

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

R (on the application of AZ) v Hampshire County Council (AAJR) [2013] UKUT
00087(IAC)

**Heard at Manchester Civil Justice Centre
On 3, 4 and 5 December 2012**

Determination Promulgated

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IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

**The Queen on the application of AZ
(by his litigation friend, Kathleen Upsdale)**

Claimant

and

HAMPSHIRE COUNTY COUNCIL

Respondent

Representation:

For the Claimant: Mr Adam Fullwood, instructed by Jackson & Canter, Solicitors
For the Respondent: Mr Charles Bourne and Mr Benjamin Tankel, instructed by
Hampshire County Council

JUDGMENT

1. The claimant (to whom I shall hereafter refer to as AZ) challenges an age assessment dated 6 January 2012 carried out by Hampshire County Council (the defendant). The age assessment concluded that the claimant's date of birth is 6 January 1993 (indicating that AZ would have been 19 years old at the time of the assessment). AZ claims that he was born on 10 January 1996 and that he was, therefore, four days short of his 16th birthday on 6 January 2012.
2. AZ had arrived in the United Kingdom in September 2011. It is not disputed that he is a citizen of Iran and is of Kurdish ethnicity. AZ claimed asylum on 29 September 2011 and, in the autumn of that year, moved to live in the north of England, first in Liverpool and then Manchester. AZ had first come to the attention of social services in Aldershot on 28 September 2011 when two social workers from Hampshire County Council (Mr Roger Warren and Mr Neil Connolly) interviewed AZ and carried out an age assessment at the police station in Aldershot. Following correspondence between the defendant and AZ's solicitors, the defendant agreed to carry out a fresh age assessment on 6 January 2012. This Tribunal has heard evidence regarding both assessments in the course of the hearing.
3. Permission was granted by Mr Justice Foskett on 24 April 2012. Directions were subsequently made in the Upper Tribunal by Mr C M G Ockelton (Vice President) on 30 May 2012. The hearing took place at Manchester Civil Justice Centre on 3-5 December 2012 when Mr Adam Fullwood of Counsel appeared for AZ and Mr Charles Bourne of counsel and Mr Benjamin Tankel of Counsel appeared for Hampshire County Council.
4. Neither party to these proceedings carries any burden of proof. It is for the tribunal to determine whether the applicant was a child at the material time with reference to all relevant evidence and applying the standard of proof of the balance of probabilities (see **R (CJ) v Cardiff County Council** [2011] EWCA Civ 1590). My attention has been drawn to a number of recent authorities to which I shall refer in the analysis which appears below. The Court of Appeal in **R (CJ)** observed:

1. In *R (A and M) v Croydon and Lambert Borough Councils* [2009] UKSC 8, [2009] I WLR 2557, the Supreme Court settled the question whether, in the event of a challenge to the decision of a local authority as to the claimant's age, the High Court was required either to reach its own decision as to the claimant's age or, alternatively, the challenge was by way of review of the local authority's assessment on *Wednesbury* principles alone. Baroness Hale gave the leading judgment with which the other members of the Supreme Court agreed. At paragraphs 26 and 27 Baroness Hale explained the difference in approach required for the evaluative judgment whether a child was "in need" within the mean of section 20 of the 1989 Act and the decision upon the precedent question of fact whether the individual concerned was a child. She said this:

"26. ... the 1989 Act draws a clear and sensible distinction between different kinds of question. The question whether a child is "in need" requires a number of different value judgments ... but where the issue is not what order the court should make but

what service should the local authority provide it is entirely reasonable to assume that Parliament intended such evaluative questions to be determined by the Public Authority, subject to the control of the courts on the ordinary principles of judicial review. Within the limits of fair process and "*Wednesbury* reasonableness" there are no clear-cut right or wrong answers.

27. 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."

Lord Hope, in his concurring judgment, said at paragraph 51:

"51. It seems to me that the question whether or not a person is a child for the purposes of section 20 of the 1989 Act is a question of fact which must ultimately be decided by the court. There is no denying the difficulties that the social worker is likely to face in carrying out an assessment of the question whether an unaccompanied asylum seeker is or is not under the age of 18. Reliable documentary evidence is almost always lacking in such cases. So the process has to be one of assessment. This involves the application of judgment on a variety of factors, as Stanley Burnton J recognised in *R (B) v Merton London Borough Council* [2003] 4 All ER 280, para 37. But the question is not whether the person can properly be described as a child. Section 105 (1) of the Act provides: "in this Act ... 'child' means, subject to paragraph 16 of Schedule 1, a person under the age of 18". The question is whether the person is, or is not, under the age of 18. However difficult it may be to resolve the issue, it admits of only one answer. As it is a question of fact, ultimately this must be a matter for the court."

5. In their opening comments to the Tribunal, Mr Fullwood and Mr Bourne were essentially agreed upon the approach the Tribunal should take in the proceedings although they did not agree as to the weight which should be given to the Tribunal's assessment of the claimant's demeanour and appearance. Mr Bourne submitted that the assessment of demeanour was important but, relying on **R (AE) v Croydon London Borough Council** [2012] EWCA Civ 547 (*per* Aikens LJ at paragraph 44) submitted that the Tribunal's assessment should start with a consideration of the credibility of the evidence of the claimant.
6. I heard oral evidence from witnesses for both the claimant and the defendant. One of the defendant's witnesses (Donna Humphrey) was unable to attend to give oral evidence. These proceedings are, perhaps, unusual in that there is no independent "expert" evidence as such; neither party has sought to adduce evidence of a purely medical nature (other than a very brief report from the treating general practitioner of AZ) or evidence of an independent social worker or psychologist. Other than the evidence of AZ himself, I heard from witnesses who had been involved in carrying out the age assessments on behalf of the defendant or, in the case of officers of the Children's Society, have worked with AZ in Manchester.

7. AZ gave evidence in Kurdish Sorani with the assistance of an interpreter. He adopted his written statements of 4 April 2012, 3 November 2011 and 31 October 2012 as his evidence-in-chief. AZ explained that he had recently (October 2012) become a student at Manchester Academy. He had been accepted as a student there on the basis that he was 16 years old. He attends college on 5 days per week and is studying, *inter alia*, English, mathematics and computer studies. Although attendance at college has improved AZ's general mood, he continues to see his GP and is taking anti-depressants. He has made a friend at college (K) who is 16 years old. AZ complained of a "language barrier" which he said prevents him making other friends at college or elsewhere. AZ currently lives on his own and complained that he has difficulty in caring for himself. AZ has a support worker (Caroline Alison) whom he sees every other day. If he did not have Miss Alison's assistance, his life would be "very difficult".
8. AZ was asked by Mr Fullwood about the second assessment carried out by Hampshire County Council. AZ said that he had not felt well at the time of the assessment (he had to travel from Manchester to Hampshire by train which he said had been tiring). In the course of the assessment, he had asked for a break. Following the short break, the social workers conducting the interview had returned and given their decision on his age. He said that he remembered the social workers saying something about "childhood milestones" but the meaning of that expression had not been explained to him.
9. Cross-examined by Mr Bourne, AZ said that he had an ID card when he had lived in Iran. He could not say when he had received the card but he had not brought it with him to the United Kingdom. He had last seen the card in 2011 in Iran. Mr Bourne suggested to AZ that ID cards are required by law in Iran from the age of 15 years. AZ did not know of that legal requirement and said that, "everybody should have a card or he would face trouble at a checkpoint".
10. AZ could not explain why he had not brought the card with him to the United Kingdom. He said that his uncle had arranged for his journey to the United Kingdom. Asked why he could not have obtained the card from his family in Iran, AZ became distressed and said, "I cannot contact them".
11. AZ said that he had worked with his family on his father's farm. The number of workers employed on the farm changed according to the seasons. His father "grew cucumbers, tomatoes, sunflowers and other things". AZ had little formal education; he said that he found it "strange that my father would not allow me an education". It was put to AZ by Mr Bourne that he had told the Hampshire County Council social worker Mr Warren that he had come to the United Kingdom in order to learn English. AZ replied, "I happy to swear on the Koran that was not what I said. I fled because I was in big trouble".
12. Mr Bourne referred AZ to a passage (paragraph 24, C23) of Mr Warren's statement. Explaining how he had taken AZ back to the station following the assessment of 6 January 2012, Mr Warren had written, "I had to take [AZ] to the train station to await for a direct train to take him back to Manchester ... While we were both waiting for the train

[AZ] was able to speak in English, far more fluently than he had originally informed me he was able to. ... We spoke about the current politics in Iran and AZ was able to make himself very understood with his spoken English (*sic*). AZ said that he could not remember any conversation about politics although he had remembered asking Mr Warren about his ID card.

13. In **AE** (see above) the Court of Appeal found that, "In the absence of any documentary evidence over his age nor any reliable dental or medical evidence, the starting point for the Deputy Judge's task for assessing the age of AE was the credibility of his own evidence." [44] Caution should be exercised in the approach to the evidence of the claimant as the court noted in **R (on the application of B) v Merton London Borough Council [2003] 4AER 280** at [28]

Given the impossibility of any decision maker being able to make an objectively verifiable determination of the age of an applicant who may be in the age range of, say, 16 to 20, it is necessary to take a history from him or her with a view to determining whether it is true. A history that is accepted as true and is consistent with an age below 18 will enable the decision maker in such a case to decide that the applicant is a child. Conversely, however, an untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for reasons unconnected with the applicant's case as to his age, for example to avoid his return to his country of origin. Furthermore, physical appearance and behaviour cannot be isolated from the question of the veracity of the applicant: appearance, behaviour and the credibility of his account are all matters that reflect on each other.

14. AZ's evidence should not, of course, be examined in isolation from the other evidence; I have had regard to the evidence as a totality before making any findings of fact.
15. With those principles in mind, I have to say that Mr Bourne did not persuade me that AZ has lied to the Tribunal or the defendant regarding his true age. It is true that AZ appeared to dispute the sequence of events described by the social workers who carried out the age assessment on 6 January 2012. He denied that he had been given the opportunity to respond to the assessment which the social workers had proposed and he also appeared to dispute the length of time that the assessment had taken. He said that, following the fifteen minute break, the conclusion of the assessment had been announced to him and that he had not (contrary to the evidence of the social workers) been asked to answer more questions after the break.
16. These discrepancies are significant but one must ask what relevance they make to the central question facing the Tribunal, that is the assessment of AZ's age. It is clear from the evidence that AZ resented having to travel to Hampshire in January 2012 for a further age assessment. I find that he is likely to have arrived for that assessment in a defensive and even hostile mood and that his recollection now of how he was treated has been coloured by his memories of the assessment and, perhaps not unsurprisingly, by what was for him a negative and damaging outcome of the assessment itself. The discrepancy between the social workers' evidence of the assessment and that of AZ is not, in my opinion, so damaging to AZ's credibility that I should discount entirely the reliability of the remainder of his evidence. In other

words, I do not find that the differing accounts of the assessment interview penetrate to the core of the appellant's credibility as a witness.

17. One unusual aspect of this application is that neither party has sought to lead detailed evidence about the asylum claim which AZ has made to the Home Office. There has been no attempt to use any evidence which he has given in support of that claim to undermine or support his claimed date of birth. Whilst I acknowledge that the Tribunal's role in these proceedings is inquisitorial, I did not consider it appropriate, in the absence of any lead from the representatives, to ask for details regarding the asylum claim. What we are left with is evidence from AZ himself and others whom he has encountered here. That evidence has been focused (in the case of the defendant's evidence) on the assessment of AZ's age and, in the case of the witnesses supporting AZ, the detailing of his daily life and his social and educational progress.
18. Mr Bourne did submit that the answers which AZ had given regarding his ID card were "fishy" and he drew attention to the fact that no effort had been made by AZ and his representatives to contact the family in Iran and obtain the ID card. There is force in that submission but it is AZ's case that he has been unable to contact his family. That evidence is perhaps supported by the fact that AZ became distressed when he was asked about his family and also when one considers that he has received and continues to receive treatment for depression, one cause of which his doctor identifies as the extreme isolation which he has suffered whilst living in the United Kingdom. The defendant has not disputed the brief medical evidence of AZ's depression and I find it hard to believe that AZ would have become ill as described in the report if he was, in fact, maintaining regular contact with his family in Iran. I accept his evidence that he has been unable to contact his family in Iran and has, therefore, been unable to obtain the ID card or a copy of it. Further, I did not find AZ's evidence in cross-examination regarding the ID card to be evasive as Mr Bourne submitted. Indeed, Mr Bourne made much of AZ's reluctance to talk about his life in Iran in both cross examination and in his interviews with the Hampshire social workers. Mr Bourne submitted that the Tribunal should draw an adverse inference from AZ's reluctance to answer questions about Iran. I reject that submission. In common with the defendant's witnesses, my only direct experience of AZ has been to observe him answering questions put to him through an interpreter. I agree that the written accounts of his interview with the social workers might lead one to conclude that AZ had been evasive. However, my very clear impression of AZ, derived from witnessing his oral testimony, is that he was not being deliberately evasive but rather responding with an awkwardness and lack of confidence typical of teenage males. Whilst I am well aware of the dangers of attaching excessive weight to the demeanour of a witness who gives evidence through an interpreter and who is from a culture and background of which I have little knowledge or experience, I found that the demeanour of AZ was characterised by a physical awkwardness which was not, in my opinion, knowing or calculated. I find that AZ has given truthful answers to questions which have been put to him by the defendant's social workers and before the Tribunal. Insofar as any conclusion may be drawn from his body language and demeanour, I find that these are consistent with his claimed age.

19. As I record below, the Hampshire County Council social workers have based their own assessment of AZ's age to a large extent upon his physical appearance. The January 2012 age assessment recorded that, "AZ's appearance and physical development suggests he has completed puberty. He is shaving full facial hair. His voice appears to be a stable adult pitch". My own observation of AZ was that, although not slender, he was "rangy". He is tall and has long limbs and quite a long face. His voice was as described in the assessment report. Whilst I remind myself of the danger of attaching too much weight to my observations of AZ, I did not find that there was anything about his appearance which was manifestly inconsistent with his claimed age. Indeed, one of the defendant's witnesses (Ms Ife) admitted that, upon first seeing AZ, she believed that he was under 18 years of age (see paragraph 54 below).
20. The most obvious inconsistency between the evidence adduced by the defendant and that of AZ concerns the conversation (about politics in Iran) which allegedly took place between Mr Warren and AZ following the age assessment on the journey back to the station. AZ denied that any such conversation took place. Having regard to all the evidence, including that of Mr Warren (which I have considered in greater detail below) I accept AZ's version. AZ has given no indication whatever elsewhere in his dealings with the Children's Society or Hampshire Social Workers that he has any knowledge of or interest in Iranian politics or, indeed, sufficient ability in the English language to discuss that subject with the fluency claimed by Mr Warren. If Mr Warren's account is accurate, then AZ has concealed an ability to speak English and the level of education and knowledge which he has not disclosed to any other individual save Mr Warren. I did not consider that to be credible. If AZ could speak English as fluently as Mr Warren suggested, then it is difficult to see why he should have become so isolated and depressed whilst living in this country.
21. Whilst I stress that I have not considered AZ's evidence in isolation, I have considered it appropriate to record my findings regarding his credibility at this point in my determination. I find that AZ has given truthful answers to questions put to him before the Tribunal, by Hampshire social workers and the Children's Society. I make no comment regarding his asylum claim because details of it have not been put before me. I find that AZ has always given the same date of birth. I find that neither AZ's physical appearance nor his demeanour indicate that his date of birth is other than that claimed by him. That is a conclusion which I find is supported by my findings on the remainder of the evidence (which I shall record below).
22. I heard evidence from Dr Antony Edkins who is the executive principal and senior partner of United Learning, the sponsor of the Manchester Academy, Moss Side, Manchester. Dr Edkins adopted his written statement of 8 November 2012 as his evidence-in-chief. In that statement he comments as follows on AZ:

"[AZ'S] behaviour in the short time I have known him has not altered my view [that he is 16 years old]. His appearance and demeanour fit with that of a typical year 12 student (that is someone who had reached the age of 17 in the academic year which runs from 1/9/12 to 31/8/13) and he seems to be naturally comfortable with this year group. From what we know of his background, the story is consistent. He speaks

Kurdish well. His writing and reading skills are poor in any language – and he is showing the usual, albeit slower, progress in learning English as a foreign language.”

23. Dr Edkins said that the Manchester Academy teaches 38 “looked-after” children. These are children who arrived in the United Kingdom without parents or other relatives. Dr Edkins explained that he looked on the “international language” of mathematics as a guide to assessing the age of a particular pupil; he believed that the level of attainment of an individual in mathematics gave an indication of that individual’s age. However, he acknowledged that teenagers between the ages of 13-19 years can “vary enormously” in terms of intellectual development.
24. I found Dr Edkins to be a helpful witness but his testimony added little to assist the Tribunal in assessing the appellant's age. Having told me that the “international language of mathematics” would assist in assessing the child’s age Dr Edkins was unable, under cross-examination, to explain exactly how it operates in AZ’s case, given his lack of formal education and fluency in English. I attach little weight to that part of his evidence. Likewise, whilst I am aware that the Manchester Academy has a student base which is predominantly drawn from ethnic minorities (Dr Edkins told me that, of 900 students, only 45 were classed as “Anglo-Saxon British”) I did not consider that Dr Edkins had any special or expert knowledge or experience which would enable him to assess the age of a teenage Iranian Kurd. What I did find compelling in Dr Edkins’ evidence was what he said about AZ’s interaction with his peers at the Manchester Academy. I accept that, although he is principal of the academy, Dr Edkins is not “desk bound”. He explained how he spent a lot of time observing students both in lessons and interacting with each other. He described AZ's interaction with others in his year 12 class as a “natural fit”. He also referred to AZ’s “sheepish look” which he considered to be very common in 16 year old boys.
25. These observations are useful and should attract probative weight because they give a more objective indication of AZ’s age than a subjective opinion based on AZ’s appearance and/or demeanour. The observations reveal AZ within a social context, more particularly a context inhabited by individuals known to be in the Year 12 age range or group. The Upper Tribunal was aware of the value of such evidence in the case of **R (AM) v Solihull Metropolitan Borough Council [2012] UKUT 00118 (IAC)**:

Our second observation relates to mental maturity and demeanour. So far as mental development is concerned, it is very difficult indeed to see how any proper assessment can be made from a position of ignorance as to the individual's age. Most assessments of mental development are, in essence, an assessment of whether the individual is at average, or below or above average, for his chronological age. Without knowing the age, a person who appears to have a mental age of (say) 15 may be 15, or he may be a bright 13 or 14 year old, or a dull 16 or 17 year old. There is simply no way of telling. So far as demeanour is concerned, it seems to us that there may be value to be obtained from observations of demeanour and interaction with others made over a long period of time by those who have opportunity to observe an individual going about his ordinary life. But we find it difficult to see that any useful observations of demeanour

or social interaction or maturity can be made in the course of a short interview between an individual and a strange adult. There may of course be cultural difficulties in such an interview but there are the ordinary social difficulties as well.

The asserted expertise of a social worker conducting an interview is not in our judgement sufficient to counteract those difficulties. A person such as a teacher or even a family member, who can point to consistent attitudes, and a number of supporting instances over a considerable period of time, is likely to carry weight that observations made in the artificial surroundings of an interview cannot carry.

Reactions from the individual's peers are also likely to be of assistance if they are available. We do not suggest that other young people are qualified specifically to give evidence about the age of a colleague of theirs, nor should they be encouraged to do so. But those who work with groups of young people see how they react with one another and it seems to us likely that evidence of such interaction, if available, may well assist in making an age assessment, particularly if any necessary allowance for cultural differences can be made.

26. Although I have taken account of the fact that Dr Edkins's acquaintance with AZ has not been lengthy, I do attach weight to that part of his evidence which arose from his observations of AZ interacting with 16 year old boys in his social milieu at the Manchester Academy.
27. I heard evidence from Annie Clarkson who adopted her written statement of 11 July 2012 as her evidence-in-chief. Miss Clarkson is a qualified social worker and has, since August 2011, been senior project worker of the Children's Society Hope Young Refuge Service, Stretford Road, Stretford, Manchester. AZ was referred to the Children's Society in November 2011 by Refuge Action, Manchester on the grounds that he was a "vulnerable child living with adults, isolated". AZ has been supported by the Children's Society since 17 November 2011. The Society engages a Kurdish Sorani interpreter for their work with AZ and support has "focused on wellbeing and mental health support; help to us access services including GP appointments, hospital mental health team; attempts to gain a college place for AZ to learn English; orientation support including finding his way around Manchester, public transport, money; information about opportunities to meet other people of his age; support and navigating the immigration system, including support and access to appointments." [statement, 3.3]
28. Miss Clarkson gives details in her statement [4.2] of thirteen meetings (each lasting for at least one hour) with AZ. Commenting on AZ's physical appearance and demeanour, Miss Clarkson noted that "his physical appearance is consistent with other Kurdish young males of the same age who we work with and those from similar backgrounds (Iranian/Iraqi Syrian). I would describe him as gangly rather than muscular. He often stands or sits as if he is 'awkward' with his body." She noted the stress AZ appears to experience when talking about his family in Iran.
29. She was asked by Mr Fullwood about Mr Warren's alleged conversation with AZ regarding Iranian politics (see above). She said that she considered such a

conversation would be “impossible”. Cross-examined by Mr Bourne, Miss Clarkson said that AZ was able to utter single words in English but had great difficulty constructing a sentence.

30. Mr Bourne asked Miss Clarkson regarding a passage in her written statement [6.8] where she states that, “[AZ] is not confident in mixing with other young people. He presented as shy with his peers”. Mr Bourne suggested that AZ was shy because he was aware that he was older than they were. Miss Clarkson did not agree with that proposition. She considered that AZ had an inherent shyness which could lead him, on occasion, to appear petulant and unhelpful when answering questions put to him by adults.
31. I heard evidence from Kathleen Upsdale. Miss Upsdale is AZ’s litigation friend. She adopted her written statement as evidence-in-chief. Miss Upsdale works for the Children’s Society Hope Young Refugee Service in Manchester and has been a qualified social worker since 2008. She has had several meetings with AZ including one which lasted for several hours (statement, paragraph 7). The interviews between Miss Upsdale and AZ are conducted with the assistance of a Kurdish Sorani interpreter. In her statement, Miss Upsdale notes that AZ is “tall ... but not muscular ... skinny. He looks as though he has yet to develop adult male physique. He has body hair and a deep voice but this is consistent with other young Kurdish males of 15 or 16 years old that I have worked with.” [8] By her assessment, AZ was “a vulnerable child who is not coping in adult accommodation” [9].
32. Miss Upsdale confirmed that she is no longer AZ’s allocated caseworker but she continues to have informal conversations with him. She said that, in July 2012, AZ had become particularly stressed and had ceased engaging with case workers at the Children’s Society. She gave up acting as his allocated caseworker as she considered that “perhaps a change of face would help”. She believed that the change in caseworker had had a beneficial effect and AZ is now engaging constructively with other officers of the Children’s Society.
33. Miss Upsdale was asked about the alleged conversations between Mr Warren and AZ concerning Iranian politics. She said that such a conversation would “not be possible unless it was just one word”.
34. Cross-examined by Mr Bourne, she explained that she had worked with a number of 15 and 16 year old Kurdish males. She acknowledged, however, that any age assessment was difficult and became more complicated when details of the subject's cultural background lay outside the assessor’s personal experience or knowledge.
35. I heard evidence from Caroline Alison, who adopted her written statement of 1 November 2012 as her evidence in chief. Miss Allison is a senior project worker at the Children’s Society Hope Young Refugee Service, Manchester. Her statement gives particulars of the Refugee Council Age Assessment Awareness Training Course which she attended in March 2012. She has been working with AZ since August 2012 when she was allocated as his caseworker by the Children’s Society (see Miss Upsdale’s evidence above). She records in her statement that, “working with AZ on a

one-to-one basis has further cemented my opinion that AZ is 16 years of age. I have observed AZ in a different environment and I have observed AZ's behaviour in his differing moods." [9] Miss Allison went on to state as follows:

"AZ's physical appearance is consistent with other Kurdish and Middle Eastern young men around the age of 16 that I have met and worked with. Other young people of the same age and background have accepted AZ at his age. In my experience, other young people are often able to judge if somebody is similar to their age by their appearance and behaviour. I have previously experienced situations where young people have queried the age of other young people they have met - this has not happened with AZ. It has been difficult to get AZ to participate in group activities by witnessing him interact with young people of the same age in their offices; in his Bedspace, accommodation and in college."

36. She also notes [10] that "AZ is very happy to start college [at Manchester Academy] and is friends with another Kurdish male who is 16."
37. Miss Allison told Mr Fullwood that she had some difficulty encouraging AZ to mix with other 16 year olds but, in recent weeks, he had shown a much greater willingness to do so. Very recently, he had attended football training and she had observed him undertaking that activity. She said, "[AZ] acts and looks like others in that group of 16-18 year olds."
38. Cross-examined by Mr Bourne, Miss Allison said that she believed the Manchester Academy had "really helped" AZ. One of the reasons she gave for forming that opinion was that he was now engaging within an institution where "someone has believed his claimed age". She considered that AZ had benefited from being with his peer group. She rejected Mr Bourne's suggestion that an inexperienced and immature 19 year old would be able to mix easily with a group of 16 year olds. In her experience, teenagers were very quick to reject individuals whom they considered to be too old or too young to engage with them in group activities.
39. I found all the Children's Society officers who gave evidence before the Tribunal to be impressive witnesses. It is true that none of the officers of the Society have particularly lengthy experience as social workers but their oral evidence was marked by a serious and thoughtful assessment of their respective engagement with AZ; none of the witnesses made any attempt to exaggerate his youth. As with Dr Edkins, I found particularly compelling evidence which went beyond subjective "gut feeling" but which offered a picture of AZ interacting with other teenage males. Quite rightly, no attempt has been made to ask AZ's friends and acquaintances how old they think he may be; such an approach would be wholly inappropriate. However, I thought it particularly significant that all the Children's Society witnesses (a) had some experience of working with Kurdish teenage males; (b) had observed AZ interacting with individuals known to be between 16 and 17 years old; (c) had received no enquiries or complaints from other boys that AZ had been placed in an inappropriate age group, and (d) had considered that AZ's wellbeing and, in particular, his mental health had improved markedly once he had been given the opportunity (and felt confident enough) to engage with 16/17 year males. The

Children's Society witnesses have had the advantage of working closely with AZ and meeting him on a number of occasions, both on his own and with males of a similar age. I find that this adds weight to their evidence. It is an advantage which has been denied to the defendant's witnesses whose knowledge of AZ has been restricted to the rather artificial and possibly stressful conditions of an age assessment.

40. The first witness to give evidence for the defendant was Mr Neil Connolly, who adopted his written statement as his evidence-in-chief. Mr Connolly qualified as a social worker in 2011 but had served for 23 years in the British Army, including nine years as an army welfare worker. He joined Hampshire County Council in March 2008 and it had been whilst working for the Council that he qualified as a social worker. At the time of the first age assessment of AZ, he had been working on a short term secondment with the Referral and Assessment Team in Aldershot. He had attended an age assessment course in September 2011.
41. Mr Connolly had, together with Mr Rogers Warren, a social worker from the Basingstoke area of the local authority, completed the first age assessment on 28 September 2011 at Aldershot. Mr Connolly confirmed that there had been no appropriate adult present at the interview with AZ. In his written statement, Mr Connolly describes AZ's attitude at the interview as "guarded" and that he "did not present as someone who was being open in communicating all information. This was especially the case when asked about wider family and his experiences at home. He was also vague about working at home with his father and any farm duties." [14] Mr Connolly and Mr Warren had decided, following the discussion with AZ, that he was over the age of 18 years. He estimated AZ's date of birth as 20 October 1992.
42. In answer to questions put to him by Mr Bourne, Mr Connolly said that he had been "concerned" that no appropriate adult had been present at the interview. He and Mr Warren had been told by officers at the Police Station that appropriate adults would only attend interviews arising from criminal matters. Cross-examined by Mr Fullwood, Mr Connolly said that he had not worked with Mr Roger Warren before the first age assessment. The assessment had started late in the day (6 pm). He was aware that AZ had been detained at a police station all day having arrived in the morning. However, he did not consider that factor to be important because he believed that the "police would have looked after him". It had been impossible on the day of the assessment to find a Kurdish Sorani interpreter so he and Mr Warren had made use of a telephone translation service.
43. Mr Connolly had taken notes of the age assessment meeting with AZ. However, when the report had been written, both he and Mr Warren relied on Mr Warren's notes only. Mr Fullwood asked Mr Connolly why he considered AZ was not a reliable witness. Mr Connolly referred to the "lack of information about the farm" in Iran and also to "a general reluctance to tell us things about his family". He said that AZ had avoided "eye contact". I asked Mr Connolly to explain what information he considered had been missing from AZ's account of his life in Iran. Mr Connolly said "he should have been able to take about his life, his health care and his schools in Iran". Mr Fullwood pointed out to Mr Connolly that AZ had not been educated in Iran and,

whilst he acknowledged that fact, Mr Connolly felt that AZ “had genuinely withheld information from us”.

44. I heard evidence from Mr Roger Warren who adopted his written statement as his evidence in chief. Mr Warren is a qualified social worker. He holds a degree in social work from the University of Portsmouth (2009). He attended an age assessment awareness training course in September 2011. He has conducted five age assessments prior to that which he carried out with Mr Connolly in respect of AZ in September 2011. In his written statement, he observed that AZ is not “boyish in physical presentation” [11]. He also noted AZ's lack of eye contact with himself and Mr Connolly [12]. He noted that the interpreter had considered that “AZ understood all of the questions fully as he had a good level of understanding of Kurdish but [he] was not answering the questions fully. He was avoidant [*sic*] and vague not giving required answers to easy/simple questions.”
45. Mr Warren had made the arrangements in January 2012 for AZ to travel from Manchester to Basingstoke for the second age assessment. He had met AZ on his arrival in Basingstoke. On his second encounter with AZ, Mr Warren had “no reason to doubt my original age assessment” [22]. Following the assessment, Mr Warren had taken AZ back to the station and “whilst we both waited for the train, AZ was able to speak in English far more fluently than he had originally informed me he was able to ... We spoke about the current politics in Iran and AZ was able to make himself very understood with his spoken English [*sic*]”. [24] – [25]
46. Cross-examined by Mr Fullwood, Mr Warren said that his discussion regarding Iranian politics with AZ had “not been a full-blown political conversation”. He said that AZ's use of English “was not fluent”. Mr Fullwood asked Mr Warren about the passage in his written statement [11] where he noted that, “AZ's hair was black and cut close at the backs and the sides and he has olive skin typical of Iranian nationality.” Mr Warren acknowledged that he is not a dermatologist but he emphasised that his observations of AZ's physical appearance had contributed to the age assessment.
47. Mr Warren was asked about AZ's apparent reluctance to talk about his life and family in Iran. At paragraph 14 of his written statement, Mr Warren noted that “AZ was able to confirm that his father was called Saadi Hasamzaee, his mother is called Sabij, two sisters two years older Leila and four years older Marian. He was also able to inform he has no relative or friends in the UK with no contacts at all.” In his evidence, Mr Connolly had said that AZ had given vague evidence “especially ... when asked about wider family and his experiences at home” [14]. Mr Warren, on the other hand, said that he considered AZ had “offered a good amount of information. I note that he had become distressed when talking about his family and I commend him for that”.
48. Mr Fullwood asked Mr Warren at what point during the interview he had formed the view that AZ was not credible. Mr Warren said, “we were not receiving the facts. In particular, we had no documents”. (cf. Mr Connolly's evidence: “He provided no documentary evidence to back up his claim of being under 18” [11]). Mr Warren was asked why he had not adjourned the age assessment appointment to enable AZ to

produce documents which might support his claimed age. Mr Warren said, "I am experienced. I thought that his inability to produce evidence was reluctance on his part".

49. I have no doubt whatever that Mr Connolly and Mr Warren have taken every effort to fulfil their professional duties and, had they genuinely formed the view that AZ was under the age of 18, that they would have sought to protect him as a vulnerable minor. However, the conduct of both Mr Warren and Mr Connolly at the first age assessment in September 2011 was problematic. It is not clear to me that the assessment should have proceeded at all given the late hour, AZ's obvious fatigue and the fact that no appropriate adult was present. I am aware of the very considerable practical difficulties in which such age assessments are often carried out. Mr Warren and Mr Connolly did not have the luxury afforded to the officers of the Children's Society in observing AZ over a period of time or in a variety of moods. I am sure that many of the subjects of such age assessments are tense, nervous, tired and occasionally hostile, often (as was the case with AZ) having spent some time in police custody. For a variety of reasons, I recognise that there is a need to carry out such assessments as quickly as possible and difficulties can arise when an assessment is delayed or not completed at a single sitting. In my view, however, the assessment and the conclusions which Mr Connolly and Mr Warren drew from it are not reliable.
50. I am aware that, even when an assessment does not survive a judicial review, the data upon which it was based may assist in a subsequent assessment by a court or tribunal. I attach very little weight to the contents of the first age assessment of AZ. First, no appropriate adult had been present. Whether or not the assessment was technically flawed because no adult had been present, the weight which should be attached to the responses given by AZ in the absence of an adult to reassure and, where appropriate, assist him is, in my view, limited. Secondly, Mr Warren and Mr Connolly decided to proceed with the assessment, without an appropriate adult present, and despite the fact that AZ had just completed a difficult and arduous journey to the United Kingdom and had spent the whole day in a police station. Thirdly, discrepancies between the evidence of Mr Connolly and Mr Warren (for example and most significantly, as to the level of detail of his life in Iran provided by AZ) leads me to find that the age assessment was rushed and the notes taken inadequate (Mr Connolly did not take or, at least, retain any notes at all).
51. The first age assessment marks the first appearance of the defendant's assertion, repeated several times thereafter in the evidence, that AZ is not a credible witness because he sought to evade questions about his life in Iran. I have considered that argument above (see above) and I have rejected it. In my opinion, any apparent evasion on AZ's part has arisen from the mixture of petulance and shyness which he exhibited when giving his oral evidence to the Tribunal. He is certainly not, in my opinion, a knowing adult who has sought to evade questions which might have exposed his true age. The defendant's assertion is, moreover, undermined by Mr Warren's written evidence which records the considerable detail provided by AZ about his close family in Iran, including the ages of his parents and the ages and names of his siblings.

52. I was also concerned by the readiness of Mr Warren and Mr Connolly to reject AZ's claimed age because he had come to the United Kingdom without documents which might prove that age. Immigration Tribunals are very familiar with undocumented asylum seekers and the jurisprudence which warns against attaching too much importance to the absence of corroborative documentary evidence. Mr Bourne's submission that, whilst he has been living in the United Kingdom, the appellant could have taken steps to obtain documentary evidence from Iran, carries more weight than the rather cruder approach to the appellant's lack of documents advanced by Mr Connolly and Mr Warren, but it is a submission which I have rejected.
53. I heard evidence from Jill Ife who adopted her written statement as her evidence-in-chief. Miss Ife is employed by Hampshire County Council as a social worker. She has been trained in conducting age assessments by the Refugee Council and had carried out six age assessments prior to seeing AZ in Basingstoke in January 2012. In her written statement [28] Miss Ife noted that "AZ appeared to use strategies when uncertain as to how to answer questions. He initially avoided the question of why he wanted to be in the UK. When asked again he refused eye contact and lowered his head. The interview was stopped by the appropriate adult as it was felt AZ was becoming distressed. However, on resuming the interview, the same question was asked and he responded with a vague answer of no plans". Miss Ife noted that AZ became increasingly confident as the interview proceeded.
54. Miss Ife told the Tribunal that her "initial feeling" upon first seeing AZ was that he was under 18 years of age. Cross-examined by Mr Fullwood, she accepted that AZ remains "vulnerable" but considered that his vulnerability was a product of his personality and lack of maturity rather than an indicator of his chronological age. She said, "I think he may present younger than his years". The answers given by AZ had "lacked detail" and this had led her to believe that he was being "guarded" in answering questions put to him. Pressed by Mr Fullwood, Miss Ife said it was AZ's demeanour (including his guarded manner in answering questions) rather than the lack of information actually provided in those answers which had led her to doubt the reliability of those answers.
55. I found Miss Ife to be a helpful witness. I accept her evidence that she had not seen the first age assessment before she conducted her own in January 2012. I accept that she only had dealings with Mr Warren regarding AZ in order to arrange the logistics of AZ's visit to Basingstoke. The conclusions of Miss Ife's assessment, therefore, should be given some weight given that they largely coincide with those of the first age assessment. I was, however, concerned by two aspects of Miss Ife's evidence. First, I consider it significant that Miss Ife's first impression of AZ when she first met him was that he was under the age of 18 years. Elsewhere in the defendant's evidence, much has been made of AZ's physical appearance (in particular, of the fact that he is tall and "rangy") in supporting an assessment that he is more than 18 years old. Secondly, Miss Ife's reasons for doubting those first impressions arose mainly from what she considered AZ's "guarded" approach to answering questions. Significantly, she does not appear to have been unhappy with the actual answers

given and the information provided by AZ but, rather, she still believed that he was withholding information from her. I have difficulty reconciling Miss Ife's evidence of AZ's "guarded" manner with the fact that, as recorded in the assessments and the evidence of those who conducted them, AZ did provide answers to the questions about his family in Iran. The defendant's witnesses have not said which questions about Iran AZ has failed or refused to answer. Further, even if AZ had not been forthcoming in his answers, none of the defendant's witnesses have shown any willingness to consider possible explanations for such conduct (shyness, petulance, teenage obstreperousness) other than a conscious desire to lie about his true age. As I have stated above, my own impression of observing AZ and hearing him give evidence was that he was not trying to withhold information or construct answers which he believed would assist his case but rather that he has a social awkwardness which has been compounded by his need to give evidence through an interpreter.

56. Miss Ife had conducted the second age assessment jointly with a colleague, Donna Humphrey, who was unable to attend before the Upper Tribunal to give oral evidence. I have considered Miss Humphrey's written statement and have attached some weight to it although the weight which the statement attracts is diminished by the fact that she was unable to submit for cross-examination. I note that Miss Humphrey considered there were times during the interview with AZ when he was "unclear and I felt that this was deliberately so". [11] Miss Humphrey records [13] that "[AZ's] interaction with us and the other adults present and from his physical appearance it was in my opinion that he was a young adult but an adult nevertheless. I judge his age to be 19+. I did think he was probably a vulnerable person from his responses and his manner. I did not consider him a child." Unlike Miss Ife, Miss Humphrey did not appear to have considered AZ to be a child when she first encountered him.
57. Essentially, all the defendant's witnesses have founded their assessment of AZ's age on (i) his physical appearance together with (ii) their belief that what they perceived to be his deliberately guarded manner indicated that he had something to hide about his true age. From this latter point, they have drawn the conclusion that he must be over 18 years old. I find that (i) AZ's appearance and demeanour are consistent with his claimed age; (ii) he has answered the questions put to him regarding his life in Iran and that his answers contain adequate detail; (iii) that the guarded manner observed by the defendant's officers was, if it exists at all, the product of AZ's personality and teenage awkwardness and not of any attempt by him to hide the truth about his age (iv) even if AZ had been reluctant to cooperate fully with the defendant's officers, it would be unsatisfactory and unsafe to reason from that observation that AZ was over 18 years old.
58. I heard oral submissions from Counsel and then reserved my determination. Both Mr Fullwood and Mr Bourne have provided detailed skeleton arguments to which I have had regard. I do not consider it necessary to discuss the submissions in detail.
59. Drawing together the findings and observations which I have set out in my analysis above, I find that AZ is a witness of truth. The first age assessment was, for the reasons I have given, unsatisfactory and, whilst the second age assessment was

conducted in a more satisfactory manner, I have concluded that its conclusion is wrong. This is not a case where a claimant has claimed to be unaware of his own date of birth; AZ has throughout asserted the same date of birth and, given that I find that his own evidence is reliable and supported by other evidence as detailed above, I find accordingly that AZ was born on 10 January 1996.

60. Although I reserved my decision, I invited Counsel for both parties to address me in the alternative regarding costs. Having regard to those submissions, my order for costs is set out below.

DECISION

61. On the basis of my assessment, I make a declaration that the claimant was born on 10 January 1996.
62. The defendant shall pay the claimant's costs to be assessed if not agreed. There shall be detailed assessment of the claimant's costs pursuant the Civil Legal Aid (General) Regulations 1989.

Signed

Dated: 20 January 2013

Upper Tribunal Judge Clive Lane