



**In the Upper Tribunal  
(Immigration and Asylum Chamber)  
Judicial Review**

In the matter of an application for Judicial Review

The King on the application of  
**ZA**

Applicant

versus

**LONDON BOROUGH OF ISLINGTON**

Respondent

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**ORDER**

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**UPON HEARING** Mr A Mackenzie, Counsel for the applicant and Mr M Paget, Counsel for the respondent on 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> September 2022;

**AND UPON THE TRIBUNAL** having received a draft order from the parties and their written submissions as to the appropriate order as to costs.

**AND UPON THE TRIBUNAL** handing down judgment on 23<sup>rd</sup> February 2023.

**IT IS DECLARED THAT**

- 1. The applicant's date of birth is 5 August 2000**

**IT IS ORDERED THAT**

1. The claim for Judicial review is dismissed for the reasons set out in the judgment.
2. The applicant shall pay the respondent's reasonable costs of the claim for Judicial review; such costs not to be enforced without the leave of the court. The applicant having the benefit of cost protection under s26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the amount that she is to pay should be determined on an application by the respondent under Regulation 16 of the Civil Legal Aid (Costs) Regulations 2013.
3. The applicant's publicly funded costs shall be subject to detailed assessment.

4. Permission to appeal to the Court of Appeal is refused.

**Reasons**

- (1) The reasons for the declaration made by the Tribunal are set out in the judgment handed down on 23<sup>rd</sup> February 2023.
- (2) The respondent seeks an order for that the applicant shall pay the respondent's costs, subject to detailed assessment if not agreed. The applicant submits the appropriate order in all the circumstances, is that each party should pay their own costs.
- (3) I acknowledge that in general, the unsuccessful party will be ordered to pay the costs of the other party, but that the court may make a different order and each case turns on its own facts. In reaching my decision as to the appropriate order as to costs, I have had regard to my discretion as to whether costs are payable by one party to another. I have had in mind the general rule that an unsuccessful party will be ordered to pay the costs of the successful party. In reaching my decision I have also had regard to the conduct of the parties, and whether the applicant has succeeded in the claim, wholly or in part.
- (4) By this claim for Judicial review the applicant was seeking to vindicate her claim that she was born on 5<sup>th</sup> August 2003 and sought a declaration and relief to that effect. For the reasons set out in the judgment, the Tribunal rejected the applicant's claim she was born on 5<sup>th</sup> August 2003. Although the Tribunal was persuaded that the respondent's age assessors placed considerable reliance upon the applicant's physical appearance and demeanour, the Tribunal noted that was based upon very limited information provided by the applicant that would enable the assessors to obtain some form of meaningful timeline, by which to attempt to discern her age and date of birth.
- (5) Nevertheless, the Tribunal attached due weight to the age assessment but did not regard it as conclusive. The Tribunal comprehensively rejected the evidence of the applicant and gained no real assistance from the applicant's witnesses and the other evidence relied upon by the applicant save for the report of Dr Eassom and the brief statement from the applicant's previous foster carer. The Tribunal found, on balance, that the applicant was already 18 when she left Sudan in February 2019. I acknowledge, as the applicant submits, that there is some disparity between the age attributed to the applicant by the respondent and the conclusion of the Tribunal that the applicant's date of birth is 5 August 2000. However, the Tribunal reached its own conclusions as to the applicant's age and date of birth, based upon all the evidence that was before it and looking at all the evidence in the round.
- (6) On any view the respondent has successfully defended the claim for Judicial Review and for all intents and purposes, is the successful party. Having considered the submissions made on behalf of the applicant I am not persuaded that the appropriate order is that there be no order as to costs, or that I should depart from the general principle that the unsuccessful party will

be ordered to pay the costs of the successful party. In exercising my discretion as to costs, in my judgement the appropriate order in all the circumstances is that the applicant shall pay the respondent's costs of the claim. The applicant has the benefit of public funding and that is reflected in the order that I have made.

- (7) The applicant has not identified any grounds of appeal. The decision of the Upper Tribunal is entirely fact specific and follows an evaluation of all the evidence before the Tribunal.

Signed: V. Mandalia

**Upper Tribunal Judge Mandalia**

Dated: 23 February 2023

**The date on which this order was sent is given below**

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**For completion by the Upper Tribunal Immigration and Asylum Chamber**

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): *23 February 2023*

Solicitors:

Ref No.

Home Office Ref:



**IN THE UPPER TRIBUNAL  
(Immigration and Asylum Chamber)**

Claim Number: JR-2021-LON-000941

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

**Heard at Field House  
On 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> September 2022**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**ZA**

Applicant

**And**

**LONDON BOROUGH OF ISLINGTON**

Respondent

**Representation:**

For the Applicant: Mr A. Mackenzie, Counsel instructed by Instalaw Solicitors  
For the Respondent: Mr M Paget, Counsel instructed by London Borough of Islington

1. By this claim for Judicial Review the applicant challenges the outcome of an age assessment by which the respondent assessed the applicant to be over the age of 18. Permission to claim judicial review was granted by David Pittaway QC sitting as a Deputy High Court Judge on 26<sup>th</sup> May 2021. The claim was transferred to the Upper Tribunal and the issue for me to resolve in these proceedings is the applicant's age, which is in dispute between the parties.

2. The applicant attended the hearing and gave evidence before me with the assistance of an interpreter arranged by the Tribunal to interpret the Amharic and English languages. At the outset of the hearing the interpreter spoke to the applicant and I was satisfied that they could communicate and understand each other without any difficulty. The applicant was supported throughout the hearing by a support worker, Ms Yvonne Campbell.

## **Background**

3. The applicant is a national of Eritrea. She arrived in the United Kingdom on 8<sup>th</sup> October 2020. The following facts were agreed by the parties at an earlier stage in the proceedings:
  - i) The respondent received a referral for the applicant on 8<sup>th</sup> October 2020 as an unaccompanied asylum-seeking child.
  - ii) The applicant had arrived in the UK by lorry from France and claimed she was born on 5<sup>th</sup> August 2003.
  - iii) The applicant has no documentary proof of her claimed age. .
  - iv) The applicant was placed by the respondent with an approved foster carer and her family pursuant to section 20 of the Children Act 1989 on 8<sup>th</sup> October 2020.
  - v) The applicant follows the Islamic faith.
  - vi) The applicant lived in Sudan from a young age. Her father is deceased and her mother left Sudan some time before the applicant did. The applicant was left with her mother's female friends.
  - vii) The applicant has no contact with anyone in Eritrea.
  - viii) The applicant left Sudan in 2019. From Sudan she travelled to Libya where the applicant stayed for 8/9 months. She then left Libya to travel to Italy by boat. From there, she went to France and subsequently arrived in the UK on 8<sup>th</sup> October 2020.
  - ix) The applicant has made a claim for international protection and a screening interview was completed on 4<sup>th</sup> November 2020. The applicant awaits a decision in respect of her protection claim.
  - x) The applicant's age was assessed by the respondent on 30<sup>th</sup> October 2020 and the age assessment was concluded on 22<sup>nd</sup> February 2021. The respondent assessed the applicant to be 27 years old. The applicant attended a meeting on 22<sup>nd</sup> February 2021, when she was informed of the outcome of the age assessment, with the assistance of an interpreter.

- xi) The applicant was transferred from section 20 Children Act 1989 support to Adult support on 22<sup>nd</sup> February 2021. The applicant was accommodated by the Home Office at a hotel in London.
- xii) Judicial review proceedings were commenced in April 2021 to challenge the respondent's age assessment. Permission was refused by Mrs Justice Collins Rice on 4<sup>th</sup> May 2021 but granted following a renewed application for permission and an oral hearing on 25<sup>th</sup> May 2021.

### **The applicant's case**

4. The applicant made a witness statement that was translated to her from English to Amharic on 9<sup>th</sup> April 2021. In summary, the applicant claims that she does not think she has ever had any documents relating to her age. Her family never celebrated her birthday. She claims she knows her age and date of birth because she was told by her mother she was born on 5<sup>th</sup> August 2003. She recalls her mother telling her on that date each year, that she was turning a year older and how old she was.
5. The applicant claims she left Eritrea and moved to Sudan when she was a year old. She never attended school in Sudan. She claims her father died when she was 11 or 12 years old. She was told by her mother that her father had passed away. The applicant claims that as a child, she spent most of her time with her mother who worked as a maid. Following the death of the applicant's father, her mother started working in the kitchen of her friend's hotel. The applicant would usually accompany her mother to work. The applicant claims her mother left Sudan in or around 2018 (*after the time of Ramadan*). She claims she is not sure why her mother left, but the applicant was left with the mother's friend (*the friend who her mother worked for*). There were two other women working for her mother's friend, who the applicant's mother had also worked with. The applicant left Sudan with those two women in 2019. The applicant is not sure how old she was when she left Sudan.

### **The evidence**

6. The written evidence before me is set out in the applicant's bundle. I heard oral evidence from the applicant, Yvonne Campbell, and from Hayat Mohammed, who gave her evidence via video link. The oral evidence received by the Tribunal is a matter of record and what follows below is a summary.

*The applicant*

7. The applicant is a vulnerable witness and at the request of her representatives, the following measures were adopted:
  - a. the applicant was accompanied throughout by an appropriate adult, Yvonne Campbell;
  - b. minimised and focused questioning;
  - c. cross-examination by open-ended questions using a calm and sensitive tone and manner, and avoiding challenging or confronting ZA;
  - d. frequent checking of ZA's understanding of questions;
  - e. frequent breaks and keeping under review ZA's pain levels, tiredness and other symptoms of distress;
8. The applicant was referred to a witness statement that appears at pages [137] to [143] of the bundle before me. The statement is not signed by the applicant but is endorsed with a statement confirming its content was translated in full to the applicant, who understood and agreed that the content is true. The applicant could not recall making that statement. The statement was translated to the applicant in its entirety by the interpreter. When she was then asked whether the content of the statement is true, she replied "*.. Some of it is, but there are some areas where there are problems with the wording.*". The applicant explained that her friends who accompanied her to Italy were not older than her mother. The applicant was also referred to a second statement that appears at pages [149] to [151] of the bundle before me, and a supplementary statement that

appears at pages [58] to [59] of the supplementary bundle. Again the applicant could not recall making those statements.

9. In cross-examination, the applicant confirmed she did not know the precise ages of her friends that had accompanied her to Italy. She accepted she did not know the precise age of her mother either. She had reached the conclusion that the two women that accompanied her were younger than her mother, because of their appearance. She claimed it was well known that the two women were junior to her mother. She claimed the two women were nearer her age. The applicant did not agree that she does not look like an 18-year-old or that she is physically similar to a 25- to 27-year-old.
10. The applicant said she recalled providing the local authority with details of her social media accounts. She said that her Facebook account had been set up by a Sudanese male when she was in France. She said that at the time, she did not have a telephone, but had a SIM card that had been provided to her free of charge. She was told that when she got a phone, she would be able to use the account. She could not recall when the account was set up. She explained that when she was in Libya she had a friend who had a Facebook account and the applicant was attempting to look for her friend and to try and find her mother. The applicant explained that she subsequently lost the SIM card, and changed her mobile phone number. Her Facebook account is now connected to her current telephone number. She said that her classmates had opened a 'Snapchat' account for her.
11. The applicant was referred to the personal profile information recorded on her Facebook account. The account name is [ZM<sup>1</sup>] and the account was registered on 27<sup>th</sup> November 2019. Her date of birth is said to be '10<sup>th</sup> October 2003'. The applicant said that the information had been input by the individual that had set up her Facebook account. She said that the date should have been 5<sup>th</sup> August. She had told the individual to put 2003,

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<sup>1</sup> Neither the forename nor the surname matches the name of the applicant.



and she did not realise that the day and month was incorrect until that had been pointed out to her by her solicitor.

12. The applicant confirmed she does not have any documents to confirm her date of birth. She has not taken any steps to obtain any documents from Sudan because she does not have anyone there that she can contact. She explained she was born in Eritrea and only had a 'yellow form' in Sudan, which was a temporary permit for her to live there, but it did not state her date of birth. She said that she had not approached the Eritrean government because she had left Eritrea when she was a year old, and she does not have contact with anyone in Eritrea.
13. The applicant confirmed that the only information she has regarding her date of birth is that which came from her mother. She claimed her mother started to tell her her date of birth during her childhood. She could not remember precisely when that was. She could not remember whether she was of school age or anything about the time when her mother first told her she was born in 2003. She could not remember why her mother told her. The applicant said she had never celebrated her birthday. When asked by Mr Paget if there was any way in which the applicant marked her birthday each year, the applicant claimed that her mother just told her, her date of birth. To clarify, I asked the applicant whether that was every year. She said, *"Not every year, just when she remembered"*. The applicant claimed there is no reason for her to lie about what she was told.
14. The applicant confirmed she was very close to her mother. When asked about her father, the applicant claimed she did not remember much about that time. She claimed that she did not remember much about her relationship with her father because she was a child at the time. When asked whether she was ever told her date of birth by her father, the applicant said, "I don't even remember him". The only recollection she has of her father was that she remembers him taking her to the mosque. She claimed that her mother told her she was 11/12 years old when her father passed away.

15. The applicant said her mother left Sudan in 2018, and until then, she had been solely looked after by her mother. She claimed that her mother had told her that she was leaving, but did not tell her where she was going. She clarified that her mother said she was going out, and never came back. Mr Paget referred the applicant to paragraph [12] of her April 2021 witness statement (page 139), in which she claims that her mother left Sudan around 2018. He asked the applicant why she had said that her mother had left Sudan, if she did not in fact tell the applicant that she was leaving Sudan. The applicant said that her mother told her she would come back to her, or the applicant could go to her, and that is why she thought her mother had left Sudan. She explained that although her mother did not tell her where she was going, because she was going to a good place, that implied she was leaving Sudan. The applicant said she has not taken any steps to contact her mother since her mother left. She said that she had been left with her mother's friends and she did not have her number. The applicant said that her mother had communicated with her friend, by calling her, but did not speak to the applicant. The applicant had asked the mother's friend to call her mother for her, but she was told to wait for her mother to call her. She did not think her mother's friend had a contact number for the applicant's mother.
16. Mr Paget asked the applicant why she has not tried to contact her mother on the mobile phone her mother had when they lived together in Sudan. The applicant said she did not have a phone in Sudan that she could use to contact her mother, and she had no money to call her mother. When she was in France, she only had a SIM card and did not have her mother's telephone number. She had not asked her mother for her telephone number when her mother left in 2018.
17. Mr Paget asked the applicant what had led to the applicant's conversation with her mother, when she was told she was born in 2003. The applicant could not remember. To clarify, I asked the applicant whether that conversation had taken place before or after her father had passed away. The applicant said she thought it was after her father had passed away,

because she does not remember a lot about things that happened before he died. She could not remember being told about her birthday whilst her father was alive. She said she was told she was born on 5 August 2003. I referred the applicant to page 102 of the supplementary bundle which shows her personal information as recorded on her Facebook account. The applicant agreed that the telephone number shown is correct. She explained that she does not remember the email address that is shown. She explained that that may have been the email address used when the account was set up. The applicant said that the error regarding her date of birth was made by the person who set up the account. She recalled being asked her date of birth when the account was being set up, and she had said her date of birth is 5 August 2003. She maintained the error was made by the person who set up the account, and it was a genuine mistake.

18. Finally, Mr Paget referred the applicant to her 'Instagram' account that was created on 1<sup>st</sup> March 2020 (*Supplementary bundle/page 83*). The applicant initially said she could not remember when she changed her name on that account. When it was pointed out that she had changed the name on the account '5 days' before the account was checked, the applicant confirmed the change of name. Mr Paget also referred the applicant to the change in the email address that occurred a year ago. He suggested to the applicant that the email address now recorded on the account is an email address that the applicant now claims she has no knowledge of. The applicant stated that she was getting stressed about the way in which she was being questioned and that the question has nothing to do with her age.
19. There was no re-examination by Mr Mackenzie.

Yvonne Campbell

20. Ms Campbell adopted her witness statement dated 15<sup>th</sup> September 2022. She confirms the applicant has attended 'Women@thewell (WATW)' since 5<sup>th</sup> July 2022 to receive basic living support and to participate in social

activities. She sees the applicant once a week and works alongside the applicant to access services and to gain a better understanding of herself and her way of life. Ms Campbell expresses the opinion, based on her observations of the applicant's interaction with peers, that they interact as typical 17 - 19-year-olds. She claims the applicant is very vulnerable and her attempts to protect herself, could be misconstrued as being older. She states that from the time she has spent with the applicant, she believes the applicant's claimed age and "*.. It is obvious she is not in her late 20s..*".

21. In cross-examination, Ms Campbell accepted she has had no 'age assessment training', and her opinion is based simply on the applicant's 'childlike interaction'. She accepted that if there is an explanation for that 'childlike behaviour', her view may be of little assistance. She added however that she is a mother of two, and has four grandchildren. One of her grandchildren is the same as the applicant's claimed age and the others are younger. She said that the applicant presents in a similar way to her grandson. She explained that on one occasion, when she had accompanied the applicant to 'Freedom From Torture', she had wanted to buy the applicant something to eat. However when they finished, the applicant saw some of her friends, and she started pulling her to meet her friends. They crossed the road, and the applicant started to hug her friends. She said that she wanted to know their ages, and they were between 17 and 19. She said the applicant's behaviour seems childlike.

### Hayat Mohammed

22. Ms Hayat Mohammed gave her evidence by video link using Microsoft Teams. At the outset, she confirmed that there was no one else in the room with her and that she was able to see and hear me and the party's representatives. She adopted her witness statement dated 3<sup>rd</sup> December 2021 (page 160). She confirms she is 26 years of age, and an Ethiopian national with indefinite leave to remain. She met the applicant at a Mosque about a year ago (i.e. December 2020). She states she sees the

applicant at least three times a week doing various things. She is from Ethiopia and speaks the same language as the applicant. She thinks the applicant is *"...quite young and vulnerable. She is around 18 and I think this is reflected in the way she acts."* She considers the applicant to be gullible and innocent, particularly in the way she speaks and interacts with people. She often has to remind the applicant not to talk to strangers in the street. She states the applicant can also be quite impulsive, which shows her age. She has had to try and stop the applicant spending all her money on silly things and to budget and shop around for cheaper options, and things that she actually needs. She has had to talk to the applicant about how she is eating as she eats lots of sweets, and she has tried to get the applicant to eat more healthily. She states, *"I think a lot of these things are things that come with time and with maturity, and are examples of why I believe that the claimant is her claimed age of 18."*

23. In cross-examination, Ms Mohammed maintained the applicant looks a lot younger than her. She said that every time the applicant finds someone new who speaks the same language as her, she will speak to them, as a youngster would. She is very open and blatant with people who are otherwise complete strangers to her. She maintained that the applicant's behaviour is an indication of her youth. She explained she has a brother aged 16 and a sister aged 19, who sometimes behave in a similar way. The applicant behaves as a young person would do. When asked to explain why a 23 or 24-year-olds would not behave in that way, Ms Mohammed said it is something that comes with maturity. As you get older you learn not to speak to strangers. Ms Mohammed accepted she has no experience of age assessment.
24. Mr Paget referred Ms Mohammed to the claim in her witness statement that the applicant does not know how to do things for herself such as taking care of her hygiene. Ms Mohammed explained that they spend a lot of time together, and she has noticed that the applicant does things that she herself did as a teenager, and has corrected as she has grown older. She gave examples of "brushing her teeth before bedtime", "when you

chop something and not put the knife back in its place". She does not believe the applicant to be a slow learner, but just "a bit negligent". To clarify, I asked Ms Mohammed whether the examples that she gives of the applicant's behaviour such as not brushing her teeth before bedtime, and not putting a knife back in its proper place, are simply lifestyle choices rather than an indication of immaturity. She accepted that they could be lifestyle choices, but in her view, they show a lack of maturity.

### Ella Royle

25. During the course of the hearing before me, I was provided with a statement signed by Ella Royle dated 27<sup>th</sup> September 2022. The statement refers to a meeting that took place on 12<sup>th</sup> July 2022, attended by one of the age assessing social workers to complete a review of the applicant's social media accounts. She states that it is thought to be agreed that the material that is at pages 65-77, 77-84 and 95 of the supplementary bundle, are extracts from the applicant's 'Instagram' account. Pages 85-95, 96-147 and 153-164 are extracts from the applicant's 'Facebook' account. Pages 148-149 are from the applicant's 'TikTok' account and pages 150-152 are from her 'Snapchat' account.

### Report of Dr Erica Eassom

26. Dr Erica Eassom is a Clinical Psychologist who carried out a 'remote psychological assessment' of the applicant on 18<sup>th</sup> and 22<sup>nd</sup> April 2022. She conducted two structured interviews and administered one psychological test. A summary of her conclusions is set out in section 1.4 of her report.

27. Dr Eassom concludes the applicant is suffering from a chronic (enduring), severe Complex PTSD ("CPTSD") and a concurrent (comorbid) moderate, chronic Major Depressive Disorder ("MDD"). She noted the applicant has physical health problems and/or somatic symptoms in the form of headaches and back pain that undermine her function in daily life in their

own right. She states the applicant presents a psychological profile that is in her experience, highly consistent with the impacts of victimisation by trafficking and further trauma during her migratory route. She claims the loss of both the applicant's parents has reduced her resilience and contributed to her psychological distress but cannot account for her PTSD. She believes each of the symptom clusters of CPTSD and MDD have negative and overlapping implications for the applicant, especially in unstable social situations. She states that gaining stable mental health, and capacity to function as a healthy adult will take years and the applicant will not achieve it without a multi-faceted package of professional and social intervention.

28. Dr Eassom states the applicant is highly likely to present differently in her behaviours to those of her peers who have not suffered from trauma and her behaviours are consistent with her psychological difficulties. Her oppositional attitude to authority figures, including assessors, may be a function of not being protected by a caregiver and forced to develop survival mechanisms and behaviours not in line with those of peers her age. It may well reflect negative transference based on her prior experiences of interpersonal abuse by figures in power. She states regression is an unconscious psychological defence mechanism in which a person copes with anxiety-provoking relationships or situations, such as an interview which triggers past trauma, by reverting to childlike behaviour. This can also be a function of PTSD especially in children after traumatic experiences.
29. Dr Eassom claims the applicant has substantial difficulty in participating in assessment interviews due to her symptoms of CPTSD and MDD. In her opinion, it would not be possible for the applicant to give evidence in a Tribunal without experiencing re-traumatisation, which also undermines her capacity to give a clear, coherent, detailed and valid account of her experiences. She suggests the applicant's evidence is confined to adopting her witness statement, but if she is obliged to give evidence, she recommends measures for vulnerable witnesses are put into place.

## **Submissions**

30. Skeleton arguments had been filed and served in compliance with directions. Counsel relied on their skeleton arguments and provided written closing submissions before briefly drawing together the threads in their closing oral submissions before me.

### *The respondent*

31. Mr Paget submits the starting position is for the Tribunal to consider for itself what the applicant looks like. He submits the applicant looks like an adult woman. He submits that although the physical appearance and demeanour of the applicant cannot be determinative, the Tribunal can have regard to the physical appearance of the applicant in reaching its decision. He submits that Merton makes it clear that the Tribunal cannot rely solely on physical appearance alone, and that AM does not say that you cannot place great weight on physical appearance. The lack of height growth can also be a relevant factor.

32. Mr Paget submits that the demeanour of an individual is also relevant, but here, the demeanour of the applicant is of little assistance. That is because in section 4.4 of her report, Dr Eassom confirms it is common to encounter presentations in which the person is functionally or interpersonally delayed or dependent, regardless of chronological age. Dr Eassom noted she had insufficient detail about the applicant's childhood and its impact on her development. However, even on the information available, Dr Eassom noted the applicant will be highly likely to present differently in her behaviours to those of her peers who have not suffered from trauma. Dr Eassom referred to the applicant's behaviours during assessment, and those behaviours are said to be consistent with a diagnosis of Complex PTSD with features of emotional dysregulation and high levels of defensive avoidance. She did not observe behaviours about which she could make any reliable comments as to whether they would be considered 'younger' or 'older' than her claim.



33. Mr Paget submits the starting point is to attach weight to the views of the social workers, and to consider whether there is anything in the evidence of the applicant that persuades the Tribunal that it should depart from the views of the experienced social workers. Here, there are no documents to confirm the applicant's age. All that the Tribunal is left with is the applicant's claim that she was told by her mother that she was born on 5<sup>th</sup> August 2003. Mr Paget submits the applicant is an unreliable witness. She gives no background detail about the event when she was told her date of birth. Throughout, the applicant has given the bare minimum of information and, he submits, closes down all other questions. She simply gives no details. Her evidence that her father lived with her until she was 11/12 but she has no recollection of him other than that he took her to a Mosque a few times, is, Mr Paggett submits, entirely incredible. He submits it is also incredible that the applicant's mother left her in Sudan in the way claimed by the applicant, without telling her where she was going, and simply telling the applicant she would contact her. Mr Paget submits the whereabouts of the applicant's mother is important because she can confirm the applicant's date of birth. He submits it is incredible that the applicant would not have tried to find out where her mother was, when her mother had contacted her friends in Sudan.
34. Mr Paget submits that in the absence of any reliable evidence before the Tribunal, the physical appearance of the applicant is something that the Tribunal can have regard to. The witnesses called by the applicant, he submits, are of no real assistance. They simply offer an opinion. Ms Mohammed appeared to be making her evidence up as she went along and simply wanted to support her friend. Mr Paget submits minimal weight should be attached to the supporting evidence relied upon by the applicant, particularly where the authors of the letters and statements did not attend to give evidence. Mr Paget submits that in any event, the witnesses the applicant has gravitated towards, of her own free choice, Ms Mohammed and Mr Said, are both 26 years old and closer to the age the applicant has been assessed to be by the respondent. That, he submits, is

interesting and telling because on her own case, the applicant has chosen to befriend people that are much older than her claimed age. He submits there is nothing in the applicant's evidence that undermines the age assessment completed by the respondent and the conclusions reached. He submits there is nothing in the evidence that has come to light since the assessment that supports the applicant's claim. Mr Paget submits that looking at the evidence in the round, there is no reason for the Tribunal to depart from the conclusions reached in the assessment. He accepts however that it is open to the Tribunal to reach its own decision as to the applicant's age and date of birth.

35. In reply, Mr Mackenzie agrees the Tribunal is not bound by the age assessment or either parties' position as to the applicant's age. He submits there is however no evidence before the Tribunal that the applicant is now almost 30 years old as the respondent claims. Equally, there is no evidence before the Tribunal that the applicant is somewhere in between the age she claims to be, and the age she has been assessed to be.
36. Mr Mackenzie submits Ms Mohammed cannot be criticised because any misunderstanding regarding her evidence was caused by the fact that she was not asked initially about her previous mobile phone. She has not made up her evidence as she went along, but clarified her account when she was asked to do so. She is criticised by Mr Paget for not answering a question that she was not asked. Mr Mackenzie submits Ms Campbell was not cross-examined on the basis that she is not an independent and objective witness. Her evidence was that she has seen the applicant interacting with other people of her own age. The fact that Mr Said and Ms Mohammed are older, takes the respondent's claim no-where.
37. The starting point is not, as Mr Paget submits, the appearance of the applicant, but the credibility of the applicant. Mr Mackenzie submits the correct approach is to recognise from the outset that the appearance of a person is by itself, entirely unreliable as a means of determining their age

and date of birth. Mr Mackenzie submits in MVN v Greenwich LBC [2015] EWHC 1943, Picken J noted the parties agreement that the credibility of the person whose age is being determined is critical. At [27], he said:

“It would, therefore, appear that the primary focus is on the credibility of the person's evidence concerning his or her age, but that it is permissible to have regard to credibility more generally provided that, in looking at credibility more generally, the primary focus to which I have referred is not forgotten. In short, the difference between Miss Luh and Miss Screeche-Powell is not as acute as it might at one stage have appeared. This was effectively acknowledged by Miss Luh in her closing skeleton argument, where she prayed in aid various authorities which have dealt with the correct approach to be applied in relation to credibility assessments when asylum claims are made. Miss Luh explained that she accepted that general credibility needs to be factored into the evaluation of the claimant made by the Court, but maintained (rightly, in my view) that there needs nevertheless to be care taken so as to ensure that particular importance is afforded to the credibility of evidence in relation to age.”

38. Mr Mackenzie submits the physical appearance of an individual is not entirely irrelevant, and it is a factor upon which the Tribunal can attach some weight, but not any great weight. The Tribunal must proceed with some caution and also have in mind the fact that the individual comes from a different culture, from a different part of the world, and will have had different life experiences that may contribute to their appearance and demeanour. It is for those reasons that the credibility of the applicant is a factor that is critical.
39. Mr Mackenzie submits it is important to have regard to the report of Dr Eassom and consider holistically, her evidence. Some of the applicant's behaviour may be accounted for by previous trauma, but at paragraph [4.7.7], Dr Eassom also noted the applicant's irritation is also commensurate with her self-report of emotional dysregulation and difficulties with anger.
40. Mr Mackenzie submits little weight can be attached to the age assessment that is relied upon by the respondent. He submits there were manifest problems with the approach adopted by the assessors. Undue reliance was placed upon the appearance of the applicant. The respondent

criticises the applicant and claims she was not forthcoming with information. However, the applicant is clearly vulnerable and has had traumatic experiences. She was cross-examined at length about her social media accounts, email addresses and telephone numbers. She was finally asked questions about her family. Whether the applicant recalls whether her father had a beard or not, is irrelevant. Her inability to provide detail is explained by the report of Dr Eassom. Mr Mackenzie submits the applicant is a credible witness who has remained consistent in her evidence regarding her age and date of birth, and I should accept that evidence.

### The Legal Framework

41. Although there is some disagreement between the parties as to the starting point, the relevant legal framework is now well established. It is sufficient to provide the following brief summary. 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.”.

42. In R (B) -v- Merton LBC [2003] EHC 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.”

43. Having made the point that, except in clear cases, a decision maker cannot determine age solely on the basis of appearance, he continued:

“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...”

44. In his judgment in R (CJ) v Cardiff City Council [2011] EWCA Civ 1590, Pitchford LJ (with whom Laws LJ and Lloyd Jones J agreed) held that the nature of the court’s enquiry under the Children Act is inquisitorial and that it was inappropriate to speak in terms of a burden of establishing a precedent or jurisdictional fact: [21]. The court is required, Pitchford LJ continued, to apply the balance of probability without resorting to the concept of discharge of a burden of proof, and a ‘sympathetic assessment of the evidence’ is appropriate.
45. The Tribunal is not confined to choosing between the positions of the parties; R (W) v London Borough of Croydon [2012] EWHC 1130 (Admin) [§ 3].

### Discussion

46. In reaching my 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 and summarised. In reaching my decision and considering the evidence of the applicant I have also had regard to the matters set out in the report of Dr Eassom. When assessing the applicant’s credibility, I have been particularly mindful of the report of Dr Eassom and the diagnosis made. I have had regard to the Joint Presidential Guidance Note No.2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance, and my assessment of the applicant’s credibility has been considered in the round, taking due account of the medical evidence

and giving due allowance for the fact that many asylum seekers and victims of trafficking will have problems, giving a coherent account.

47. Dr Eassom states it is common to encounter presentations in which the person is functionally or interpersonally delayed or dependent, regardless of chronological age. She states young people who have had their developmental experiences disrupted due to trauma and abuse, including *inter alia* the loss of a caregiver and limited socialisation, will develop very differently to a young person with normative development. Dr Eassom addresses 'regression', and the applicant presenting and behaving consistently with someone younger than the applicant claims to be, as an unconscious psychological defence mechanism that can occur within a number of mental health conditions including PTSD and Major Depressive Disorder. Dr Eassom states she did not detect signs of age regression due to trauma during her assessment, but notes the observations in the age assessment of childish behaviour. She states those behaviours could be in line with age regression due to trauma and or delayed development due to childhood deprivation, trauma and/or neglect. Dr Eassom did not observe behaviours about which she could make any reliable comment as to whether they would be considered 'younger' or 'older' than the applicant's claim.
48. I have borne in mind the evidence of Dr Eassom that from a psychological perspective, chronological age and psychological developmental age do not directly map on to each other, and her opinion that the applicant is highly likely to present differently in her behaviours to those of her peers who have not suffered from trauma. I have borne in mind that the applicant showed clear difficulties in verbal comprehension and expression when she spoke to Dr Eassom and that she needed significant prompting for detail. I have borne in mind the opinion of Dr Eassom that the applicant is likely to experience memory difficulties due to PTSD, that accounts of her experiences will vary over time, and there may be events the applicant does recall but is unwilling to disclose. Dr Eassom states the applicant appears to have substantial difficulty in trusting others and

during interview, the applicant reported it is difficult to talk about her experiences; difficult to talk to strangers, and that she finds it harder to talk to men than women and girls. I have also had regard to the comments made and opinions expressed by Dr Eassom as to the applicant's ability to give evidence and the measures required for the applicant to give evidence. As I have already set out, measures were adopted so that it was possible for the Tribunal to receive the best evidence from the applicant.

49. I do not accept, as Mr Paget submits, that I should start by considering for myself what the applicant looks like. Although I accept that in very clear cases, an individual's appearance can be a good indicator, I do not accept this to be a very clear case where the appearance of the applicant, points only in one direction. For the avoidance of any doubt, before I embark upon the search for an answer to the question now to be addressed by me as to the applicant's age and date of birth, I confirm that I have done so without any "predisposition" that the applicant is or is not a child.
50. Throughout my consideration of the claim I have been mindful of the difficulties that are likely to be experienced by an individual, whether they are a child or young adult, in providing evidence in support of their account. I have also been mindful of the cultural differences that exist between different countries, and I have been careful not to make any assumptions or to impute what might be termed "Western norms" where it is not appropriate to do so. I have also had very much in mind the fact that there are significant cultural differences between the United Kingdom, Sudan and Eritrea regarding the celebration of birthdays. The applicant claimed during the age assessment that her family never celebrated her birthdays. In reaching my decision, I have had the opportunity of seeing the applicant give evidence, with the assistance of an interpreter. I was satisfied that the applicant and the interpreter understood each other throughout. Nevertheless, I appreciate that where evidence has to be interpreted, whether at a hearing or previously, some confusion may arise, and certain phrases and words may not have exact translations. When

considering the evidence of the applicant in particular, I have also considered the fact that the applicant may well have been nervous and anxious when giving evidence before the Tribunal, and I have made allowances for that.

51. I have also been mindful that even if I find that the applicant is not credible in respect of one element of her account, although it is necessary to exercise caution in considering her evidence as a whole, it does not follow that all aspects of her account are not true. A person may lie for a number of reasons including a misguided but genuine perceived need to do so, in order to support what is an otherwise legitimate claim. Of course conversely, the fact that the applicant may be giving a true account of some parts of her claim, does not mean that all of it is true.
52. Distilled to its essence, the applicant's account about her age is a simple one. I have summarised it at paragraphs [4] and [5] of this decision.

#### *The respondent's decision*

53. It is convenient to begin my consideration with an examination of the age assessment report prepared by the two social workers employed by the respondent. That is because conventional judicial review principles continue to play a relevant and important role in deciding the weight to be afforded to the local authority's assessment of a person's age and because the better the quality of the initial decision-making, the less likely it is that the court will come to any different decision on the evidence: R (MVN) v London Borough of Greenwich [2015] EWHC 1942 (Admin); [2015] ACD 141, at [47], per Picken J and R (A) v Croydon LBC, at [33], per Lady Hale.
54. The 'age assessment' occupies fifteen pages of A4. Section 11 of the assessment sets out the assessment process, those in attendance and an outline of the interviews completed on 30<sup>th</sup> October 2020, 3<sup>rd</sup> November 2020, 6<sup>th</sup> November 2020, 23<sup>rd</sup> November 2020, 27<sup>th</sup> November 2020 and the final interview on 22<sup>nd</sup> February 2021 when the applicant was informed



of the outcome. The identity, qualifications and experience of the assessors is set out. The assessment comprises a series of sections dealing with matters such as the applicant's physical appearance and personal presentation, her social and emotional presentation, her family composition and history, her social and community history, education, independent living skills, health, her journey to the UK and evidence available from other sources. The following analysis is recorded:

"[ZA] has provided a consistent and clear narrative of her family and journey to the UK. However, there are significant gaps and a real lack of detail around her life in Sudan aged 1 - 15, whereby in this time she did not attend education, only accompanying her mother to work and did not socialise with any peers, only her mother. This in turn provides challenges to better understand [ZA's] life experiences and correlate with any timeline or significant events/dates.

[ZA] was unable to recall her age at periods of times in her life in Sudan. She was however able to provide quite a specific timeline for her journey to the UK (8-9 months in Libya, 2 weeks in Italy, 1 year in France). In line with her account that she left Sudan in February 2019 and arrived in Italy in October 2019 this account is accurate. There are only a few references to age given by [ZA] in her account of her history; firstly that she was either 10, 11 or 12 years of age at the time of father's passing and that she knows this because her mother told her in 2017. And that she was 15 at the time she left Sudan. One could argue that if she is not clear she was 10, 11 or 12 at the passing of her father, how can she then be clear she was 15 at the time she left Sudan.

In respect to the time of the passing of her father she follows with the account that she lived with her mother alone for approximately 3 years after and in 2018 when her mother left and she spent approximately one year with her mother's friend in Sudan before leaving aged 15 in February 2019. Her uncertainty around the age she was when her father passed (3 years difference) with either had (*sic*) made her 14, 15 or 16 at the time she left Sudan and consequently either 16, 17 or 18 at her (*sic*) time of her arrival to the UK. It has to be noted that the passing of her father would have been a very traumatic event in addition to her mother unexpectedly leaving her in 2018. These events may have caused PTSD and affected [ZA's] ability to recall details and dates. However, she has demonstrated an ability to provide clear dates and timeline in her journey to the UK, to which she also disclosed being a traumatic time and to which she witnessed significant violence and had thoughts of self-harm.

[ZA] reports to have had quite a sheltered life in respect of her mother providing for her and doing all the chores, and although coming from a low-income background and living on the breadline, [ZA] reports that she did not have to work when she was accompanying her mother. From [ZA's] account her parents were loving and were able to meet her needs when they were present in her life. This account of not being involved in household tasks, is at odds with [ZA's] current independent skills; [ZA] can cook and take care of herself confidently.

There is however an inconsistency in [ZA's] appearance and demeanour that does give rise to doubt to her claimed age. Her facial appearance quite strikingly has visible signs of ageing unexpected in someone of the claimed age of 17, despite bereavement, separation and a traumatic journey to the UK, such signs of ageing are more akin to an individual in their late 20s. This maturity in appearance has been observed by both the foster carer and Home Office caseworker upon initial meeting, querying whether she is being age disputed.

For someone who reports to had (*sic*) little interaction in her childhood with others but for her mother, she is noticeably very confident and articulate in expressing her needs and views with a range of professionals, again a skill more likely to be seen in young adults, especially in the context of being in a foreign country and not speaking the language. This was seen most noticeably in the the (*sic*) dismissal and overriding of her appropriate adult interjecting or raising points on her behalf, to which she asserted that she would ask them herself if needed.

There is also a stark contradiction in [ZA's] behaviour, whereas above she is able to self-advocate, respond appropriately with professionals and recount details and chronologies. She will at times present with behaviour akin to a 6-8 year old, swinging her feet from the chair, skipping, acting childlike in a manner that is wholly unexpected and so far from her claimed age of 17. The reasons behind this behaviour are unknown, and although there are considerations to the trauma she may have experienced, she is clearly very able to articulate and present as mature in interactions with most professionals. This childlike behaviour is also not noted by her foster carer with the family home.

It must be noted that we do not have any documentary evidence supporting [ZA's] account of being treated as a minor and looked after as a child in Italy. Should this information come to light we would make due and fair consideration of this information in the determination of her age."

55. The applicant was offered the opportunity to comment. She did not agree with the assessors' comments regarding her appearance and confidence. She maintained she is 17 years old. The assessors concluded as follows:

"The young person's physical appearance and demeanour very strongly indicate that they are over 25 years. They have failed to provide details and a clear narrative of their childhood up to age 15 in Sudan and/or provide dates and ages in this account. Whilst they are able to provide a very detailed and clear narrative and chronology of their journey to the UK, they have also failed to provide any further information or evidence relating to their claim they were treated and supported as a child by Italian authorities."

56. The applicant makes a number of criticisms of the respondent's assessment. The applicant claims no adequate 'minded to' meeting was held and the applicant was not given a proper opportunity to address the assessors' concerns. The applicant also claims the respondent's

assessment relies excessively on the applicant's physical appearance and demeanour at interview and the assessors conclusion that the applicant was 27 was irrational on the evidence available. Further or alternatively, the applicant claims no adequate reasons were given for the assessors' conclusion. The assessors refer to 'contradictory' aspects to the applicant's presentation before concluding her physical appearance and demeanour 'very strongly' indicate she is over the age of 25. The applicant claims it was unfair to hold against her, her inability to prove that she was supported as a child in Italy and the assessors' repeated focus on when the applicant's father died was irrational. Finally, the applicant claims the assessors placed undue weight on the reported view of her foster carer.

57. The assessment process is set out in the age assessment. In her witness statement dated 9<sup>th</sup> June 2021, Lila Wisbeach confirms the draft age assessment that had been prepared was shared with the applicant on 22<sup>nd</sup> February 2021. The applicant attended in person and was assisted by an appropriate adult and an interpreter, who both joined the meeting remotely because of restrictions in place because of the Covid-19 pandemic. The summary and key findings were read to the applicant by the interpreter. The applicant was given an opportunity to consider the draft age assessment with the appropriate adult and interpreter privately. The applicant maintained that the Italian authorities should have a record of her fingerprints and a photograph of her. She maintained that she is known to the Italian authorities having provided them with the same name and date of birth when they had asked similar questions. It is clear from what is said in paragraphs [9] to [25] of the witness statement of Lila Wisbeach, which I accept, that the applicant was asked for her comments in relation to a number of the concerns held by the assessors, and was given an opportunity to address those concerns.
58. I accept that there is some force in the submission made on behalf of the applicant that the assessors placed considerable reliance upon the applicant's physical appearance and demeanour, but that was based upon

very limited information provided by the applicant that would enable the assessors to obtain some form of meaningful timeline, by which to attempt to discern her age and date of birth. I do not however accept that the conclusions reached by the assessors are irrational. Reading the age assessment as a whole and the analysis completed, there was in my judgment, a holistic assessment of all the information available to the social workers at that time.

59. The information available to the social workers to make an assessment of the applicant's age by reference to any particular timeline, was extremely limited. In reaching their decision, the social workers drew upon their own observations of the applicant, the limited information she was able to provide to them, and information obtained from other sources including the applicant's foster carer. In her witness statement Derya Orbaz confirms the applicant was the first Eritrean young person that she looked after. She confirms she commented on the applicant's appearance and said the applicant does look older, but she did not have anything else to add. She confirms the applicant looks older than her son, but mixes with age-appropriate young people. She does not elaborate, and set out what she considers to be 'age-appropriate young people' in this context. She simply claims the applicant is still in touch with the other young people living in her home. I am satisfied the assessors gave due weight to the view of the foster carer in reaching their decision.
60. The assessors also observed that the applicant displays independent skills and that she can take care of herself confidently and when she wishes to, she can appear very confident and is able to articulate her needs in a way more likely to be seen in young adults. They were observations that the assessors were entitled to have regard to, in reaching their decision, and I give due weight to those observations.
61. I make it clear that although I have taken into account the content of the age assessment and the conclusions reached by the assessors, I have reached, as I must, my own conclusions as to the applicant's age and date

of birth, based upon all the evidence that is before me. The physical appearance and demeanour of an individual is a 'notoriously unreliable' indicator which, by itself, constitutes only somewhat fragile material. I attach due weight to the age assessment but do not regard it as conclusive given the reliance placed by the assessors upon the applicant's demeanour and appearance.

62. In considering the credibility of the applicant's account I have considered her own evidence, and sources of information that go beyond the evidence of the applicant herself, including the evidence of the other witnesses, and the information set out in the contemporaneous records that form the backdrop to the age assessment completed by the respondent.
63. The expert evidence of Dr Eassom assists me in providing an explanation for the difficulties experienced by the applicant in providing her account and her presentation. The applicant's evidence is better understood in terms of the subconscious consequences of trauma, the consequent significant mental health problems, and her lack of education. In reaching my decision I have carefully borne in mind the limitations of the applicant when considering her past responses in interviews, or as part of the age assessment. I have taken into account the applicant's vulnerability throughout.
64. However, considering all the evidence in the round, I find the applicant to be an unreliable and incredible witness. I was able to carefully consider the way in which the applicant gave her evidence. She did not come across as a straightforward, honest witness who was attempting to answer truthfully the questions put to her. Although the applicant remained entirely consistent as to the very simple core of her claim that she was told her date of birth by her mother, her evidence is otherwise very vague and entirely lacking in detail. When she was pressed for detail, her evidence is equally vague and, on analysis, inconsistent. I accept the observations made by the age assessors that the applicant's inability to

recall much about her life in Sudan so that there could be a better understanding of her life experiences that could be correlated with a more informed timeline, is in stark contrast to the applicant's ability to provide quite specific information about her journey to the UK. During the assessment the applicant was, for example, able to provide a timeline for her journey to the UK and was able to go so far as to provide the exact date she arrived in Lampedusa, Italy (16<sup>th</sup> October 2019), even though that was about a year before she had arrived in the UK. I find the applicant has throughout displayed a reluctance to answer awkward questions that would reveal too much. Overall, I feel unable to attribute much weight to the applicant's oral evidence regarding her age and date of birth.

65. I do not accept the applicant's claim that she has very little recollection of her father, beyond him taking her to the Mosque and that she would get a biscuit. The applicant does not describe a difficult relationship between her mother and father, or a difficult relationship between the applicant and her father. She clearly has some recollection of him. Even when considered against the matters set out in the report of Dr Eassom, it is simply contrary to common sense that all that the applicant can remember of her father is that he took her to the Mosque and would get her a biscuit. The applicant's evidence in this respect is, in my judgement, simply an attempt to ensure that she provides as little information as she can, that might be probed with a view to establishing her correct age and date of birth.
66. The applicant has remained steadfast in her claim that her date of birth is 5<sup>th</sup> August 2003. She has simply maintained throughout, that she knew her date of birth from what she had been told by her mother. Having considered the applicant's evidence, I do not accept that she was told by her mother that her date of birth is 5<sup>th</sup> August 2003 as she claims.
67. The applicant made a witness statement in April 2019, with the assistance of her representatives and an interpreter. She said in that statement that

her mother *“would tell [her] [she] was born on 5/8/2003”* and she remembers her mother *“telling [her] on that date each year that [she] was turning a year older, and how old [she] was turning”*. Although the applicant claimed during the hearing before me that she could not recall making that statement, I am satisfied that it was a statement made by her. It is endorsed with a certificate of translation, confirming it was translated to the applicant in full, and that she understood and agreed its content to be true. In any event, after the statement was read to the applicant again during the hearing before me, the applicant did not suggest that the passages I have referred to are not correct.

68. In her oral evidence before me the applicant was very vague. The applicant was unable to say when her mother had told her how old she is. She claimed that her mother had started telling her from childhood. When asked when she had been told, the applicant could not remember the specific time or occasion but said she did remember her mother telling her she was born in 2003. When asked *“can you remember when that was?”*, the applicant replied, *“I was told since I was a child, but I do not remember the date”*. The applicant was unable to give any information as to anything that had led to a conversation between the applicant and her mother, when she was first told she was born in 2003. In fact she could not provide any information putting any such conversation regarding her age in context, or any particular reason that the conversation particularly stood out. I asked the applicant whether that first conversation regarding her age and date of birth had taken place before or after her father had passed away. She replied that it was probably after her father had passed away since she has very little recollection of events before then. If that is correct, that first conversation must have taken place, on the applicant’s account, after 2014/15 since she claims her father died when she was around 11 or 12 years old. As the applicant claims her mother left Sudan in 2018, on the applicant’s account, her mother would have told her her age, on no more than 3 or 4 occasions. However, when Mr Paget asked the applicant whether her mother had told her her age and date of birth every

year, she relied “*not every year, just when she remembered*”. The applicant’s oral evidence is inconsistent with her written statement that she remembers her mother telling her on that date (5<sup>th</sup> August) each year, that she was turning a year older, and how old she was turning.

69. In the agreed statement of facts the parties agreed that the applicant’s mother left Sudan some time before the applicant did, and the applicant was left with her mother’s female friends. That appears to be on the basis of the evidence set out in the witness statement made by the applicant in April 2019. At paragraph [12], the applicant claims her mother left Sudan around 2018. In her oral evidence before me, the applicant said that her mother did not just disappear. She accepted that her mother had not told her where she was going. The applicant claimed her mother told her she would come back to her, or that she would be able to go to her, and so the applicant assumed she had left Sudan. I make it clear that I do not go behind the agreed statement of facts, but I do not accept the applicant has had no contact at all with her mother since her mother left in 2018.
70. During the age assessment, the applicant initially said that she could not remember when her mother left in 2018 but she thought it was during the middle of the year (*they had celebrated Ramadan together*). She claimed her mother told her she would find her again. During the third interview, the applicant claimed she last saw her mother at the beginning of 2018. Putting aside the inconsistency as to when in 2018 her mother left, even in mid-2018, the applicant, on her case, would have been 14 years old, almost 15. In cross-examination, the applicant said she had not taken any steps to contact her mother. When asked why, she said that her mother had left her with her friends and although her mother communicated with her friends, she did not speak to the applicant. The applicant accepted her mother had a mobile telephone (*a small handset*) but claimed that she could not contact her mother because she did not think her mother’s friend had her mother’s number. It is entirely incredible that the applicant’s mother would have maintained some contact with her friends, with whom she had left the applicant, without making any attempt to



speak to the applicant herself, given the applicant's age and previous reliance upon her, as the sole surviving parent. It is also contrary to common sense that the applicant's mother would be able to contact her friend, but her friend would not have her number. I do not accept the applicant's mother would have left the applicant in the care of her friends, without providing her friends with her contact number. The applicant's evidence in this respect is, I find, yet another an attempt to ensure that there is little opportunity to probe the applicant's claim with a view to establishing her correct age and date of birth.

71. During the age assessment the applicant claimed she left Sudan in February 2019, when two girls who worked at the same hotel as her mother, said they were leaving Sudan. She claimed she knew it was February when she left because the girls told her. She claimed she was 15 when she left. The applicant claimed they travelled to Libya and after spending 8 or 9 months in Libya, she left Libya and arrived in Lampedusa (Italy) via ship, on 16<sup>th</sup> October 2019. She claimed she was 15 years old. In her April 2021 statement the applicant claims she was left with a friend of her mother in around 2018. She thinks it was after the time of Ramadan. She claims there were two women, adults, who just like her mother, worked in the kitchen. She claims the women "*were older than me, not my mother's age, but older.*". She states "*..I am not exactly sure of how old I was when I left, but it was around 8 months before I entered Lampedusa I think.*". The applicant's claim in her witness statement that she does not know how old she was when she left, is inconsistent with her claim during the age assessment that she was 15 years old when she left Sudan. The additional difficulty for the applicant is that if, as she claimed during the age assessment, she left Sudan in February 2019 and she was 15 at that time, she could not have been 15 years old when she arrived in Lampedusa on 16<sup>th</sup> October 2019 as she claimed (*Page 15 of bundle and contemporaneous note at page 31*). On her claimed date of birth (5 August 2003), the applicant would have been 16, in October 2019, when she was in Italy.

72. The applicant's claim that she was born on 5 August 2003 is also inconsistent with the applicant's date of birth as recorded on the 'Personal Information' pages of her Facebook and Instagram Accounts. Those accounts record her date of birth as 10 October 2003. The applicant's explanation is that her Facebook account was set up when she was in France, by a Sudanese national. She claims she did not have a mobile telephone at the time, but had a SIM card that was provided free of cost. The applicant claimed in her oral evidence that she provided her date of birth and that she had not realised her date of birth was incorrectly recorded until that was recently pointed out to her by her solicitors. As far as information she had provided when the account was set up is concerned, the applicant initially said that she had told the individual she was born in 2003. When I asked her to clarify, she confirmed that she recalls the individual asking her about her date of birth when the account was being registered. She told him her date of birth is 5 August 2003. She could not think of any reason why the individual might have recorded her date of birth as 10 October 2003, other than it being a genuine mistake. I do not accept the applicant's account. There is no logical reason for any individual who was, as the applicant claims, assisting the applicant register a social media account to ask the applicant her date of birth and then enter something different. It is quite possible that a genuine error might occur in recording either the day or month, but it is unlikely in my judgement that a genuine error would be made in recording both the day and month. In my judgement, it is more likely that the applicant's day and month of birth is inconsistent because that was not the day and month of birth she was told by her mother. In my judgment, it is likely that the applicant has been able to consistently maintain that she was born in 2003, again not because that is her correct year of birth, but because that is the year of birth she has been encouraged to adopt, either by her mother, or by others during her journey to the UK, to support a claim that she is a child when she arrives in the UK.

73. In reaching my decision, I have had particular regard to the evidence of Ms Yvonne Campbell and Ms Hayat Mohammed who I accept are able to provide evidence following their interaction with the applicant over a considerable period of time. I accept their evidence provides some support for the applicant's claim as to her age. They both gave evidence before me and I am entirely satisfied that they were both doing their best to assist the Tribunal. I consider their evidence alongside the evidence of Dr Eassom. Dr Eassom notes the applicant is likely to present differently in her behaviours to those of her peers and that it is common to encounter presentations in which a person is functionally or interpersonally delayed or dependent, regardless of chronological age, and the possibility of regression.
74. Yvonne Campbell appeared to me to be objective and measured in her evidence. She regularly interacts with the applicant. I accept her evidence that the applicant presents in a similar way to her grandson, who is about the same age as the applicant claims to be. Ms Campbell refers to an occasion when she accompanied the applicant to 'Freedom From Torture' and the applicant crossing the road and hugging friends who were between 17 to 19 years old. It is natural for teens or young adults to be drawn towards acquaintances and to 'hug' when they meet. The high-water mark of Ms Campbell's evidence, which I accept, is that the applicant interacts well with 17- to 19-year-olds. The evidence of Ms Campbell however tells me little upon which I can come to any informed view as to the applicant's age and date of birth. It is equally true, as the evidence of Hayat Mohammed and Mr Ibrahim Said confirms, the applicant is able to interact well with those in their mid 20's. Ms Campbell was bound to candidly accept that she has no age assessment training and her opinion is based upon the applicant's 'childlike' presentation. Ms Campbell has had no reason to question the credibility of the applicant or to question her age. I have no doubt that Ms Campbell has sought to assist the Tribunal, but in the end, I gain very little assistance from her evidence.

75. As far as Ms Hayat Mohammed is concerned, I accept she is someone that the applicant sees, interacts with, and engages with on a very regular basis. She is clearly of the view that the applicant is quite young and vulnerable, reflected in the way that she acts. Her evidence is that that the applicant is gullible and innocent, particularly in the way she speaks and interacts with people. She claims that every time the applicant finds someone new who speaks the same language as her, she will speak to them as a youngster would. She claims the applicant is very open and blatant with people who are otherwise complete strangers. Her evidence is difficult to reconcile with the claim by Dr Eassom in her report that the applicant reports having substantial difficulty in trusting others and during the interview, the applicant reported she finds it difficult to talk to strangers. Ms Mohammed is very clear that the applicant's behaviour in her view, shows a lack of maturity. Although I have due regard to the views expressed by Ms Mohammed, it is clear to me that Ms Mohammed has had no reason to question the credibility of the applicant or to question her age. She has never had any cause to doubt the applicant's honesty. Understandably, she has never had reason to probe the applicant about her claimed age and date of birth and there is no reason why she should disbelieve what she is told by the applicant. Again, I have no doubt that Ms Mohammed has sought to assist the Tribunal, but in the end, I gain very little assistance from her evidence and attach little weight to her view of the applicant's age.

*Ibrahim Said*

76. Mr Ibrahim Said is an Eritrean national who has been granted refugee status in the UK. He has provided a witness statement signed on 15 December 2021 in support of the applicant's claim to be a child. Although the applicant's solicitors had expected him to attend to give oral evidence, he had not arrived by the time that I had finished hearing all the other oral evidence. There was no adequate explanation for his absence. His failure to attend impacts upon the weight I attach to his evidence.

Other witness statements / letters

77. Included in the bundle before me is:

- a. A statement signed by Derya Orbaz on 28<sup>th</sup> April 2021. She is the foster carer who the applicant went to live with on 8<sup>th</sup> October 2020. She has worked with children of many ages and nationalities. The applicant was the first Eritrean that she looked after. She confirms that she was asked her views as part of the age assessment, and she had said the applicant did look older than she claims, but she has nothing to add. She claims the applicant looks older than her son, but she mixes with age-appropriate young people and attends school. The applicant is said to remain in touch with other young persons living in her home who are 17/18 years old. She notes that the age assessment refers to the applicant “skipping and swinging her feet”, but that is not something that she observed at home. She did see the applicant swinging her feet when she attended the dentist. [Page 144 of the bundle]
- b. An undated and unsigned letter from Roxanne Nanton, a Children’s Adviser on the age dispute project at the Refugee Council. She states the applicant has a childlike demeanour and there is nothing in the applicant’s demeanour or physical appearance that suggests that she is 27 years old. She claims the applicant’s behaviour is that of a “young person and not an adult”. [Page 146 of the bundle]
- c. A letter dated 6<sup>th</sup> April 2021 from Chloe Jacobs, an ESOL Lecturer at City and Islington College confirming the applicant’s attendance, punctuality and positive attitude to learning. The applicant is described as a hard-working, dedicated and determined student. [Page 148 of the bundle]
- d. A statement from Myriam Abdel-Basit dated 1<sup>st</sup> December 2021. She is a Youth Caseworker at Community Action for Refugees and

Asylum Seekers. The applicant was internally referred to the youth caseworker team on 21<sup>st</sup> May 2021. They assisted her with accessing educational resources and other support needs. She confirms she has not met the applicant in person but has no reason to question the applicant's claimed age. [Page 163 of the bundle]

- e. A letter from Nathalie Noach, a Student Welfare Adviser. [Page 167 of the bundle]
- f. A letter from Freedom from Torture dated 5<sup>th</sup> September 2022 confirming a full psychological assessment was commenced on 15<sup>th</sup> August 2022 and the applicant has been referred for appropriate specialised clinical trauma-based therapy as part of a rehabilitation process.

78. I have had regard to that evidence. The authors of those letters and statements did not attend to give evidence before the Tribunal and there has been no opportunity to test that evidence. That inevitably impacts upon the weight I attach to that evidence. I note that the evidence of Derya Orbaz, the foster carer the applicant went to live with on 8<sup>th</sup> October 2020 is that when she was asked her views as part of the age assessment, she had said the applicant did look older than she claims, but she has nothing to add. She expresses no view as to how much older than her claimed age the applicant might be.

79. I do not accept the applicant is a credible witness for the reasons I have set out. The applicant has not been forthcoming with any information against which a reliable timeline or chronology can be established to conduct a more nuanced assessment of her likely age and date of birth. The applicant has been able to display a degree of confidence and independence that in my judgment points to her transition to adulthood when she left Sudan. In her evidence before me, when asked by Mr Paget about the two women that she had left Sudan with, the applicant said that it was well known that the two women were younger than her mother. The

applicant went on to say, "*The two were nearer my age*". The applicant does not know how old they were, but if they were working in Sudan, they are, on balance, likely to have been young adults.

80. The task of the Tribunal is not simply to choose between the credible attempts to assess the applicant's age, but to reach my own assessment, informed by all of the evidence that assists. The outcome of the findings I have set out above, in my judgment leads to a plausible and credible determination of the applicant's age and date of birth. I have considered all the factors together, and in the context of the evidence before me, as a whole.
81. Drawing all of the threads together, I accept as Mr Paget submits, the applicant gravitates towards those who are in fact older than the age she claims to be, as the evidence of Ms Mohammed and Mr Said demonstrates. The applicant has demonstrated some independence, an ability to self-advocate when she wishes to, and is able to take care of herself confidently. She is an unreliable and incredible witness. I gained little assistance from the evidence of the witnesses called by the applicant, who all in the end have no reason to doubt what she has told them. The respondent's age assessment is deserving of weight, but the weight I attach to it is limited because of its significant reliance upon the applicant's physical appearance and demeanour.
82. Having carefully considered all the evidence before me, I find that the applicant's demeanour, choices, physical appearance, confidence and independence are not consistent with her claimed age. I am not persuaded that the applicant is as old as she has been assessed to be by the local authority. I accept the applicant may sometimes display childlike behaviour but that is explained by Dr Eassom.
83. Looking at all the evidence before me in the round, I find that the applicant adopted the date of birth on 5 August 2003 to support a claim that she is a child when she arrived in the UK. I find, on balance, that the applicant was

already 18 when she left Sudan in February 2019. Even though I have found the applicant not to be a credible witness, that is not to say that she is as old as she has been assessed to be by the respondent. I have had due regard to the evidence of Derya Orbaz, a foster carer with some experience of caring for adolescents from a range of different backgrounds. Looking at all the evidence in the round, adopting the day and month that has been used by the applicant, I find that she was born on 5 August 2000. She was therefore 18 when she left Sudan in 2019 (*whether February or mid 2019*) and 20 years old when she arrived in the UK on 8<sup>th</sup> October 2020, and when the age assessment was completed on 22<sup>nd</sup> February 2021.

## Conclusion

84. There shall accordingly be a declaration that the applicant's date of birth is 5 August 2000.
85. I will invite written submissions from counsel on costs and any other consequential matters.

Signed **V. Mandalia**  
2023

Date 6<sup>th</sup> February

**Upper Tribunal Judge Mandalia**