

R (on the application of BF (Eritrea)) (Respondent) v Secretary of State for the Home Department (Appellant)

Case ID: UKSC 2019/0147

Case summary

Issue

- (1) What is the test that the court must apply to determine the lawfulness of policy issued by HM Government in relation to the treatment of asylum seekers who claim to be children.
- (2) Whether the Home Department's policy relating to an initial assessment of the age of asylum-seekers claiming to be children is lawful.

Facts

BF is a national of Eritrea and an asylum seeker who presented himself to police claiming that he was 16 years old. The immigration officers who saw him believed him to be substantially over 18, describing his physical appearance as that of an adult in his mid-twenties. He had previously claimed asylum in Italy, where he had given his age as 26. BF was held in immigration detention pending his return to Italy and continued to claim that he was a minor. Two formal age assessments found him to be an adult, but a third found him to be 16. Save in limited circumstances, it is unlawful for the Home Department to detain an unaccompanied child. BF applied for judicial review of the decision to detain him on the ground that the Home Department's policy, which provided that a person claiming to be a child could be treated as an adult if immigration officers considered that their physical appearance very strongly suggested that they are significantly over 18, is unlawful. BF's judicial review claim was rejected by the Upper Tribunal. The Court of Appeal allowed BF's appeal by a majority. The SSHD appeals the Court of Appeal's decision.

Judgment appealed

[\[2019\] EWCA Civ 872](#)

Parties

Appellant(s)

Secretary of State for the Home Department

Respondent(s)

BF (Eritrea)

Appeal

Justices

Lord Reed, Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Burnett

Hearing start date

16 March 2021

Hearing finish date

16 March 2021

Watch hearing

16 Mar 2021 [Morning session](#) [Afternoon session](#)

Judgment details**Judgment date**

30 July 2021

Neutral citation

[2021] UKSC 38