



IN THE UPPER TRIBUNAL
(Immigration and Asylum Chamber)

JR/5284/2019

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Heard at: Field House
On: 12 and 13 February 2020

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

AY

Applicant

And

LONDON BOROUGH OF BARNET

Respondent

Representation:

For the Applicant: Ms S Davies, Counsel instructed by Bindmans LLP
For the Respondent: Mr A Campbell, Counsel instructed by London Borough of Barnet

1. The applicant has been granted permission for a judicial review of the respondent's decision dated 10 August 2019. That is the outcome of an age assessment by which the respondent assessed the applicant to be aged 20 and estimated the applicant's date of birth to be 21 February 1998.
2. The issue for resolution in these proceedings is the applicant's age, which is in dispute between the parties. The applicant, a national of Eritrea, claims that he was born on 21 October 2001. He has maintained throughout, that he knows his age and date of birth in the Gregorian calendar. He has no documents to support his claimed age.

3. The applicant's case is that he left Eritrea at the age of 4, with his mother. His father died two years earlier. Thereafter the applicant and his mother lived in Ethiopia until 2011 when they left for Sudan. The applicant and his mother travelled to Libya, however his mother died in the Sahara Desert. The applicant was taken to Libya by other Eritreans, however he was abducted and ill-treated in Tripoli and subject to forced labour. The applicant travelled to Italy by sea. The boat he was in capsized. Thereafter he travelled to Germany, arriving at some stage during 2015. He remained there until 2018, when he left for Belgium and thereafter, the United Kingdom.
4. The applicant arrived in the United Kingdom on 16 June 2018 and presented himself to a police officer, who considered that he appeared to be around 16 or 17 years old. The applicant was referred to the London Borough of Haringey who took no issue with his age and noted that he appeared to look around 16 years old.
5. On 2 July 2018, the applicant claimed asylum. He was fingerprinted as part of that claim. On 3 July 2018, the applicant was referred to the London Borough of Barnet owing to a lack of capacity at Haringey for unaccompanied asylum-seeking children. The applicant was recognised as a refugee on 21 December 2018, owing to his fear of forced military service in Eritrea. No issue was raised as to his age. Prior to that decision, the Competent Authority concluded, on 5 November 2018, that there were reasonable grounds to believe that the applicant had been a victim of modern slavery.
6. On 23 July 2018, the respondent decided to carry out an age assessment. The explanation initially given in Barnet Social Services records was that this decision was made, not because his age was disputed, but so he could have the "most appropriate support." The applicant was interviewed on 19 August 2018, 17 December 2018 and 18 December 2018. The age assessment was concluded on 28 January 2019. Thereafter the applicant's support under the Children Act 1989 ceased and he was referred to the housing department and accommodated as a homeless adult.
7. The social workers concluded that the applicant was an adult based on information received from the German authorities which indicated that he was born on 21 February 1998. In addition, the German authorities stated that the applicant had given a different name (AG) and nationality (Ethiopian) in the context of an asylum claim. Despite efforts by the applicant's representatives to bring evidence of the applicant's poor mental health to the respondent's attention, the latter was unwilling to reassess the applicant's age.
8. Provided in the hearing bundle was a typed copy of the age assessment. If any contemporaneous manuscript notes were made by the social workers during the assessment, they have not been made available.
9. Thus, the applicant says that when he arrived in the United Kingdom, he was aged 16 years and 8 months old. He has maintained throughout that he was born on 21 October 2001 and was therefore 17 years and 3 months old when he was served with the completed age

assessment. On the other hand, the respondent claims that the applicant is over 18 years of age and was aged nearly twenty-one years old as of 28 January 2019. The parties are therefore, three years apart, as to the applicant's age.

10. In reaching this decision I have had the benefit of the totality of the evidence upon which the parties seek to rely, including the oral evidence that I have heard. I also have the benefit of a copy of the records maintained by Haringey and Barnet Social Service recording its interactions with, and decisions taken in respect of the applicant, and information disclosed by the Home Office under the Data Protection Act. In reaching my decision I have also had regard to the matters set out in the correspondence from Mr Stewart Mc Cafferty, a family therapist who was involved in the applicant's treatment under Child and Adolescent Mental Health Services (CAMHS) as well as documents relied upon by the respondent which resulted from its enquiries with the German authorities.
11. For the avoidance of any doubt, I have addressed the question as to the applicant's age and date of birth, without any predisposition that the applicant is or is not a child.
12. Before descending into a detailed analysis of the evidence, I note the conclusion of Mr McCafferty that the applicant is suffering from a complex and chronic form of PTSD.
13. The applicant's account is set out in six witness statements that have been prepared with the assistance of his representatives. Each of those witness statements have been read over to the applicant with the assistance of an Amharic interpreter. In reaching my decision, I have carefully considered the content of each of those statements.

The applicant's case

14. The applicant explains that he was taken to Germany by other Eritrean asylum-seekers and that he was encountered by the authorities there, who fingerprinted him. The applicant states that there was no interpreter provided when he gave his personal details and that he was not age assessed in Germany.
15. The applicant says that an incorrect identity was assigned to him, that of [AG] born in 1998 and his attempt to persuade the police officer to amend the record was fruitless. The applicant is unable to state for how long he remained in Germany. He maintains that his identity is AY born in 2001.
16. I have also had regard to the witness statements made by Mr Mc Cafferty as well as Mr Daniel Smith, a senior caseworker at Young Roots. I shall consider the evidence of the applicant and each of these witnesses, who gave oral evidence before me in my analysis of the evidence that follows.

The respondent's case

17. The respondent relies upon the age assessment carried out between August 2018 and December 2018 and signed off by two social workers, during January 2019; a witness statement from a social worker, Nicola Kell, as well as other material, including documents received from the German authorities and extracts from Facebook.

The hearing

18. Mr Campbell made an application to admit further evidence in the form of an additional witness statement from Ms Kell, the social worker, dated 10 February 2020; social media material; German court documents regarding AG and a photograph provided by the German authorities. He advised me that the judgment had previously been disclosed, evidenced by the applicant's response to it in his fifth witness statement. Mr Campbell argued that the opposition of the applicant went only to weight and not to admission.
19. Ms Davies confirmed that the judgment was disclosed previously and that there was no objection to its admission. Other exhibits to Ms Kell's statement had previously been seen and responded to. The objection was owing to the late production of a photograph (NK5), a series of social media comments and Ms Kell's additional witness statement, none of which was previously disclosed.
20. While noting that Ms Kell sought documents from the German authorities after the advocates meeting on 29 January 2020, I nonetheless gave permission for the additional documents to be admitted as I was of the view that their omission would be prejudicial to the respondent's case and that the Tribunal could be assisted by their consideration.
21. Ms Davies mentioned that she had met the applicant for the first time on 12 February 2020 and because she would not be sure if he was becoming distressed, Mr Smith had agreed to alert her if he saw any such signs. While noting Mr Campbell's preference that Mr Smith give his evidence first, I agreed that the applicant should be the first witness, with Mr Smith remaining in the hearing room throughout and that this amounted to a reasonable adjustment, given the medical evidence provided.
22. The applicant gave evidence over the course of the two days of the hearing, with the assistance of an interpreter. It was apparent that the applicant was experiencing significant distress during the hearing and Mr Campbell is to be commended for the patient and sensitive way he carried out his cross-examination.
23. The interventions of Mr Smith were also of great assistance to the Tribunal, which led to frequent breaks for the applicant's benefit. I also heard evidence from Mr McCafferty and Mr Smith on the second day of the hearing as well as submissions from the representatives. I

have considered all the evidence taken, the submissions as well as all the evidence before me in coming to my conclusion as to the applicant's age.

The legal framework

24. Where the age assessment of the local authority is in dispute, it is for the Tribunal or Court to reach its own assessment of age as a matter of fact. It was recognised by Lady Hale in R (A) - v- Croydon LBC [2009] UKSC 8 that this was not a task without difficulty:

“But the question whether a person is a “child” is a different kind of question. There is a right or a wrong answer. It may be difficult to determine what that answer is. The decision-makers may have to do their best on the basis of less than perfect or conclusive evidence. But that is true of many questions of fact which regularly come before the courts. That does not prevent them from being questions for the courts rather than for other kinds of decision-makers.”.

25. In R (B) -v- Merton LBC [2003] EHHc 1689, the following guidance was given by Stanley Burnton J, as to the correct approach to that task:

“the assessment of age in borderline cases is a difficult matter, but it is not complex. It is not an issue which requires anything approaching a trial, and judicialisation of the process is in my judgement to be avoided. It is a matter which may be determined informally, provided safeguards of minimum standards of enquiry and of fairness are adhered to.”

“I do not think it is helpful to apply concepts of onus of proof to the assessment of age by local authorities. Unlike cases under section 55 of the Nationality, Immigration and Asylum Act 2002, there is in the present context no legislative provision placing an onus of proof on the applicant. The local authority must make its assessment on the material available to and obtained by it. This 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...”

26. In determining the applicant's age, the Tribunal is not confined to choose between the positions of the parties; R (W) v London Borough of Croydon [2012] EWHC 1130 [§ 3]. The nature of the Tribunal's inquiry under the Children Act 1989 is inquisitorial, R (CJ) v Cardiff City Council [2011] EWCA Civ 1590 [§ 21]. As for as how it goes about this inquiry, the Tribunal must decide the applicant's age on the balance of probability:

“Where the issue is whether the Applicant is a child for the purposes of the Children Act it seems to me that the application of a legal burden is not the correct approach. There is no hurdle which the Applicant must overcome. The court will decide whether, on the balance of

probability, the Applicant was or was not at the material time a child. The court will not ask whether the local authority has established on the balance of probabilities that the Applicant was an adult; nor will it ask whether the Applicant has established on the balance of probabilities that he is a child."

Analysis of the evidence

27. As emphasised from the outset, when assessing the applicant's credibility, I have been particularly mindful of the report of Mr McCafferty and the diagnoses made. I have had regard to the Joint Presidential Guidance Note No.2 of 2010: Child, Vulnerable Adult and Sensitive Applicant Guidance, and my assessment of the applicant's credibility has been considered in the round, taking due account of the medical evidence.
28. In determining the applicant's age and date of birth, I have considered all the evidence before me and submissions made in the round, even where not referred to directly.
29. It is convenient to begin with an examination of the age assessment report prepared by the two social workers employed by the respondent. In reaching their decision, the social workers drew upon their own observations of the applicant during the age assessment, the information he was able to provide to them, information from notes and information obtained from other sources including the German authorities.
30. From the analysis of the information provided, the reasoning of the social workers that led them to conclude that the applicant is likely to be over the age he has claimed, is founded upon the following factors;
 - i) A discrepancy regarding the applicant's age at the time his father died;
 - ii) An inconsistency as to whether the applicant travelled to Sudan by car or lorry;
 - iii) The applicant's lack of knowledge of his age on arrival in Italy or Austria
 - iv) A failure to mention events in Germany
 - v) Issues raised by Facebook accounts
 - vi) That the applicant is an adult Ethiopian national, whom I refer to as "AG."
31. The social workers concluded that the information from German Social Care Services showed that the applicant was cared for by them between specific dates in 2015 and 2018 and that he used the name AG and said that he was an Ethiopian national with a date of birth of 21 February 1998.

32. The applicant, during his oral evidence, disagreed with a significant amount of what was attributed to him in the Age Assessment document and stated that he was prevented from speaking by the interpreter, that he was rendered very little in the way of assistance by the Refugee Council observer, that he was asked questions in a confusing and unstructured manner and that he was distressed throughout.
33. Mr Campbell made the following submission regarding the Age Assessment document. He recognised that it was not a verbatim record of what was said and that there were no contemporaneous notes. He contended that it was natural there would be an element of paraphrasing, misinterpretation and mis-recording. Nonetheless, he argued that it was not credible that what has been recorded was so wrong. Acknowledging the applicant's written and oral evidence that the interpreter was not listening, was on Barnett's side and no-one was supporting him, Mr Campbell argued that the Age Assessment was conducted by experienced social workers and there was nothing to suggest that it was oppressive or that the applicant raised concerns regarding the conduct of the interpreter. He contended that the age assessment recorded the opposite, describing the applicant as energetic and happy; that he was offered breaks, water and supported by someone from the Refugee Council.
34. Mr Campbell acknowledged that the alleged inconsistency regarding the applicant's age when he left Eritrea was relatively minor and could be explained away by misinterpretation, the applicant's error or that his response had been wrongly recorded. He focused his submission on the applicant not initially being forthcoming about having lived in Germany and providing varying accounts of how long he lived there.
35. I have carefully considered the content of the age assessment however I am prepared to attach very little weight to it for the following reasons. The applicant attended three interviews with the social workers, however there is no attempt within the age assessment document to attribute any of the responses he is said to have provided to any particular date or indeed event. The compiler of the age assessment used varying tenses throughout. At many points the phrase "had said" was used yet nowhere is it stated when the applicant was supposed to have said something and in what context. At other times in the assessment, the present tense was used, and comparisons were made between differing responses made by the applicant at different times, yet there is no indication whether the applicant made these statements during the various age assessment interviews or during other interactions with the local authority.
36. I am not assisted by the fact that the age assessment is unsupported by any contemporaneous notes and no explanation has been provided for this omission. The statements of Ms Kell do not assist. The age assessment provides no narrative as to questions and answers and therefore even were the respondent correct in its recording of the applicant's responses, it would have been helpful to know precisely what questions were put to him and when. There is also no indication that the ADCS guidance was observed regarding the taking of detailed written notes, the retention of those notes and their production for age dispute hearings.

37. There is no indication in the respondent's records of any concerns regarding the applicant's age. It was only as a result of commencing the age assessment process, that evidence came to light as to the applicant's residence in Germany. Yet, in the age assessment document, a substantial amount of adverse comment is made regarding the applicant's physical appearance and demeanour, with the social workers concluding he looked much older than his claimed age. It appears odd that this point was never taken previously, if it was considered that the applicant resembled a young adult. In any event, the ADCS guidance is that physical appearance is an unreliable indicator of age.
38. The assessing social workers did not provide their experience of conducting age assessments. It is the case that Ms Kell mentions in her witness statement that she achieved a first-class degree in 2016 and that she started work at Barnet in June 2018, shortly before the respondent began working with the applicant. I find that this very employment is unlikely to be sufficient that it could be classed as "*experience of working with children and young people, and of undertaking assessments of children in need*" as recommended in page 12 of the ADCS guidance. No information is provided at all regarding Ms O'Neill, the other assessor.
39. The respondent's failure to provide the written notes, which the applicant believed were being taken, has prevented him from being able to fully address the concerns raised in the age assessment.
40. It is a matter of concern that the respondent, according to the CLA review of 31 July 2018, elected to carry out the age assessment as "*standard good practice procedure*" and for no other reason. The ADCS guidance states that they should be carried out only where there is reason to doubt the claimed age.
41. There are indications in the body of the age assessment that the applicant was distressed, when traumatic events were being discussed, particularly regarding the death of his mother. In the respondent's CLA records it is noted that the applicant cried, fell to the floor, struck himself and ran out of the room during the age assessment. Yet these observations, the applicant's mental health and traumatic incidents were disregarded in the conclusions of the age assessment. The applicant was diagnosed with PTSD shortly after the age assessment was concluded, it being recorded that the most distressing event was the death of the applicant's mother. It is worth mentioning that the first witness statement of Mr McCafferty, who first saw the applicant in March 2019, remarks that the applicant was avoidant of difficult topics which caused flashbacks or other traumatic responses.
42. Mr Campbell argued that the applicant was supported by an appropriate adult from the Refugee Council during the age assessment, yet it is notable that there is no evidence from that organisation at all, let alone to show that the applicant was adequately supported during the interviews.
43. The first three of the specific reasons concerns raised in the conclusion of the age assessment are woefully insufficient to undermine the applicant's account as to his age and history.

Owing to the lack of notes, there is no reliable evidence that the applicant said any of the statements attributed to him. Even if there were discrepancies or omissions, his age when he left Eritrea, the type of motor vehicle he used to travel to Sudan and his age on arrival in Italy and Austria relate to matters, all of which occurred when he was a child by all accounts; and in relation to Italy, is a source of trauma.

44. The applicant's suggestion that he was misunderstood either by the interpreter or the assessors is not an unreasonable one in the light of the poor records available.
45. A further issue raised in the age assessment relates to the applicant's account of his time in Germany. In that document it is asserted that the applicant attempted to deny that he had been in Germany and had given discrepant responses when pressed on the subject. As indicated above, there are no notes as to what questions were asked or what responses were given on any of the occasions when the applicant was interviewed. By contrast, there is documentary evidence showing that the applicant voluntarily informed the Home Office in his Unaccompanied Minor Statement of Evidence Form, submitted in September 2018 that he had been fingerprinted in Germany and that he had lived there for some time. In addition, it can be seen from the applicant's SEF and interview, that he provided a wholly consistent account including of his age, family and nationality.
46. There is no indication that the respondent sought, obtained or considered the Home Office evidence prior to a conclusion being reached on the applicant's age. On the contrary, the respondent erroneously informed the Independent Reviewing Officer on 22 January 2019, that the Home Office were not aware that the applicant had claimed asylum in Germany prior to granting him status. Furthermore, in her second witness statement Ms Kell repeated that the applicant failed to notify the Home Office of the same during his "screening interview." The applicant did not undergo a screening interview because he was accepted to be an unaccompanied minor and the questions typically asked at a screening interview formed part of the Unaccompanied Minor SEF, which he answered in full, as well as providing a detailed witness statement. In any event, the applicant was fingerprinted by the Home Office when he sought asylum and the Eurodac search carried out prior to a decision being made established that the applicant had been fingerprinted in Germany on 20 April 2015. Therefore it cannot be said that the Home Office was misled or ill-informed.
47. It is the case that the applicant is unable to state when he arrived in or how long he had remained in Germany, this is also the case for other countries he has either transited or remained in. Given that the applicant was bereaved, subject to forced labour in Libya and the boat he was in capsized in Italy, it is perhaps unsurprising that owing to these traumatic events, he is unable to recall dates and durations of his journey to the UK. The age assessment amounts to poor evidence that the applicant has attempted to conceal his time in Germany.
48. I have carefully considered the extracts from Facebook, in the name AG, which are relied upon by the respondent. I have considered Mr Campbell's submission that the photographs

show the applicant having friends and a social life in Germany, which contradicts his account of being seriously unhappy. This is not a particularly strong point.

49. I find that I am able to place very limited weight upon the Facebook material for the following reasons. Firstly, there is no account by the respondent as to how the photographs and comments relied upon were identified and obtained. Secondly, the majority of posts were translated from a different language, yet the original posts have not been provided and thus those representing the applicant have been unable to verify the accuracy of the translation.
50. Thirdly, there are inconsistencies between the “likes” and “loves” shown on the photographs and the posts said to relate to those photographs and as such I am not satisfied that the posts relate to the photographs provided. Fourthly, the applicant was not shown these items during the age assessment process. Fifthly, the information is far from complete, in that the photograph albums have not been produced and there is no evidence as to when the posts, some of which are years old, were extracted. Sixthly, the applicant has consistently stated that the AG Facebook account was set up on his behalf because he had no telephone or computer when he was in Germany and that he has since set up his own Facebook account in a different name.
51. Mr Campbell argued that if the applicant was assigned an incorrect name and age, it was unlikely that others would refer to him by that identity. I do not accept that submission. The only reliable social media evidence that the applicant was referred to as AG in Germany by anyone other than the German authorities is the photograph posted by the Jean Paul charity. I consider it more likely than not that a charity would record the applicant by the identity assigned to him by the German authorities and therefore this evidence does not undermine the applicant’s claim as to his identity. I am not satisfied that the remaining Facebook evidence establishes that the applicant was also referred to as AG by his peers in Germany.
52. The respondent has made strenuous efforts to obtain evidence relating to the applicant’s time in Germany, right up until close to the eve of the hearing. Having considered all that material, I accept that the applicant was resident in Germany for a protracted period of time between 2015 and 2018 and that he was registered by the German authorities in the name of AG with a date of birth of 21 February 1998. Nonetheless, for reasons set out below, I accept that the applicant has provided his correct details to the UK authorities.
53. The respondent relies on a transcript dated 27 March 2018 and judgment from the Bavarian Administrative Court of Bayreuth dated 6 April 2018 as evidence that the applicant is an Ethiopian national aged nearly twenty-one. I am not satisfied that this material relates to the applicant for the following reasons.
54. Firstly, the evidence of the complainant, AG, was that he entered Germany on 8 March 2015 and was apprehended the same day by the authorities, whereas the applicant was apprehended and fingerprinted in Germany on 20 April 2015. While the asylum claims of the

claimant and the applicant were both lodged on 21 April 2015, I find this evidence does no more than add some credence to the applicant's claim that his case was confused with that of AG.

55. Secondly, the complainant in the German proceedings gave an account of turning 18 years old in March 2017, which would give him a month and year of birth of March 1999. It has been the respondent's case that the applicant was born in February 1998, over a year earlier. There is no reference to the latter date of birth in the transcript or judgment.
56. Thirdly, the findings of the German court demonstrate that there are no similarities and numerous differences between the facts of the applicant's case and that of AG. In particular, AG is Ethiopian, with three siblings including one in the UK and his parents were alive with his father being active in politics. The judge accepted that AG was active, at a low level, in Ethiopian politics during his time in Germany, albeit it was not accepted that he had been arrested in Ethiopia as claimed. I would add that the oral evidence of Mr Smith was that the applicant had showed no interest in politics in the UK, unlike many Eritrean and Ethiopian young people who used Young Roots' services. In the case of AG there was no reference to an age assessment being carried out, a fear of military service nor mention of traumatic events during the journey to Europe or mental health problems.
57. I also take into account Ms Davies' submissions regarding the respondent's treatment of the German material, including that this material was not shown to the applicant during the age assessment process and that it was not verified with the Home Office as required by the 2015 ADCS and Home Office Joint Working Guidance on Age Assessment. In addition, it can be seen from the asylum interview record that the applicant was tested in depth regarding his knowledge of Eritrea. The Home Office were satisfied with the applicant's responses, when compared to country information as to culture, geography and language and concluded that he was a national of Eritrea and recognised him as a refugee on that basis. That much is clear from the Asylum Grant Minute. The conclusion in the age assessment that the applicant was an Ethiopian national was reached in the absence of the Home Office records or reference to country material.
58. The respondent's position as to the applicant's identity has varied during these proceedings. The age assessment concluded that the applicant was an Ethiopian national aged twenty at the time. Yet the respondent's Summary Grounds of Resistance stated as follows, "*The claimant is a national of Eritrea.*" Whereas in her second witness statement dated 10 February 2020, Ms Kell concludes, "*in the light of the differing information he has provided it is felt that the Applicants (sic) true identity is unknown.*"
59. I have had regard to the fact that the applicant received a decision from the Competent Authority, accepting that there are reasonable grounds to believe that he has been a victim of modern slavery, in relation to events in Libya. A conclusive grounds decision was not made because, according to his representative, the applicant was recognised as a refugee and there was no benefit to him of proceeding with this aspect of the claim.

60. I now consider the evidence relating to the applicant's mental state which dates back to 30 June 2018, when he met with a social worker at Haringey Council. The notes of that meeting record that the applicant was having difficulty sleeping, was experiencing flashbacks related to the death of his mother and was in pain because of being physically abused in Libya. The social worker recorded that they were "*concerned about (the applicant's) emotional wellbeing and mental health*" as well as the impact of trauma. A Child and Family Assessment was carried out on the applicant on 2 July 2018 by Haringey council who recorded that the applicant was "*a vulnerable young person and will require ongoing support not only to settle in the UK but to also address the emotional and psychological issues as a result of his past.*"
61. The applicant was referred to Barnet Council on 3 July 2018. In its Child and Family Assessment, Barnet record that the applicant found it difficult to discuss his journey and the death of his mother, noting that the applicant "*can get tearful and is finding it difficult to sleep.*" It was also noted that he may have an underlying trauma for which he would require support. The said assessment further stated that the applicant's age was not disputed, that he was of average height for a person of his age and that he required support with self-care skills such as cooking and budgeting, which he had yet to learn.
62. On 25 July 2018, the applicant was seen for an initial health assessment by the Oak Lodge Medical Centre. The applicant told the doctor who examined him that he was suffering from poor sleep, poor appetite, palpitations, headaches, sweating and flashbacks. The applicant also told the assessing doctor that he did not like discussing his experiences and would prefer it if they were not mentioned. The doctor further recorded that the applicant's physical appearance, including pubertal was appropriate for his age.
63. The applicant mentioned his experiences in Libya to his GP on 29 August 2019. The following is recorded in the GP's notes, the applicant stated that he "*was often hit and also exposed to the death of others around him. Have left him with depression/anxiety (especially in crowded places). Keyworker with him states he has been known to hit himself during outbreak of anxiety...*"
64. The respondent referred the applicant to the Child and Adolescent Mental Health Service (CAMHS) on 5 September 2018. The referral form, completed by Ms Kell, stated that the applicant "*is an unaccompanied minor...showing signs of emotional trauma he cannot sleep and breaks down when talking about his mother dying in the Sahara Desert during their journey. (the applicant) reports being imprisoned in Libya and beaten, he has deep scars on his legs from this...during age assessment had slapped his face hard and then run out of the room. He was found slouched on the floor crying...behaviour can be erratic i.e he presents as not being able to concentrate, fidgeting...*"
65. The applicant attended his first appointment with CAMHS on 12 March 2019. A letter from Stewart McCafferty, the applicant's Family Therapist, dated 28 March 2019 states that the applicant has been diagnosed with PTSD and that he has experienced "*multiple traumatic events*" which are "*highly arousing and disturbing for him.*" Mr McCafferty mentioned that he planned to treat the applicant for the following 3 months, in the first instance. On 9 May

2019, Mr McCafferty wrote to state that the applicant's treatment was ongoing, in that he was being seen on a weekly basis. In addition, reference was made to the therapeutic work being done to "*help (the applicant) integrate his fragmented recall of traumatic events...*" The applicant continued to be treated by CAMHS until October 2019, when he ceased to become eligible for services. There have been delays in transferring the applicant's case to adult services and as of the date of the hearing, the applicant was still waiting to be seen.

66. Mr McCafferty attended the hearing and gave evidence. He has also provided a witness statement for these proceedings, dated 21 November 2019. In that statement, he states that he originally qualified as a social worker but ceased practising in 1995 and that he is a qualified systemic psychotherapist. He has taught extensively in his field, has worked in multi-disciplinary mental health teams since 1987 and has assessed over 1,000 children and young people. He has never prepared or given evidence in a disputed age case previously.
67. Mr McCafferty confirmed in his statement that the applicant has a "*complex and chronic form*" of PTSD as well as non-organic insomnia and clarifies that he always discusses cases and diagnoses with the team's consultant psychiatrist. Mr McCafferty considers that the applicant is aged eighteen and gives several reasons in his statement, which include that the applicant was referred as he was considered to be a child, his reactions to information and events, his presentation and the time it took for him to be able to engage in therapy. It is recorded that between March and September 2019, the applicant received weekly treatment for PTSD in the form of trauma-focused Cognitive Behavioural Therapy (CBT) and Eye Movement Desensitisation and Reprocessing (EMDR). The insomnia, described as longstanding, was to be treated with tuition of good sleep hygiene and a melatonin prescription.
68. The applicant's symptoms were summarised by Mr McCafferty as forgetfulness owing to trauma and exhaustion owing to insomnia. He described the applicant's recall as initially "*non-chronological and fragmentary,*" but that he was eventually able to recount his story in a "*somewhat chronological*" order. Mr McCafferty expected those symptoms to resolve over the course of the following year if treatment was continued. His statement was supported by the discharge summary, referral letters to adult mental health services and the applicant's clinical notes.
69. Mr McCafferty expanded on his witness statement, in response to questions from both counsel and his evidence including the following. The applicant had never given any indication that his mother was alive; and he was unable to talk about her to begin with, without distress. The applicant had not indicated that he was older than his claimed age or that he had siblings whose whereabouts were known. The applicant had been seen by one of Mr McCafferty's colleagues who was also of the view that the applicant was an adolescent and suitable for their service. He explained that if the service had concerns that someone was masquerading as a child, as had happened once or twice, they would be advised to restrict the service. In the applicant's case, as there was a dispute over his age, Mr McCafferty had to discuss that with management. The conclusion of those discussions was that the applicant

was not a risk to children because of his age on the “NHS Spine” considered with his demeanour.

70. Mr McCafferty said that he had worked with many unaccompanied asylum-seeking children as well as large numbers of teenagers of various ethnicities. The applicant had not mentioned political activities and all the discussion had surrounded his traumatic experiences. During one session, the applicant had listed his experiences in order of distress, the greatest being the death of his mother. Each of the applicant’s traumatic experiences elicited the necessary features of PTSD, that there were three sources of trauma resulted in the diagnosis of Complex PTSD.
71. It was put to Mr McCafferty that the respondent’s case was that the applicant’s mother was alive. In response, he explained that in the early days of therapy, the mere mention of the applicant’s mother made him “freeze” preventing progress and therefore Mr McCafferty initially avoided the topic until through the course of work, the applicant was able to talk about that experience. He considered that it was unlikely that the applicant could have had the ability to portray these circumstances if they were not true.
72. When asked by Ms Davies if consideration had been given as to whether the account was fabricated, Mr McCafferty said that that the team also looked at arousal, physiological change, posture, demeanour and hypervigilance which can take different forms, a common one being insomnia like in the applicant’s case. In addition, there was intrusiveness observed during the first discussion of the mother, in that he was observed to be fighting back against overwhelming recall.
73. Mr McCafferty also spoke of the impact on the applicant’s daily life which seemed to be considerable. He said that such impact was more prevalent in young people and in the applicant’s case, included terrifying flashbacks, going completely blank or forgetting everything, which had happened in some sessions. Mr McCafferty confirmed that he discussed all his sessions with the senior consultant.
74. When asked whether he could comment on what was said by the respondent about the applicant’s presentation during the series of age assessment interviews, with particular regard to his varying recall of detail of some events and not others, Mr McCafferty replied that the applicant’s recall was “quite limited” at first and that he entered a state of distress regarding a variety of topics. Owing to that, other issues were discussed and at first the applicant’s recall was “non-chronological, partial and fragmented.” The applicant’s ability to recall events came and went and varied from week to week. Mr McCafferty considered it unhelpful for young people to be asked too many questions at a time as the process could be confused and they might disassociate and push matters back into their minds. There was a need to work with them and ask one or two questions and process them instead of pushing on.

75. Mr McCafferty became aware at the hearing on 13 February 2020, that no adult services had been provided and he was concerned. His experience of working with young people and adults was that if they were only part of the way through the work, things unravel because the person is not inoculated from trauma. Mr McCafferty had been hoping that adult services would pick up the applicant's case rapidly and if they had, he considered that his mental state would be much improved. Mr McCafferty's understanding was that things had reverted to how they were, and he thought that daily life was very difficult for the applicant, particularly in terms of giving evidence. The applicant had told Mr McCafferty outside of the hearing that his sleeplessness had deteriorated. I should add that Mr McCafferty was not present when the applicant was giving evidence.
76. When asked by Mr Campbell whether the impact of trauma could lead to loss of recall of events subsequent to the trauma, Mr McCafferty said that it was his experience that part of the process of suppressing unwanted memories had the effect of suppressing wanted memories and could lead to a person becoming forgetful, particularly when accompanied by nightmares and flashbacks. In general, there were different forms of amnesia and it was likely that there were other things forgotten. Mr McCafferty had worked with other people who had forgotten things which appeared benign. Otherwise Mr McCafferty stood by his written evidence including the examples he gave as to why he considered that the applicant was aged seventeen at the time of his treatment by CAMHS. Mr Campbell's sole submission on Mr McCafferty's evidence was that the examples given of the applicant's behaviour being of someone much younger could equally show immaturity.
77. I have considered all the medical evidence in the round. I attach a substantial amount of weight to that evidence and find that it provides a reliable account of the applicant's mental state between the time of his arrival in the United Kingdom in July 2018 and October 2019 when his CAMHS treatment ceased. There was no challenge to the suitability of Mr McCafferty as an expert witness nor to the content of his written or oral evidence. I further found the evidence of Mr McCafferty to be detailed, plausible and consistent with the medical records. It was not disputed by Mr Campbell that the applicant's traumatic experiences were sources of distress, however it is notable that no such experiences were raised in the claim of AG according to the German documents. I therefore take this evidence into consideration in terms of the applicant's likely mental state at the time of the age assessment interviews and during his oral evidence before me.
78. The applicant's claim to currently be 18 years old is supported by the evidence of Daniel Smith, a Senior Caseworker at Young Roots, who is the applicant's Advocate. Mr Smith provided a witness statement dated 18 November 2019, in which he stated that he first met the applicant on 15 April 2019 and since then has seen him on at least a weekly basis. Mr Smith accompanies the applicant to appointments, assists him with practical tasks and has observed the applicant take part in activities organised by Young Roots such as youth club parties and football matches. Mr Smith's opinion of the applicant's age is based on his own experience, of more than two years' duration, of working with young people from East Africa in his current and previous roles undertaking refugee casework. His view is that the

applicant's "*appearance, demeanour and behaviour*" are consistent with an age of 18. He gives a number of examples in relation to the applicant's response to situations to support his view.

79. In addition, Mr Smith comments that to his knowledge and according to the records of Young Roots, the applicant's friends and associates are all aged 17 or 18 and from East Africa. Mr Smith has prepared evidence for use in only one other age dispute case. The records of the majority of the applicant's contact with Young Roots were annexed to Mr Smith's statement.
80. During his oral evidence, Mr Smith stated that the applicant had never given any indication that he had a mother who was alive, siblings, a brother in the UK, that he was not Eritrean or that he was misleading the authorities about his age. Nor was Mr Smith aware of the applicant having an interest in Ethiopian politics. By contrast he was aware that a lot of Young Roots' clients were Ethiopians with political protection claims, however the applicant was never involved in those discussions.
81. Mr Smith explained that Young Roots mostly worked with 16 to 19-year olds and that the available activities were targeted at that age range. Examples of activities being board games and cooking. Most of the young people disengaged from these activities from 19 or 20 years old. Mr Smith was of the view that the applicant was a good fit with these activities, in that he was a longstanding attendant who attended youth club activities and parties. Mr Smith also assisted the Tribunal with understanding the Facebook documents relied upon by the respondent.
82. In response to questions posed in cross-examination, Mr Smith confirmed that he had a passion in working with refugees. He stated that he was still working with the applicant as at the time of the hearing and had probably met with him on more than 50 occasions. Mr Smith was able to expand on the examples he had given in his statement regarding the applicant's ability to undertake tasks for himself and he explained that a lot of the support he provided was reassurance and providing emotional support to him.
83. Generally, Mr Smith assisted the applicant with his first attendance at various appointments, such as at the GP or attending his hearing, following which the applicant could go alone on the next occasion. In terms of the applicant's concerns regarding his temporary accommodation, Mr Smith explained that he had visited it and noted that the applicant's room was grim and bare. The applicant had told Mr Smith that he was fearful of the other residents because they were much older and had been aggressive to him. Mr Smith felt that the applicant was seen as an easy target and was vulnerable living there. He had raised these issues regularly with the council. Mr Smith confirmed that he was currently working with four or five people who were being age assessed and had worked with around ten in total.
84. When it was suggested that he would always support young people and take their side, Mr Smith responded that he would not be able to write a witness statement if he did not believe that the person was of the age claimed. While Young Roots would support their service

users, they would not provide a witness statement. He had not spoken in court before for an age disputed service user. There were other cases, where Mr Smith did not know if he would be confident to speak for them. He denied that he would find it hard to take a neutral view, explaining that his opinion was based on the work he did with the applicant in a variety of environments on a regular basis over a long time. Mr Smith added that the applicant's age assessment case was the one he was most confident about and that the applicant had never given any indication other than he was credible regarding his age and history.

85. Having had the opportunity of hearing the evidence of Mr Smith and that evidence having been tested in cross examination, I find that he is a truthful witness and that I can attach a moderate degree of weight to the view expressed by him as to the applicant's age and date of birth. He has had the most contact as well the most recent contact with the applicant compared to any other witness. That contact has been at least weekly over a period of around ten months and Mr Smith has provided detailed examples to support his evidence as to the applicant's age. I accept his evidence that he would not be comfortable to support a case where he had doubts as to a service user's age. Furthermore, there is no indication that the applicant has misled Mr Smith and indeed this would be difficult to achieve given the extent of contact they have had over a protracted period of time and in a variety of circumstances.
86. I now consider the evidence of the applicant. His presentation was not incongruent with the description of his mental state in the medical evidence from Mr McCafferty. He required many breaks because he was becoming distressed while giving his testimony. Mr Smith was of great assistance in helping to identify when the applicant required a break. That distress exhibited itself by the applicant becoming tearful, disturbed and distractible throughout his evidence. I have taken into consideration the entirety of the applicant's written evidence as set out in his six witness statements as well as his oral evidence in considering whether there is anything within it, which enables me to reach an informed view as to the applicant's age.
87. During examination-in-chief, the applicant's evidence was consistent with his witness statements. His responses to questions posed in cross-examination including the following. The applicant agreed that he was apprehended in Germany by the police, but he could not recall the date or location. He said that it was not until perhaps a year or 8 months' later that he understood that he had been registered with the name of AG and that he had argued that it was not his name. He had attended an educational institution in Germany but unsure whether it was a school or a college.
88. The applicant said that he had been distressed and unhappy and that he had not received the same assistance, including medical, in Germany as he had in the UK. The applicant denied saying that he was only in Germany for a week during the age assessment. He described the interview as very rushed, that he did not know what he was saying and that the assessors wanted to confuse him. Nor had he told the assessors that he had leave to remain refused in Germany. The applicant denied that he had been provided water during the assessments, stating that he had to go outside to a water fountain.

89. When it was put to the applicant that he became angry in the age assessment when he realised that the assessors knew he had Facebook, the applicant denied this and said he was angry because he was being asked about his mother. The applicant had shown them his mobile telephone when he was asked if he had Facebook and they had seen his account in which he used the name of a footballer he admired. The applicant maintained that he told the assessors that he had lived in Germany, that he had already told the Home Office this and he would have no reason to hide this information. The applicant said that the name AG had been mistakenly used by everyone in Germany to refer to him.
90. The applicant became distressed during the hearing when describing the age assessment interviews, stating that they were going "*round and round about my mum and I was crying.*" In relation to the Facebook accounts, the applicant clarified that the AG account was opened by a worker in Germany and that the applicant had set up an account in the name of 'AM', subsequently changed to the name of the footballer. He had not changed the name to hide his account and he had shown the account to the social workers when they asked. The applicant could not remember running for the Jean Paul charity and was unsure if the picture was of him. At this point Ms Davies pointed out that comment on the post relating to that race had been translated and the post in the original language had not been made available.
91. The applicant denied that he was trying to conceal his time in Germany and added that the Home Office had not asked him about his time in Germany when he was interviewed. The applicant was shown the seven photographs said to have been taken from social media and it was put to him that these photos showed that he did not have an unhappy time in Germany. The applicant maintained that he was depressed but that nonetheless, he wanted to be among people. He complained that he was unsupported during the age assessment and that the interpreter was telling him to just listen. He did not get on with the interpreter and was not offered water apart from on the first day out of three or four interviews. The applicant described the person from the Refugee Council as elderly and silent. He could not recall attending a court hearing in Germany and nor could he recall the court judgment.
92. The applicant did not accept that he had a brother and that a photograph of the applicant with another male was of him and his brother. He did not know who this person was. He explained that he would not have been homeless or had to borrow money from an interpreter for food if he had a relative in the UK to help him.
93. During re-examination the applicant stated that he did not know what leave to remain meant, that he had not had an age assessment in Germany and that he had a mobile telephone for the first time when he came to the UK. He had never used the internet to contact people prior to arriving in Germany and when he was in Germany, he would use other people's devices to do so. Regarding the age assessment interviews, the applicant recalled that one of the assessors was making notes on a "*small paper.*" He was not shown the social media material and only saw it via his solicitor. The social workers had never shown him the documents from the German court.

94. The applicant was asked if he understood the difference between central government in the form of the Home Office and local government in the form of the respondent. He replied that he did not, and his understanding was that the Home Office would look after him and he had not realised that he would be passed elsewhere. The applicant expanded on the reasons why he had been upset with the age assessment interviews, stating that he felt like the interpreter was supporting the local authority and was preventing him from speaking.
95. The applicant said that he had become confused after the interview and taken the wrong bus because he was preoccupied with the interpreter not explaining what he was saying. He described the social worker, a manager and the interpreter upsetting him "*one on top of the other*" and that he did not know what he was saying. He felt very bad after the interview, he had cried and could not eat when he returned home. The social workers had not read over to the applicant what they had written apart from on the day they rejected his age and came to his accommodation.
96. The applicant presented in a distressed manner during the hearing despite being accompanied by his lawyers, their interpreter and his support worker as well as having received therapeutic intervention until October 2019. Despite the lengthy cross-examination of the applicant, which took place over both days over the hearing, no new information emerged and his evidence was overwhelmingly consistent with that set out in his witness statements and Home Office documents. He gave his evidence in a forthcoming manner, without any attempts at hesitation or evasion. I am satisfied that his evidence was credibly given, to the best of his ability.
97. I accept that it is likely that the applicant was particularly vulnerable at the time of the age assessment and that his condition could well have been worse than currently, given the absence of support and that the assessment took place at a time when the applicant was still awaiting his first appointment with CAMHS.
98. As indicated above, there are no contemporaneous notes as to what was said at the age assessment and therefore it has not been established that the applicant attempted to hide information or gave discrepant answers.
99. Should the comments made in the age assessment reflect what the applicant said, I find that his vulnerability, together with his impression that he was unsupported and pressurised puts those comments in context. Mr McCafferty's description of the applicant having a "*fragmented recall of traumatic events*" when his treatment commenced and having forgotten issues including non-traumatic events, approaches a complete answer to any difficulties the applicant may have experienced in answering questions during the age assessment process.
100. In summary, the applicant has provided a strongly consistent account regarding his history, since his arrival in the United Kingdom. His circumstances including his account of being an Eritrean national were accepted by the Home Office, having been tested in interview. Furthermore, he was considered to be a minor by the police who encountered him, by

Haringey social services, the Home Office, CAMHS and Mr Smith, his key worker. Even the respondent had no concerns regarding the applicant's age and recorded that an age assessment was carried out only owing to a flawed understanding that this was "*good practice*." As indicated above, I place very little weight on the age assessment document or on the German court documents.

101. Drawing all the evidence and submissions together I reach the following conclusions.
- a. I am satisfied that the applicant is suffering from a complex and chronic form of PTSD owing to multiple traumatic events as well as longstanding insomnia.
 - b. I am satisfied that the applicant presents as a vulnerable person with a psychological profile and clinical history that is highly consistent with a person who has suffered different types of trauma
 - c. I find that at the time the applicant arrived in the UK on 16 June 2018, he was aged 16 years and 8 months.
 - d. I conclude that the applicant is aged 18 years and 4 months at the time of this hearing.

SUMMARY OF DECISION

102. It is determined that the applicant's date of birth is 21 October 2001 and that he is currently aged 18.

Costs

1. The applicant has been found to be the age he claims and he has therefore been entirely successful in this judicial review.
2. The respondent is to pay the applicant's reasonable costs, to be assessed if not agreed.

Signed

Date: 20 March 2020

Upper Tribunal Judge Kamara