



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**R (on the application of SO) v London Borough of Barking and Dagenham AAJR  
[2013] UKUT 00256 (IAC)**

**Heard at Field House**

**Determination Promulgated**

**On 8 and 9 April 2013**

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**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**UPPER TRIBUNAL JUDGE GOLDSTEIN**

**Between**

**THE QUEEN (ON THE APPLICATION OF SO)**

**Applicant**

**and**

**THE LONDON BOROUGH OF BARKING AND DAGENHAM**

**Respondent**

**Representation :**

For the Applicant: Mr T Buley, instructed by Fisher Meredith

For the Respondent: Mr K Rutledge, QC, instructed by London Borough of Barking and Dagenham.

**JUDGMENT**

1. In these proceedings the applicant (to whom we shall refer as SO) challenges the decision of the respondent to refuse to accommodate him as a former relevant child on the basis that he is the age he claims to be, having been born on 6 July 1990. The essential reason why the respondent does not accept that the applicant is the age he claims he is, is because the respondent believes him to be a person (hereinafter referred to as HH) who was born in Jeddah, Saudi Arabia, on 21 February 1987. Although this is an age assessment judicial review the essential issue is that of identity. It is common ground that if the applicant is who he says he is then his application for judicial review must succeed. Alternatively, if he is the person who the respondent says he is, then his claim must fail.

2. SO claimed asylum on 26 September 2007. A screening interview took place on the same day. The respondent carried out an age assessment on 2 October 2007 and accepted that he was the age he claimed to be. He made a statement on 19 October 2007 and his asylum interview took place on 30 October of that year. His asylum claim was refused on 20 November 2007 and removal directions

were issued on 28 November 2007. An appeal was lodged on 10 December 2007. His appeal was allowed on 10 March 2008 by Immigration Judge Oliver. Subsequently reconsideration was ordered, and on 10 September 2008 Immigration Judge Charlton-Brown heard his appeal and dismissed it, and on 19 January 2009 permission to appeal to the Court of Appeal was refused by Scott Baker LJ. A fresh claim was made on 15 June 2009 with further submissions on 7 July of that year, but on 17 June 2010 the UKBA declined to accept that the fresh material taken with the previously considered material amounted to a fresh claim. An application to apply for judicial review against that decision has been stayed behind these proceedings.

3. After SO became 18, the respondent decided that it would cease to provide him with accommodation on the basis that it considered it had no obligation to do so at that time. This decision was challenged by way of an application for judicial review, and the matter proceeded to the Court of Appeal where it was resolved in the applicant's favour in 2011 ( *R (SO) v Barking and Dagenham LBC* [2011] 1WLR 1283).

4. It seems that it was during the course of those proceedings that the respondent became aware of the fact that Immigration Judge Charlton-Brown had agreed with the Secretary of State that SO was in fact HH. The respondent had accepted that it would need to make a new determination on this issue which the applicant would be entitled to challenge, and the matter was consequently remitted by the Court of Appeal to the Administrative Court and subsequently transferred to the Upper Tribunal for a determination of the applicant's age. A new decision was in fact not made until 1 October 2012. It consists of the adoption in effect in a witness statement by Deborah Noel, a social worker employed by the respondent, of a report by an age assessor, Mr Kenneth Ambat.

5. It is relevant to mention at this stage a preliminary issue that arose before us as to the admissibility of evidence submitted late in the day on behalf of the applicant. On 16 January 2013 Mr Ockelton, Vice President of the Upper Tribunal (Immigration and Asylum Chamber) ordered that the applicant could not seek to rely on any amended grounds or serve any additional evidence. This was a consequence of the failure on the part of the applicant to comply with a previous order of 12 October 2012. The evidence on which the applicant sought to rely consisted of a further witness statement of his dated 13 March 2013, a witness statement of Mr Abdulkadir Turkey of 19 March 2013, a witness statement of Kamal Mohammed of 25 March 2013, a witness statement of Colin Michael Ravden of 26 March 2013, a birth certificate in the name of the applicant, and an expert report concerning that and previously submitted documents, by Professor Gaim Kibreab, dated 5 April 2013.

6. We can condense quite significantly the argument that was made before us concerning this evidence. We were concerned and remain concerned at the fact that no formal application to admit this evidence in light of Mr Ockelton's order had been made prior to oral submissions by Mr Buley on the day of the hearing. Essentially Mr Rutledge QC on behalf of the respondent took a pragmatic view, bearing in mind the inquisitorial nature of the hearing and the relevance of the evidence. He suggested that the matter had to be approached on the basis of what had been said by the Immigration Appeal Tribunal in *Tanveer Ahmed* [2002] IAR 318, that in assessing credibility it is necessary to take into account the late delivery of evidence. The Tribunal would have to evaluate the evidence and its timing. He also made the point with respect to paragraph 12 of Mr Ravden's report that it was not agreed that Mr Ambat had implied that he accepted the truth of what SO had told him. Mr Rutledge emphasised the need for finalising the case, bearing in mind the period of time over which the proceedings had taken place and previous adjournments. Mr Buley argued that best efforts had been made to obtain the documents and he hoped there would not be criticism of those involved in their provision. In particular efforts had been made to obtain the birth certificate which had been

given by the applicant to his immigration solicitors, some time previously and it was not possible to apply for its admission until they had seen it.

7. On consideration we accepted that the further evidence should be admitted, given its clear relevance to the proceedings, though we deprecated the late production of the evidence.

8. We turn to SO's account. In his screening interview on 26 September 2007 he said that he had left Eritrea on 18 September 2007 and arrived in the United Kingdom on 25 September. He had travelled via Sudan and one other country (unknown). He said the Immigration Officer checked his passport and said "Welcome" and let him pass through.

9. In his statement, dated 19 October 2007, he said that he was born on 6 July 1990 and had lived in Asmara, Eritrea, all his life. He spoke Tigrinya and a little Arabic. He said that approximately two months before he came to the United Kingdom his father received a letter stating that the applicant was required to report to Sawa for military service. His father said that he would not allow him to report and said that many of his cousins and nephews had not returned from Sawa and he would not allow his only son to disappear in the same way. He said that during the two months after his father received the letter he remained in hiding in Asmara. On 18 September 2007 he was introduced to an army officer whom he had never met before. He had no identification documents with him. The officer took him by car to Tesseney where another man was waiting to take him to Kessala. He did not know this man's name or nationality and the man spoke Arabic and the applicant could not understand him very well. A man drove him to Kessala and he spent the night there at the man's home and the next day the man drove him to Khartoum. He said that he did not speak to any officials himself at any time during the journey from Asmara to Khartoum. At checkpoints the driver simply spoke to the official whilst the applicant remained in the car. He did not hear what was said and he was not asked any questions.

10. On arrival in Khartoum on 19 September the man handed him over to a third man whose name and nationality again he never knew, and who spoke Arabic. He remained in Khartoum for approximately a week staying at this man's home and on 25 September he boarded a flight from Khartoum to the United Kingdom in the company of the same man. The man sat apart from him during the flight and told him not to speak anyone and to follow him once he had landed. The plane stopped once on its flight to the United Kingdom but the applicant did not know where, as he did not leave the plane. He said that just before landing in the United Kingdom the man gave him a red document that looked like a passport. He did not open it and did not know what details it contained, following the man's instructions not to open the document. He followed the man off the plane and through the airport and when he showed the document to the British officials they did not stamp it or ask him questions but simply said "Welcome". Once he had passed through immigration the man asked him to return the passport to him and he did so. He was driven by a fourth man whom he did not know to that man's home and he spent the night at that house. The next day the driver dropped him off outside the offices of his solicitors, as they became, and he was met there by an Eritrean man who interpreted for him during his interview with the solicitor. He explained that he was completely reliant on the men who helped him on his journey. The man whom he travelled with on the plane gave him strict instructions not to speak to anyone.

11. The applicant's answers at his asylum interview, which was conducted on 30 October 2007, essentially repeat what is set out in his statement. There are, however, a number of further matters. At question 23 he was asked what the terrain was in Kessala and whether it was mountainous or flat and he said it was just small houses and flat land and no mountains. He did not know the name of the

agent with whom he left Asmara as his father told him not to ask any questions. The agent with whom he was on the plane did not tell him on whose name he was travelling. He was asked what he would have said if someone had asked him his name and said that the agent would answer and did not tell him to say anything.

12. At question 51 the applicant was shown a photograph of someone who obtained a UK visa in Riyadh who the Immigration Officer said he believed to be the applicant. He was asked whether it was his picture and said "no". he denied it again and also denied applying for a UK visa in Riyadh under this name.

13. There was then a break for some ten minutes and then when the applicant was asked again whether it was him in the picture he said yes, he took it three months ago. He denied having applied for a UK visa in Riyadh. He said it was not his passport and he did not know how it was that his photograph was used to apply for a UK visa in Riyadh. He agreed that the photograph was his, but said he did not have a passport. He did not know or understand how his photograph got inside the passport. He did not know where Riyadh was and had never been there. He was asked why the photograph was taken and he said he thought it was for school. He was asked why it was taken for school and said he did not know, his father told him to provide him with a photograph and he had given the photograph to his father. He denied taking part in the interview in Riyadh and had never taken part in an interview by phone. He denied that the signature on the Visa Application Form was his. He had never heard of the sponsor of the visa application and said he knew nothing about it.

14. He did not have any proof of his identity with him. He said his father advised him not to take any proof of identity with him. He was not in contact with his family in Eritrea as he did not have a contact number. He was asked whether he had any documents he could get sent from Eritrea to prove his identity and said he had nothing and said he did not have an ID card. He had had a school card which had enabled him to register for school, but he had left it in Eritrea. He was asked whether he had a birth certificate and said "no". His birth had been registered and when asked why he thought he did not have a birth certificate he said he had not seen it and did not know.

15. Returning to the photograph, he said he could not remember how long ago it was taken but it was about a year and his father had asked him to take a photograph and he had done it. As regards the terrain in Kessala he said it was dark and he had not seen it properly and he thought it was flat. He left Kessala the next day in the morning at 6.00 am and it had not been really dark then. It was put to him with the production of pictures of Kessala that it was a very mountainous area and he said he had not seen this all and had not seen mountains. He said it was dark and he could not see and he was a bit scared and all of his concern was for his safety.

16. As regards the call-up letter he said he did not read himself although it was addressed to him. His father had received it. He had no idea as to whether it came by post or was served in person. He had not seen it and had not asked to see it as his father had told him not to worry. He then said he had asked to see it but his father had told him not to worry about it. The call-up letter was with his father. He was asked whether he could ask his father to send a copy to him and he asked how he could ask him and asked whether they wanted him to write a letter. He did not know whether his father would send a copy if he wrote to him. He was in hiding in the family house in Asmara between the time of receiving the call-up letter and leaving. Sometimes he went to a relative's house.

17. The applicant went on to answer a number of questions about Asmara including the market where he said his father worked, its distance from his house, the district (Akria) in Asmara in which he lived,

the names of other districts in Asmara, the names of newspapers and radio stations and sports teams in Asmara.

18. In his most recent statement of 13 March 2013 the applicant denies being HH. He acknowledges that the photograph in HH's documents is him (SO). He remembers having the photograph taken when he was taken by his father to a shopping district in Asmara and he was told that the photograph was needed for papers in relation to school and his education.

19. He says in the statement that he did not have any documentary evidence to support his age or identity when he arrived in the United Kingdom. He had not questioned his father and he trusted him. He said that after they landed at Heathrow and had disembarked from the plane the agent handed him a red travel document and he passed through immigration whereafter the agent took the travel document back. He had not looked inside the document and just did what he was told.

20. He refers to having contacted his family on three occasions since being in the Kingdom. The first time was in 2009 when he sent a verbal message to them through a member of the Eritrean community, requesting documents that would support his immigration case. This person responded with a verbal message, but eventually the applicant's father responded by sending him a conscription letter and a certificate of immunisation.

21. On the second occasion he wrote to his mother as he was missing her very much and this must have been, he said, in around September 2011. By this time he had convinced himself that it was safer to make direct contact with his family. His mother wrote a letter back to him on 7 November 2011 and the letter and the translation are exhibited to the statement. The applicant expresses concerns that if the government were aware of the contact they would reprimand the mother or ask her for money and hence he did not send letters directly to his family sooner.

22. The third communication was sent after he received Mr Ambat's age assessment and he said he was upset because this questioned his identity. He wrote and asked his mother to send him all documents available at home including school certificates and any birth certificates and she responded after about four to six weeks, including his original birth certificate which the applicant then gave to his immigration solicitor.

23. In his statement the applicant also refers to the sessions he had with his support worker, Mr Ravden. He had told him he had written to his family and asked for his birth certificate and any documents that might help. Mr Ravden had encouraged him to write by telling him that one of the other Eritreans from his class had made contact with his family even though he had previously held back from doing so. The applicant had not told his solicitors at the time because he was unsure whether or not the letter would reach his mother and whether anything would result from it. He was also scared that the letter would be intercepted. In her letter his mother referred to problems she was having with his father. He had known that they were having problems in their marriage as these had been going on for a long time, and he thought that they lived separately. The most recent letter his mother sent showed a different address on the envelope and he was not sure why this was the case. He did not recognise the address so he thought she might have opted to use a safe address or the address of a different family member.

24. He referred to meeting Kamal Mohammed at a wedding party in 2007. He had gone there with his friend Jabar and he saw Kamal and recognised him. He knew Kamal in Asmara as he lived in the neighbourhood and grew up in the same neighbourhood as the applicant's mother and her brothers and Kamal knew the applicant's mother and maternal grandfather and used to visit his grandfather at

his home. He had last seen him in Eritrea in about 1999 or 2000. The meeting at the wedding in 2007 was a very short meeting and he did not see Kamal again until the end of 2012.

25. The second person that he had met in the United Kingdom whom he knew in Eritrea was Abdulkadir Turkey. He met him in October or November 2012 at Jabar's house. They recognised each other immediately. Abdulkadir was a very good friend of the applicant's mother's younger brother, his uncle Mubarak. He used to see Abdulkadir often at his grandfather's house where Mubarak lived. It was Abdulkadir who got the applicant back in touch with Kamal Mohammed as they knew each other. The last time he had seen Abdulkadir prior to seeing him in the United Kingdom in 2007 was in Asmara. He used to see him in the mosque in the same neighbourhood as his grandfather. Abdulkadir suggested that he contact Kamal who he knew was in the United Kingdom and whom he had seen, and they met up.

26. In his oral evidence before us the applicant confirmed the correctness of the contents of his statements. When cross-examined he said that when the call-up letter came he was out playing in the area and his father had told him he had received it. It was put to him that the letter was addressed to him and he said "yes, but youngsters' parents received letters for them". He was asked why he had not asked to see it and said they could not ask their fathers and he agreed that it was risky that he hid at home after receiving the letter but said it was also difficult to find a place to hide.

27. He was asked why he said Kessala was flat when the photographs showed that it was mountainous and he said that they had entered at night and when he came out it was morning and he saw no mountains at all. He was asked whether that was because it was dark and he said probably they passed the mountains as it was dark. It was put to him that he would see them anyway and he said he was not aware of the mountains and he was frightened and it was at night time and he was not thinking about the landscape of the place but thinking how to be safe.

28. At the Sudan border the agent had spoken to the man and they had no problem. He had been sitting in the back and was visible with his luggage at his feet. He was asked what he would have said if he had been asked and said that he would have answered what he could, but his father had told him that the agent was responsible for everything. When the question was repeated he said he could tell them his name. He was asked whether that would be the case even though he was fleeing because he had been conscripted, and he had to tell his name. The agent had not told him anything to do and had not told him to lie to them. He accepted that he had come to the United Kingdom on a false passport and that possibly that involved a lie, yet he would have said who he was if asked earlier. But, he said, his father had arranged everything and the man knew what to do and his father had told him he would leave Eritrea safely with the agent. He said that he was given the document which he assumed was a passport when he was leaving the plane.

29. It was put to him that there was an inconsistency in his evidence as to whether he was given it when he was leaving the plane or after he had left the plane and he said that the agent gave him the passport when they were leaving the plane and still on the plane and as to any discrepancies it was five years ago and very difficult to recall all the details. He had not opened the document. He trusted the man. If anyone had asked him on the plane who he was he would have asked the man.

30. He accepted that the photograph on HH's Visa Application Form and passport were his photograph. He agreed that he had initially denied that when he was asked by the Immigration Officer and when asked why he said he was scared and shocked at how his picture had got there and did not know how it had happened. He had been shocked as he knew he left Eritrea illegally and entered the United Kingdom illegally and this would be a forged document that they had put his picture under. He

had no clue how his photograph got on to the visa and the passport issued to HH. He denied being HH. He did not recall being interviewed in Riyadh. With regard to him having said earlier that his father could have had something to do with the photograph he said that when he came to the United Kingdom he saw the documents and it was probably done as a forgery and he did not know. As to whether his father had anything to do with it, he said that the picture was his picture and not his father's and it should have been taken from his father or mother. He had no idea whether his father had anything to do with his photograph being on that passport. He had not asked his father about this. He had explained to his mother about the forged documents and told her his picture was in a different document and that he needed ID to prove who he was.

31. He had met Kamal in 2007 at a wedding. He could not recall the exact date. He thought it was after his asylum claim had been made and before the decision. He was asked whether when he got the decision he had told the Home Office he had met a man at a wedding who might be able to vouch for him and he said he had not even remembered him and they had just met and departed. It had not come into his mind and he had not remembered. He was new at that time and knew nothing about documents and the asylum system. He was asked why it had come into his mind now and said that when he met Kamal again he told him all about his problems with documents and he said he would help him and he had told his solicitor who had written to Kamal and Kamal had said he knew him.

32. He was referred to the birth certificate. He agreed that it seemed that it was issued on 1 August 1996. He agreed that he presumed his parents needed it to register him at school. He agreed that his mother would have had it for years. He agreed that his father's name was not on it, but he did not know why not and said it was the Eritrean government. He agreed that it was the case that he was initially very reluctant to contact his parents to send evidence as he feared that any communication would be intercepted but he was a little more confident by 2009 about contacting his parents. Colin Ravden had told him he would have done so and this gave him confidence to write a letter to his mother.

33. He was asked whether he had asked his mother to give him the birth certificate at that time and said yes, he had told her but the third time he made sure he explained everything right. The question was repeated and he said that on the second occasion he wrote her a letter about her condition and did not mention documents and then she responded with a letter. He knew that he had a birth certificate at that time but he had not seen it. He was asked why he had not asked his mother for it in 2009 and said he did not want to put them at risk. It was put to him that he had asked her to send his call-up letter and he said that when that letter came he had not written except to ask how his mother was and on the third occasion he told her everything and asked her to help him with the documents. He had initially seen the call-up letter of 2009 when they sent it to him. He had received it because he had asked his father by another person to send it. When he asked the family he had not mentioned the papers but said he needed papers which proved him.

34. He had initially obtained the birth certificate in October or the end of September 2012 and he had given it to his immigration solicitors and not to his age assessment solicitors. He was asked whether he had not thought it would be helpful to give it to Fisher Meredith and said his solicitor asked the immigration solicitor to send her a copy. He had not even taken a photocopy. He was asked why he had not told Mr Ambat about the birth certificate or produced it and he said that when he received the documents he gave them to the immigration solicitors and they would provide everybody with it.

35. He could not explain why his district was spelled in three different ways on the birth certificate. He denied that it was a forgery and said it was real. At B81 was the envelope he had received it in, from his mother. It was not an address which he knew. It was his mother's name.

36. On re-examination the applicant said that he had not asked for specific documents when he sent the message to his family requesting documents. He had asked them for any documents which proved who he was. He had not asked for any documents when he wrote to his mother in September 2011. The letter he sent in 2012 was to his mother only and he received the birth certificate in reply. That was the initial time she had sent him documents.

37. We asked the applicant if he knew when his parents separated and he said he did not but when he saw the new address he thought they had separated and his mother was living at a different address. They had argued for a long time. He had not tried to contact his father separately. When we asked him why not he said he loved his mother.

38. In his statement, adopted in oral evidence before us, Mr Turkey, who came to the United Kingdom in November 2011 and successfully claimed asylum, said that he knew the applicant while living in Asmara through the applicant's maternal uncle Mubarak who was a very good friend of his from school days. He had last seen the applicant in Asmara in 2007 and subsequently heard he had left Eritrea. He met him again between October and November 2012 at the home of their mutual friend Jabar. In Eritrea he used to see the applicant through Mubarak because sometimes Mubarak would bring the applicant with him when they went to coffee shops or to get the applicant some sweets in Gezabanda where Mr Turkey and Mubarak attended the mosque. He said that he knew the applicant's mother and could recognise his father but they were not close acquaintances. He knew Kamal Mohammed from Asmara and he had put the applicant back in touch with Kamal as he had his phone number and his phone.

39. In his oral evidence he said that the last time he saw the applicant in Eritrea was in Asmara in around May 2007 and occasionally in Gezabanda at the mosque. Although the applicant's appearance had changed between then and now he could not be mistaken as to his identity, and was quite sure. He referred to Jabar as being the applicant's friend and his (Mr Turkey's) extended relative. It was put to him that he said in the statement that Jabar was his friend and he said he was a friend of the applicant and a relative of his (Mr Turkey's). They were extended relatives and friends also.

40. It was put to him that his evidence in this regard contrasted and he said perhaps he did not go into details in the statement. He had kept in touch with the applicant since remeeting. They went for tea and for a chat. He was asked why he had not made his witness statement until 19 March and said he was not asked before then and when the applicant asked he was ready to assist him. It was put to him that he was the applicant's friend and had seen him continuously and was here to help him and he said he had not come to help his friend but to tell the truth. It was put to him the truth was that the applicant was not SO but HH who came to the United Kingdom from Saudi Arabia. Mr Turkey said that the person he knew as SO was the person who lived in Asmara and Gezabanda and whose uncle was Mubarak.

41. On re-examination he said that he had a lot of extended relatives and was friends with about half of them. He could not recall when he had contact with the solicitors.

42. In his witness statement, adopted in his oral evidence, Kamal Mohammed said that he knew the applicant in Eritrea because the applicant's mother was from the same area as he was from and probably knew his maternal grandparents better than he knew the Applicants father. He had met the



applicant once by chance in 2007 at a wedding in London. He had not recognised him when said hello to him. He remembered thinking that he had grown so much taller but did not recognise him until he introduced himself. He had probably seen him in the few years before he left Eritrea but could not remember exactly when. He did not think much about the applicant afterwards but at the end of 2012 he was contacted by Mr Turkey whom he also knew from Asmara and he had put the applicant and Mr Mohammed back in contact. In his oral evidence he said it was not possible that he had been deceived by the applicant. Although he had not seen him for several years his facial structure was the same. He had last seen the applicant before the hearing, possibly last month in west London together with Mr Turkey. They had had tea together. Previously he had last seen him in Asmara in around 2000. He did not know what school the applicant had attended. The applicant's grandparents were Mr Mohammed's neighbours and he had not known where his parents were. He had seen him when he had come to his grandparents at Eid when he had played at Mohammed's place. His mother had come once a week. As to not knowing what school he attended, the applicant lived in a different area.

43. He was sure that he was the same person whom he had seen in 2007 in London previously and Eritrea. They met at the wedding of the applicant in 2007 and he thought it was perhaps the wedding of a person called Negash. There were 150 to 250 people there. The applicant had not told him he had come to the United Kingdom to claim asylum. They were just thinking about the marriage and he had planned to meet him again but could not. There had been no decision as such with the applicant asking him to vouch for him. It was put to him that he had come here today to say that he was SO when in fact he was HH and Mr Mohammed said he had not come to witness for HH but had come to witness for SO.

44. Colin Ravden has provided a witness statement, dated 26 March 2013, which is not contested. He has known the applicant since October 2007 when he joined Mr Ravden's class at DOST, which is a project for young asylum seekers and refugees. Previously Mr Ravden was a teacher, for a number of years a head teacher. The applicant attended his classes for a period of time and did well, and although the applicant now has little contact with Dost he continues to maintain close contact with Mr Ravden personally and Mr Ravden considers that he is probably the British adult whom the applicant knows best. The applicant turns to him for advice and support and he has accompanied him to many solicitors' appointments and immigration hearings and other appointments.

45. Mr Ravden comments on the unanimity with which the Eritrean contingent in his class warned each other against making contact with families back home. There were six other Eritreans in addition to the applicant. The applicant played a leading role in discussions concerning the two different cultures and his comments were approved by the other Eritreans. His comments included specific reference to Asmara. He discussed with the applicant whether it would be possible to have evidence sent from Eritrea when he became aware of the Applicants identity difficulties with the Home Office. He returned to the issue several times but did not press him as he did not want to be responsible for persuading the applicant to take action that led to trouble for his family. He says that the applicant has enormous respect for adults and had told him that his father had told him not to contact home and he had found it very difficult to break this instruction. The applicant had said he had had a difficult relationship with his father as he was unhappy with the way that he treated his mother. The applicant had told him in 2009 that he had decided to make contact with his family in a way that should be safe for them, via a fellow Eritrean who was returning to Eritrea. He said that he attended, as an observer, the age assessment carried out by Mr Ambat and that Mr Ambat implied that he accepted the truth of what he was told but the report in 2012 concentrated overwhelmingly on the identity issues. This led

the applicant to realise how vital it was to secure compelling evidence and Mr Ravden encouraged him to write to his family. He speaks highly of the applicant's character and behaviour.

46. In Deborah Knowles' witness statement she exhibits and reports the findings in the age assessment review carried out by Mr Ambat and Ms Burton. The applicant was interviewed on 24 August 2011 and again on 7 September 2012. Comments are made in the review on the respondent's age assessment of 2 October 2007. It is said that there have been significant developments within the sector that have arisen since this assessment was completed. It is noted that it was conducted by a single worker and that it appears to have been on the basis of a relatively short interview. Her report was of a length that the assessor would have expected to find in a single section of an age assessment report. It did not appear that Ms Carr, who carried out the assessment, would have had access to the Applicant's witness statement. His journey to the United Kingdom and reasons for leaving Eritrea were not discussed within the original assessment report. It seemed unlikely that the local authority were aware of the UKBA evidence which undermined the asserted identity.

47. At paragraph 2.7 the authors of the report state that the independent assessors placed no weight on the applicant's physical appearance at the time when they assessed him since it was not felt that this could be seen as a determinative factor given the age range under considerations. It is said that similar considerations would apply to any observations of demeanours at this time. The assessor had accepted the asserted age but acknowledged that he appeared "nervous" and "afraid of answering questions". The opinion of the independent assessors was that the assessment fell short of the standard required to ensure compliance with both case law and best practice in the area. It is noted that the report was countersigned by a manager and it therefore appeared that it had been completed and filed without any level of management oversight and the independent assessors were confident that the local authority would have agreed that the assessment did not meet the standard required to demonstrate good evidence-based practice and critical analysis of the information gained during the assessment process.

48. The report notes in summary form the documents taken into account by the independent assessors. It goes on to review the applicant's evidence and also the evidence concerning HH. In light of the questions raised in relation to that, Mr Ambat wrote to the British Embassy in Riyadh. It transpired in the course of evidence that the British Embassy was reluctant to provide this information directly to Mr Ambat, and as a consequence it was relayed to the Treasury Solicitors who passed the information on to the local authority's solicitors and thence to Mr Ambat. Among other things the response stated when asked whether the Eritrean passport could be accepted as genuine that there was nothing adverse identified when it was assessed, but UKBA/FCO were no longer in possession of the passport. It is noted that all ECOs and entry clearance assistants have received forgery training and applied this expertise when looking at passports and if there is any suspicion as to ethnicity the case is referred to a specialist department. It is said to be a possibility that HH could have previously entered Eritrea as a dependant on a parent's passport and then applied for a new passport in Saudi Arabia but there was no evidence to confirm or deny this assertion. There was no evidence to confirm that he had left Eritrea illegally. Asked as to whether there was evidence that HH had a continuing right to reside in Saudi Arabia, a general enquiry had been made against his name and the results were awaited. As to whether there was conclusive evidence that placed HH in Saudi Arabia at the time of the application the response was yes, on the basis that although no biometrics were taken for him an interview in person was conducted at the British Embassy on 21 August 2007.

49. The independent assessors put their provisional conclusions to the applicant and his response to that appears to have been calm. The conclusion of the independent assessors is that the applicant is in fact HH and aged 25 years at the time of submitting the report.

50. In his oral evidence Mr Ambat adopted the report. He had subsequently seen the additional witness statement and the documents. There was nothing in this that caused him to revise his opinion that the applicant was HH.

51. In cross-examination Mr Ambat agreed that he was not a witness of primary fact. He was asked whether he gave his evidence as an expert and said it was as an independent social worker and was aware that it would only be admitted if it was expert evidence. He was referred to the guidance at part 35 of the CPR and said that he did put himself forward as an expert in age assessment but nothing else. He agreed that he should not give evidence on matters outside his expertise.

52. He was aware of criticisms that had been made of him in the courts. He was referred to paragraph 237 of the judgment of Lord Stewart in *ISA [2012] CSOH 134*. He agreed that he was criticised for giving evidence outside any area of expertise he purported to have. His opinion there had been on the presentation of a young person, but he said there was a lot more to consider. He had given his impression of the individual as an expert. He was asked whether in light of that criticism he should not have been particularly careful about the limits of his expertise in this report and said yes. He said of course he had taken heed of the advice and his practice had evolved. He agreed it was the case that no weight could be placed on the physical appearance or demeanour of the applicant.

53. He was asked whether the documents listed at paragraph 1.2 were the only documents that he had seen and said yes, though a lot were in the trial bundle. If a document was not referred to he had not looked at it. He was asked whether he had not seen the social services file on the applicant and he said he had seen most of it and it had been in the first bundle. He was referred to documents at tab B of bundle 2 and it was put to him that he had not seen it separately from the High Court bundle and he said he had requested it and he had thought he had all the documents he needed. He was asked whether he had for example seen the Pathway Plan document at page 61 and said he had seen it and had spoken to the author. It was put to him that it was not referred to in paragraph 1.2 and he said it was in the first bundle of 9 January 2008. It was suggested to him that he had said he had seen it before he knew which plan it was and he said he had seen several but he could not say he knew how many there were in total. It was suggested to him that he had not seen them all and he said he believed he had seen them all now and he had asked for the most recent. He thought that this particular document was in subparagraph (i) of paragraph 1.2 of his report.

54. He was referred to the document at page 84 of tab D and was asked whether he had seen it when he had prepared the report and he said he had thought so given the date on it of 25 October 2007. As regards the profile notes at page 116 onwards, he said he had seen them but he could not recall which bundle they were in. It was put to him that they were not in subparagraph (i) of paragraph 1.2 and he said he did not know. It was suggested that they were not in fact in any of the categories of documents referred to at paragraph 1.2 and he said he did not know and he apologised if he had failed to list them. It was put to him that it was either untrue that he had seen all or they were not listed and he said it was the latter. His practice had evolved. He agreed that it was shoddy in that section. It was put to him that the Pathway plans were not in the bundle and he said that he had perused them all and had spoken to Mr Mirza who had worked with the applicant.

55. It was put to Mr Ambat that the reason for the questions was that he could be claiming to be expert on the perusal of social services files but he did not refer to those documents in the report. He said that he would rely on them in a different kind of case and this was about identity not age.

56. He was asked, with reference to paragraph 6.1 of his report, whether his opinion about the family was a matter of expertise and he said "no". He thought it was a matter he had to consider as a local authority social worker. It was all evolving. He was not sure the guidelines fitted with the work he was asked to do. He felt qualified to do an age assessment where the age was unknown and in this case most social workers would not have gone as far he had, but he was asked to consider these documents. He did not claim to be a country expert.

57. He was asked whether he accepted that paragraph 6.1 was not within his expertise and he said he was entitled to have an opinion. It was put to him that he was not entitled to put himself forward as an expert and he said he was not a country expert, not on Eritrea. He could defend his opinions. He said that the factual circumstances about the journey of a migrant to the United Kingdom were all a large part of any age assessment. He agreed that he was not an expert in truth and the Tribunal was not bound by non-expert opinion. He said that where there was a negative decision about age then it was important that views were taken on credibility and it was necessary to explain to the person why those views were reached.

58. Mr Ambat said that the text of the letter at paragraph 32 annexed to his report was his text. The final sentence at the top paragraph at page 33 entailed him seeking to confirm what additional checks had been made. He agreed he had not exhibited a copy of the response. He could get it (as set out above) and this was subsequently provided on the basis that we have set out. He agreed that he should have exhibited a copy of the email and that it was bad practice not to. It would be on his file.

59. He could say that his expertise extended to presentation and appearance of a person and if they were a child, but not in this case. The report was really an expression of his views as to the truthfulness of an adult in light of the documents but was as much about considering documents. It was not appropriate for him to consider whether the applicant had told the truth today. He had considered the provenance of the documents, not the truthfulness, in coming to his view. Even if the document was genuine it could concern a different person. He did not have a view on the genuineness of the document.

60. In re-examination Mr Ambat said that there was always judicial criticism. He was referred to tab 9 paragraph 49 in ALA [2012] CSOH 135 and agreed that it seemed Lord Stewart had accepted that he had substantial experience of age assessments. He was also referred to the decision of the Upper Tribunal in MW CO/10823/2011 at tab 8, at paragraph 93 onwards. He had been instructed always by applicants in the past. He said that what was said at paragraph 93 was right. He had twelve to thirteen years' experience of African cases which were mainly if not all from Sudan and Eritrea. He had looked at documents and considered escape routes over those years. He had never seen a birth certificate from Asmara before. He was asked whether he felt qualified to express any view about the validity of the birth certificate and said he could not conclude it was true given his view of the Applicants' identity and hence he had doubts.

### **Other Evidence**

61. The original age assessment was carried out by Ms Carr on 2 October 2007. She noted the applicant's physical appearance including the fact that he had no facial hair and generally shy demeanour. With regard to his interacting during the assessment he interacted, she said, as would be

expected for a young person of his age. She said he spoke with confidence but it was clear he was nervous and afraid of answering questions. He gave the names and approximate ages of his parents. He said that he had just completed his year 11 education and used to play with his friends and never had a job and used to help his mother around the house. He had started school at the age of 6. He referred to his education in a little detail. He said he was able to cook, wash, clean and budget and shop by himself but felt he would require support living in the country and in accessing education and independent skills. He was a practising Muslim and in good health. There was reference to Home Office documents having been a source of information, but it is not said what those documents were, and in light of the date of the assessment it would seem that it could not be no more than at best a relatively brief screening interview and certainly not the asylum interview.

62. Ms Carr assessed the applicant as being a child aged 17.

63. Professor Kibreab has provided an expert report dated 5 April 2013. He is out of the country so it was not possible for him to give oral evidence before us. He comments on three specific matters. First, whether Eritrean government departments other than the Ministry of Defence were involved in the call-up for national service, bearing in mind that the letter to the applicant came from the Ministry of Local Government. His view on this is that the fact that it was sent to his father by the Ministry of Local Government is something known to happen in practice and consistent with Professor Kibreab's own observations, sources and background information.

64. As to the likelihood of the call-up letter, the Child Health Growth and Promotion Card and birth certificate being genuine, he makes it clear that he is not in a position to provide a definitive authentication of the documents and states that he is not qualified to authenticate documents. He says that however based on comparison he is able to give an opinion regarding the documents and express an opinion as to whether they appear to be genuine when compared with similar documents with which he is familiar.

65. So far as he can tell, the birth certificate and health card are original documents, though he only had a copy, as do we, of the call up letter. He notes a slightly different spelling of the applicant's name in the English translation of the call up letter and says that the translations of Eritrean names into English is not standardised with slight variations in the spelling of the name Omar not being significant and they are likely to be one and the same surname. He considers that the call-up letter's details appear to correspond with other genuine call up letters he has seen before. The Child Health and Growth Promotion Card and birth certificate appear to be similar to genuine cards he has seen before and he showed both of them to trusted sources who said that they were similar to ones with which they had been issued.

## **Assessment**

66. There is no burden of proof in a case such as this. We have to decide on the balance of probabilities what the age of the applicant is, and in this case that effectively comes down to deciding whether he is SO as he claims to be, or HH as the respondent claims him to be.

67. We start with a consideration of the applicant's evidence, which we have set out above.

68. Mr Rutledge has raised a number of concerns about the credibility of the applicant's evidence, to which Mr Buley has responded. We do not consider it to be adverse to the applicant's credibility that his father, on his account, opened the call up letter and did not show it to him. We accept that the father might open his teenage son's letters and decide on the proper way of dealing with such an

important matter as the question of his call up. Nor do we have any particular concerns about the relative passivity of the applicant in not asking the agents their names. The discrepancy as to whether the third agent gave the applicant the passport while still on the plane or soon after they disembarked seems to us to be essentially minor.

69. However, we do have concerns about the fact that the applicant appears to have been content to travel from his home to the United Kingdom without ever enquiring as to the identity under which he was travelling. We do not accept that his passivity could credibly extend to never asking the agent any questions of this kind. It is relevant to note the background information, to which Mr Rutledge referred us, concerning the road blocks and checks both within Eritrea and at the Sudanese border. We do not find credible the claim that not having been told the identity under which he was travelling he would not have asked about it, given the inevitable risk of being stopped and questioned at any stage of the journey.

70. We also find it lacking in credibility that he would have been able to board the aircraft at Khartoum without documentation. We bear in mind what Mr Buley says about the possibility of bribes having been employed by the agents for every stage of the journey, and we do not dismiss that possibility, but it seems to us to be inherently implausible that a person would be able to board a flight without documentation at Khartoum and also they would be prepared to undertake a journey of this kind without at any stage facing questions about the identity in which they were travelling or about the documentation which was being used.

71. We also consider adverse to the applicant's credibility the fact that at interview he described the terrain in Kassala as being flat land with no mountains, contrasting with the mountains that clearly appear in the background to the town as shown in the photographs with which we have been provided. In response to question 116 he said that it was not really dark when he left Kassala the morning after he arrived. We can understand that he might have been concerned about his safety and scared, but we do not find it credible that he would not have noticed the sizeable range of mountains which could clearly be seen in the photographs.

72. Having met Mr Mohammed in 2007 soon after his arrival in the United Kingdom, he did not see fit to mention that fact to his representatives. Even if it is the case that the meeting took place between his interview and the Home Office decision on his case, once that decision had been made, and the doubts about his identity had been raised, we have not found credible any explanation he has given as to why he did not at that stage remember the meeting with Mr Mohammed, if indeed it took place, and relay that information to his representatives. Nor do we understand why, given that the age assessment procedures were well under way, when he received the birth certificate from his mother he did not at least provide a copy of that to Fisher Meredith rather than sending the document to his immigration solicitors.

73. To an extent we agree with Mr Rutledge that the evidence of Mr Turkey and Mr Mohammed lacked precision. Neither however resiled from his identification of the applicant as the person he says he is, and there is an essential consistency between their evidence and that of the applicant.

74. As regards the evidence of Mr Ambat, we have been unable to derive more than minimal assistance from this. Mr Ambat properly accepted that he could not say anything about the applicant's age from his appearance or demeanour given the age range. We have derived a little help from what he says about the 2007 age assessment, with regard to the detail in the report and the then prevalent procedures. But essentially his report goes dangerously close to trespassing on the Tribunal's territory in assessing the credibility of the applicant.

75. Inevitably social workers carrying out an age assessment will take into account the credibility of an applicant in assessing their age. It is not a process that can be carried out in a vacuum of simply considering a person's appearance, demeanour and interaction with others. If a person's account of their background or how they came to the United Kingdom or their actions while in the United Kingdom is palpably untrue, then that must have some relevance to their claim to be of the age they claim to be, although clearly it is a matter that must be considered in the round together with the other matters such as demeanour, appearance and interaction. But in a case such as this where those matters last mentioned do not feature as part of the age assessment carried out by an independent assessor, we can see little if any value to the views of such an assessor carrying out a review. The matters that fall for consideration in such a case are essentially matters for the Tribunal, and that is the basis upon which we assess Mr Ambat's report and his oral evidence.

76. We have summarised the evidence of Mr Ravden above. He has, entirely properly, not sought to assess the applicant's age. We note his observations of the applicant including approval of comments made by the applicant during discussions during other Eritreans, those comments including specific reference to Asmara, and the encouragement that Mr Ravden gave him where appropriate, to make contact with his family. His evidence takes matters little further but it is of relevance and assists.

77. Professor Kibreab is unable to provide a definitive authentication of the documents that he saw. He is able to confirm that there is nothing surprising about the call-up letter having been issued by the Ministry of Local Government. As regards the Child Health and Growth Promotion Card and the birth certificate, he has shown both of those to trusted sources who say they are similar to their own documents. He says there is nothing to suggest that the slight variations in the spelling of the applicant's surname are of any significance. He says that the translation of Eritrean names into English is not standardised and that more often than not the translations are phonetic and the spelling is random. He does not comment on the fact that the word Maakal which is part of the address of both the applicant on his birth certificate and the Public Registration Officer is spelt variously in the way set out above and also as Maakel and Maekel.

78. In his skeleton argument and in oral submissions Mr Buley emphasised as one of the aspects of his positive case, as he put it, the evidence on the social services file. He argued that this was valuable as it gave a snapshot of the applicant's behaviour at a particular time. He argued that the applicant would have had to have been very sophisticated to be acting and the evidence in that file had not been before the Immigration Judge. It was striking, Mr Buley argued, that no one had ever had any reason to doubt the applicant's age among any of the social workers with whom he dealt. As an example, he drew our attention to the review carried out on 25 October 2007, to be found at page 84 of tab D. Among other things it is noted there that the applicant spoke very little English, was said to be settling in slowly, was developing a relationship with his key worker and could tend to be very dependent. This, he said, should be contrasted with a 20 year old pursuing an active deception and what was said there was highly consistent with the applicant's evidence about his journey. He did not question the adults then nor while in the United Kingdom.

79. There was reference at page 86 in the same review to the fact that he appeared to miss his family members and had broken down crying, and the same reaction could be noted in the profile note of 26 October 2007 where he was said to be missing his mother to the point where he broke down on the previous day.

80. From the Pathway Plan of 9 January 2008, beginning at page 61 of tab D, there is reference for example at page 65 of the applicant having developed a good relationship with two young people in

the flat who had become like family to him. They would have been in the 16 to 18 age range. Also, at page 76, he was noted as having shown a keen interest in establishing contact with his relatives back home, most especially his mother to whom he had written a letter but had not yet received a reply. There is further reference to him having written a letter to his mother at page 74 and a reference there also to the fact that he sometimes broke down in tears when talking about his mother. He was said to have developed a good relationship with some of the young people with whom he shared his placement. There was a reference also in oral evidence when asked why he had not contacted or tried to contact his father to him saying "I love my mum". It was, said Mr Buley, very difficult to imagine this was in fact HH playing a role. The social services file was said to contain an independent picture of his behaviour and was consistent.

81. We agree that this is again relevant evidence to be borne in mind when making our overall assessment of the evidence. It is clear that both at the original age assessment and subsequently the respondent saw no reason to doubt the age of the applicant until the point at which it took on board the views of the Home Office and the conclusions of the Immigration Judge.

82. We turn next to the documents. We have noted above the points made about the three different ways in which a particular part of an address is set out in the birth certificate. We have also set out Professor Kibreab's views which are of course of assistance concerning these documents. We have looked at the documents ourselves. We are not experts in documentation and can say no more than that subject to the points about the various spellings on the birth certificate there is nothing on the face of them to suggest to us that they are other than genuine. They have to be seen with the other evidence in the round, however.

83. A major point upon which Mr Rutledge relied was the fact that the applicant's photograph, on his own admission, appears in the Visa Application Form and on the passport of HH. The applicant in oral evidence was unable to give any explanation for this although he had previously referred to his father having taken the photographs after he had originally had them taken. He did not suggest any particular use to which his father might have put the photographs. As Mr Buley argued, without that evidence it is difficult to imagine that there would have been any need for an age assessment for judicial review given the acceptance of the applicant's age on the part of the respondent.

84. There is however this evidence, and it is powerful evidence. To accept that the applicant is who he says he is we would have to conclude that the Entry Clearance Officer either did not compare the face of the person whom she interviewed with the photographs on the Visa Application Form and the passport or that there was such a strong likeness between the person she interviewed and the photographs as not to cause her concern. We do not think we unduly speculate in considering that part of the point of an entry clearance interview is to establish identity, and even if we are wrong about that, it seems to us that ordinary prudence on the part of an Entry Clearance Officer would be to compare the photographs in the documentation before her with the person whom she was interviewing. As a consequence, we are led to the conclusion that the Entry Clearance Officer had no reason to doubt that the person she interviewed was HH, on the basis of a clear identity between that person and the photographs on the Visa Application Form and the passport.

85. We must bring all this evidence together in our assessment of the claim as a whole. The positive case on behalf of the applicant as set out by Mr Buley in his submissions consists of the 2007 age assessment (although that must to a minor extent we think be seen in the context of Mr Ambat's remarks concerning it), the social services file which indicates that no-one at that time had any concerns about the age or identity of the applicant, the evidence of Mr Ravden which, as Mr Buley



accepted, is hearsay and opinion evidence, but who has worked with the applicant for a long time and developed his views on him, the documents, the report of Professor Kibreab and the oral evidence of the applicant and the two witnesses.

86. The negative case consists to a slight extent in Mr Ambat's report, and also the negative credibility matters arising from the applicant's evidence of his journey to the United Kingdom, and the timing of the production of the late evidence and the failure on the applicant's part to alert his representatives and through them the respondent of the potentially strong evidence of Mr Mohammed whom he met as early as 2007 after he had come to the United Kingdom. There is also the fact of the applicant's photograph appearing in the Visa Application Form and passport of HH, a person who we think we can properly take to have been identified as being the person in those photographs having been interviewed by the Entry Clearance Officer.

87. We see that latter piece of evidence as being of particular weight. Taking all these matters in the round, we conclude that on the balance of probabilities the applicant is HH. He is therefore aged 26 and is not entitled to the ongoing services that are potentially available to a formerly relevant child.

88. We make a declaration therefore that the date of birth of the applicant is 21 February 1987 and that at the date of the hearing he was 26 years and 1 month old.

89. The parties may make further submissions on the terms of any further order sought and in particular on the issue of costs, to be received no later than 14 days after the promulgation of this judgment.

Signed Date

Upper Tribunal Judge Allen