



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

Appeal Number: PA/00622/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 7 September 2017**

**Decision & Reasons Promulgated
On 12 October 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**RAA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk (Counsel)
For the Respondent: Mrs R Petterson (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal (hereinafter "the tribunal") whereupon it dismissed his appeal against the Secretary of State's decision of 6 January 2016 refusing to grant him international protection.
2. The tribunal granted the claimant anonymity. That was presumably, at least in part, because of an assertion made by him (which the tribunal ultimately disbelieved) that he is a minor. Nothing was said about anonymity before me but I have considered it appropriate to continue the status quo.
3. The claimant, it is accepted, is a national of Iran of Kurdish ethnicity. It is recorded that he entered the United Kingdom ("UK") on 28 August 2015 and claimed asylum on arrival. In seeking asylum he claimed to have been born on 28 May 1999. That, if correct, would mean that he was, on arrival, aged 17 years albeit that it would make him 18 now. He also said that he had had to flee Iran, with the assistance of an uncle and an agent because his father was seeking to make him go to

Syria and fight for the ruling regime there. That was something which he says he did not wish to do.

4. There have been three different age assessments carried out in relation to the claimant. One of those, prepared on behalf of Bedford Borough Council and dated 2 September 2015, contained the view that the claimant was over 18 years of age. However, the full content of that report was not before the tribunal because, it was said, the claimant had not given consent for it to be “shared”. Another report had been prepared by BDP Social Care Limited and was dated 17 September 2015. A view was expressed therein that he was thought to be “in his early twenties” but would be given “the benefit of the doubt” and treated as being aged 18 as at the date it was prepared. A third report, carried out by the Doncaster Children’s Services Trust on 31 October 2016, contained the view that there was “sufficient doubt to afford the appellant the benefit of the doubt over his age” such that he would be regarded as being “17 years old”.

5. The Secretary of State took the view that the claimant was, at all material times, an adult rather than a minor. The Secretary of State also thought that he had given an untruthful account of being pressed to fight in Syria. So, the application for international protection was refused.

6. The claimant appealed against that decision and his appeal was heard on 24 November 2016. He gave evidence at that hearing and was represented (indeed by Mr Schwenk who represented him before me). The Secretary of State was also represented. The tribunal concluded that the claimant was not a minor as claimed and also concluded that he had not come under pressure to fight in Syria. So it dismissed his appeal. As to his claims about his age and the other credibility issues the tribunal said this:

“ 27. The case of *A v London Borough of Croydon and SSHD* [2009] EWHC 939 (Admin) determines the correct approach for the court to adopt in age assessment cases. In his judgment, Collins J reviewed the previous cases including the guidance given by Stanley Burnton J in *R (on the application of B) v Mayor & Burgesses of the London Borough of Merton* [2003] EWHC 1689 (Admin).

28. It is helpful to set out the guidance of Mr Justice Stanley Burnton in the ‘Merton’ case, which can be summarised as follows:

The assessment of age in borderline cases is a difficult matter, but it is not complex. It does not require a trial, and judicialisation of the process is to be avoided. It is a matter which may be determined informally, provided safeguards of minimum standards are adhered to [paragraph 36].

... except in clear cases the decision-maker cannot determine age solely on the basis of the appearance of the applicant. In general, the decision-maker must seek to elicit the general background of the applicant, including family circumstances and history, educational background and activities during the previous few years. Ethnic and cultural information may also be important. If there is a reason to doubt the given age, the decision-maker will have to make an assessment of credibility by questions designed to test credibility [paragraph 37].

I do not think it is helpful to apply concepts of onus of proof to the assessment of age by local authorities [paragraph 38].

There should be no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child [paragraph 38].

Of course, if an applicant has previously stated that he was over 18, the decision maker will take that previous statement into account, and in the absence of an acceptable explanation it may, when considered with the other material available, be decisive [paragraph 38].

Similarly, the appearance and demeanour of the applicant may justify a provisional view that he is indeed a child or an adult. In an obvious case, the appearance of the applicant alone will require him

to be accepted as a child; or, conversely, justify his being determined to be an adult, in the absence of compelling evidence to the contrary [paragraph 38].

However, the social services department of a local authority cannot simply adopt a decision made by the Home Office. It must decide whether an applicant is a child in need ... A local authority may take into account information obtained by the Home Office; but it must make its own decision, and for that purpose must have available to it adequate information [paragraph 39].

A local authority is obliged to give adequate reasons for its decision that an applicant, claiming to be a child, is not a child [paragraph 45] and

The court should not be predisposed to assume that the decision-maker has acted unreasonably and carelessly or unfairly: to the contrary, it is for the claimant to establish that the decision maker has so acted [paragraph 50].

29. It is recognised in all of the cases that the determination of an applicant's age is rendered difficult by the absence of any reliable anthropometric test; for someone who is close to the age of 18, there is no reliable medical or other scientific test to determine whether he or she is over or under 18. Age determination is an inexact science with a significant margin of error.

30. In this particular case, which I am considering, there were three documents, which were stated to be 'Age Assessments'.

31. There is an Assessment carried out on behalf of Bedford Borough Council dated 2 September 2015. It is headed 'Merton Compliant Assessment of Age' and provides the names, although not the qualifications of the assessors. The Assessment concludes that the Appellant is stated to be 'Over 18 years'. The consent form, attached to the document, indicate that only the conclusion of the assessment would be shared, and the full report would not be shared without the written consent of the Appellant. That consent has not been provided and accordingly the full report was not available for my consideration.

32. There is an Assessment conducted on 17 September 2015 by BDP Social Care Limited. The age assessment did not form part of the Respondent's bundle of documents. It was referred to in an assessment conducted by Doncaster Children's Services Trust on behalf of the Appellant (see below). The Respondent relied on the Bedford Borough Council assessment and that was the one quoted in the letter of refusal. The BDP Social Care Limited assessment was produced by the Respondent at my request from the Respondent's file of papers. That was conducted on the 17 September 2015 and in it, it indicated that, 'No other assessment of the Appellant's age had taken place that the assessors were aware of.' There is no explanation as to why they were not aware of the Bedford Borough Council assessment.

33. The BDP Social Care Limited Assessment document is headed 'Merton Age Assessment'. The detail and qualifications of the Assessors were provided. In the course of the assessment the Appellant was provided with a face-to-face interpreter and an experienced advocate from Bedford Borough Council acting as his independent person. The assessors concluded that the Appellant was older than the age he claimed based on the information he shared, his physical presentation/demeanour, manner and maturity, which is that of an adult male. The Appellant, in the Assessor's opinion, had reached majority was of average build and stated he began shaving around two years ago. He was said to have scarring to his face which resembled healed acne and has a tattooed 'S' on his right wrist which he says is the initial for his sister's name. He could not explain why that was in English and not Arabic script. The Appellant was advised that if he was able to make contact with his family to gain his national ID card that might prove beneficial to him in firmly establishing his age. The Assessor's concluded that: 'based on the overall assessment, the way the Appellant presents himself, his interaction, physical presentation, level of maturity and demeanour we would believe his age to be in his early 20s'. The Appellant was informed that experience led assessors to believe him to be in his early 20s but would provide him with the benefit of doubt and place him at 18 years now.

34. There is an Assessment conducted by the Doncaster Children's Services Trust on 31 October 2016. That was conducted at the request of the Appellant's solicitors. It was conducted by two qualified social workers. There was an interpreter and a personal adviser acting as independent person for the Appellant. The lead social worker had obtained a copy of the BDP assessment but not that of Bedford Borough Council (presumably because of the absence of the consent of the Appellant). The conclusion of this assessment was that the assessors were satisfied that there was 'sufficient doubt to afford the Appellant the benefit of the doubt over his age'. They concluded that the Appellant 'could be his stated age of 17 years old'. The Assessors stated that account had been taken of the BDP assessment which, it was noted, was unequivocal in its

conclusion that the Appellant was an adult. The assessors said: they 'do not dispute that this may have been a reasonable finding at the time, I have had the opportunity to observe [the Appellant] in differing situations which indicate that stress factors can impact upon his ability to interact with others ... the assessor was not in agreement that his physical appearance alone was sufficient to conclude he is an adult – indeed my colleague ... was of the view his skin has a teenage appearance due to the spots/pimples, viewed as healed acne scars by BDP assessors.

35. That material needs to be considered together with the evidence of the Appellant in support of his claim.

36. The Appellant claims that he lived in Dezley, near Mariwan with his parents and younger sister. The Appellant states he grew up in a Muslim family and his father was very strict forcing him to go to the mosque with him, even if he did not want to. The Appellant claims his father worked as a Sarhang (which equates to Colonel) in the Iranian army. He claims that his father was also a landowner.

37. The Applicant claims that he only attended school for one year because he has a speech impediment, and stopped going because he was bullied. He claims that his father wanted him to go to Syria and fight against ISIS, saying that if he died in the fighting then he would be a martyr. The Appellant claims that his father was actively encouraging all the young men in the family to go and fight in Syria.

38. The Appellant claims that, when his father started encouraging him to go to Syria, he did not say no to him, as he was afraid of his father. The Appellant claims that his father was not afraid of being violent towards him and that he had been beaten by him many times. The Appellant claims that, although he said nothing to his father, he did not want to go and fight in Syria. He claims he was too afraid, but knew that his father would make him go and so he told his mother that he was scared and did not want to go.

39. The Appellant says, however, that his mother was unable to help him as she was very scared of his father who was very violent towards her as well. He claims that his mother was upset by what his father was suggesting and so she called her brother to help.

40. The Appellant claims that he knew his father would not back down and would make him go, and that he was too scared to stand up to him and say no. He claims his father had a really bad temper, and he knew that he would have been beaten severely and sent to Syria to fight.

41. The Appellant claims his uncle came for him, whilst his father was at work, and took him to Mariwan which is about a 40-minute drive away from the village where the Appellant was living. The Appellant states that he left home with 'nothing at all'. He claims that his uncle took him to an agent, who then made arrangements for the Appellant to leave Iran.

42. The Appellant said that his uncle had provided him with a telephone number at which he could be contacted but that the piece of paper on which it was written was damaged in the journey to the UK. He claims, however, that he met someone from Mariwan who knew his family and he asked him to let his uncle and mother know that he was safe. He claims that he met the man, named G, in a Kurdish Tea House in Doncaster. He said that G told him that he had been able to make a phone call and had spoken to the Appellant's mother who had been 'so happy that she started to cry'.

43. The Appellant said that he had identification documents in Iran but has not obtained them, nor did he ask G to seek to obtain the documents when G is said to have made contact with his family. This was despite the fact that he met G some months ago and had been advised by BDP Social care of the benefit of obtaining such documentation.

44. The Appellant claims to have met G in a Doncaster Kurdish tea café. Despite that meeting having said to have occurred some three months before the Appellant submitted a witness statement there is no mention whatsoever in the witness statement of the meeting. The Appellant states that G telephoned the appellant's mother but for some unexplained reason the Appellant did not speak to his mother himself nor was there any request for documentation to be sent regarding the Appellant's age or any other material which might have supported his case. There is no evidence from G either by attendance at the hearing or by way of a witness statement.

45. I find it significant that the Appellant has not sought to obtain the identification documents or other evidence of his age, knowing that is an area of dispute.

46. I have read the Age Assessments, noting that the Appellant did not give consent for the disclosure of the full Report of the Assessment conducted by Bedford Social Services. Taking account of the content of those reports and the evidence of the Appellant I conclude that he is, at the date of hearing, an adult. His claim to be otherwise is damaging to his credibility.

47. The Appellant stated that his father worked for the government and that he was a 'Pasdar'. The Respondent stated that there was no evidence to substantiate his claim of the existence of the 'Pasdar' within the Iranian government, however external evidence confirmed that the Iranian Revolutionary Guards Corps (IRGC) are commonly known as the 'Pasdaran' (see paragraph 13 of the letter of refusal).

48. When the Appellant was asked what specific role his father undertook, the Appellant said 'Sarhang'. External evidence confirmed that that rank within the IRCG equates to 'Colonel'. (see paragraph 14 of the letter of refusal).

49. The Appellant was asked, at question 50: 'What exactly did he want you to do in Syria? And to confirm who did he want you to fight for?' to which the Appellant responded: 'To fight' and 'I don't know'. In his witness statement the Appellant now states that he was being sent to fight ISIS.

50. The Appellant was asked to follow questions:

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| Question 91 | - | 'Is it correct that he received a letter from Pasdra asking him to send people to fight in Syria?' |
| | - | 'Yes' |
| Question 92 | - | 'Why do you believe that he would want his only son to risk his life and travel to Syria and fight?' |
| | - | 'He preferred the Islamic state of Iran than me.' |
| Question 93 | - | 'Are you aware that he asked any other individuals to go fight in Syria?' |
| | | 'No I don't' |
| Question 94 | - | 'Could he not have asked any other youths in the area or have gone himself to Syria instead of you?' |
| | | 'I don't know' |

51. I found the Appellant was vague regarding the role of his father and his specific duties and in relation to why he would ask his son to go and fight in Syria. The answer that his father preferred the Islamic State of Iran might be credible if the Appellant was being asked to fight for Iran rather than in Syria. The Appellant gave no information that would not be widely known.

52. The background information confirms that there is, and has been Iranian involvement in the Syrian Civil War. However, the support referred to relates to 'logistical, technical and financial support, as well as training and some combat troops' (page 27) and 'In mid-September 2015, the first reports of new detachments from the Iranian revolutionary guards arriving in Tartus and Latakia in west Syria were made. There were also further reports of new Iranian contingents being deployed to Syria in early October 2015.' The evidence does not support an assertion that there has been the despatch of young, untrained boys without any particular skills.

53. I did not find it credible that the Appellant would flee Iran a week after his father stated that he wanted him to go to Syria to fight. I do not find it credible that the Appellant's mother would have not made some attempts, supported by her brother to persuade the Appellant's father to change his mind. I do not find it credible that she would immediately defy her husband by making arrangements for the Appellant to flee Iran.

54. I conclude that the Appellant is not a credible witness. I conclude that the Appellant has not established even to the low standard required that he would face any risk from his father on return."

7. Permission to appeal was sought. The helpfully concise grounds of appeal asserted, in summary, that the tribunal had erred in failing to adequately explain why it was preferring the conclusions contained in the BDP Social Care Limited report to those contained in the Doncaster Social Services Trust report; in allowing its erroneous preference to infect its other credibility conclusions and in failing to acknowledge or factor into its conclusions the point that the claimant had offered an explanation as to why he had not sought documentation from Iran regarding the disputed question of his age. Although permission was initially refused by a judge of the First-tier Tribunal such was granted by an Upper Tribunal judge who said this:

“It is arguable the First-tier Tribunal judge failed to have regard to the age assessment which has resulted in the appellant being treated as a child and gave inadequate reasons for preferring an earlier assessment over a final assessment which was Merton compliant and does not appear to have been challenged and as a consequence of which the appellant is being treated as a child by Social Services. It is arguable that the findings with regard to the appellant’s age significantly contaminated the credibility findings, even though the judge states he took account of the ‘vulnerable’ guidance.”

8. Permission having been granted, there was a hearing before the Upper Tribunal (before me) so that consideration could be given to the question of whether or not the tribunal had erred in law. Representation at that hearing was as stated above and I am grateful to each representative.

9. Mr Schwenk, essentially, relied upon his written grounds. He argued that too much had been made of the question of refusal of consent and pointed out that the claimant himself had no recollection of his ever refusing consent for the full report prepared on behalf of Bedford Borough Council to be disclosed. He also argued that, since a relatively low standard of proof is applicable in international protection cases, and since one of three reports had been in the claimant’s favour with respect to his age, it simply had to be concluded that that lower standard of proof (the real risk test) had been met. Mrs Petterson highlighted aspects of the tribunal’s reasoning and argued that that reasoning was adequate and complete.

10. I reserved my decision and, having considered matters, I have reached the conclusion that the tribunal did err in law albeit not for all of the reasons Mr. Schwenk argues it did.

11. The first thing I would like to say is that the tribunal’s written reasons are, in general terms, most thorough. It is readily apparent that the tribunal has diligently considered the evidence before it. But I have decided that it has erred through failing to give adequate reasons for its ultimate conclusion as to whether or not the claimant is a minor.

12. In reaching this view I would accept that the tribunal has taken considerable care over reviewing the content of the three reports bearing in mind that it only had an incomplete version of one of them before it. I accept that it was not just its view of the report but also its other credibility concerns which led it to the conclusion that the claimant was not a minor. But obviously what it made of those reports was of considerable importance. Having thoroughly reviewed all three and having made some comments about them and having then made some findings regarding other aspects of the claimant’s case, it stated its conclusion as to age at paragraph 46 of its written reasons.

13. In my judgment the tribunal’s consideration as to age was holistic in the sense that it did not base its conclusion solely upon the content of the three reports and its view about that content. So, I do not think its conclusion as to age can be characterised as Mr. Schwenk suggests it can, as a decision to prefer one report to another. Further, I do not agree that the tribunal was bound to conclude that the claimant had made out his case as to age solely because the standard of proof is a low one and one report out of three was in his favour. What the tribunal was tasked with doing was

undertaking an assessment of the evidence as a whole and then reaching a view on the basis of the applicable standard of proof. That is what it did. To take Mr. Schwenk's submission to its logical conclusion it would be necessary for decision makers, including tribunals, to accept assertions as to age made by a claimant wherever a single report supported that assertion whatever the quality of that report and whatever the quality of any evidence pointing the other way. It does not seem to me that that can be right.

14. But having said all of that, what the tribunal made of the three reports was a crucial consideration in its ultimate conclusion as to age. The written reasons do not, in my judgment, make it clear what the tribunal did make of the content of the reports. That is because it simply offered a description of the content of the reports (albeit a commendably thorough one) and then, at paragraph 46, a statement of its conclusion as to age. What was lacking, in my judgment, and what therefore makes the tribunal's reasoning incomplete and consequently legally inadequate, was some form of clear evaluation of the content of the reports and an indication as to what weight was or was not being attached to each one and why. The tribunal was right to say that it had to approach the age issue on the basis of all of the evidence as a whole but that did not mean it was not required to evaluate the reports themselves.

15. In light of the above I have concluded, with some regret in view of the overall quality of the written reasons that the tribunal did err in law. I consider that the error I have identified is a material one because had the tribunal found the claimant to be a minor that might (I do not say would) have impacted upon its general adverse credibility assessment.

16. Both representatives urged me to remit to the First-tier Tribunal for a complete rehearing in the event of my deciding to set aside the tribunal's decision. Given the need for a new credibility assessment and further findings I consider that to be the most appropriate course of action. The significance of the claimant now being 18 years of age will be a matter for the tribunal conducting the rehearing to consider and evaluate. No doubt it will receive submissions as to the significance or otherwise of that development.

17. Finally, I have issued some directions in relation to the remaking of the decision. There is, however, only limited content to those directions because I do not wish to step on the toes of the First-tier Tribunal.

Directions

For the remaking of the decision

- A. There shall be a rehearing of the appeal before the First-tier Tribunal. Nothing shall be preserved from the tribunal's previous decision of 4 December 2016.
- B. The rehearing shall take place at the Bradford Hearing Centre. The claimant will be provided with a Kurdish Sorani speaking interpreter unless his legal representatives advise otherwise.
- C. The rehearing shall not involve the tribunal judge previously involved in the making of the decision of 4 December 2016.
- D. These directions may be supplemented, varied or replaced at any time by any salaried judge of the First Tier Tribunal in the Immigration and Asylum Chamber of the First-tier Tribunal.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

The case is remitted for a complete rehearing before a differently constituted First-tier Tribunal.

Signed: Date: 11 October 2017

Upper Tribunal Judge Hemingway

Anonymity – rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and respondent. Failure to comply could lead to contempt of court proceedings

Signed: Date: 11 October 2017

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

No fee has been paid and no fee is payable. There can, therefore, be no fee award.

Signed: Date: 11 October 2017

Upper Tribunal Judge Hemingway