IN THE UPPER TRIBUNAL **CASE NO: JR-2023-LON-001584**

(IMMIGRATION AND ASYLUM CHAMBER)

JUDICIAL REVIEW

BETWEEN:

THE KING

on the application of

SP

(by his litigation friend MARIA HOULIHAN)

Applicant

-and-

LIVERPOOL CITY COUNCIL

Respondent

DRAFT ORDER

BEFORE Upper Tribunal Judge Bruce

ON 2 April 2024

UPON the Upper Tribunal having conducted a fact-finding hearing to determine SP's age and date of birth on 19 and 20 March 2024

IT IS DECLARED THAT:

1. The applicant's date of birth is 25 July 2006.

IT IS FURTHER ORDERED THAT:

2. The respondent shall pay the applicant's costs to be subject to detailed assessment if not agreed.

3. There shall in any event be detailed assessment of the applicant's publicly funded costs.

Upper Tribunal Judge Bruce
2nd April 2024

Case No: JR-2023-LON-001584

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Before:

UPPER TRIBUNAL JUDGE BRUCE

Between:

THE KING
on the application of
SP
by his litigation friend, MH

Applicant

- and -

LIVERPOOL CITY COUNCIL

Respondent

Hearing date: 19th and 20th March 2024
Manchester Civil Justice Centre

For the Applicant: Mr V Jagadesham of Counsel, instructed by GMIAU
For the Respondent: Mr A Campbell, of Counsel, instructed by Liverpool City Council

J U D G M E N T

1. The Applicant has applied for judicial review of the Respondent's decision dated the 13th September 2022 that the Applicant is not the age he claims to be.

2. Social workers employed by Liverpool City Council believe that the Applicant was born on the 25th July 2000. The Applicant seeks a declaration that in fact he was born on the 25th July 2006. The Appellant's true age is the only matter in issue before me. Permission was granted

by HHJ Margaret Obi, sitting as a Judge of the High Court, on the 16th March 2023.

3. The hybrid hearing took place over two days at the Civil Justice Centre. On the 19th March 2024 I heard from the following witnesses for the Applicant:

   i) The Applicant himself, in person with the assistance of a Kurdish Sorani interpreter.

   ii) Gareth Hankinson, Operations Manager at Asylum Link Merseyside, over video-link.

4. The Respondent called no live witnesses.

5. I was provided with three bundles of evidence, all of which I have read. From this material the following documents were the most significant for the purpose of my decision (in no particular order):

   - The report of the 'brief enquiry' age assessment conducted by social workers Edwina Ryall and Cassie Fitzgerald on the 13th September 2022 and served on the 14th October 2022 plus the handwritten note taken during the assessment.

   - Witness statements of the Applicant dated the 10th November 2022 and the 2nd November 2023.

   - Written evidence of Gareth Hankinson, comprising his letter dated the 20th October 2022, his statement dated the 21st November 2022.

   - Written evidence of Nicola Taylor, ESOL Manager at Wirral Metropolitan College, comprising a witness statement dated the 7th November 2023 and an email dated the 5th February 2024.

   - Extracts from the Home Office General Cases Information Database ('GCID'), obtained by the Applicant's solicitors after a subject access request in October 2023.

6. On the second day of the hearing I heard submissions from the representatives and I reserved my decision.

7. I am not in this judgment concerned with a public law challenge to the age assessment. In these proceedings it is for me to determine the Applicant's likely age, giving due weight to the expertise of the assessors, but considering all of the evidence before me. I have taken account of all of that evidence in the round and I have reached my findings bearing in mind that the standard to which I must be satisfied is the balance of probabilities, and that there is no burden of proof on either party. I have not considered it necessary to summarise all of the evidence in this judgment, since the parties are plainly aware of it. I shall however refer to parts of the evidence in course of reaching my findings.

The Evidence: Discussions and Findings

The Applicant's Narrative: Pre Arrival

8. I begin with the evidence of the Applicant himself about his life before he reached the United Kingdom.

9. The Applicant states that he is the son of a *kolbar* from Iranian Kurdistan, near the border with Iraq. His father was killed whilst working when the Applicant was about 11, and the Applicant took over his route. At some point in 2021 the Iranian security forces came to the Applicant's home looking for him, acting on information that he had been smuggling alcohol. When the Applicant's uncle heard about this he told the Applicant not to return home; he said that he had to leave Iran for his own safety. Arrangements were then made for the Applicant to leave the country. He has left behind his mother and a twin sister.

10. The Applicant states that his journey to the UK took about a year. He got across the Turkish border by walking and car. The smuggler who took charge of him in Turkey kept him there for about 3-4 months before he was taken in a lorry to Italy. Again he was kept there for some months before being driven by car to what he later learned was the 'Jungle' in France. He was put in a dinghy to cross the channel, and they were picked up by a bigger boat and transported to shore. The GCID record shows that his arrival date is recorded as the 6th August 2022.

11. Mr Campbell took no issue with any of that, and no points arose from it in submissions. I find it to be an entirely unremarkable account of life in northern Iran. The reason the Applicant gives for leaving is one familiar to this Tribunal, as is his account of traversing Europe over a period of months. None of that is however directly probative of age. At its highest I am able to draw the conclusion that some of the things said by the Applicant are plausible, and consistent with what is known generally not just about Iran, but about migration experiences in Europe.

The Applicant's Narrative: Post Arrival

12. There are certain facts about the Applicant's life since he arrived in this country that are uncontested. We know that he arrived on the 6th August 2022 and that having been interviewed he and another young asylum seeker, whom I shall refer to in this decision as B, were transported by bus to a hotel. The Applicant states that he was not aware of where that hotel was, but later investigations have established that it was Home Office provided accommodation in Hillingdon, London. It is also accepted that on approximately the 7th September 2022 both the Applicant and B turned up in Liverpool, and variously sought assistance from Edge Lane police station, Migrant Help and Asylum Link Merseyside.

13. How the Applicant and B came to be in Liverpool is a matter in issue between the parties. The social workers who conducted the brief

enquiry, and before me Mr Campbell, contend that there are aspects of the evidence on this point that lack credibility, and that although they do not go directly to the matter of the Applicant's claimed age, are relevant to the weight that can be attached to his general account.

14. The Applicant himself says this. The hotel was horrible and frightening. They did not feel safe there. There were older men drinking and taking drugs and the Applicant had heard that when people take these kind of substances they don't know what they are doing. He found it very frightening – he could not sleep. He thought the older men looked at him in a mocking way. B was also scared. They tried to get assistance from an organisation called Migrant Help. They wanted to be moved to different accommodation. Unfortunately they were unable to get through, despite calling the helpline number multiple times.

15. One day the Applicant and B were sitting on the street outside of their hotel. They had been there for a while – maybe half a day, maybe less. The Applicant was crying as he and B sat and talked about what they could do about their situation. They were approached by a Kurdish man who came up and asked them if they were OK. They explained their situation to him. He said to them that they should move from this place to go somewhere else for help where it would be better: "he talked to us and we agreed". The man told them to come with him. They just went in the clothes that they had on. He took them to a train station. In his oral evidence the Applicant said that "the man took us to where the bar codes are scanned and pointed to the train that we should get on". I interpreted that to mean that the man took them as far as the barriers and pointed to which train they should get on. He did not explain to them what they should do once they reached their destination, just that they should get off at the last stop and seek help there.

16. For the Respondent Mr Campbell takes issue with this account on two fronts. First, he says it is inherently incredible that a random stranger would take these two young asylum seekers from their hotel in Hillingdon all the way into central London to board a train to Liverpool without giving them some information about why they were going there or what they should do once they arrived; tickets from London to Liverpool are not cheap and he asks me to reject the claim that this stranger simply paid that money out of the goodness of his heart. Furthermore, Mr Campbell points out that the handwritten note taken by social workers during the enquiry records that the Applicant told them he came to Liverpool on the bus. He suggested that the Applicant later amended this, in his witness statement and oral evidence, to tally with what B had told social workers, namely that they had made the journey by train.

17. Starting with the Good Samaritan, I have to say that I do not find there to be anything inherently incredible about the claim that a Kurdish man helped two Kurdish boys he found crying/distressed in the street. People are capable of being kind, and generous, particularly to those who appear vulnerable. Nor do I find it particularly remarkable that he did not give them any further information: perhaps he thought they would meet someone else who would help them, perhaps he thought that he had done enough.

18. As to the claim that the Applicant changed his account about how they physically got to Liverpool, I have not found this an easy matter to determine. On the one hand there is a clear discrepancy between what the social workers record and what is now said. The word "bus" appears twice in the handwritten notes, once where the Applicant is recorded as saying "He bought us a bus ticket", and then when the Applicant replies "yes" to the question "you travelled on a bus for 4-5 hours and presented with claimed age rather than presenting in London". He now completely denies that. He points out that there was no interpreter present, and that the interpreter was on the phone, which could have caused confusion. I was not provided with any information about what the words for 'bus' and 'train' are in Sorani and whether there is a generic term for 'transport' that might have been used. What I do know, as an absolute fact, is that the Applicant and B did turn up in Liverpool and presented to various agencies seeking help. How they may or may not have made that journey does not appear to me to be immediately or obviously probative of their claimed ages. It may be that the Applicant is right and that his evidence was mis-recorded. Or, possibly more likely, it may be that he and B were taken to Liverpool by someone who asked them not to mention his name, out of fear that he would get in trouble. I have taken on board Mr Campbell's point that I should treat this evidence with caution, but in the end do not think that this significantly assists in my task. At its highest what I can derive from it is a conclusion that I cannot accept everything that the Appellant says at face value.

Evidence Relating to Age

19. There are no identity documents in this case. All I have is the Applicant's own evidence about his date of birth and claimed age. The Respondent says that this evidence is such that it must be given little weight. I therefore set it out, and consider it, in some detail below.

20. The first evidence about the Applicant's stated age is to be found in the Home Office GCID. Upon his arrival at Dover on the 6th August 2022 the Applicant was interviewed by an immigration officer, whose name is redacted on the official record that I have been provided with. It is recorded that the interview was conducted with the assistance of an "Arabic HO interpreter". The Applicant does not speak Arabic. His evidence about the interpretation in that interview is that the interpreter was on the other end of a phone line, and that he was speaking Kurdish, but in a slightly different dialect from that spoken by the Appellant. I infer from this that the interpreter was a Kurd from an Arabic speaking country (most likely Iraq). The Applicant is asked a series of questions. He gives his date of birth as the 25th July 2006 and then there is the following exchange:

> "Q. How old are you?
> A. I am 16 years old
>
> Q. How do you know?

A. My father told me before he died that I was 16 years old. My father died about five years ago.

Q. So that would make you around 21 years old?
A. No response"

21. At the conclusion of that interview the officer concludes that the Applicant is 22 years old and that "he will be registered on our system as born 25.7.00".

22. The next day, the 7th August 2022, Home Office staff conducted an 'initial contact and asylum registration questionnaire'. This records that the interview was again conducted with an interpreter on the telephone. At 1.2 of the pro-forma it records that the Applicant's date of birth is the 25th July 2000. At 1.3 it then asks "have you ever used any other names or dates of birth": here the Applicant's response of 25th July 2006 is recorded.

23. The next time that the Applicant is asked to give his date of birth was during the brief enquiry age assessment. Again, the Applicant was interviewed using an interpreter on the telephone. Reading the handwritten note of the social workers it appears that the first question he was asked is "how old are you?" to which he replied "16". The notes then record:

"What is your dob?
25 July 2006

What calendar do you use for your dob?
I use the same. The English one.

What is dob in the Iranian calendar?
3 Mehr 1385

[the Applicant] repeating to interpreter
3 Mehr 1385 – 25 September 2006

Do you have any docs to show/prove dob, age/name?
No I don't have identification because I escaped.

Do you have any docs at home in Iran
No

So how do you know that is your age/dob?
My father told me. My father is dead.

Crying. Head in hands."

24. The Applicant is offered a break, which he takes. When the interview resumes he states that his father passed away when he was 11, and that he was also told his date of birth by his mother: she told the Applicant and his twin sister at the same time. The Applicant is at no stage in that

interview asked to clarify whether he was born in July or September of 2006, ie Mehr or Mordad of 1385 in the Iranian calendar. It is not until the 'Minded Too Session' (sic) that the following is put to him:

> "You have provided three dates of birth including the Home Office dob of 25.7.00, you cannot provide information as to why the Home Office would have this information. You provided the dob 25.07.2006, again you cannot provide any information to prove this is your dob as you said you do not have any ID documents in the UK or Iran. You also provided the dob 3 Mehr 1385 which equates to 25.9.2006. This information is inconsistent".

To which the Applicant gives no response.

25. The Applicant provides a witness statement dated 10th November 2022. Therein he reiterates that he has always known that his birthday was the 3 Mordad 1385, because his father told him when he was young. He states that although he was not old enough to have an ID card, or passport, he did have a *shenasnameh* (birth certificate) which his mother showed him and his sister. The Applicant states that he does not know where that certificate is, but assumes it to be with his mother. He told the social workers he had no documents because he does not have any in the UK. He explains that he learnt what that date is in English after he was told by the smuggler on the way to the UK.

26. In his live evidence before me the Applicant was asked several questions about his date of birth. In response to Mr Campbell's questions the Applicant said that he could recall two conversations with his father in which age came up. The first was when he was young, and the second of which was not long before his father passed away. In that conversation his father had joked to him and his twin sisters that the "little donkeys had grown up". After that he was also told his date of birth by his mother. One day she showed them (ie he and his sister) their *shenasnameh* and she had pointed to the date of birth: the Applicant was himself unable to read it but his mother had said it out loud. Mr Campbell asked if it was possible that the Applicant could have his *shenasnameh* sent to him but he said no: he has not had any contact with his family since he left Iran. He has no telephone numbers for them and they don't have smart phones or social media. In any case he believed that the document would have been seized when the *Etelaat* raided the family home. Mr Campbell asked the Applicant when that raid took place. He said that it was before he left Iran, it was the reason he left. He had been working as a *kolbar* at the time; he was up on the Iraqi border when he received the call from his uncle.

27. Mr Campbell asked the Applicant why the social workers would have recorded that he said he was born in the month of Mehr. He did not know. He maintained that he has only ever said he was born in Mordad. Similarly he denies that he ever said he was born in 2000: that date, which appears in his screening interview record, was, he says, placed there by the Immigration Officer who completed the form.

28. At my suggestion Mr Campbell asked the Applicant if he could recall when he started fasting for Ramadhan, as he was on the day of the hearing. He said that when you are 6 or 7 your parents start to teach you about things like praying and fasting. Then you start to do half fasts, or to go as long as you can without eating, so that you get used to it. You work your way up to full fasts and then eventually you can fast for the whole month. The Applicant said that before he left Iran he completed two full Ramadhans of fasting.

29. The Applicant was also asked about the conversation he had had with the smuggler. He could not remember exactly when it was but he thinks it was when they were in France. The smuggler asked him if he knew his date of birth and he had said yes, in the Iranian calendar. The smuggler had said to him "that's no good no one will understand that – you have to learn it in English". The smuggler had used his phone to look up the conversion and had written the English date – the 25th July 2006 – on a piece of paper. The Applicant lost that bit of paper but it hadn't helped him anyway as he cannot read. He had just memorised the words.

30. I have considered the evidence on this matter in the round, taking into account Mr Campbell's general submissions on the Applicant's credibility. Weighing in the Applicant's favour are the following matters. The Applicant has repeatedly given the date of the 25th July 2006. I found his account of how he came to know his date of birth to be plausible in the context of a Kurdish community in northern Iran. His description of how his father had teased him and his sister by calling them "little donkeys" had the ring of truth, and I observed how in giving that evidence the Applicant had smiled, as if recalling a fond memory. Similarly his account of the conversation with the smuggler was given in a straightforward and credible manner. The Applicant's evidence about when he started to fast is consistent with him having started to keep full fasts in early puberty, as would be the expected norm. All of that generally points towards the Applicant's date of birth being the 25th July 2006, notwithstanding the lack of documents to prove that to be the case.

31. Conversely I am not able to attach any significant weight to the alleged discrepancy about dates identified in the brief enquiry age assessment. It is apparent from the handwritten notes that there was an immediate inconsistency in which was being recorded. He is said to have said 'Mordad' with one breath, and 'Mehr' the next. Bearing in mind the confusion liable to be caused by having an interpreter on the end of the phone, and bearing in mind that this was a young person who was, by the social workers' own description, so nervous/distressed that he was shaking, it is baffling to me why this matter was not clarified by further questions. Having recorded the two different words the interviewer just ploughs on. It is only later, in the 'minded to refuse' interview, that the Applicant is asked about it, and in terms that were very likely to confuse and upset him. It is put to him that "*You* have provided three dates of birth including the Home Office dob of 25.7.00, you cannot provide information as to why the Home Office would have this information…". This was of course wholly misleading. It was not the Applicant who said that he was born in 2000, it was the Home Office. No wonder he is unable "to provide information as to why" they would "have this information". It

was in my view totally unreasonable for this to be framed as a discrepancy of the Applicant's own making. It was further unreasonable for negative inference to be drawn from his failure to be able to explain why the Home Office had decided as they had.

32. Similarly I place very limited weight on the record made by an immigration officer using an "Arabic" interpreter on the end of a phone line the day that the Applicant was retrieved from a dinghy in the English channel. There he is recorded as having said that his father told him he was 16, rather than saying 'the date of birth my father told me would make me 16'. I have no way of knowing what the Applicant's exact form of words was.

Observation Evidence: Appearance, Behaviour and Demeanour

33. In this section I consider the observations about appearance, demeanour and behaviour made in turn by Home Office officials, the age assessing social workers, myself, and people who know the Applicant from normal and regular interactions.

34. The first of the latter is Mr Gareth Hankinson, the Operations Manager at Asylum Link Merseyside who first assisted the Applicant and B when they arrived in Liverpool. Mr Hankinson has worked with refugees, both adults and youth, for some 15 years. He had regular and frequent contact with the Applicant for approximately three months between September and November 2022, when they were both granted injunctive relief and taken out of the adult services with which Mr Hankinson is concerned. Mr Hankinson gave live evidence before me by video link.

35. The second of these witnesses is Ms Nicola Taylor, the Applicant's teacher at Wirral College. She has been working with young people aged between 11-18 since 2008; she is also a mother to an 18 year-old and a 19 year-old. She has known the Applicant, and seen him on a frequent basis, since January 2023. Ms Taylor was not able to attend the hearing as planned due to personal reasons known to both parties. For that reason her evidence was in writing only.

36. In respect of the professionals who conducted the brief enquiry, I recognise that both these social workers also have some experience in dealing with adolescents. Ms Ryall has been a social worker since 2019 and formerly worked for Leeds City Council in the Child Protection Team. She also has particular experience in working with refugee communities, and was trained by Liverpool City Council in age assessment in August 2021: she has been part of their Unaccompanied Asylum Seeker Children's (UASC) Unit since then. Ms Fitzgerald qualified as a social worker in 2017, and has worked exclusively in the UASC unit since 2020. She has received Merton compliancy training and has participated in over 100 brief enquiries and age assessments. I appreciate that in accruing such experience the assessors will have personally seen many adolescent males, and formed a view about what physical characteristics one might expect to see as they age out of minority. Their evidence was untested, and it is therefore for me to determine what weight can be

attached to their views, bearing in mind their experience and role as social workers.

37. When he came ashore in the United Kingdom on the 6th August 2022 the Applicant was interviewed by an immigration officer at the Kent Intake Unit. I am not told what expertise the officer involved might have had in assessing age. The notes record the Officer's observations:

> "The applicant's physical appearance appears older than his claimed age. He has deep lines on his forehead, body hair on his arms, toes and feet, he has recently shaved as there is evidence of stubble/regrowth and his Adams apple is clearly visible".

38. It was on the basis of these observations that the Applicant was classed as being obviously an adult, and sent to that hotel in London, along with B.

39. The next person to form an impression of the Applicant was Mr Gareth Hankinson, when the Applicant and B presented themselves to Asylum Link Merseyside seeking help on the 8th September 2022. In his letter of the 20th October 2022 Mr Hankinson writes that the two of them told him that they had left their hotel in London because they were frightened and that they had been wandering about Liverpool crying: "they both kept saying that they were scared, and asking for help to live with people of their own age". While Mr Hankinson was trying to secure them accommodation, they sat upstairs in the staff area because they were uncomfortable downstairs, which is full of adult service users. During the wait they both fell asleep on the sofa. When the news came back that they had to go back to London they both became extremely upset and the Applicant started to cry. He cried often during the two days that he spent at Asylum Link while a solution was found for his accommodation needs. In the conclusion of his letter Mr Hankinson writes:

> "In my opinion [the Applicant] is a minor. Both his appearance and behaviour support that. [The Applicant] tells me of the difficulties that he is having in the adult accommodation and feeling frightened. When talking with [the Applicant] his responses and lack of understanding support his assertion that he is indeed a child. When observing [the Applicant] and [B] together they interact as two scared children. I believe that his current living situation is having a negative impact on his mental well-being and would support a full reassessment of his age".

40. In cross examination Mr Campbell put it to Mr Hankinson that his observations here were influenced by the Applicant's vulnerability. He had recently arrived in the UK, had managed to make his way to Liverpool and on the day that he presented himself to Mr Hankinson had, on his own evidence, been sleeping on the streets for at least a night, possibly two. He had not eaten. It was therefore unsurprising that he appeared upset and vulnerable, no matter how old he actually is. Mr Hankinson agreed that this might be the case, but pointed out that in the

15 years that he has been working with refugees he has spent time with adults and children, and that they are very often in similarly vulnerable positions: he is still able to tell the difference. An adult who has recently arrived can, it is true, appear vulnerable and scared, but he still looks and acts like an adult.

41. In his witness statement Mr Hankinson states that subsequent to this letter being written the Applicant continued to regularly present at Asylum Link in a distressed state. He was always with B, and Mr Hankinson reiterates his view that the two gave each other reassurance and support. They were reluctant to avail themselves of any of the services/support groups/activities offered by Asylum Link simply because they did not want to take part in activities with adults. In the days following their arrival in Liverpool, Asylum Link had referred them back to the Home Office, who initially provided accommodation in a hotel. During this period the Applicant and B regularly sought his help in moving. It was only after they were taken into the care of the local authority in November that they ceased attending. Mr Hankinson concludes that there is nothing in the Applicant's presentation or behaviour that leads him to conclude that he is anything other than his claimed age.

42. It is worth recording one other observation that appears in the evidence about that period when the Applicant first arrived in Liverpool. It comes from an unnamed individual who has recorded the following in the internal Home Office case record - GCID. The names of all the immigration officers/Home Office staff in the GCID are redacted but on the 9th September 2022 someone wrote the following, apparently in response to the enquiries made by Asylum Link:

> "The young people applied for IA yesterday and were told to make their own way back to their previous hotel in London. Asylum Link put them in a hotel for the night as the young people did not way back to hotel, the name of the hotel or have cash to get there. They do appear and act very young. Evidenced by their decision to leave the hotel in the first place. I understand that they shouldn't have left the hotel but is there any way that they can be picked up from Liverpool and either taken back to London or anywhere else to be accommodated. I am just concerned that if they aren't picked up they will be left on the streets, and they are potentially children"

43. Underneath this text is a note arranging transport for 2 applicants to be collected from Asylum Link.

44. The next witnesses to consider the Applicant's age were the social workers. What they say is this:

> "[The Applicant] presented as approx. 5 foot 9 inches tall with a developed bone structure, medium to well set build and broad shoulders. He had a defined Adam's apple. There was visible signs of shaving and a defined shadow was clearly visible".

45. The handwritten notes taken by the social workers on the day of the assessment say this:

> "When did you first start shaving?
>
> I don't have a mustache (sic) to shave.
>
> Pointing at face/lip/chin saying no.
>
> When did you first start?
>
> About a month ago
>
> Was that the first time?
>
> Not proper shaving, not around my neck
>
> When was the first time? What age?
>
> Here in the UK.
>
> Before the UK or here in the UK when was the first time?
>
> I don't remember it.
>
> How often do you shave?
>
> I don't have hair to shave. Maybe every 2 weeks. I don't have too much"

46. The conclusions that the social workers draw from this were that the Applicant's physical appearance and features were not that of a 16 year old but more like an individual of 22+ years old, coinciding with the view reached by the immigration officer in Kent.

47. In cross examination Mr Campbell put the impressions gained by the social workers to the Applicant. In respect of shaving the Applicant denied having ever had a beard. He said:

> "I have a bit of hair on the top (motioning to his upper lip) and a bit on the bottom (pointing to the point of his chin) but I have never had any hair on my cheeks. When I go to get my hair cut I ask them to shave this for me because I want it to grow back thicker".

48. Under cross examination the Applicant said that during both the interviews with the social workers and with the immigration officer he felt pressured to give an answer about shaving. He maintains that he explained on both occasions that he does not shave his cheeks, only his moustache area and that this is not required frequently. He said that the interpreters on both occasions told him to give an estimate. In cross examination the Applicant was asked a lot of questions about this. He maintained that when he does shave, it is only to shave his upper lip and the tip of his chin. He has never needed to shave his cheeks.

49. As numerous authorities explain, relying on physical appearance in order to determine age is an inherently dangerous strategy, because

individuals can mature and develop at wildly different rates, driven by genetics, environmental factors and to some extent life experience. For that reason I approach any observations on this matter, including my own, with a considerable degree of caution. Whilst mindful of that, in this case I am however bound to say that I am astonished at the description of the Applicant given by the immigration officer in Kent and the social workers. Having read those descriptions I was prepared to see someone who looked like a "clear and obvious adult" when I walked into court. What I saw instead was someone who looked very much like an adolescent boy: to adopt the phrase recorded by the unnamed individual in the GCID, someone who 'appears and acts very young'.

50. During the hearing I sat approximately 8 feet away from the Applicant, immediately facing him in the well of the court. I saw him standing and sitting, and was able to observe him for myself. I asked him to show me his forehead. Not a "deep line" in sight. Not even a faint line. His forehead was entirely smooth. As for the "defined shadow" of facial hair regrowth, what was clearly visible from where I sat was a tiny patch of follicles on the tip of Applicant's chin, on his upper lip, and small 'side burn' patches at his hairline. What marked these patches out was the complete absence of any hair regrowth over the entirety of the Applicant's cheeks. I would not, as the social workers did, have described this young man as having a "medium to well set build". His shoulders certainly are not "broad". He appeared to me to be of slight to medium build at most.

51. As I say, any observations of appearance are going to be of very limited value in assessing true chronological age. What I can say is that the descriptions of the Appellant given by the Kent Intake Unit and these social workers are in my view inaccurate in several respects. It is of course of some significance that my visual assessment of the Applicant is made in March 2024, roughly 18 months after they made theirs. It seems unlikely that he has grown slighter or younger looking in that time.

52. I am afraid that I am also bound to draw similar conclusions about the way that the Applicant's behaviour and demeanour are described by the assessors. In their brief enquiry Ms Ryall and Ms Fitzgerald record the following:

> "During the enquiry [the Applicant] presented as shaking as if he was cold more so than timid, this presented as quite theatrical and overt at times. [The Applicant] put his head in his hands and noises, similar to crying noises could be heard…it was observed that when [the Applicant] would stand up to leave the room he would keep at least one hand to his face (covering), however when almost reaching the door way, [he] removed his hand, no tears were visible and his face. Cheeks were not flushed. [He] went from a hunched shoulder position to standing up straight and tall, shoulders back. A strong, clenched jaw was visible, with a stoney look upon his

> face. The demeanour was drastically different compared to when he was sat with the two social workers. When returning to the room following the break, it was observed that [he] confidently would watch the lead social worker close the door and when she turned back around to continue the enquiry, he would then have a sad look on his face and the shaking would represent itself".

53. In his submissions Mr Jagadesham referred me to another case in which employees of Liverpool City Council made similar allegations, which were rejected by one of my colleagues. I have derived no assistance from that: it was another case and another allegation. I am not however prepared to attach any weight to the allegation of 'theatrics' here. It is, at best, entirely subjective. Another observer in the room might have thought that the Applicant was genuinely upset at being asked about his family and journey to the UK, matters which, however old he is, would be potentially upsetting. As it happens, my own subjective observations of the Applicant are, again, completely at odds with the way he is described above. At the beginning of the hearing before me the Applicant become immediately upset and cried freely and visibly before he had been asked a single question – the anticipation of it was sufficient to elicit this reaction. Tears poured down his cheek. During his live evidence I noticed that on more than one occasion he bit his lip, in what appeared to me to be an effort to stop it trembling. I noted that at these moments his eyes filled with tears. If this was acting, it was impressive stuff. This behaviour is also consistent with what Mr Hankinson says. He reports that the Applicant cried frequently in the three months that he was seeing him regularly at Asylum Link:

> "[He] has presented as extremely distressed when attending at our centre and frequently cries at his situation pleading for help".

54. Ms Taylor has had regular and frequent contact with the Applicant since she first met him in January 2023 when he came to the Wirral College for his language assessment. In her statement she says that she observes him interacting with other 16-18 year-olds in the canteen, or during enrichment activities, and she considers those interactions to be consistent with his claimed age. She gives specific evidence about a residential trip the college organised in May 2023. The Applicant was worried about sleeping away from home and needed regular reassurance. If he didn't get his own way he would "sulk". Ms Taylor explained that the Applicant had come to her to ask if he could go home because he did not want to share a bedroom. When she told him that this was not possible he went to ask another teacher: Ms Taylor described this as "typical teenager" behaviour – trying to play one person off against another. Ms Taylor concludes that the Respondent's age assessment has concerned her immensely – there is nothing in his interactions with staff or peers which leads her to conclude that he is any older than his stated age of 17.

My Conclusions

55. In assessing the weight I can attach to the age assessment I have at the forefront of my mind that this is not a public law challenge to that decision. I am nevertheless properly entitled to draw my own conclusions about the reasoning therein, in particular in light of evidence that I have available to me which was not available to the social workers. I was not, I have to say, impressed by the reasoning in the decision.

56. For the reasons I set out above I attach very little weight to the description set out, at some length, of the Applicant 'faking' being upset. He was obviously upset in court and this accords with the numerous times that Mr Hankinson observed him to be in tears. The description of his physical appearance was in many respects entirely at odds with what I could see sitting in front of me in court. This did not appear to me to be a well-built, broad shouldered obvious adult with broad shoulders and a "strong clenched jaw".

57. It was of course unhelpful that this was a brief enquiry rather than a *Merton*-compliant full assessment, and I appreciate the pressure that social workers are under. It seems to me that with so much at stake it was nevertheless incumbent on those social workers to conduct that enquiry in a fair and careful way. It was not fair that the discrepancy about Mordad or Mehr was not immediately cleared up. When someone seems to say one thing in one moment and something different the next, the obvious thing to do is to check. That the interpreter was on the telephone only amplifies the duty to make sure you are getting it right. Telephone interpreting no doubt saves time and money but it makes the job of everyone concerned more difficult. I saw myself how the excellent, very careful and patient interpreter we had in court sometimes struggled to catch what the Applicant was saying, because he would continue speaking in Sorani as the interpreter was translating the last bit of English. He had, on several occasions, to ask the Applicant to pause until he had finished. A lot of that interaction depended on eye contact, for instance I observed that the interpreter at one point just raised his hand as the Applicant was about to launch into more Sorani. None of that is possible over the phone. Nor was it fair that the social workers suggested to the Applicant that he had provided the Home Office with the information that he had been born on the 25th July 2000, and then drew negative inference from his failure to explain why he had done so. Those instances of unfairness mean that I am unable to place weight on the 'discrepancies' identified.

58. I found the evidence given by Mr Gareth Hankinson on the other hand perfectly straightforward and credible. As someone who saw the Applicant on numerous occasions in normal everyday interaction his evidence, and impressions, are obviously of value in this exercise. His conclusion, that there is nothing about the Applicant which would lead him to doubt his claimed age, finds some support in the written evidence of Ms Taylor. There is of course a limit that I am able to place on her untested evidence. I have nevertheless been able to attach some weight to this written evidence. I do so because Ms Taylor is a professional, and I see no reason to doubt her partiality. In his submissions Mr Campbell

suggested that in her role at the college she necessarily assists the Applicant and so would feel a natural, perhaps instinctive desire, to wish to do so in this forum. He drew my attention to a case in which a panel of my colleagues expressed concerns about evidence given by a witness who worked for the Refugee Council for just that reason. I am obviously not bound by that decision and I do not in any event regard it as an appropriate analogy. In that case the organisation that the witness worked for was actively engaged in representing the migrant involved. Ms Taylor is not. Ms Taylor is a teacher, and I see no distinction between her position and that of, say, a GP. Whilst she may well want the best for her student she is also a professional who is expected on a regular basis to express honest opinions about her students. With over 15 years' experience of dealing with adolescents I find that she may usefully have some observations to make about the Applicant's behaviour. What is clear from her statement is her view that the Applicant appears to be a "typical teenager". Mr Campbell questioned what she might have meant by that, but in my view it is quite clear. He fits in with his peers, he behaves just like other 16/17 year old boys do. That is important information in the context of this claim.

59. The Applicant's evidence itself was harder to assess. Mr Campbell was successfully able to undermine it, particularly in regard to how he and B came to be in Liverpool. I agree that this is evidence that I should approach with caution. That is however of very limited assistance to me. It could be, as Mr Campbell suggests, that this untruth is indicative of a greater lie, but it could equally be said that this is a teenager lying to cover something up. He would not be the first. At its highest, the point serves to generally undermine the Applicant's credibility as a witness. I have kept that in mind.

60. When I turn to focus on the evidence most directly relevant to age, however, I find the Applicant's testimony, and behaviour, to be consistent with his claimed age. Since he arrived in the UK the Applicant has been reported to be upset and frightened at being placed in accommodation with adults. Individuals who have interacted with him – such as Mr Hankinson and the unnamed individual whose observations are recorded in GCID – have described him as tearful and pleading for help. This could, as the social workers thought, all be an elaborate and lengthy act: it could also be because the Applicant was in fact a child placed in adult services who was genuinely scared. As to the claimed date of birth there is no documentary evidence to support the Applicant's claim. He has simply told immigration officers and social workers that he has none. He knows that he had a *shenasnameh* at one time, and that it may be with his mother in Iran, or that it may have been seized by the Etelaat. He maintains that the date written on that *shenasnameh* is the 3 Mordad 1385: the 25th July 2006. The Applicant described three conversations to me in which that date was discussed. The first was when his father told him and his sister that his "little donkeys had grown up"; the second was when his mother traced the date written on the *shanesnameh* with her finger and said the words out loud to the children; the third was when the smuggler translated the date for him into the Gregorian calendar. I found each of these reports to have the ring of truth about them. I saw the Applicant giving his evidence and he did so in

a natural and straightforward manner. He looked as if he was recalling a real event. The Applicant's evidence about fasting for Ramadhan tallies with his claimed age. He fits in at college.

61. Standing back and looking at all of the evidence, as it emerged, together, in truth I find no reason to conclude that the Applicant's evidence is anything other than what he says it is. His age was originally doubted by an immigration officer whose expertise is unknown, and whose conclusion that the Applicant appeared to be a 'clear and obvious adult' I have rejected. It seems to me that the social workers took that as a starting point: indeed they refer repeatedly to the date that the Home Office plucked out of the air. For the reasons I have given I am not able to place any significant weight on their reasons for maintaining it.

62. Drawing all of that together I am satisfied that on the balance of probabilities the Applicant was born on the 25th July 2006.

Upper Tribunal Judge Bruce, 24th March 2024