



Upper Tribunal

(Immigration and Asylum Chamber)

R (on the application of AS) v London Borough of Croydon AAJR [2013] UKUT 00609(IAC)

Heard at Field House

Determination Promulgated

On 18 and 21 October 2013

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IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Before

UPPER TRIBUNAL JUDGE LATTER

Between

THE QUEEN (ON THE APPLICATION OF AS)

Applicant

and

LONDON BOROUGH OF CROYDON

Respondent

Representation :

For the Applicant: Mr A Suterwalla , instructed by Scott-Moncrieff & Associates

For the Respondent: Ms C Cooper , instructed by London Borough of Croydon

JUDGMENT

Introduction

1. This is an application for judicial review by the applicant, a citizen of Afghanistan of a decision made by the defendant on 17 May 2012 assessing his date of birth as 4 September 1995 as opposed to his claimed date of birth of 4 September 1997. Permission was granted on 12 November 2012 and the application was transferred to the Upper Tribunal. The issue for me is to carry out a fact-finding exercise to determine the applicant's age.

The Evidence before the Tribunal

2. I heard oral evidence from the applicant and his cousin, MS, and on behalf of the respondent, from two social workers, Rebecca Faithfull and Sheila Johnson. The documentary evidence is set out in an agreed bundle indexed and paginated A1-S215. Tab A contains the pleadings, court documents and witness statements, Tab B the age assessment documents and the applicant's documents, Tab C the

party and party correspondence and Tab S, the Social Services file. I was also provided with a bundle of authorities and comprehensive skeleton arguments from both counsel.

Background

3. The applicant arrived in the UK on 5 December 2011 making a clandestine entry by lorry. In his first witness statement at (A53 para 15) the applicant said that the journey took about two to two and a half months and that he had been advised it was likely that he had left Afghanistan in about October 2011 (A53). After he got out of the lorry, he looked for a policeman and was then taken to the Home Office and there was a screening interview (B88-104) on the same day. The applicant claimed that he was 14½ years old and that his date of birth was 30 June 1997. However, in a further statement (B105-111) in support of his asylum application he clarified that he believed his date of birth to be 13 June 1376 in the Afghan calendar; the date was recorded on his school register and his father had confirmed that this was his date of birth when he left Afghanistan.

4. On his way to the UK the agent asked his date of birth and he told him. He was told that the correct year was 1997 but the agent did not translate the day and month and this led to him thinking that his date of birth in the western calendar was 13 June 1997 whereas the correct date would be 4 September 1997. An age assessment was carried out by the respondent on 16 December 2011 and the assessors concluded that the applicant was two years older than claimed, with a date of birth of 4 September 1995. As the applicant was dissatisfied with this assessment, a letter before action was sent to the respondent which led to the offer of a second age assessment which took place on 5 April 2012 and was completed on 3 May 2012. In a decision dated 17 May 2012 the assessors reached the same conclusion as in the first assessment that the applicant was two years older than claimed with a date of birth of 4 September 1995.

The Evidence of the Applicant

5. The applicant's evidence is set out in two witness statements dated 8 August 2012 (A49-59) and 30 September 2013 (A60-67). In his first statement he asserts that his date of birth in the Afghan calendar is 13/06/1376 which he is informed converts to 04/09/1997 in the western calendar but his date of birth had been partially converted by some organisations as 13/06/1997 as in his medical records. He was born in a village in Afghanistan, Qala-e-Akhond, in Kama district, Nangarhar province. He has two younger siblings and when he was 7 he started attending a madrassa in his village to learn the Koran and when 8 the local primary school. The applicant then says:

“ 8. My father gave the school my date of birth of 13/06/1376 when I was first registered at the school. My father knew my exact date of birth. Although my father had not received any formal education, he studied the Koran and he also had basic literacy and numeracy skills having worked in a shop when he was younger. I know my date of birth because my father gave me this information and also I saw my date of birth recorded next to my name in the school register .”

6. The applicant went on to say that when he was 12 his father arranged for an Afghan identity document, a taskira. It was issued in 1388 but he could not recall having his photograph taken for it. His father kept his taskira and his sister's in a safe place but he did not know exactly where they were located. When he was just under 13 his mother died following childbirth and the baby died a couple of days later. His sister stopped going to school after their mother died and started to take care of the household chores. His father had suffered a stroke about three years ago, was paralysed down one side and had to use a walking stick. The applicant resumed year 6 at school but was forced to flee Afghanistan for his own safety because he was in fear of the Taliban. Arrangements were made for

him to leave the country through an agent but he did not know how the trip was funded. His father made the arrangements. The journey to the UK took about two to two and a half months and he arrived on 5 December 2011. He accepted that at the screening interview he gave his date of birth as 13/06/1997 as it had been wrongly converted by the agent. At the first age assessment he had also made a mistake when giving his date of birth as 13/06/1391 in the Afghan calendar rather than 1376. The social workers had made him feel nervous and he thought they were asking about the current year in Afghanistan.

7. In his second statement he confirmed that he has two cousins in the UK and he had met one of them in Afghanistan, MS, who lived in Thornton Heath. He had seen him by chance in a mosque a few months previously and had been very happy to find him. In the second age assessment it was said that he did not have any documents to support his date of birth but his cousin had since given him his taskira.

8. In his oral evidence he confirmed that he was upset at being separated from his father and he did get upset when his family was mentioned. When he first came to the UK, he did not have any skills and his social worker had said to him that she would be like a mother to him and look after him like a son. He had wanted to be placed with a family but instead he had been given accommodation.

9. In cross-examination he accepted he had been in the UK now for two years. He was at college. He said that sometimes he got confused as he did not understand the lessons but he accepted that when he was well mentally, he was able to do good work. He had done some work experience at a restaurant where he had been sent by his key worker so that he could learn to cook and the social workers had come to his home to teach him how to cook vegetables. He was asked about the note at S127 from 9 July 2013 confirming that he had grown in confidence in his cooking and his key worker had not seen any take-away boxes in the house which was a good indicator for his development. The applicant said that when he had take-aways, he now binned them so the social worker did not see them.

10. He explained that his life in Afghanistan had been very hard as his family was poor. He described their home as a mud hut. When asked how many rooms there were in his home, he said he did not remember nor could he remember his father's face. The house did not have electricity and cooking was on a wood burning stove. He accepted that generally men did not cook in Afghanistan. His father had told him that he had two cousins in London but he had only ever seen one cousin. Sometimes this cousin would telephone a shop in the village so that he could speak to the applicant's father. The calls were about once a month and his father would simply mention that his cousin had called. His cousin had come to their home when his mother died which was two years before he left Afghanistan. It would have been four years ago but he could not recall the season or the weather. His cousin came about one to two and a half months after his mother's death. It was put to the applicant that he had said that his mother died one and a half years before he arrived in the UK but he said he did not count the months and did not know this.

11. He had had to leave Afghanistan because of the problems he had had with the Taliban. His father had handed him over to an agent. He took him to Jalalabad, a 45 minute to one hour journey by taxi. This was on the same evening that he had escaped from the Taliban. He stayed in a small room, the agent came in a vehicle and he was taken away. He did not see his father and the agent together. When asked about what he said at B52 about his father and the agent being together, he said that he had not himself seen them talking to each other. When it was put to him that he was not telling the truth, he said that he was and that he had had mental health problems. He accepted that he had

arrived in the UK in December 2011. He could not remember the details of the first age assessment. He was not shaving at that time but had only recently started. He did not remember saying that he was shaving then.

12. He had met his cousin, MS, in London recently. He had been praying in a mosque one Friday when he saw him there. He did not remember how long ago this was save that it was a day off from college. He did not know when his cousin gave him the taskira, saying it might have been a month ago, maybe more or less but he had no exact memory of this. He did not know how his cousin got the taskira as he does not discuss his family with him because he gets upset. He did not know where his cousin's father lived. He explained that when his father obtained the taskira, they went to the district office in the province. He did have a photograph taken and confirmed that the photograph on the taskira was his. He said his father got proof from the school about how old he was. He thought his father put his date of birth on the documents. His father had kept the taskira. He confirmed that when he had started school his date of birth was written in the school register and his father had got a letter from the school. He did remember his date of birth. He had been told by the agent that if he gave his date of birth in Pashtu it would not be understood. The agent said he would convert it but he only did this for the year and not the day or month. The applicant explained that he was having counselling from Freedom from Torture. He had initially attended weekly but was now going fortnightly. He would like to stay as long as possible in the UK.

The Evidence of MS

13. MS is the applicant's cousin and his witness statement is at A68-70. He came to the UK as an asylum seeker on 18 December 2001. He did not know what his date of birth was but told the Home Office he was 15 and he was given a date of birth of 1 January 1976. His claim was accepted and he was granted four years' leave to remain, then indefinite leave and is now a British citizen. His father is the brother of the applicant's father. His own father now lives in Pakistan where he moved about ten years ago. He has visited him there a number of times since living in the UK and it is also safe for him to visit Afghanistan. He remembered the applicant from his last visit to Afghanistan when he visited the family shortly after their mother died. He would say that the applicant was about 12 when he saw him then.

14. He knew from his own father that the applicant had left Afghanistan for the UK but he had met him completely by chance in a mosque in south London this year. He could not remember the date but it would have been in summer. He had visited his own parents in Pakistan in 2012 and his father gave him some papers for the applicant that had been given to him by the applicant's father. He did not know where the applicant was but it was always his hope that he would find him and the documents were put away until a few weeks after he met the applicant. He had been told by his father that the applicant's father had visited him in Pakistan and had given him the documents after the applicant had left Afghanistan. The documents were the original taskira and a letter about the Taliban. He had passed the taskira to the applicant's solicitors.

15. In his oral evidence he confirmed that he had travelled to Afghanistan, flying to Pakistan and then travelling by car or bus across the border. There was no entry stamp in his passport for Afghanistan because on the border between Pakistan and Afghanistan they were not really asked for passports. His visit to the applicant's family in Afghanistan had been in 2009. He confirmed from his English and Afghan passports that he had visited Pakistan between 26 November 2008 to 23 February 2009 and from 27 September 2009 to 15 February 2010. When he saw the applicant, he would have said he was about 12. His mother had recently died and the applicant was playing with other children and

although he understood his mother had gone, he did not seem very sad. He had no reason to believe that the applicant would have lied about his age to social workers at Croydon.

16. In cross-examination he confirmed that it had been 2009 when the applicant's mother had died, saying that this date was recorded on her tombstone as having passed away in 2009, the date being recorded as such because most of their people spoke English. He could not remember the season when he visited or the month but it was definitely 2009. He was unable to describe the house or say how many rooms there were. He described his uncle, the applicant's father, as an old man of 50 or 60. There was nothing special about him. He was ill but not such that he was dying. He used to telephone his uncle maybe once or twice a year calling the local shop. He had stopped contacting him in 2011. His uncle had come to his father's house in 2011 and left some papers there. He was not able to contact his uncle and did not know where he was and his own father said the same. He had been given the documents in 2011, not 2012. He had met the applicant in the Croydon mosque where he had been going for Friday prayers for about two years. He saw him there two to three months ago and asked him to come to his home and then was able to give him the taskira. The applicant had told him that there was an age dispute.

17. In re-examination he said that he had been nervous giving evidence because it was the first time he had given evidence in a court or Tribunal and although he had not used an interpreter, his English was not very good.

The Evidence of Rebecca Faithfull

18. Ms Faithfull's witness statement is at A71-74. She confirmed that she is a qualified social worker registered with the Health and Care Professionals Council on 30 November 2012. She has been employed by the respondent since November 2012 and was currently based in the Permanence 2 Team in the Looked after Children's Service. She had previously been on a student placement in the Unaccompanied Minors Team from December 2011 to May 2012 and during this time she was the allocated social worker for the applicant from 31 January 2012 to 9 May 2012. She had met with him nine times during the course of her duties. She described the applicant as a quiet young person who displayed maturity in his social interactions above that of a 14 year old boy. He had needed support with developing his independent living skills such as cooking and keeping his flat clean and tidy. At the time she worked with the applicant, she was aware that he had been assessed to be 16 years of age and that he was disputing this. It was her view that his age had been appropriately assessed by the respondent. He had a good relationship with his key worker who felt he assimilated well into semi-independent living successfully. She believed him to be 16 when she was working with him because of a combination of his physical appearance and his demeanour. She had the sense of working with a young man rather than a boy.

19. In cross-examination Ms Faithfull confirmed that she was still employed by Croydon and that she had qualified in 2012 and so was not fully qualified when supervising the applicant. She was unable to recall the frequency of the visits but they were usually for a minimum of an hour but could on occasions have been shorter. She was referred to the note at S20 and accepted that this referred to a pathway plan which her manager was not happy with and wanted her to amend. She was taken through the notes of her contact with the applicant and confirmed that there was no specific observation about his behaviour being mature. The applicant had told her about his past experiences and how he was feeling to some extent. She did not know whether he was suppressing his fears but he had had other professionals to talk to about this. The applicant had always engaged well both with her and his key worker. She would expect a person of a younger age not to have managed. Her view about

the applicant's age was based on her observations and how he interacted with her. The applicant was a quiet person but he was competent enough to ask for things and did not look either up or down at her. She felt he was mature beyond his claimed age.

20. When he arrived he did not have any independent living skills and there was no suggestion that he had those skills before he arrived. She described him as a fairly quick learner who developed skills over the three months she was working with him. He had been placed by the respondent in semi-independent accommodation. She accepted that the development of skills was not necessarily an indication of maturity. The applicant had said he suffered from nightmares, had difficulty sleeping and had some mental health problems. She accepted there might be a possible link between these and his age but there was no necessary correlation and that it was difficult to judge age from physical appearance but it was still her view that his appearance was more consistent with being 16 rather than 14. It was not impossible that he had been 14 but her opinion was that he was more likely to be 16.

21. In re-examination she said that she had not given evidence before. She had drafted maybe four pathway plans and was not aware of criticism of them. She had worked with other young people. When responsible for the applicant, she had had about eight to twelve cases.

The Evidence of Sheila Johnson

22. Ms Johnson's witness statement is set out at A75-79. She is a qualified social worker and prior to working for the respondent had worked for Barnardos for nine years. She was the allocated social worker for the applicant for five months from April to September 2013. She met with him on four occasions (correcting line 1 of para 6 of her statement which referred to five occasions). She believed that the applicant had been appropriately age assessed and was not as young as he claimed. Based on her interactions and observing him interact with other professionals and young people, she felt he presented as someone who was at least 18 years old. On occasions when he requested her support with college and on issues relating to finance he came across as quite demanding, telling her what she should do and how she should support him. He was a confident young man who was able to look after himself and kept his living space to a good level without the support a younger person would require.

23. In her oral evidence she said that she thought the applicant was 18 but possibly older. She took this from the way he looked and how he presented. He did not need a lot of support and was able to verbalise quite confidently. She said he could be between 18 and 21. He had told her that he was entitled to his Eid money and would chase her on a daily basis. There had been an occasion where he had been issued with an £80 fine for travelling without the appropriate ticket on the tram and he had chased her up about whether the respondent would be paying.

24. In cross-examination she confirmed that she had qualified as a social worker in 2005. She had met the applicant on four occasions, two at his placement, once for his LAC review and once to discuss the pathway plan. She had not met him with his peers. She accepted that at S26 she had used the phrase "becoming mature" as he was still developing as a young man. She was referred to S28 about the applicant losing his oyster card, S30 about being tearful and anxious in the mornings and S35 as having forgotten a visit and asked whether this would be expected from a child. She said that this was not necessarily the case; it could be expected from anybody, perhaps a young person. When dealing with the Eid money, this had not been sent to the applicant when he expected it and she had to explain to him that it had to go through a process and that it would take two weeks but still he constantly pestered her because he was impatient to receive the money. She was asked whether this was more a

characteristic of a child than a young person. She accepted this to a degree but she would not say that he was immature and it could be a sign of a lack of understanding.

25. She thought that the respondent had done the best it could and that his key worker had done a good job. It was not surprising that he had developed the skills he had. When using public transport, initially the applicant would have been escorted but he was encouraged to use it as a part of becoming independent. She accepted that some boys could look older than their true age. She stood by her view that the applicant looked over 18 and she did not accept that it was not beyond possibility that he was 16.

26. On re-examination she explained that in her previous work in the Leaving Care Team she had been involved with 30 young people from Afghanistan, all over 18.

Submissions for the Respondent

27. Ms Cooper reminded me that the Tribunal's task was to determine the applicant's age and to do so by taking essentially an inquisitorial role with neither party bearing a burden of proof. The respondent's social workers were tasked with doing their best. They were not lawyers but were truly independent with their professional duty being to the young person. She confirmed that the conclusions reached in the first age assessment were not reliable but it stood as a record of the account given by the applicant at that time. Reliance was placed on the report of the second assessment at B12 and the accuracy of the record could be verified from the notes kept by the applicant's own legal representative at B35-55.

28. The respondent relied on the evidence of the two social workers called who had spent longer periods with the applicant and were able to refer to the notes that had been made. Whilst Ms Faithful was newly qualified as a social worker and may have been very nervous in giving evidence, she had given her opinion about the applicant's age and believed that the age assessment was correct. Ms Johnson was extremely experienced and weight should be given to her evidence. She submitted that the applicant had not been a reliable witness and when inconsistencies were put, he had changed his story. There were clear discrepancies about the frequency of phone calls by the cousin to his father, on the evidence about his father taking him to meet the agent in Jalalabad and whether he had seen his father with the agent or had heard him speak, about the date of his mother's death, the applicant had previously been clear that it was one and a half years before he left but in his oral evidence said that it was two years before.

29. She submitted that other aspects of his evidence were implausible: he could not remember the number of rooms in his house and his evidence was of no help in assessing when his cousin visited him. However, he had been able to remember his date of birth on the basis that he had seen it recorded at school. He had said during the age assessment that his age was on the taskira but this was not the case and he had accepted that he had been wrong about that. His evidence was that his father had taken a letter from the school referring to the date of birth but if it had been shown to the official, it had not been recorded but the age had been given relying on appearance.

30. The applicant's assessed age was consistent with the progress he was making at college and with the increasing level of his skills. There was evidence that he had been receiving counselling and there was a report from Freedom from Torture (B75-76) but that report was clearly compiled from what the applicant had said and was at odds with the evidence and observations of other people. She submitted that the observations of the key workers were reliable and these were consistent with a young man growing into adulthood.

31. Ms Cooper submitted that the cousin's evidence was not reliable. He had been unable to give any details about his visits to the applicant's family home in 2009 and his evidence about the frequency of phone calls contrasted with that given by the applicant. He had said the purpose of the calls was to ask about the health of the applicant's father but he was unable to give any further details about that. She submitted it was not credible that nothing had been discussed between the applicant and his cousin about the age assessment and the account of how the taskira was obtained was not plausible. It was said that the cousin's father had obtained the documents in 2011 from the applicant's father. If so, this was difficult to square with the applicant leaving Afghanistan in October 2011. His father must have set off to travel to Pakistan within weeks of the applicant leaving and in these circumstances it was difficult to understand why he had not taken the applicant to his brother in Pakistan. In summary, the evidence showed that the applicant was a capable young man living an independent life now with little support. He had accepted one of his goals was to remain in the UK and not to go back to Afghanistan and he would know that giving himself a younger age would help him in this respect. She submitted his most likely date of birth was as assessed by the respondent.

Submissions for the Applicant

32. Mr Suterwalla submitted firstly that the age assessment relied on was not reliable as provisional adverse findings had not been put to the applicant and there was no adequate evidence that the social workers had been properly trained or that the required procedural safeguards were in place. In any event the Tribunal should not automatically defer to the views of the social workers which were simply matters to be taken into account. The credibility of the applicant's account was an issue of considerable importance. He submitted that the applicant had been co-operative and straightforward in his evidence giving no hint that he was trying to deceive. Giving evidence about age could be confusing especially when it was repeated on a number of occasions. It was said that the applicant was vague in his answers but he should not be faulted for saying that he could not recollect something when that may well be the case as opposed to trying to hide something. A number of aspects of his evidence had not been challenged in cross-examination at the hearing such as the length of his journey and the years when he was at school. He said he had completed five years of schooling, having started school at 8.

33. It had been argued that parts of the applicant's evidence were inconsistent but when at the first age assessment the applicant had given his date of birth as 1390 or 1391, the answer was clearly bizarre as 1390 was equivalent to 2011 and such an answer would simply reflect nervousness rather than lying. So far as what he had said about being handed over to the agent, it was entirely plausible that he did not himself see the agent and his father talking; there was no reason why he should lie about this matter. It had not been put to the applicant that he was lying about how his taskira had been obtained and no adverse inference should be drawn from his account about the taskira. He submitted that looking at the evidence in the round and focusing on the significant issues, the applicant had been consistent about his family, its composition, his activities in Afghanistan, why he had left and about his life in the UK. There was nothing strange in him recalling his date of birth since being enrolled in school.

34. So far as the evidence of his cousin was concerned, it was accepted that he came across as a very nervous witness but this did not mean that he was not telling the truth. He had not exaggerated his position only claiming to have seen the applicant for one night during a short visit to Afghanistan. Similarly, he had not exaggerated his evidence about why he thought the applicant had been 12 when he saw him. He had made visits to Pakistan in 2009 and it was clear that he believed the visit to Afghanistan was in the spring. There was no inconsistency in his description of the applicant's home

with that given by the applicant and his account of how he met him in this country was consistent with the applicant's own account.

35. He accepted that the taskira could not be regarded as decisive as it recorded that his age of 12 in 2009/2010 was based on his appearance. Nonetheless, this document clearly supported the applicant's account of his age because he always said he had a taskira which had now been produced and he had explained that his father went with him to obtain it with a letter from the school with his date of birth on it.

36. Mr Suterwalla submitted that little weight should be attached to the age assessments. Neither assessment was signed off by the assessors and no oral evidence had been called by those who had made the assessments. Further, the second age assessment was flawed in that it was clear that the overriding reasons for the assessment were how the applicant physically presented, the fact that he did not show any evident signs of emotion and was unable to give details about the date he left Afghanistan or the countries he travelled through. It was common knowledge that dates and times did not have the same importance in Afghanistan as in the West. No explanation was given for the assessors relying on the claimant's "level of cognitive development demonstrated by his ability to grasp and process information". They claimed they had applied the benefit of the doubt but this was not explained. There had been no analysis of the applicant's actual account of his age and how he came to know it.

37. He submitted that the evidence from Ms Faithfull and Ms Johnson was unconvincing. Ms Faithfull had accepted that her evidence was essentially that the applicant was older than he claimed because he had coped well in his semi-independent placement and the record of her meetings with him did not support her assessment that he behaved maturely in his interactions with others. The evidence showed that after a period of adjustment the applicant had coped in semi-independent placement but that he submitted was not evidence of maturity. Ms Johnson said that it was impossible that he could present as 16 but she had not spent a lot of time with him. The fact that he coped well in his placement did not say anything about maturity and his physical appearance could not be given any great weight. In summary, he submitted that there was no compelling evidence to dislodge the applicant's own account of his age which in the light of the evidence as a whole should be confirmed as his true age.

The Law

38. There is no issue between the parties on the law to be applied. In R (A) v London Borough of Croydon [2009] UKSC 8 the Supreme Court held that in cases involving the exercise of a local authority's statutory obligations in respect of children, a child's age was a matter subject to determination by the court as a precedent fact. Neither the applicant nor the respondent bear a burden of proof but it is for the Tribunal to enquire and on the basis of the evidence produced to make a decision on a balance of probabilities.

Evaluation of the Evidence and Assessment of the Issues

39. I now turn to my assessment of the evidence. It is common ground between counsel that this involves the consideration of the following: (1) the applicant's account, (2) the evidence of his cousin MS, (3) the weight to be placed on the taskira produced in evidence, (4) the weight to be placed on the two age assessments, and (5) the weight to be placed on the evidence of the social workers, all the evidence being assessed in the context of the evidence as a whole.

40. It is not in dispute that the applicant is a citizen of Afghanistan who arrived in the UK on 5 December 2011 and immediately claimed asylum. He claims that his date of birth is 4 September 1997 whereas the respondent has assessed his age as two years older with a date of birth of 4 September 1995. This is a case where the applicant's credibility is of considerable importance. I remind myself of the guidance given by Stanley Burnton J in *R (B) v London Borough of Merton* [2003] 4 All ER 280 where he said at [28]:

“ Given the impossibility of any decision maker being able to make an objectively verifiable determination of the age of an applicant who may be in the age range of, say, 16 to 20, it is necessary to take a history from him or her with a view to determining whether it is true. A history that is accepted as true and is consistent with an age below 18 will enable the decision maker in such a case to decide that the applicant is a child. Conversely, however, an untrue history while relevant is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for reasons unconnected with the applicant's case as to his age, for example to avoid return to his country of origin. Furthermore, physical appearance and behaviour cannot be isolated from the question of the veracity of the applicant: appearance, behaviour and the credibility of his account are all matters that reflect on each other .”

41. The applicant has maintained since his arrival that his year of birth is 1997. In the screening interview he initially claimed that he was 14½ years old giving a date of birth as 13-06-97. He explained this further in his statement of 5 January 2012 that his agent had translated the year into the western calendar but not the day and month and that the correct date in the West would be 4 September 1997. Subsequently, he has been consistent in this assertion. I do not draw any adverse inference from the fact that at the first age assessment he gave a date of birth as 13/06/1391 as 2011 is 1390 in the Afghan calendar and the year 1391 had not been reached at that stage. The date was plainly wrong and may well have arisen from either nerves or confusion. However, I have more difficulty with his explanation about why he had initially said that his date of birth was 13/06/1997. He knew that his birth date was being put into the western calendar from 1376 and it seems unlikely that the agent would not have made an accurate conversion rather than simply translating the year.

42. The applicant's claim is that he knows his date of birth, unlike his cousin in the UK who in his evidence said that this would generally be unusual for someone in Afghanistan. The basis of the applicant's knowledge was that his father had told him his date of birth and it was recorded when he was first registered at his school. He also relies on the evidence of his cousin who assessed his age at about 12 when he visited in 2009 and on the taskira which has been produced in evidence.

43. Dealing generally with the applicant's evidence, there are a number of aspects which give rise to concern. When asked in cross-examination about his home in Afghanistan he simply described it as a mud house. He was unable to say how many rooms there were. His evidence about his cousin's claimed visit was also very vague. He said in evidence it was about one to two and a half months after his mother died but he could not recall the season or the weather. He was unable to explain the contradiction with his written evidence that his mother died one and a half years before he came to the UK. So far as his cousin's telephone calls are concerned his evidence gave the impression of relatively regular calls about once a month and his father would tell him that his cousin had called. This contradicted the evidence from his cousin who said that he may have called infrequently about once a year.

44. When describing his departure from his home village and travelling to Jalalabad to be put in the hands of the agent, he said that this was on the same evening that he escaped from the Taliban. In the

information he gave at the second age assessment he said that his father handed him to the shopkeeper and that he was still present when the agent arrived. However, in his oral evidence he said that he did not see the agent and his father together and when this was queried he said that although he did not see them himself, he heard them talking together.

45. I also had difficulty with the applicant's evidence about when he met his cousin in this country. The applicant arrived in December 2011 but he did not meet his cousin until, on his account, by chance when praying at a mosque in about July 2013. There had been telephone contact between the cousin and the applicant's father and according to the evidence of both the applicant and the cousin he paid a visit in 2009 following the death of the applicant's mother. If the applicant's age is as claimed at the age of 14 he was entrusted to an agent who brought him to the UK where he has two cousins and yet the applicant appeared to have had no means of contacting them and they only met by chance, and a happy chance, as the cousin had collected some documents when he visited his father in Pakistan in 2011, these having been left by the applicant's father who had travelled from Afghanistan to Pakistan.

46. I have heard evidence about the applicant's ability to cope with his semi-independent living. I accept that the applicant arrived without such skills and that he has developed them. I find that during his evidence he tended to downplay his abilities. I have taken into account the Freedom from Torture Report which paints a very different picture from that in the respondent's case notes but this report inevitably depends upon what the applicant has told the counsellor.

47. None of the concerns I have identified in the applicant's evidence are in themselves determinative but when they are taken cumulatively, particularly when taken with the view I have formed about the cousin's evidence and the reliability of the taskira, I find that the applicant's evidence about his age is neither credible nor reliable.

48. I now turn to the evidence of the applicant's cousin. It was submitted that he was clearly very nervous in giving his evidence. He said so at the end of his evidence, saying this was because he had never given evidence before and was giving evidence in English. On his account he paid a visit to the applicant's home in early 2009 when he would have been about 33. He was unable to give any details about the home or when he visited save in the most general terms that it would have been in 2009 during his November 2008 - February 2009 visit to Pakistan. He accepted that there had been infrequent telephone calls, the purpose to ask about the health of the applicant's father but he was unable to say anything about him when asked in evidence. He maintained that he had received the documents from his own father in 2011 which he brought to the UK. He had held on to them until contact was renewed between him and his cousin in 2013 and he was then able to give them to him. I found MS's evidence to be wholly implausible on the issues relevant to the applicant's age. The fact that evidence is implausible does not mean it is not credible but the cumulative effect of the matters I have set out lead me to the finding that his evidence is not credible but has been tailored to support the applicant in a false claim about his age.

49. I now turn to the taskira which is at A66 and A67. The applicant has maintained that he knew his date of birth as did his father. He says that this document was obtained in 2009/10 when his age was assessed at 12. This document provides for the recording of the date of birth and age and in circumstances where it is said that his father knew that date and took a letter from the school to confirm it, it is odd that the taskira reads "based on his appearance, his age was determined to be 12 years in 1388" and makes no reference to the actual date. I also note that although a photograph has been attached to the taskira, nothing has been entered under "distinguishing signs". I also take into

account the fact that the applicant initially maintained that his actual date of birth appeared on this document when this was not the case. I am also concerned about the provenance of the document and the way in which it has been obtained. As I have already set out, the applicant's case is that he received this document from his cousin quite recently who had been keeping this and another document about the Taliban at his home having been given it by his father in Pakistan in 2011. In summary, I am not satisfied that the taskira is a reliable document.

50. I now turn to the question of the age assessments. The respondent does not seek to rely on the first age assessment save in so far as it records what was said at the time. Reliance is placed on the second assessment but when considering the weight to be given to it I take into account the points made by Mr Suterwalla that the assessment does not appear to have been signed off by the assessors who were not called to give oral evidence in any event. Further concerns arise about this assessment in the light of the apparent reliance based upon them on social interaction and maturity assessed in a relatively short interview.

51. Finally, I turn to the evidence from the social workers, Ms Faithfull and Ms Johnson. It is argued that Ms Faithfull's evidence was unconvincing in that essentially she was relying on the fact that the applicant had coped well in semi-independent placement and that she regarded him as mature. Ms Faithfull has only recently fully qualified as a social worker and to that extent is still gaining in experience. She was asked in particular about a pathway plan which her manager found unsatisfactory and required amendments but I draw no adverse inference from this about her competence or her views about the applicant's age. She said in her statement that prior to qualifying as a social worker she was a youth worker with the Youth Service of the London Borough of Merton with young people aged 14 to 18, worked with a school as a learning support assistant with children with learning difficulties from 11 to 16, as a key worker in the homeless section of Centrepont for two years with young people aged 16 to 25 of various ethnicities and had also taught children aged 5 to 18 in Nepal. She was the applicant's social worker for three months from 31 January 2012 to 9 May 2012. If his claimed birth of 1997 was correct, he would have been 14 at that stage. It was Ms Faithfull's view that he displayed maturity in his social actions above that of a 14 year old boy. In her evidence she was taken through the records of the various meetings she had had with the applicant and agreed that they had not explicitly referred to the applicant as mature. However, when those reports are read as a whole, they do show that he coped well with semi-independent living and with adjusting to life in Croydon following a very different life in Afghanistan.

52. So far as Ms Johnson is concerned she is a more experienced social worker having qualified in 2005. She was the applicant's social worker between April and September 2013, meeting with him on four occasions. Her view was very clear that he was 18 and could possibly be older. She has had considerable experience of working with children, having worked with Barnardos for nine years before joining Croydon. She felt he presented as someone who was at least 18 years old. She pointed to the fact that he was able to make it very clear what he wanted and could be persistent evidencing his pursuit of her over his money for Eid and about paying his penalty for travelling on the tram without a ticket.

53. I am satisfied that both Ms Faithfull and Ms Johnson have been entirely professional in their approach to their dealings with the applicant and have not been influenced by the fact that they are employed by the respondent local authority which made the age assessment. I am satisfied that they have both given an honest assessment of their view about the applicant's age based on their experience of working with the applicant and generally with young people. I attach considerable weight to their opinions.

54. In summary, for the reasons I have given, I do not find the applicant or his cousin to be reliable or credible witnesses about his age nor do I find that the taskira is a reliable document on which any weight can be placed. When reaching this decision I have taken into account the positive comments made about the applicant in the papers. His key worker speaks highly of him as do his college lecturers. One describes him as having a very respectful attitude and as very committed to his studies and the other as an intelligent, hardworking and extremely pleasant young man who is always polite, co-operative and willing to learn despite his mental health problems caused by his post traumatic stress disorder. I have taken into account the letter from the Freedom from Torture but as I have already commented, much of what is set out there contradicts the respondent's notes about how he has coped with semi-independent living.

55. I accept that there are criticisms which can be made of the second age assessment but when I take into account the evidence of Ms Faithfull and Ms Johnson, in the light of the records in the Social Services' file, I am satisfied that the applicant is older than he claims, and by a reasonably significant margin. Ms Johnson clearly believes that he may well be older than 18. Nonetheless I am not satisfied there is any proper basis for finding that the applicant is older than the age assessed by the respondent and I find that his probable date of birth is 4 September 1995.

Decision

56. I therefore find on a balance of probabilities that the applicant's date of birth is 4 September 1995 and I make a declaration accordingly.

57. The applicant is to pay the respondent's costs on the standard basis. As the applicant has the benefit of public funding no further action is to be taken until an assessment is made of his ability to pay in accordance with s.11(1) of the Access to Justice Act 1999, directions in respect of which are to stand adjourned generally to be restored on the written request of the respondent.

58. There is to be a detailed assessment of the applicant's publicly funded costs in accordance with the Community Legal Service (Funding) Order 2000.

Signed: Dated: 18 November 2013

Upper Tribunal Judge Latter