JR-2024-LON-001195

IN THE UPPER TRIBUNAL
IMMIGRATION & ASYLUM CHAMBER

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW

BETWEEN:

THE KING on the application of

SA

(by his Litigation Friend, Erinç Argün Kayım, of the Refugee Council)

Applicant

-and-

LONDON BOROUGH OF HOUNSLOW

Respondent

FINAL ORDER

BEFORE Upper Tribunal Judge Norton-Taylor and Upper Tribunal Judge Pinder

HAVING considered all documents lodged and having heard Ms A. Benfield of counsel, instructed by Bison Solicitors for the Applicant and Mr. F. Hoar of counsel, instructed for the Respondent at a hearing held on 10 to 13 December 2024

IT IS DECLARED THAT:

(1) The Applicant's date of birth is 3 April 2007.

IT IS ORDERED THAT:

(1) The application for judicial review is allowed for the reasons in the attached judgment.

(2) The Respondent shall hereafter treat the Applicant in accordance with his claimed age and provide him with support and services on that basis in accordance with the Children Act 1989.

(3) The Respondent age assessments dated 29 September 2023 and 24 May 2024 are hereby quashed.

(4) The order for anonymity made by the Administrative Court remains in force.

(5) The order for interim relief made on 12 December 2023 is hereby discharged.

Costs

(6) The Respondent shall pay the Applicant's costs of the claim for judicial review, to be assessed if not agreed.

(7) The Respondent shall make a payment on account of £32,289.88 representing 50% of the Applicant's draft bill of costs, to be paid to the Applicant's solicitors within 21 days of the date of this order.

(8) There shall be a detailed assessment of the Applicant's publicly funded costs.

Permission to appeal

(9) The Respondent having made no application for permission to appeal, permission to appeal is refused.

Dated 10 February 2025

Case No: JR-2024-LON-001195

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

10 February 2025

Before:

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
UPPER TRIBUNAL JUDGE PINDER

- -

Between:

THE KING
on the application of

SA
(By his Litigation Friend, Erinc Argun Kayim, of the Refugee Council)
(ANONYMITY ORDER MADE)

Applicant

- and -

LONDON BOROUGH OF HOUNSLOW

Respondent

- -

Ms A Benfield, Counsel
(instructed by Bison Solicitors), for the Applicant

Mr F Hoar, Counsel
(instructed by the London Borough of Hounslow) for the Respondent

Hearing date: 10th, 11th, 12th, and 13th December 2024

Order Regarding Anonymity

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

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identify the Applicant. Failure to comply with this order could amount to a contempt of court.

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J U D G M E N T

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Judge Pinder:

Introduction

1. The Applicant is a national of Sudan. He arrived in the United Kingdom ('UK') on a boat on 6th September 2023. He claims to have been born on 3rd April 2007 in Omdurman, near Khartoum, Sudan and to be 16 years old and 6 months old on arrival to the UK.

2. The Applicant's age and year of birth were disputed by the Home Office on the Applicant's arrival and subsequently, by the Respondent London Borough of Hounslow. The Respondent has assessed the Applicant to be in the age range of 23-25 years old. The Respondent has not disputed the day and month of birth, namely 3rd April, but deems instead that the Applicant's year of birth is between 1998-2000.

3. This judgment is therefore concerned with the determination of the contentious question of the Applicant's age and year of birth.

4. In undertaking that task, we have been greatly assisted by Ms Benfield and Mr Hoar, together with their respective instructing solicitors. We would also like to record our appreciation for the services of the Sudanese Arabic interpreter, Mr Mikhail, who assisted with the Applicant's evidence over the course of a day and a half.

Agreed factual background

5. The procedural history to these proceedings is well-known to the parties and is set out comprehensively in the Statement of Agreed Facts. We do not propose to rehearse it in detail here. For present

purposes, the core events leading up to the fact-finding hearing can be summarised as follows:

(a) The Applicant arrived in the UK by small boat on 6th September 2023. Having left Sudan, the Applicant travelled via Libya, Tunisia, Italy and France;
(b) He informed the Home Office on arrival that he was a child, born on 3rd April 2007 and he claimed asylum. The Home Office assessed the Applicant, on his physical appearance and demeanour only, to be born on 3rd April 1998, such that he would have been 25 years old at that time;
(c) The Applicant was thereafter transferred to adult asylum support accommodation in the Respondent's area;
(d) On 9th September 2023, the Applicant was interviewed by the Home Office in connection with his asylum claim ('the screening interview');
(e) Following a referral, the Respondent met with the Applicant on 29th September 2023 ('the welfare check'). Further to this meeting, the Applicant was provided with a letter dated 29th September 2023 titled "Determination of age" recording that the Applicant's appearance and demeanour overwhelmingly suggested that the Applicant was an adult. The letter also confirmed that the Respondent was not intending to undertake an assessment of the Applicant's age and that he should remain being treated as an adult;
(f) The Applicant instructed his current solicitors and correspondence ensued;
(g) A judicial review claim was issued on the Applicant's behalf in the Administrative Court on 30th November 2023, seeking to challenge the Respondent's decision of 29th September 2023. This claim included an application for interim relief;
(h) On 12th December 2023, Mr David Lock KC, sitting as a Deputy High Court Judge, granted the interim relief sought by the Applicant, namely that the Applicant be accommodated by the Respondent under s.20 Children Act 1989 until further order. The Court also issued further directions;
(i) The Applicant was provided with accommodation and support by the Respondent from 8th December 2023 to date;
(j) On 19th March 2024, the Administrative Court approved the parties' consent order providing for permission to apply for judicial review to be granted to the Applicant, for the matter to

be transferred to this Tribunal and for the interim relief to remain in place until further order;

(k) In April 2024, the Respondent undertook a full age assessment ('the age assessment'), which ultimately concluded that the Applicant was in the age range of 23-25 years old;

(l) On 23rd July 2024, a completed Statement of Evidence Form ('SEF') and the Applicant's witness statement were submitted to the Home Office on his behalf in connection with his protection claim;

(m) Following transfer, the Upper Tribunal began its case management process, culminating in a case management review hearing on 25th September 2024;

(n) On or around 9th December 2024, the usual round-table meeting was conducted without any further material agreement being reached.

6. As can be seen from the brief chronology above, it was the original decision of the Respondent dated 29th September 2023, to treat the Applicant as an adult, which was the subject of the Applicant's judicial review claim. Following the grant of permission to apply for judicial review, the Respondent decided to undertake a detailed age assessment of the Applicant and did so over the course of five meetings, including a 'minded-to' and an outcome meeting, in April and May 2024 ('the April 2024 assessment').

7. The Respondent confirmed at the outset of the hearing that the local authority was not seeking to argue that the April 2024 assessment displaced the decision challenged and that this most recent assessment ought to have been challenged by way of separate proceedings. Both parties were agreed that the April 2024 assessment was now part of the body of evidence for us to consider when determining the Applicant's age. The Respondent has also continued to support and accommodate the Applicant pursuant to s.20 Children Act 1989 and in implementation of the High Court's Order of 12th December 2023.

8. Ms Benfield confirmed on the Applicant's behalf that his protection claim remains pending with the Home Office.

The essential legal framework

9. There is little, if any, real dispute between the parties as to the relevant legal framework in this particular case. In summary, the core principles to which we have directed ourselves are as follows (we do not propose to cite the well-established authorities):

    (a) Neither party carries the burden of proof as to an applicant's age. We are not bound to choose one or other of the parties' positions;

    (b) A Merton-compliant age assessment requires procedural fairness, which in turn relates to the provision of a suitable interpreter (where necessary), the absence of any predisposition as to age, the opportunity to have an appropriate adult present, adequate reasons for conclusions reached, an acknowledgement of the limited utility of relying on physical appearance and demeanour, and having a "minded-to" procedure in which the individual is given an opportunity to respond to concerns prior to a final conclusion being reached;

    (c) All relevant evidence must be considered in the round;

    (d) At a fact-finding hearing, it is the substance of the evidence which is of primary importance. Matters going to process are very unlikely to be of decisive importance;

    (e) Issues of vulnerability must be taken into account insofar as relevant;

    (f) The fact that an individual has been untruthful about one aspect of their claim does not mean that the same necessarily applies to the rest of their evidence;

    (g) The standard of proof is that of a balance of probabilities.

10. In respect of (b) and the need for caution when evaluating physical appearance, we note the recent observations of Fordham J in R (oao Karimi) v Sheffield City Council [2024] EWHC 93 (Admin), at [4].

11. Any reliance on an application of the "benefit of the doubt" should be treated with caution. It is not a requirement of fairness that a person be afforded any such benefit: see HAM v London Borough of Brent [2022] EWHC 1924 (Admin), at [39]. Further, and having regard to the immigration and asylum context (which is in certain respects analogous), there is no substantive principle of law that a person should be given the "benefit of the doubt": see KS (benefit of the doubt) [2014] UKUT 552 (IAC). Rather, the evidence of a person must be assessed in the round and in the context of any vulnerabilities and other relevant matters which might have an impact on that evidence.

12. In MVN v London Borough of Greenwich [2015] EWHC Civ 1942 (Admin), Picken J considered the issue of the relevance of a young person's credibility to their age as follows (emphasis added):

> 27. It would, therefore, appear that the primary focus is on the credibility of the person's evidence concerning his or her age, but that it is permissible to have regard to credibility more generally provided that, in looking at credibility more generally, the primary focus to which I have referred is not forgotten. In short, the difference between Miss Luh and Miss Screeche-Powell is not as acute as it might at one stage have appeared. This was effectively acknowledged by Miss Luh in her closing skeleton argument, where she prayed in aid various authorities which have dealt with the correct approach to be applied in relation to credibility assessments when asylum claims are made. Miss Luh explained that she accepted that general credibility needs to be factored into the evaluation of the claimant made by the Court, but maintained (rightly, in my view) that there needs nevertheless to be care taken so as to ensure that particular importance is afforded to the credibility of evidence in relation to age.

13. Evidence of adult dentition, and more specifically of the eruption of the third molars (also known as a person's wisdom teeth) and whether this is admissible (and if so, what weight it should be given), was considered by the High Court in R (M) v Waltham Forest LBC [2021] EWHC 2241 (Admin). At [46], the High Court summarised the guidance provided by the preceding authorities on dental evidence as follows:

i) Decision-makers need to be aware of the clear limitations of any evidence on dental development or on height changes as a way of assessing age.

ii) Provided the limitation of the evidence is understood, however, it is not legally irrelevant so as to render any decision that has considered it necessarily flawed. I see no reason, as in AM [v Solihull Metropolitan BC (AAJR) [2012] UKUT 00118 (IAC)] and AK [v Birmingham City Council [2013] UKUT 00307 (IAC)], why such evidence could not be considered to see if it supports other evidence on age obtained through a Merton compliant process.

iii) On the current state of the medical and scientific knowledge (at least insofar as that has been considered by the courts and presented in admissible evidence before me), it is difficult to imagine cases in which height and/or dental evidence will suffice, on their own, to determine whether someone is a few years over or a few years under 18. While dental maturation or a lack of growth may indicate that a person is within a few years of 18, it cannot definitively determine whether the person is, say, 19 as opposed to 16/17.

iv) A local authority may be able to rely on dental and height evidence to cast doubt on a claimed age far below 18, and to support other evidence on age obtained through a Merton compliant process. It is difficult to see, however, how a local authority will be able to justify avoiding undertaking a Merton compliant assessment of a person purely on the basis of dental and/or height evidence. The evidence before me and the relevant caselaw does not suggest that dental and height evidence, taken alone, can indicate so clearly that a person is over 18 that no further inquiries are needed. To put it another way, it cannot be said on the basis of such evidence that a case falls within the category in which it is so “obvious” that a person is an adult that a Merton compliant assessment can be dispensed with.

14. We confirm that we have had regard to all of the authorities referred to in the skeleton arguments/written submissions from Ms Benfield and Mr Hoar.

The documentary evidence

15. The documentary evidence before us consists of:

    (a) A trial bundle, indexed and paginated 1-605 ('TB');

    (b) A supplementary bundle ('SB'), indexed and paginated 1-37, filed by the Applicant and containing documents inadvertently omitted from the trial bundle as well as documents later disclosed by the Respondent at the Applicant's request;

    (c) The notes of the Applicant's allocated Social Worker ('ASW') recording details of the ASW's Looked After Child ('LAC') statutory visit to the Applicant on 23rd February 2024, filed by the Respondent;

    (d) An e-mail exchange dated 10th December 2024 between the parties' respective solicitors, filed by the Respondent.

16. The supplementary bundle and documents listed at (b)-(d) above were duly admitted into evidence at the hearing – neither party having raised any objection to the same.

The oral evidence

17. The Applicant was called to give evidence. At the start of the hearing, in light of the Applicant's claimed age and of his experiences in Libya – the latter not significantly disputed by the Respondent - we confirmed that we would treat the Applicant as a vulnerable witness within the meaning of the *Joint Presidential Guidance Note No.2 of 2010*. The Applicant was accompanied by an appropriate adult during the course of his evidence and regular breaks were taken.

18. The Applicant gave his oral evidence through the assistance of a court interpreter in the Sudanese Arabic language and dialect. It was not possible to complete the Applicant's oral evidence on the first day of the hearing and the same court interpreter was not available the following day. The parties agreed therefore to inter-pose the two other witnesses, due to give oral evidence within

these proceedings, on the second day of the hearing. The Applicant resumed and completed his oral evidence on the third day. Neither party raised any concerns in respect of the way in which the Applicant's oral evidence was taken, both in relation to the inter-posing of other witnesses and in relation to the interpretation or any other concerns.

19. As with the oral evidence of the other witnesses, we do not propose to recite the Applicant's evidence here at any length. We have a detailed note of the oral evidence and there is the audio recording as well. We will deal with relevant aspects of the oral evidence when setting out our assessment of the evidence in due course.

20. The Applicant relied on his two witness statements, dated 23rd November 2023 and 3rd September 2024, which he adopted as his evidence. He was asked questions by both Ms Benfield, Mr Hoar, and (briefly) by Judge Pinder. It is appropriate at this stage to record that Mr Hoar adopted the position not to ask any specific questions of the Applicant relating to the period in which he was detained and ill-treated in Libya. It is our view that this was an entirely appropriate position to adopt. The only questions asked of the Applicant relating to Libya concerned the type work that he carried out there.

21. On the Applicant's behalf, Ms Erinc Argun Kayim gave evidence. Ms Kayim was appointed as litigation friend for the Applicant. She is employed by the Refugee Council as a Children's Advisor in the Age Dispute Project there. She adopted her two witness statements, dated 31st October 2023 and 16th August 2024. She too was asked questions from both advocates.

22. On the Respondent's behalf, the Applicant's allocated Social Worker ('ASW') gave evidence. She too adopted her witness statement dated 21st August 2024 and spoke to her casework notes. She was asked questions from both advocates.

The parties' submissions

23. The various submissions made in writing and orally are all a matter of record and will be well-known to the parties. We consider the

parties' respective submissions when setting out our assessment of the evidence, below. We emphasise that we have taken all of the points made into consideration and we reiterate our appreciation to both advocates, particularly for the way in which there were both able to reflect on the oral evidence and very fairly present their respective cases in closing submissions.

24. In summary, both parties addressed *inter alia* the following issues arising from the evidence before us:

(a) The Applicant's own account of his age and his knowledge of his date of birth;
(b) The credibility of the Applicant's account of his age and more generally, including the following issues:

(i) The Applicant's name, as recorded by the Home Office,
(ii) The Applicant's siblings,
(iii) The Applicant's literacy, education, and his understanding of Arabic interpreters, as opposed to Sudanese Arabic interpreters,
(iv) Whether the Applicant had worked in Sudan previously,
(v) The Applicant's account of having a passport and a nationality identification number,
(vi) The Applicant's journey to Libya from Sudan and the reasons for this,
(vii) Work undertaken by the Applicant in Libya,
(viii) The Applicant's injury on his leg and when this was sustained,
(ix) The length of time spent in Tunisia and how the Applicant financed his journey to the UK,
(x) Whether the Applicant shaves, and
(xi) Whether he had a mobile telephone when he met the Respondent's social workers on 29th September 2023.

(c) The Respondent's April 2024 assessment;
(d) The evidence of Ms Kayim, litigation friend and employee of the Refugee Council, and her opinion that the Applicant is aged as claimed;
(e) The evidence of the ASW and her opinion that the Applicant is an adult; and

(f) The available dental evidence concerning the Appellant's teeth.

25. When setting out our analysis in the section immediately below, we have adopted a similar order to the list of issues above.

Assessment of the evidence

26. In assessing the evidence, we have had regard to the guiding principles summarised earlier in this judgment and to those set out in the skeleton arguments and closing submissions, both oral and written.

27. Any holistic assessment must have some form of structure to it. The sub-headings used in what follows are not to be taken as an indication that we have considered the various aspects of the evidence either in turn or in artificial isolation. We have set out our assessment of each aspect of the evidence within the sub-headings in order to make clear our reasoning for the same. We have then drawn together all of that reasoning, after standing back and considering the case as a whole, to reach our ultimate conclusions at the end of this judgment.

28. A number of the issues which we analyse below are also issues that were considered by the Respondent's assessors in the April 2024 assessment. These also bear relevance therefore to the contents of that assessment report. Our consideration of those issues in the separate sub-headings below should not be taken as suggesting that we have not considered the assessment report as a whole and on its own terms. We have done so and we have also set out additional findings on remaining aspects on that report in a separate sub-heading.

29. We confirm that any specific aspects of the evidence to which reference has been made in writing and/or oral submissions, but which does not expressly feature in our assessment below, have not simply been left out of account. We can confirm that everything has been considered.

30. Terms and concepts such as 'honesty', 'credibility', 'plausibility', 'consistency', and 'reliability' can sometimes be used

interchangeably, or be intended to have different meanings. We recognise that, for example, an individual can be honest but mistaken; in other words, their evidence is unreliable. In what follows, we have kept in mind that when all is said and done, it is the truthfulness of the Applicant's claim to have been born on 3rd April 2007, which is crucial. The various strands of the assessment of the evidence feed into answering that question.

The Applicant as a vulnerable witness: impact?

31. Having watched and listened to the Applicant give his evidence over a sustained period of time and taking full account of the *Joint Presidential Guidance*, we conclude that his vulnerability did not have a material impact on his ability to engage with the proceedings and present his evidence.

32. The Applicant appeared to understand the great majority of the questions put, and asked for clarification when he did not. He did not appear to have become upset at any stage, although of course we have taken account of the possibility of internal distress. He appeared relatively confident when answering questions and we could not detect any inhibitions which might have been attributable to his vulnerability. The Applicant was able to ask for comfort breaks when necessary, in addition to the breaks taken at regular intervals. He was also very clear when volunteering his view that he would prefer not to discuss a particular aspect of his experiences in Libya, which had not proven necessary in any event.

The issues raised by the Respondent pertaining to the Applicant's credibility more generally

The Applicant's account of how he knows his age and date of birth

33. We find that the Applicant has been on the whole consistent in his account of how he came to know of his age and date of birth. In so finding, we have had regard to all of the evidence pertaining to this issue, including what is set out in the April 2024 age assessment report.

34. He has maintained that he grew up knowing his age and date of birth and that he was told this by his mother. The Applicant has also detailed that there was a knowledge of his age in the family, in particular amongst his many cousins and who, amongst them, was older or younger than him. The Applicant confirmed in oral evidence that his mother counselled him not to go out with certain cousins, because they were older than him.

35. The Applicant does not claim to have celebrated his birthday every year but rather than he became aware of his age when he started attending the Khalwa, where he studied the Quran. This was to enable the Applicant to be placed in the right group, i.e. with children of the same age range than him.

36. The Applicant has also been consistent in his account to have had a birth certificate, which detailed his date of birth and which his mother had possession of and kept safely with other important documents. We agree with Ms Benfield that the Applicant's account of this birth certificate is under-stated - in that the Applicant has not ever claimed to have seen his birth certificate nor to have had a copy of this document. Rather, the Applicant was aware of this document and his mother is the one who passed its contents on to him.

37. We also consider that the Applicant has generally been forthcoming and has cooperated with the Respondent in trying to assist with obtaining further information or proof of his age. For instance, the Applicant provided the Respondent with the contact details for his mother in Sudan but neither the Applicant nor the Respondent have been successful in reaching her. The war in Sudan is likely to be why and the Respondent has not submitted otherwise. Nonetheless, the Applicant's cooperation is to his credit.

38. The Applicant's evidence that his birth was registered and that his mother held a copy of his birth certificate also sits well in the context of the country information relied upon by Ms Benfield on the Applicant's behalf at §19 of her written closing submissions. This includes a UNICEF article recording the prevalence of birth registrations in Sudan for male children: this being relatively high at 59% of children's births registered in 2010, increasing to 67.3%

in 2014. Although Ms Benfield could not assist with any figures for 2007, the claimed year of the Applicant's birth, she was able to point to a UNHCR Khartoum publication, which stated that over the last 15 years (from 2012) birth registration had varied between 40 and 60%. We note also that the Applicant is from Omdurman, near Khartoum.

39. It is plausible that the Applicant would not have been in possession of his birth certificate when still a child but similarly, that he would have been aware, as a young person, of its existence and where this had been kept in the home by his mother. The Applicant's account is that his father died when he was younger and this has not been disputed by the Respondent.

40. It is also plausible that the Applicant would have become aware of his age upon him starting to study the Quran at the Khalwa. Similarly, when being compared, or comparing himself, to his cousins and where he stood in that age hierarchy, so to speak.

41. The overall plausibility of the Applicant's account of how he came to know of his age and date of birth clearly weighs in his favour when it comes to assessing whether the claimed date of birth is accurate. The above lends support to the Applicant's overall credibility, which in turn has an impact on whether he is truthful as to his claimed date of birth.

42. We do of course bear in mind the points raised by Mr Hoar, concerning some aspects of the Applicant's account which bear on our findings above. We have addressed those in more detail further below in our judgment.

The Applicant's name

43. The Respondent took issue with the name recorded to have been given by the Applicant to the Home Office when initially interviewed (as part of his protection claim) on 9th September 2023. We do not detail here the full name recorded in that interview in light of the Anonymity Order in place but suffice to say, that the name recorded by the Home Office consists of two components of the Applicant's full name as disclosed to the

Respondent in the course of the Applicant's exchanges and meetings with the Respondent's social workers.

44. Mr Hoar submitted on behalf of the Respondent that the different recording of the Applicant's name by the Home Office amounted to an inconsistency in the Applicant's account of his identity and one that damaged the credibility of the Applicant's evidence more generally. Mr Hoar also questioned the Applicant on this issue during cross-examination and suggested to the Applicant that he had given a different name to the Home Office in order to initially conceal his identity and that he was of an older age.

45. The Applicant has maintained throughout, both in response to the age assessors when this was raised with him during the 'minded to' meeting and subsequently in his written and oral evidence, that he gave his full name when initially interviewed by the Home Office.

46. As addressed above, the name recorded by the Home Office consists of two out of four names otherwise given by the Applicant and recorded as such in the Respondent's own records. There is no other allegation before us of the Applicant using, at different times, different versions of his name, a different name, an alias or a different identity all together. As far as we can discern, all other records, save for a health assessment which we have considered in more detail further below, document the Applicant giving his full name, as disclosed to the Respondent. Neither party has suggested otherwise.

47. It is also relevant to note that the Applicant was initially interviewed by the Home Office very shortly after his arrival – after, it is accepted, a difficult journey to the UK. In addition, it has been documented that the Applicant was ill on arrival and that he was placed in quarantine with suspected diphtheria by the Home Office. We also note that this interview record details the Applicant's claimed date of birth at question 1.2, not the date of birth arising from the Home Office's own age assessment and decision dated 6th September 2023, namely that of 3rd April 1998.

48. In light of the above, we consider that it is more likely than not that the Home Office's record of the Applicant's initial interview on 9th

September 2023 contains an incomplete record of the Applicant's name. That was was through no fault of the Applicant. Thus, we do not find that there is an inconsistency in the Applicant's account of his identity as far as his name is concerned.

The Applicant's siblings

49. Mr Hoar submitted that the Applicant had been inconsistent in his accounts of how many siblings he had and whether he was the youngest or the oldest. Mr Hoar argued that this was indicative of the Applicant not being a reliable witness as to his age.

50. The aspects of the Applicants' accounts concerning his siblings that are said to be inconsistent by the Respondent are as follows:

    (a) He has four younger siblings, all younger than him, as recorded in the ASW's notes of the LAC visit by the ASW with the Applicant on 11th January 2024;
    (b) Under the heading "siblings", Dr P Mugalige recorded in the Initial Health Assessment ('IHA') of the Applicant (conducted as part of the Respondent's statutory responsibilities towards the Applicant) that he had: "older sibling lives in the same village";
    (c) The Applicant confirmed with the Respondent's assessors that he had three older brothers and that he was the youngest.

51. In his oral evidence, the Applicant maintained that he had not given conflicting information and had always stated that he had three brothers/siblings, all older than him.

52. We note that when the accounts, as recorded in the ASW's notes and in Dr Mudalige's assessment, were put to the Applicant by the Respondent's assessors, the Applicant corrected those accounts and confirmed that he had not provided that information, reiterating instead that he had three older brothers.

53. We are mindful that the purpose of Dr Mudalige's assessment and of the ASW's meeting on 11th January 2024 was not take the Applicant's account of his age nor to assess the Applicant's age. When considering the ASW's note, it is also important to consider that the ASW confirmed in her oral evidence that she met with the Applicant on that occasion over Microsoft Teams. This was also her

first meeting with the Applicant. The interpreter would have also attended remotely and whilst the ASW did not record the interpreter as being present in her note, we do not doubt that one was used to assist with conversing with the Applicant.

54. As per the ASW's note, there was no other detailed information provided by the Applicant concerning his siblings and the reference to him having four younger siblings is brief. It was also in the context of the Applicant disclosing that his father had died and his mother remained in Sudan. The ASW accepted in her oral evidence that she had not raised this apparent discrepancy with the Applicant when she later recorded the Applicant as having stated that he was the youngest of four siblings, when they met for their second meeting on 23rd February 2024.

55. In light of the above, we consider that it is more likely than not that the ASW mis-recorded the number of the Applicant's siblings and that they were younger than him. This could be as a result of this being a fleeting reference only, or a mis-communication or interpretation, in a remote meeting with a remote interpreter or a combination of all of the above.

56. In respect of Dr Mudalige's assessment, we note that Dr Mudalige confirmed on the first page of their assessment that the information contained therein is based on information taken from the IHA referral form, from the young person themselves (whose first name is mistakenly recorded here as something else entirely) and from their 'carer' (the Applicant's keyworker from his supported accommodation). We consider therefore that it is more likely than not that Dr Mudalige mis-recorded the sibling information in their assessment report, that being peripheral to the purpose and focus of the assessment.

57. Whether such a mis-recording arose from Dr Mudalige's own recording of the information provided to them or whether it arose as a result of a misunderstanding, during the course of interpretation or otherwise, or a deficient source of other information, it is not possible to determine. We do also note however that it is not known whether the interpreter provided to the Applicant spoke Sudanese Arabic as this is only recorded by Dr Mudalige as 'Arabic'.

58. We also agree with Ms Benfield that there are many more references to the Applicant describing himself as the youngest siblings of four. This suggests that the accounts recorded and relied upon by the Respondent, as summarised at §50(a)-(c) above, are likely to be mis-recordings, misunderstandings and/or mis-interpretations. Neither are these other references limited to documents or notes, which post-date the Respondent's April 2024 assessment when this issue was raised by the Respondent. These references include the following:

    (a) Welfare Visit with the Respondent's social workers on 29th September 2023 – "3 brothers who are older" - [174 TB];
    (b) First witness statement of Ms. Kayim dated 31st October 2023, detailing what the Applicant had told her when they first met that he had "three older brothers" - [116 TB, §13];
    (c) First witness statement of the Applicant - "my three brothers all of them are older than me" - [100 TB, §11];
    (d) Child and Family Assessment completed on 27th March 2024 - "SA is the fourth of four children. He said he is the youngest". This is also consistent with the underlying note of the meeting on 23rd February 2024 (filed separately), as briefly considered above and in which the ASW recorded that "SA said he is the youngest of four children" - [222 TB];
    (e) April 2024 assessment - "his family consist of him, his mother and 3 older brothers" - [245, 246, 251 TB and others];
    (f) Second witness statement of the Applicant - denying ever saying he had younger siblings or that he said he had 4 siblings, he has "three older siblings" and "4 including myself" - [138 TB, §20].

59. It is of particular note that the Applicant has always maintained that he had three older siblings with the Respondent's assessors. The inconsistency is said, by the Respondent, to lie between those *consistent* accounts of the Applicant to the Respondent's assessors, over a significant number of meetings, and diverging accounts given by the Applicant during his first (remote) meeting with the ASW and during his IHA, undertaken as part of the Respondent's Children Act statutory responsibilities. Both of these latter meetings were not intended, as we had already addressed

briefly above, to explore, or otherwise assess, the Applicant's disputed age.

60. In those circumstances and for the reasons above, we do not consider that the Applicant has been inconsistent about his siblings, the number of these and whether he is the youngest. As with the issue of the Applicant's name, we are of the firm view that it is more likely than not that the records of the ASW and of Dr Mudalige are incorrect and that this is likely to have arisen as a result of mis-communication and/or mis-interpretation.

The Applicant's literacy, education, and his understanding of Arabic/Sudanese Arabic interpreters

61. Whilst these issues were addressed separately in the Respondent's April 2024 assessment, Mr Hoar effectively linked these together when pursuing these matters with the Applicant in cross-examination and in closing submissions. It is appropriate therefore to consider these issues together.

62. First, in relation to the Applicant's education, Mr Hoar emphasised that the Home Office had recorded the Applicant to have confirmed in his screening interview [158 TB] that he had "completed year 5" when asked of his level of schooling or education. Mr Hoar acknowledged that this was not the most significant point but was a point nonetheless, which taken together with the others was problematic when considering the Applicant's account.

63. The Applicant had on the other hand maintained that he attended, as a child, the Khalwa to learn and study the Quran. The Applicant explained that the Khalwa is a place within the Mosque, where lessons would be held and conducted by the Sheikh, with other children, specifically to learn the Quran.

64. The Respondent did not otherwise dispute the Applicant's account of having attended the Khalwa. When the Respondent's assessors raised the Home Office record with the Applicant during their assessment, the Applicant responded as follows:

> "In the Home office, they asked me about my education, and I said I studied in Khalwa, they said how long you studied in Khalwa and I

> said year 5 or year 6, and they said give us an approximate, so I said year 5."

65. The factors that led us to conclude at §§46-47 above that the Home Office record of the Applicant's name, from the same screening interview, was not an indication that the Applicant had been inconsistent, also apply here. Moreover, we bear in mind that the purpose of a screening interview is to gather brief details of a person's identity, health and special needs (under which the education and school question is asked) and so forth. We are able to take judicial notice that this is to assist with the management of a person's protection claim. In the context of the screening interview, we do not expect therefore much detail to have been given, or recorded, on the issue of and applicant's education and this appears to have been the case with the Applicant as well. In any event, there is no evidence before us to suggest that such interviews are intended to elicit detailed information about an individual's claim on specifical issues like education. For these reasons, we do not consider that the Applicant has been inconsistent with regards to his education. Instead, we find that the Applicant has been consistent throughout that he attended the Khalwa only and did not attend any other more formal education when in Sudan.

66. Turning to the Applicant's literacy, this was pursued with more force by the Respondent at the hearing before us. The Applicant has maintained throughout that he cannot read or write in any language, including Arabic and Sudanese Arabic. He also confirmed this in the Home Office screening interview. To the assessors and in response to questions in cross-examination when the Appellant was pressed on this, the Applicant explained that he would learn the Quran by repeating the passages read/explained by the Sheikh and that he would also copy the passages out in the sand on the floor. The Applicant explained that in this way, he learnt to write Arabic to the limited extent that he can write the passages of the Quran that he has learnt, but not other Arabic letters.

67. In summary, Mr Hoar submitted that, through this learning and his study of the Quran, for a sustained period of time, the Applicant will have learnt to write Arabic script. Mr Hoar submitted that this

meant that the Applicant had effectively learnt the language and how to write this. Mr Hoar maintained that the Applicant's account that he could not read or write was simply not true.

68. We have very carefully considered Mr Hoar's submissions on this issue but do not accept these. The Respondent did not seek to rely on any expert evidence of the Applicant's knowledge of the Quran and its contents and whether this entails a wider understanding and an ability to read and write in Arabic. Moreover, the Applicant's account of how he was taught and how he learnt the Quran is consistent with the information retrieved and recorded by the Respondent's own assessors.

69. We consider it helpful to extract some of these passages from the Respondent's April 2024 assessment as these provide a bit more information on the Khalwa. These also emphasise the teaching and learning methods generally used. We have understood from the information recorded in the assessment (and extracted below) and from the Applicant's own evidence, that these methods are grounded in memorising and learning by rote. The Respondent's assessors recorded as follows in the 'Education, Employment & Training' section of their assessment:

> "When we explored the structure of his Khalwa class, (SA) explained that students can join Khalwa at any age and that unlike the UK, all students are in the same class rather than in different groups. He said that there was no hierarchy and students just learn the Quran and prayers at their own pace. This is supported by information we found about Khalwa in Sudan which states: The students, normally called "al-Hiran" (Arabic: **الحيران**), are not divided into classes as is customary in modern schools. Rather, the khalwa follows an individual approach that depends on the student receiving knowledge directly from his sheikh. The sheikh follows his students and teaches each of them according to his ability and level. The student does not need a certain number of years to graduate but progresses according to his ability. The students are typically boys under the age of 15.
> (…) He said that while at Khalwa, he was taught the Quran which he found very hard to memorise. According to online information, memorising the whole Qur'an typically takes three years (SA) said that he could only memorise the Yusunma which is one of the Surah. He also learnt to write Arabic in Khalwa but he can only write the Quran and not Arabic letters. He said that nobody in his family is educated but some of his cousins also attended the Khalwa with him (…)"

70. Mr Hoar also relied on the screenshots of the Applicant's mobile telephone and messages, that the Applicant had written, that show Arabic writing. In his submission, this demonstrated that the Applicant could write in Arabic, despite maintaining that he could not. Mr Hoar was able to ask the Applicant about these messages in cross-examination and the Applicant explained that those messages were exchanged on a Friday, and to use the Applicant's words, this was the day of prayers. He explained that these included an expression that was repeated over and over again in prayers and were also the first words included in the Quran. He added that he had learned this expression and he confirmed that once he had learnt such an expression, and memorised it, he could write it. Beyond this, the Applicant did not accept that he could read and write more generally, or to a higher level than he otherwise claimed.

71. In light of the above, it cannot be said in our view that the Applicant has learnt to read and write Arabic and/or that that he has sought to minimise or otherwise lessen his level of literacy. There is no evidence to support Mr Hoar's submission.

72. Similarly, the mobile telephone messages of the Applicant do not disclose more elaborate or lengthy communications in Arabic. These show brief expressions or very short sentences (in what we are told is Arabic but which has not been translated into English). We are satisfied that this is consistent with the Applicant's evidence and accept that the messages show words that the Applicant has memorised and can write, because of their use in prayers and in the Quran. It is not evidence that supports the Respondent's contention that the Applicant can read and write to a higher degree than claimed.

73. This leads us to consider the Respondent's position in relation to the Applicant's ability to understand Arabic, as opposed to Sudanese Arabic, and specifically in the context of interpreters. Mr Hoar submitted that this issue was critical to the Respondent's case as the issue of interpretation had been the Applicant's explanation for several of the inconsistencies that were said by the Respondent to have arisen. Mr Hoar reiterated that the inconsistencies concerning the Applicant's siblings and his own name, could not otherwise be explained and the Applicant had

therefore placed blame on the interpretation that he had received. As we have already addressed above, we do not consider that the Applicant has in fact been inconsistent on the issue of his siblings and name.

74. Mr Hoar also submitted that the Applicant had been able to undertake casual work when in Tunisia, and to a certain extent when in Libya, and those exchanges would not have been in Sudanese Arabic. To that extent, Mr Hoar argued that the Applicant had managed to converse in Arabic or in a different Arabic dialect than he was otherwise used to. Mr Hoar did not suggest however that the Applicant did not need a Sudanese Arabic interpreter when meeting with the Respondent's social workers.

75. Drawing all of the above, we are satisfied that the Applicant has needed, throughout his time in the UK, the assistance of a Sudanese Arabic interpreter when meeting and speaking to professionals and when being assessed by the Respondent for the purpose of his age. As referred to above, we did not understand the Respondent's position to dispute this. Save for one of the meetings between the Applicant and his ASW, which we have addressed in more detail further below in our judgment, we are also satisfied that the Applicant has been consistent, and indeed truthful, to the Respondent, and anybody else, on his ability to converse and/or understand Arabic, as opposed to the Sudanese Arabic dialect. It is trite to note that there is often a distinct difference between being able to converse in more informal settings, and when it is a matter of necessity, to imparting precise and comprehensive detail on matters of importance.

76. For the reasons above, whilst there was much focus during the hearing on the issue of interpretation and whilst Mr Hoar submitted that this remained a critical part of the Respondent's case against the Applicant, we agree with Ms Benfield that it is important to recall that the Applicant was, and remains, a vulnerable person witness and that mis-communications can, and do often happen when there is interpretation, despite the good intentions and best efforts of all concerned.

77. As an example of this, Ms Benfield pointed to the exchange between the Applicant and Judge Pinder, who asked a question of the Applicant, by way of clarification, at the end of the Applicant's evidence. The Applicant was asked whether he had been to see a dentist prior to seeing a dentist in the UK. The Applicant appeared to answer that he had, both in Libya and in Tunisia, indicating at the same time that he did not wish to give details of his visit in Libya. When expanding on his evidence with regards to his visit in Tunisia, it later transpired that the Applicant was referring to having been to see a doctor, i.e. a general practitioner, or similar, as opposed to a dentist or a dental specialist. This was clarified with the assistance of the court interpreter during the Applicant's evidence. It transpired that the Applicant had not visited a dentist before his arrival in the UK and the Respondent did not seek to dispute this.

The Applicant's accounts on whether he worked in Sudan previously & the work he did in Libya

78. We address these two separate issues together fairly swiftly.

79. First, on whether the Applicant had worked in Sudan, Mr Hoar submitted that the Applicant had stated to Dr Mudalige (the IHA medical professional) that he had done so and that this was indicative of the Applicant being older than claimed. The Applicant had otherwise not claimed to have worked when interviewed by the Respondent's assessors nor by his ASW. The Applicant could not explain why it was recorded in Dr Mudalige's assessment that he had "lived and worked in Sudan" [268] and he maintained that he had not told the doctor this. Mr Hoar accepted that this was the only reference to him having worked in Sudan.

80. We have already addressed the other issue in contention contained in Dr Mudalige's health assessment of the Applicant at §§56-57 above. In light of this assessment including a record of a different name for the Applicant and not detailing whether the interpreter used was Sudanese Arabic, we are not prepared to prefer the account contained in Dr Mudalige's assessment over the Applicant's account. As referred to above, the Applicant has otherwise been consistent throughout of only having attended the Khalwa in Sudan, until he left in 2022.

81. On the type of work that the Applicant did in Libya, this was one of the issues that was not pursued with much force by Mr Hoar and we agree that that was a sensible approach to take. The Applicant's accounts of the types of work that he was able to carry out when in Libya varied from cleaning houses, sweeping the streets or areas in front of houses and construction work. We are not of the view that these accounts are conflicting in any way and accept that the Applicant's work over the time that he spent in Libya will have varied.

82. We also understood from the Applicant's evidence that he went to a specific place to wait and see if there was work that he could do and/or be offered. Working in construction can also entail all sorts of different manual work and Mr Hoar rightly accepted that things will not have been easy for the Applicant there. For those reasons, we do not find that the Applicant's account of what types of work he did in Libya informs our assessment of the Applicant's age and/or of the credibility of his accounts more generally.

The Applicant's account of having a passport and a nationality identification number

83. Mr Hoar submitted that the account given by the Applicant in his screening interview, that he had lost his passport during fighting, suggested that the Applicant had not been truthful on this issue, which was relevant to his reliability as a witness more generally. The Home Office screening interview record details that the Applicant was asked at question 1.7 whether he had "any evidence to confirm (his) identity", to which the Applicant said "no". The following question at 1.8 asked "if no passport, where is your passport", to which the Applicant answered "No, lost passport during fighting".

84. The Applicant was asked about this in cross-examination and explained that he did not tell the Home Office that he had a passport and that this had been destroyed as a result of the war. We also note that as part of the Respondent's welfare visit on 29th September 2023, the Applicant said that he had a birth certificate but that he did not have this now because of the war [171 TB].

85. We find that this is also consistent with the record of a discussion with the ASW, reflected in her observation report of 25th March 2024, which was provided to the Respondent as part of the Respondent's April 2024 assessment. The Applicant is recorded to have said that he had no passport but had a birth certificate and national number in his home country but did not possess either of these [211 TB].

86. We find that the Applicant's accounts as to whether he had a national number to be unclear. It is the Applicant's understanding, as far as we understand his evidence, that his national number would have been detailed on his birth certificate. The Applicant does not profess to know his national number nor to have seen his birth certificate, as considered already earlier on in our judgment. Since we accept that the Applicant has never seen his birth certificate, we do not consider that any confusion on this aspect of the Applicant's evidence should be held against him.

87. We do not otherwise consider it likely that the Applicant has been discrepant in the account that he gave to the Home Office in his screening interview. With the first question, as summarised above at §83, centred on evidence of his identity, we consider it more likely that the term 'passport' was used loosely as a synonym for identity documents or evidence, whether by the Applicant himself or by the interpreter used on that occasion.

88. We consider instead that this is another example where there is a single record of the Applicant referring to have had a passport when all the other records of the Applicant's accounts, and his own evidence, confirmed that he only ever had, to his knowledge, a birth certificate. Considering the context and purpose of the screening interview, the possible issues of interpretation as considered above and the Applicant's vulnerabilities on that day, which we have already set out earlier in our judgment, we are not prepared to find that this amounts to a discrepancy that should be held against the credibility of the Applicant's account more generally.

89. It is also necessary to briefly record that the assessors in their assessment had taken issue with a purported inconsistency in the Applicant's account as to where he was from in Sudan, namely

whether he was born in Omdurman or Khartoum. Following further information and a map provided by the Applicant in Ms Benfield's skeleton argument, the Respondent confirmed that it was no longer seeking to pursue this issue (§55 Respondent's opening submissions). The two places, Khartoum and Omdurman, are very closely situated: Omdurman is on the other side of the River Nile from Khartoum.

The Applicant's journey to Libya from Sudan and the reasons for this

90. Mr Hoar invited us to consider that the reference in the screening interview to the Applicant's passport being lost in fighting was not the first time that the Applicant had mentioned that there was a war. Mr Hoar suggested to the Applicant in cross-examination that he had been inconsistent about the reasons why he had fled Sudan. It was suggested that he had given details of fleeing in 2022 because he feared being recruited, or forced to join by one his uncles, the Rapid Security Forces ('RSF'), also at times referred to as 'the army', to fight in Yemen. However, Mr Hoar highlighted that at question 4.1 the Applicant had stated something different in response to being asked to explain all of the reasons why he cannot return to his home country:

> "There is a war in Sudan and I am running away because of that. It is not stable to stay. People are destroying property and killing people.
> The houses were shelled during fighting and I'm afraid of being killed."

91. Bearing in mind the purpose and context of a screening interview, as we have already considered, we do not accept that there is anything to be said against the Applicant about this issue. The Applicant was asked at question 4.1 for the reasons why he cannot return. This was in September 2023, approximately six months after the war is reported to have started in Sudan. On his account, the Applicant left Sudan in 2022 and so it clear that there was a change in country conditions between the Applicant leaving and him being interviewed by the Home Office. When taking this into consideration, the Applicant has not, in our view, been discrepant on why he left and why he cannot now return.

92. Mr Hoar maintained, when this was explored in submissions, that the Applicant's words "I am running away" demonstrated that the Applicant was referring to when he had to flee Sudan. We do not consider that such a forensic approach to the Applicant's brief explanation at question 4.1 is fair. The Applicant was expressly asked to give a brief explanation. That is ordinarily the purpose of screening interviews and country conditions in Sudan were, and remain, complex. Suffice to say that for the purposes of our determination on the Applicant's age, we do not consider that the Applicant, in the evidence that stands before us, has been inconsistent with why he fled Sudan.

Injury to the Applicant's leg in Libya/Tunisia, duration of stay in Tunisia and the costs of his journey

93. The three issues listed in the sub-heading above, were addressed separately by the advocates (and taken issue with by the Respondent in the April 2024 assessment). In light of the brevity with which we can address each of these issues, and the chronology of these separate events, we have grouped these together.

94. First, in relation to the Applicant's injury, this was pursued in cross-examination with the Applicant, merely in relation to the timing of the injury. The Applicant confirmed that he had sustained the injury in Libya, was already injured when he entered Tunisia and that the injury had gotten worse by the time he arrived in Tunisia. The Respondent has not otherwise disputed that the Applicant sustained an injury but raised concerns instead with the Applicant's accounts of when he had sustained the injury, namely whether this was in Libya or after he had arrived in Tunisia.

95. Following the oral evidence, Mr Hoar did not seek to make any closing submissions on this point. We accept for the reasons given by Ms Benfield in her closing submissions that the Applicant has been consistent in his account. His oral evidence was consistent with his account recorded in the IHA [187 TB], the Child and Family Assessment [222 TB] and what he had said to the Respondent's assessors [267 TB]. When this point was clarified with him in the age assessment [269 TB], his answer was also that "he sustained injury while in Libya but it got worse on his way to Tunisia".

96. Second, with regards to how long the Applicant stayed in Tunisia, whether this was approximately one month (as stated in his first witness statement and to the Respondent's assessors) or two months (as stated in his screening interview), Mr Hoar acknowledged that there could be other explanations for such a difference, as highlighted by Ms Benfield in her closing submissions at §27 where she useful drew together a number of principles to bear in mind when considering an applicant's account(s).

97. We do not consider that any change in the Applicant's account of how long he stayed in Tunisia is significant and/or should impact on his credibility as a whole or more generally. This is mainly because the longer period was given initially during his screening interview, when the Applicant was ill and was asked for brief details only.

98. Third, on the Applicant's account of how he paid for the cost of travelling across the Mediterranean, this was not pursued with any force by Mr Hoar either. Mr Hoar had set out in his skeleton argument that the Applicant had said in the April 2024 assessment that he had paid for his journey with money he saved in Tunisia but had also said in the same assessment that he had used all the money to buy food [267; 252 TB].

99. We consider that this reference and submission again underlines the importance of consulting primary records. When the latter is considered (the screening interview again), the Applicant explained that he had used the money he got in Libya to buy food and, to get from Tunisia to Italy, he had used the money he saved in Tunisia [159 TB]. The assessors' notes of the meetings with the Applicant during the April 2024 assessment also assist with this issue. There, it is recorded that the Applicant was asked about how he funded the cost his journey from Tunis:

> "NO (one of the assessors): How did you get money to travel from Tunis
>
> A: I work
>
> NO: How much did it cost you.
>
> A: 360-370 dinars, and some organisation gave me some money too."

100. In light of the above, we do not consider that the Applicant has been discrepant on this issue either.

The Applicant's appearance and whether he shaves

101. In approaching this issue, we remind ourselves of the well-established caution that we must apply when taking into consideration evidence relating to the Applicant's appearance and demeanour, except "in clear cases" – see §13 of the Applicant's skeleton argument and §§27-29 of the Respondent's skeleton argument. Both advocates confirmed at the hearing that they were in agreement as to the applicable law on these issues and at the start of his closing submissions, Mr Hoar confirmed that he had been able to reflect on the Respondent's case following the taking of the parties' evidence. He submitted that he had opened high on the Applicant's appearance but in closing, he was not seeking to place such high emphasis on this. Importantly, Mr Hoar also accepted that this was not an "obvious" case. We agree with Mr Hoar's concession and record that it was an entirely appropriate concession to make.

102. On shaving, Mr Hoar submitted that it was matter for us to consider and that there were suggestions in the evidence that the Applicant had shaved or does shave. Mr Hoar added that if the Applicant had been untruthful about whether he shaved, this was relevant to the issue of credibility.

103. The evidence, which the Respondent states was suggestive of the Applicant shaving, and which also documents the Applicant's appearance more widely, includes the following:

(a) The Home Office short assessment of the Applicant on 6th September 2023, which recorded the following as indicative that the Applicant was significantly over 18 years old (bold emphasis added):

- Individual was of slim build and tall height
- He had Receding hair line
- **Shaving for a while, (thick facial hair**
- Big hands

- Confident spoken
- Confident posture
- Forehead wrinkles
- Well developed Jaw and cheek bone structure.
- Strong Nasolabial lines
- Broad chest
- Prominent brow bone.
- Crow's feet

(b) The photograph of the Applicant taken by the Respondent's assessors shortly after his claimed 17th birthday on 15th April 2024 [278 TB], which the Respondent states shows and highlights the features of a young man much older than 17: crows' feet, clear nasolabial lines and a significantly receding hairline.

104. As we have already recorded above, the Respondent did not pursue an "obvious" case in closing nor seek to address us on other matters of the Applicant's appearance, save for the issues of shaving and the Applicant's teeth. We also note that the Respondent's assessors stated that they took a cautious approach to the Applicant's appearance. We do not therefore address the other matters concerning the Applicant's appearance listed above and we focus only in this section on whether the Applicant has previously shaved and/or currently shaves.

105. As already considered above, the Home Office's observation on 6th September 2023 was undertaken while the Applicant was in quarantine for suspected diphtheria. The reliability of any observation taken upon arrival in those circumstances is therefore very limited. There is also no photograph of the Applicant to accompany the assessment undertaken on that date. As Ms Benfield highlighted, the earliest photograph of the Applicant thereafter is from 10th September 2023 and is included in a 'Bail 201' notice granting the Applicant immigration bail [433 TB]. This photograph, although small in format and of low quality, does not show any facial hair, let alone any "thick facial hair".

106. We agree with Ms Benfield that the following entries and records are of more probative value:

(a) No observation is recorded in the Respondent's welfare visit of 29th September 2023 about signs of facial hair or shaving [172; 413 TB];
(b) Observation report from Little Acorn, 25th March 2024 noting "no facial hair" [214 TB];
(c) Child and Family Assessment, 27th March 2024 similarly recording "no facial hair" [222 TB];
(d) The Applicant had no obvious facial hair in the course of the April 2024 assessment [254 TB] albeit the Respondent's assessors had suggested that from a photograph taken on 15th April 2024, it appeared he shaved. We agree with Ms Benfield that at most, this photograph seemed to show the Applicant with some very light facial hair on his upper lip. We also note that the Applicant expressly offered for the assessors to more closely inspect whether he had facial hair during one of their meetings. He offered the assessors to "touch and check" [323 TB]. There is no entry from the assessors by way of a response.

107. There are also other records from the ASW, which detail the Applicant as having a "clean-shaven appearance" [196; 209 TB] but no other information is provided. The Applicant has consistently maintained that he does not and has never shaved. This was the case within the April 2024 age assessment and in oral evidence before us.

108. In light of the above, we consider that on balance, the Applicant has been truthful in his evidence. The evidence relied upon by the Respondent is not in any way sufficient to displace this and in any event, it is not inconsistent with his claimed age even if the Applicant has, on occasion, shaved.

The available dental evidence concerning the Appellant's teeth.

109. Before we turn to the Respondent's April 2024 assessment and consider this in more detail, we address the parties' respective cases on the issue of the Applicant's teeth.

110. Mr Hoar submitted in opening that the evidence showed that the Applicant had at least two erupted wisdom teeth by December 2023, when the Applicant claimed to have been 16 years old. The evidence relied upon by the Respondent is the Initial Health

Assessment ('IHA') record [187 TB], where the doctor recorded that the Applicant was treated for complications caused by his inflamed wisdom teeth on 22nd December 2023 - §31 of the Respondent's skeleton argument.

111. Looking at the primary source however, the IHA does not in fact record the Applicant's wisdom teeth being the issue. Under the sub-section 'dental', the following is recorded:

> "Dental: He has been seen by a dentist on 22.12 23 and he has been given some antibiotics for dental infection. He will be reviewed on 6th of January 2024."

112. The Respondent also relied on the Respondent's 'Multi-assessment' also known as the Child and Family Assessment, again conducted as part of the Respondent's Children Act statutory responsibilities towards the Applicant. A Child and Family Assessment is an assessment that takes place over a period of time based on a number of meetings, directly with the child, and also sourced from other assessments and records, including from other agencies. At [223 TB], the following is recorded:

> "He reported a toothache to the staff, prompting them to book a dentist appointment for him. (SA) was prescribed antibiotics to address the issue and was scheduled for a tooth extraction procedure.
>
> During (SA)'s initial dental examination, it was observed that (SA) had inflamed wisdom teeth. Antibiotics were prescribed, and he was referred to Southall Sterling Dental Practice for wisdom teeth extraction. However, during subsequent appointment in January 2024, (SA) expressed discomfort and resisted the procedure, leading to rescheduling for February 2024. During this appointment, the dentist plans to administer a sedative to facilitate the extraction, with the support of an interpreter."

113. Whilst this record does refer to the Applicant's wisdom teeth, the reference is to these being inflamed, there is no information as to how these may have erupted, whether at all, partially or fully, and the number of these. Ms Benfield highlighted a further reference where the following is recorded as part of the Respondent's Looked After Child Review report: "04/03/2024 - dental extraction of his wisdom teeth. No report concerns thereafter." No other detail is

however recorded concerning the number of teeth and their level of eruption.

114. There is no evidence from the Applicant's dentist or any other independent (direct) evidence of the Applicant's teeth.

115. When asked in cross-examination, the Applicant described having gone to the dentist twice in the UK. The first time, a tooth on his right side of his mouth was examined but was not taken out. The second time, the Applicant was given something to help with the pain and a tooth on his left hand side of his mouth was taken out. It was clear to us that the Applicant did not know or could not tell whether the tooth taken out was a third molar, also known as a wisdom tooth.

116. We note that the Applicant's oral evidence, that he only had one tooth removed, is consistent with the Placement report of March 2024 from Little Acorn. This recorded that he had "some dental issues with an inflamed wisdom tooth" and underwent a successful "tooth" extraction [418 TB]. The Respondent's assessors also seemingly understood the Applicant to have had a single tooth removed [254 TB].

117. In closing, Mr Hoar submitted that the Applicant's oral evidence, considered together with the available records could only lead to the conclusion that his wisdom teeth had started to erupt. We are first concerned that positive submissions were made by the Respondent about the Applicant's teeth without direct specialist evidence of the same, whether from the Applicant's treating dentist or otherwise. The only evidence that is before us is essentially hear-say evidence and oral evidence from the Applicant himself. We also recorded above at §77 that the Applicant had not visited a dentist before coming to the UK. In these circumstances, we are not able to attach much weight at all to the evidence available concerning the Applicant's teeth. At most, it is likely that one or several of the Applicant's wisdom teeth have started to erupt but the extent of the eruption is not in any way known.

118. The background evidence and authorities relied upon by Mr Hoar document that wisdom teeth *usually* emerge or grow through the gums during the late teens or early twenties. In December 2023,

the Applicant on his own case would have been approaching 16 ½ years old. When the tooth was extracted in March 2024, he would have been 16 years and 11 months old. We consider that this is within the range of 'late teens' relied upon by the Respondent.

119. In the alternative, all of the background evidence and authorities relied upon by the Respondent pointed to the *usual* age range at which the third molars start to grow and erupt. We have no evidence of what might be the norm for a person of the Applicant's gender and ethnicity, let alone any *direct* evidence of the Applicant's teeth, e.g. how many wisdom teeth he may have, whether any have erupted, or which ones may have been extracted. The records considered above have raised confusion as to whether one tooth or more than one were extracted from the Applicant but as previously considered, none of these records are direct evidence from the Applicant's dentist. This illustrates again the importance of sourcing primary records or evidence, and to consider any such records, before seeking to make evidence-based submissions.

120. We are satisfied in light of the above that there is no reliable evidence upon which we could properly conclude that it is more likely than not, on the basis of a likely single wisdom tooth (or even two) having erupted (the extent to which is unknown) so as to cause inflammation, that the Applicant is older than he says he is. This is also the case, as we have considered above, on the Respondent's own reading of the authorities and background evidence relied upon and as emphasised by Ms Benfield at §38 of her closing submissions.

The Respondent's April 2024 assessment;

121. Mr Hoar, on behalf of the Respondent, submitted that we should place significant weight on the Respondent's assessment, conducted in April 2024. This was the Respondent's second assessment of the Applicant, albeit the first was a brief (also referred to as a short-form) assessment on the basis that the Applicant was "obviously" significantly over his claimed age. This was conducted on 29th September 2023 and has been referred to as a "welfare check".

122. The April 2024 assessment included five meetings between the two assessors and the Applicant, with the penultimate meeting being the 'minded-to' interview and the final meeting consisting of the assessors communicating their final decision and assessment to the Applicant. Mr Hoar focused on the experience of the two assessors and that their assessment was a holistic one, which had produced a cogent piece of evidence before us, and which suggested that the Applicant was not the age that he claimed. The Applicant was accompanied by an appropriate adult and assisted by an interpreter at each of the meetings. We have also been provided with the assessors notes of each meeting.

123. It is appropriate to record at this stage that the Respondent confirmed in opening that the local authority was no longer seeking to rely on its first assessment of 29th September 2023 (§4 of the Respondent's skeleton argument) nor on the Home Office's assessment of 6th September 2023, save in respect of the latter that this record was an accurate record of the observations of the interviewers and of the Applicant's account given to them. We have already addressed those observations and what can be said of the Applicant's account as given to the Home Office assessors at §§103-105 above. The only assessment of the Respondent therefore that requires our detailed consideration is this second assessment of April 2024.

124. The Applicant has not suggested that this assessment was procedurally unfair or otherwise failed to be *Merton*-compliant. Instead, the Applicant has submitted that the reasons advanced by the assessors are weak and do not, separately or collectively, support that the Applicant is an adult of 23 to 25 years old. Further, that since the assessment, the Applicant has explained in his second witness statement a number of the matters held against him in a coherent and credible way. Similarly, evidence now available outside of the assessment supports the Applicant's claim as to his age.

125. Ms Benfield also made clear that she was not suggesting that the assessors were lacking in competence or were dishonest in any way but that in reality, only little weight could be attached to their report as a result of the assessors' unsustainable reasons for assessing the Applicant to be between 23-25 years old.

126. The reasons underlying this assessment are detailed in the assessors' analysis section [273-275 TB] and conclusions at [276-277 TB]. In the analysis section, which contains the greater level of detail, the following reasons are given for the decision on the Applicant' age:

(a) The Applicant was inconsistent on his knowledge of age [273 TB];
(b) The Applicant was inconsistent on the issue of where he was from and his identity documents [273 TB];
(c) The Applicant was inconsistent on his name [274 TB];
(d) The Applicant had attempted to conceal information [274 TB] - the assessors expressed the view that the Applicant "came across as a calculated person", mindful of the information he shared and that inconsistencies in his account to different professionals was "due to attempt/s to conceal information rather than misinterpretation or error on the professional's part" [274 TB];
(e) The Applicant's physical presentation [275 TB].

127. We re-emphasise what we stated earlier in our judgment: the substantive analysis and reasons set out in the Respondent's assessment are dealt with under separate sub-headings and we will not repeat what has been said above. This therefore addresses the issues that we have listed immediately above at §126(a)-(c) and (e). What we have said about those matters is clearly relevant to our view as to the overall weight which should be attributed to the report. We have addressed the observations of other professionals (which were referred to by the assessors in the context of the Applicant's physical presentation) under separate headings further below.

128. What follows immediately below is our analysis of the issue raised by the assessors and listed at §126 (d) above together with remaining observations on the assessors' report.

129. The assessors found the Applicant to be calculated and mindful of the information he shared. The primary reason given for this resides in the inconsistencies that were said by the assessors to cloud the Applicant's account of his age as well as his account of

various aspects of his up-bringing and journey to the UK. As we have already addressed, we are satisfied that, on balance, there are no inconsistencies in the Applicant's account and if any inconsistencies do exist, we consider that these are of little significance. A closer analysis of the information considered by the assessors, through in particular a consideration of the relevant primary sources, has revealed that the Applicant has been on the whole consistent in his accounts. We have not otherwise found the Applicant to be 'calculated' when giving his oral evidence before us. On the whole, we found the Applicant to have given his evidence in an open, straight-forward manner.

130. For completeness, we also very briefly address the Respondent's concern at the time of the April 2024 assessment and the welfare check on 29th September 2023 that the Applicant may have had a mobile telephone in his possession and subsequently claiming that it was not his. Further details were included by the Respondent's assessors in their assessment under 'Other Evidence /Information' ([267]-[268] TB). Mr Hoar confirmed in submissions that the Respondent was not seeking to pursue this issue.

131. There has otherwise been no disagreement between the parties as to the qualifications and experience of the two assessing social workers and no disagreement as to the fairness of the procedures that they adopted to interview and assess the Applicant.

132. We find that the six areas covered by the report before the analysis and reasoning set out were in principle appropriate: Family Composition and Religion; Education, Employment and Training; Journey; Development, Independence and Self-care Skills; Health and Well-Being; and Physical Presentation. These were also accompanied by detailed sections on the following topics: Summary of Process; Confirmation of Personal Details and Age; Professional Observation Feedback; and Other Evidence and Information.

133. What we have said above does not of course mean that no weight is attributable to the age assessment report. It represents a considered view by two appropriately-trained assessing social workers as to the Applicant's age following five meetings with the Applicant and the consideration of information provided by other

agencies and other professionals involved with the Applicant. On the question of substance, many, if not most, of the matters raised within the report are matters, which we regard as deserving of less weight than that afforded by the Respondent. As mentioned, we have given our reasons for this elsewhere in this judgment.

134. Overall, we place some weight on the April 2024 assessment report: it is more than the "little" value, as submitted by Ms Benfield but it is certainly less than the "significant" weight urged upon us by Mr Hoar.

The parties' respective witnesses

135. We have no hesitation in finding that the evidence of the two witnesses has been provided truthfully and there has been no suggestion to the contrary.

The evidence of Ms Kayim, litigation friend and employee of the Refugee Council

136. Ms Kayim readily accepted that she had not been able to observe in any detail the Applicant interacting with peers and other persons of his own/similar age as she had mostly met with him on his own. She nonetheless had formed the view that the Applicant was truthful about his age. Ms Kayim also accepted that she has not had sight of all of the records and documents concerning the Applicant and which have been considered as part of this hearing. For those reasons, Mr Hoar asked us to place limited weight on her evidence.

137. Ms Kayim confirmed in her oral evidence that nothing in her interactions with the Applicant had caused her to change her view or doubt the Applicant's claimed age. Ms. Kayim had worked with the Applicant since 13th October 2023 and she had noted the Applicant's behaviour and presentation, when in adult asylum support accommodation in contrast with his changed, much more positive, presentation upon being treated and accommodated in accordance with his claimed age. She also cited his need for emotional and practical support, and friendships as being in accordance with his claimed age.

138. Out of all of the professionals involved with the Applicant, Ms Kayim has had the longest involvement, having supported him since October 2023 and continued to meet with him fairly frequently since then. We found her views and her evidence to be measured and considered. For these reasons, we attach some weight to her evidence.

The evidence of the ASW and her opinion that the Applicant is an adult

139. From the evidence before us, the Applicant's Allocated Social Worker ('ASW) is the only professional, aside from the Respondent's assessors, who has raised a concern about the Applicant's age. Whilst the Applicant's placement reports are in evidence, none of these reports raise such a concern.

140. Much of the ASW's oral evidence focused on her Looked After Child ('LAC') meeting with the Applicant, held on 9th December 2024, the day before this hearing started. By all accounts, this appeared to be a fraught meeting and we briefly summarise the ASW's evidence of this meeting as follows:

(i) The LAC meeting was overdue. The ASW had last seen the Applicant in October and it had been difficult to set a meeting for November as the Applicant had had meetings with his solicitors and college to attend. The ASW had consulted her manager as to whether she needed to hold the meeting before the hearing and he decided that she should. The ASW, on reflection, accepted that it may have been best not to have held this meeting in such close proximity to the hearing.

(ii) The ASW was running late for the LAC meeting with the Applicant. She duly notified the Applicant of this but the Applicant had left the placement by the time the ASW had arrived, approximately 15 min late.

(iii) The ASW waited for over two hours, with her telephone calls to the Applicant going straight to voicemail. When leaving the placement, the ASW met the Applicant on her way back to the station and he agreed to return with her to his placement.

(iv) The ASW then attempted to talk with the Applicant, through a Sudanese Arabic interpreter arranged over the telephone but the Applicant maintained that he could not understand the interpreter. This happened a number of times with the ASW

each time arranging for a different interpreter to attend their meeting remotely over the telephone. The third interpreter, who assured the ASW and the Applicant that they were from Sudan (as opposed to being qualified to interpret in Sudanese Arabic), assisted for approximately 30-40 min.

(v) During this time, the ASW said that they had not discussed the age assessment but that the Applicant had asked why there was to be an age assessment hearing, that other young persons he knew had not needed to go to court and they also had a social worker.

(vi) The ASW described the Applicant as becoming angry and asking her why she had taken him to court. At this juncture, the Applicant stated that he could no longer understand the interpreter. The ASW tried to obtain a fourth interpreter, but the Applicant stood up and walked out of the meeting. The ASW understood that the Applicant no longer wished for the meeting to continue and she left the placement thereafter.

141. In our view, it is clear from the ASW's and the Applicant's evidence before us that they have differing views of their working relationship. We do not doubt the sincerity of the ASW's evidence that she has very good relationships with other children and young persons, for whom she has responsibility, that she prides herself of those strengths and that at times she has experienced a good relationship with the Applicant as well. It is a reality however that the Applicant has likely perceived the ASW as the one professional who has placed into question his age. This was not the ASW's understanding but the age assessment report itself recorded on its second page that the reason the age assessment was conducted was because of the ASW's expressed concern that she felt that the Applicant presented significantly older than the age he claimed [240 TB]. From this, we find that it is understandable that the Applicant may (mistakenly) perceive the ASW as the person responsible for 'taking him to court'. We also find that this helps to explain why the Applicant behaved in the way that he did during the LAC meeting on 9th December 2024, which was the day before the hearing started.

142. It is also necessary to record another aspect of this LAC meeting, which was explored with both the ASW and with the Applicant in evidence. At the end of the first day of the hearing, the Applicant's

solicitors sent the Respondent's solicitors an e-mail notifying them that the Applicant had raised with his legal representatives that the ASW had told him, during the LAC meeting, that he should not attend the hearing as it may harm his protection claim. It was requested in this e-mail that the ASW refrain from speaking to the Applicant about the age assessment hearing. A copy of the parties' e-mail exchange was admitted in evidence, as briefly recorded at §§15-16 above.

143. In her oral evidence, the ASW denied telling the Applicant not to attend the hearing and denied raising or ever discussing at that meeting the Applicant's outstanding protection claim. Neither did she think that she had said anything, or that the interpreter could have said anything, that would have misled the Applicant. The Applicant maintained in his evidence that the ASW had told him not to attend court and he also said that the ASW had told him that he did not have any documents to prove his age.

144. There is a clear disagreement therefore between the Applicant and the ASW as to what was said at the LAC meeting and whether the ASW told the Applicant not to attend the hearing because this would harm his protection claim. No one rightly suggested that the ASW was not being truthful in her evidence. Considering the ASW's responsibilities and her qualifications and experience, we do not consider it likely that she told the Applicant not to attend his age assessment hearing.

145. It has been difficult to discern what exactly was, or was not, said during this meeting as a result of the way in which this evidence arose and was presented mid-way through the hearing. The relevant meeting also only took place the day before the hearing started. However, we consider that it does not necessarily follow from the above that the Applicant was being untruthful in relaying what he understood the ASW to have said.

146. Mr Hoar submitted that one of the witnesses was clearly not telling the truth and it was more likely to be the Applicant. We do not accept this submission. We accept the Applicant's evidence that the ASW explained to the Applicant that he did not have any documents to prove his age. This is indeed the case. It is also apparent from both witness' evidence that the Applicant raised at

the LAC meeting the issue of the hearing, being taken to court and blaming the ASW for this. From the matters considered at §140 and the proximity between the LAC meeting and the hearing, we understand why it is that the Applicant perceived and raised this. In this context and with the Applicant no doubt feeling nervous and worried about the hearing, we find it more likely than not that the Applicant misunderstood the ASW's explanations and information provided to him and he duly relayed this misunderstanding to his legal representatives on the first day of the hearing.

147. If we are wrong on the above and the Applicant has been untruthful about what was said by the ASW at the LAC meeting, we do not consider that this is otherwise indicative of a propensity to mislead or indicative of the Applicant not being truthful about his age. If anything, we consider that this demonstrates that the Applicant is less mature than previously assessed by the Respondent, traits also supporting of the Applicant being aged as claimed.

148. When considering the ASW's opinion that the Applicant is older than claimed, we having noted the following points:

(i) By 13th March 2024 when the ASW expressed the view that the Applicant looked significantly older than 16 years old, the ASW had only met the Applicant twice, once on 11th January 2024 when they met remotely and again on 23rd February 2024.

(ii) In her oral evidence, the ASW stated that it was not just his appearance but the factors she raised additionally in her observation report of 25th March 2024 [209-213 TB] and summarised in her statement [129 TB; §9] namely his behaviour and demeanour, interaction in placement with other young people and staff, and his independence skills. These were said by the ASW in those two documents to be "not consistent with the behaviours of teenagers of his claimed age". However, the evidence from the Applicant's placement (in the form of placement reports) does not support this over the period of February to November 2024, which Mr Hoar very fairly accepted.

(iii) Other aspects of the Applicant's behaviours, which the ASW ascribed to him as being older than claimed, could equally be

classed as behaviours indicative of a 16-17 year old, such as staying out late and not wanting to return a lime bike even after it was explained to him the consequences of not doing so. We also note that the November placement report stated that the Applicant's curfew is 11pm and that the Applicant adhered to that curfew and "ensures he arrives before the stipulated time" [SB, 36]. In addition, the Applicant had raised with the ASW that he did not have a bike and wanted one in his first meeting with the ASW on 11th January 2024 [199 TB] – he obtained one in November 2024 [SB, 24].

149. From our consideration of the monthly placement reports, the Applicant was being supported to develop independence skills [416; 418; 419; 420 TB] and there was no record of the Applicant being confrontational in placement with staff [416; 420 TB]. The greatest challenge the placement reports identify is around funding, stemming from the fact that the Applicant was not receiving a college bursary (September report [SB, 30]). This is detailed by October as leading to some frustration [SB, 32] but when resolved by November [SB, 34] once the Applicant had received his college bursary and free meals in college, this appeared to have alleviated concerns. On the ASW's own evidence, the Applicant was supported by her to attend college and to ensure that he had all that he required to support his college attendance and learning, such as a bag and stationary. From the ASW's evidence, this took several attempts and close support from her, but she accepted that this was resolved in the end and did result in him attending and showing good attendance.

150. There is thus no evidence that the Applicant is "challenging" beyond what is expected of a typical teenager. The ASW herself accepted that a number of instances of presentation, interaction or behaviour from the Applicant could also be "typical teenage" behaviour.

151. In light of the above, whilst we do not doubt the sincerity of the ASW's work and evidence before us, we are not able to attach much weight to her evidence and views that the Applicant is older than he claims.

Conclusions

152. In light of the cumulative assessment we have undertaken and the findings set out above, and reminding ourselves that we need not simply choose between one party's case and the other's, we conclude that it is more likely than not that the Applicant has provided a true account of his age and date of birth.

153. We find as a fact that it is more likely than not that the Applicant was born on 3rd April 2007, was 16 years old on arrival in the United Kingdom on 6th September 2023, and is now 17 years old.

Anonymity

154. There is no dispute between the parties as to the appropriateness of an anonymity direction in this case. Having full regard to the important principle of open justice, we conclude that a direction is indeed appropriate on the basis that the Applicant has a pending protection claim and is on our findings a minor.

Disposal

155. The parties are invited to draw up an Order which reflects the terms of this judgment. The Order should address any ancillary matters, including any application for permission to appeal and costs, and should provide for the interim relief granted to the Applicant to be discharged.

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