in fact, be older.

52. The year 2002 is also consistent with her having spent longer in education in Ethiopia or Sudan than she has been prepared to admit. While I accept that it could be said that, even on her claimed age she could have remained at school beyond the age of 12 and still arrived in the UK on her claimed chronology, I do not consider that that would be an accurate finding of fact. There are, I have found, missing years in the applicant's chronology that have been masked by a lack of detail, inconsistencies, and a last minute attempt to bolster her case (the tenth birthday), leading me to conclude that the probability of her having received more education prior to her journey to the UK is inexplicably linked with her having masked her true age.

Conclusion

53. Drawing the above together, and doing the best I can, I find to the balance of probabilities standard that the applicant was born on 28 January 2002, so that when she arrived in the UK in June 2021, she was 19 years old.

Anonymity

54. The applicant's application for anonymity was granted by the High Court upon permission being granted to her to bring these proceedings. I maintain that order, primarily on account of the fact that the applicant has claimed asylum, and that claim is yet to be determined.

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