

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2015

Before:

MR JUSTICE HADDON-CAVE

Between:

THE QUEEN on the application of IG	<u>Claimant</u>
- and -	
THE LONDON BOROUGH OF CROYDON	<u>Defendant</u>

Tarlochan Lall (instructed by **Bhatia Best Solicitors**) for the **Claimant**
Andrew Lane (instructed by **The London Borough of Croydon**) for the **Defendant**

Hearing dates: 3rd & 4th March 2015

Judgment

MR JUSTICE HADDON-CAVE:

Introduction

1. The Claimant (who shall be referred to as “IG”) arrived in the United Kingdom on 16th July 2014 from Angola with her three-year-old son. She applied to the Home Office for asylum. She also claimed to be 16 years old and entitled to be accommodated and supported by the Defendant, the London Borough of Croydon, pursuant to the Children Act 1989.
2. An age assessment was carried out by Defendant on 30th and 31st July 2014 (“the Age Assessment”). This determined that IG was over 18 years of age. She was, accordingly, moved from local authority foster care to the care of National Asylum Support Service. By these judicial review proceedings, the Claimant challenges the Defendant’s Age Assessment. Determining the correct age of entrants to the UK is important because children are entitled to special rights of accommodation and support under the Children Act 1989.
3. On 30th December 2014, the Claimant’s claim for asylum and leave to remain was rejected by the Home Office.

Appropriate forum for age assessment - UTIAC

4. The Immigration and Asylum Chamber of the Upper Tribunal (“UTIAC”) is the appropriate *forum* for ‘age assessment’ cases, not the High Court (*R (FZ) v LB of Croydon* [2011] EWCA Civ 59). If mis-listed in the Administrative List of the High Court, such cases should immediately be transferred to UTIAC pursuant to section 31A(3) of the Senior Courts Act 1981. The possibility of transfer was raised by the parties; but unfortunately this was not picked up by the busy Administrative Court Office. It is the responsibility of all parties to ensure that such cases are transferred to UTIAC in a timely fashion. Given the inconvenience to the parties that a transfer at this late stage would entail, I have agreed exceptionally to conduct this age assessment hearing.

The law

5. The role of the Court in an age assessment is straightforward fact-finding: the Court is to determine the actual age of the Claimant as a matter of objective fact, in order to decide whether the Claimant is a child, *i.e.* under 18 years old.
6. I direct myself in accordance with the well-known authorities in this arena, in particular: *R (B) v LB of Merton* [2003] EWHC 1689 (Admin) (Stanley Burnton J), *R(A) v London Borough of Croydon* [2009] UKSC 8, *R(CJ) v Cardiff CC* [2011] EWCA Civ 1590, *R (F & Ors) v Lewisham LBC & Ors* [2010] 1 FLR 146, *VS v The Home Office* [2014] EWHC 2483 (QB) (Simon Picken QC sitting as a deputy judge of the High Court).
7. The general approach was helpfully summarised in *R(AS) v LB of Croydon* [2011] EWHC 2091 (Admin) by HHJ Thornton QC (sitting as a deputy judge of the High Court) as follows:

“19. The minimum standards that are to be expected of an age assessment are not, therefore, clearly defined and the same standards are not universally adopted or applied. The current appropriate standards for application in age assessment cases were considered by the Court of Appeal in *FZ v Croydon LBC*. Taking that decision and the *Merton* decision, which was approved in *FZ*, together, the relevant standards applicable to the defendant's assessments that were undertaken in this case may be summarised as follows:

(1) An appropriate adult should accompany the child and should be present during the interview.

(2) A full and careful explanation should be given to the child of the nature of the assessment and its purpose and of the role of the assessing social worker. A careful check should be made to ensure that there is full understanding between the child and the interpreter and that the interpreter is skilled in both the language and dialect of the child and has experience of interpreting in the kind of situation created by the age assessment process.

(3) The interview should be conducted in a structured, fair, non-adversarial, non-stressful and informal manner and an informal but full note of the questions and answers should be taken by one of those present.

(4) The assessors should pay attention to the level of tiredness, trauma, bewilderment and anxiety of the child and his or her ethnicity, culture and customs should be a key focus throughout the assessment.

(5) The assessors must take a history from the child. All relevant factors should be taken into account including, but not limited to, physical appearance and behaviour. The objective is to undertake a holistic assessment.

(6) Each interview should, if practicable, be conducted by two assessors who should have received appropriate training and experience for conducting age assessment interviews on young and vulnerable children

(7) The assessors should establish as much rapport as possible with the child (a process known as “joining”), should ask open-ended non-leading questions using, as appropriate, circular questioning methods. The assessors should be mindful of the child having been “coached” and that the child may have had to answer questions on relevant topics several times previously thereby unwittingly blurring accuracy of the answers. Giving the child the benefit of the doubt should always be the standard practice.

(8) The assessors should give the child a fair and proper opportunity to answer any potentially adverse findings at a stage when an adverse decision is no more than provisional to so as to enable him or her to provide any appropriate explanation or additional facts which might counter or modify such findings.

(9) The conclusions reached by the assessors should be explained with reasons which, although they may be brief, should explain the basis of the assessment and any significant adverse credibility or factual finding.

(10) The reasons should be internally consistent and should not exhibit any obvious error or inadequate explanation for not accepting any apparently credible and consistent answers of the child.”

8. The Court is not reviewing the local authority’s decision but making its own assessment (Langstaff J in *MC v Liverpool City Council* [2010] EWHC 2211 at paragraph 5).
9. The question of burden of proof does not arise. It is the job of the Court decide the question of age on a balance of probabilities. It should approach the task on the basis of a “*sympathetic assessment of the evidence*” so far as the claimant is concerned (*per* Pitchford LJ in *R(CJ) v Cardiff CC* [2011] EWCA Civ 1590, at [21]).

Angolan document

10. When IG first arrived in the UK at Heathrow she presented a document entitled “*Cédula Pessoal*” to the UK Border Agency. This document appeared on its face to be issued by the Registry Office of the Republic of Angola. It was headed “*Cédula Pessoal*” (“*Personal Details*”) and contained the Claimant’s name (IG) and stated her date of birth as “*31 Outubro 1997*” (“*31st October 1997*”) and her place of birth as Cabinda (in Angola). The relevant entries were handwritten. It does not contain any photograph or other means of identifying the person named in the document.

11. The Home Office did not accept the document as evidence of the Claimant's true age and required the Claimant to undergo an age assessment.

The Age Assessment

12. The interview for the Age Assessment under challenge was carried out over two days (30th and 31st July 2014) by two social workers employed by the Defendant (Ms Dawn Nelson-Smith and Mr Sydney Rozario) in the presence of an independent adult (Mr Ron Breijer) and an interpreter (Ms Fatima Richardson). The interview took place in Portuguese. A full note was taken of the proceedings by Mr Breijer. The accuracy of the note is not challenged.
13. On 31st July 2014, the Defendant informed IG's legal representatives by letter of the provisional basis of the Defendant's conclusion that IG was over 18 years of age, and promised to serve the full Age Assessment within 15 working days.
14. Rather than waiting for the full Age Assessment, the Claimant's solicitors, Bhatia Best Ltd, commenced judicial review proceedings on 13th August 2014 claiming that a 'provisional view' was insufficient. The full Age Assessment was duly served by the Defendant, as promised, within 12 working days. The Claimant's legal representatives then modified their judicial review challenge to take issue with the correctness of the substantive age assessment itself.
15. The Age Assessment stated that the assessors "*...were minded to consider [IG] as over the age of 18*" for the following reasons:

[1] "[IG] confirmed her son's' date of birth was 19/4/2011. Given this information she became pregnant at the age of 13 and gave birth at the age of 13. However, in the first interview she repeatedly told the assessors her mother left home when she was 15 and pregnant. The two years inconsistency was raised with [IG] but she then asserted that her mother definitely left the family home when she was 13 and pregnant."

[2] [IG] was not clear about the distance of her school from home as she said it was in Belize, 150 to 220km away. She did not know the address and said it took an hour to walk there or half an hour if she was on the back of a motor bike.

The assessors raised the improbabilities related to the distance she gave and the time it took her to get there....

Subsequently, the assessors doubted the credibility of [IG's] account of going to school as it is not possible to walk 150km in an hour.

Furthermore although she indicated she did not know the time, she gave a clear account of waking up at 6am, leaving home at 7am and getting to school for 8am."

- [3] “The assessors believe [IG’s] physical appearance, presenting, maturity and demeanour is that of a person older than her claimed age. For example, her physique is more similar to adult women than that of younger teenage women.

[IG] interacted with the assessors on a self-assured adult to adult level, sat upright facing the assessors and maintained eye contact with them. When she thought the assessors did not understand what the interpreter said she reached over, took a notepad from the interpreter, wrote in large letters and turn the pad around to show what she had written to clarify.

When a question needed further clarification she asked why she needed to repeat herself because she already gave an answer. Moreover, at the end of the interviews [IG] initiated shaking hands with the assessors. The norm of initiating hand shakes at the end of an interview is a characteristic more associated with adult rather than young people.

The assessors informed [IG] about the above observations. [IG] simply responded “My life teaches me to be confident from a very young age... I have always been like that.”

- [4] “Other than a copy of her civil registration card [IG] did not have any other documents to confirm her given date of birth and that of her child. However, the assessors are not able to authenticate the document. [IG] informed the assessor that she gave the original copy of her ID card to the Home Office.”
- [5] “Lastly, the assessing social workers considered the views of Katherine Macleod, [IG’s] allocated social worker. Katherine’s view also indicated that she believes [IG] to be an adult.

Evidence

16. I heard live evidence from the following witnesses (in accordance with *R (F) v LB of Lewisham* [2010] 2 FCR 292 at [27-35]):

- (1) The Claimant, IG;
- (2) Ms Katherine MacLeod;
- (3) Mr Sydney Rozario;
- (4) Ms Dawn Nelson-Smith.

17. I also carefully considered the documents in the case, including the “*Cédula Pessoal*”, the Age Assessment, the witness statements of the live witnesses and the witness statement of the Claimant’s solicitor, Mr Stuart Luke and exhibits.

Submissions

18. Counsel for the Claimant, Mr Tarlochan Lall, submitted, in summary: (i) IG was a truthful and reliable witness who gave an accurate account of her life story and her age; (ii) strong weight should be placed on the only documentary evidence available as to IG’s age, namely the “*Cédula Pessoal*” (see above) which was ‘unchallenged’; (iii) the Age

Assessment carried out by the Defendant was not reliable or persuasive evidence as to IG's age in that it was overly reliant on physical appearance, it did not expose relevant inconsistencies and was in some respects 'unfair'; and (iv) little weight should be placed on third party witnesses, such Ms Katherine Macleod (see below), who did not have significant knowledge of IG.

19. Counsel for the Defendant, Mr Andrew Lane, submitted, in summary: (i) IG's assertion that she was 16 (now 17) years old was undermined by numerous inconsistencies as to what she told the assessors, the Home Office and the Court; (ii) IG's credibility was a crucial factor and the inconsistencies were both significant and unexplained; (iii) due weight should be given to the Defendant's Age Assessment which was conducted by two experienced social workers in a careful and fair manner and was 'Merton' compliant; and (iv) due weight should be given to the evidence of IG's social worker, Ms Katherine Macleod, who had had the opportunity of observing IG over a period of 8 months.

Analysis

IG's evidence

20. In her age assessment interview and in her oral evidence, IG maintained that her date of birth was as stated in her "*Cédula Pessoal*", namely 31st October 1997, and that she was now only 17 years old. She said that she had become pregnant by a man called Chico and her son was born in April 2011 when she was (about) 13 years old. She said her mother was an alcoholic and her parents had separated for the last time after she became pregnant. She said that any mistakes she had made during her age assessment interview – in particular about the distance to her school being 150 to 220 kilometres away - were because she felt 'confused' and 'pressurised'.
21. IG was, in my view, somewhat forensic about the way in which she gave her evidence. She sought, for instance, to distance herself from her social worker, Ms MacLeod (who was being called as a witness by the Defendant) by suggesting that "*practically, I have no relationship with Katherine [Macleod]*". She sought to explain away any infelicities in what she said in her assessment interview regarding her age - in particular her incautious utterances about when she had become pregnant and when her mother had left home – by suggesting that she had been 'confused' as to the purpose of the interview and 'under pressure' during the interview and 'upset' about unfair questions about her sex life. These excuses were, however, less than convincing. In the first place, it was clear from the notes taken by the independent observer, that right at the start of the interview Ms Nelson-Smith and Mr Rozario explained in very clear terms what the interview was about, namely that the Home Office had disputed her age and that IG clearly understood this. She said "*My real documents are with the H.O.*" and that she expected to be asked "*a lot of questions*" and wanted to get on with the interview. Second, the damaging answers about becoming pregnant and her mother leaving when she was "*nearly 15*" came at the very beginning of the interview; whereas the questions about her sex life came much later in the interview. Third, when confronted in cross-examination with the answers that she had given in interview, she resorted simply to denying that she had said these things to the assessors.
22. In my judgment, IG was not truthful about her age (see below).

Ms MacLeod's evidence

23. Ms MacLeod gave evidence that she had a Masters degree in social work and had been looking after unaccompanied minors in Croydon for the past five years and prior to this had experience working with children, young adults, refugees and asylum seekers from a variety of backgrounds. She had been IG's allocated social worker since 16th July 2014 and had met her on a monthly basis and had developed a good working relationship. She stated that IG was "*a very resourceful and capable woman*" who presents as "*a confident and mature woman*" who interacts well with adults and does not take a deferential position. Ms MacLeod pointed out that IG had chosen to socialise with adults and made friends with a 21 year old and adults in her church community. She had also consistently asked if she could leave her foster carers and live independently on her own. Ms MacLeod said that, "*...in my professional opinion [IG] is an adult and is consistently functioning at that level*".
24. Mr Lall cross-examined Ms MacLeod on the basis that she had not made allowance for the fact children who had had a hard upbringing in life might have a more advanced level of maturity and most teenagers were likely to bridle at the restrictions of 8 p.m. curfews. He went as far as accusing Ms MacLeod of lacking objectivity. Ms MacLeod rejected his criticisms. She said that she had worked with IG for 8 to 9 months and always taken an open-minded approach. She stood by her view that IG was an adult.
25. I found Ms MacLeod to be an impressive and measured witness who gave objective evidence on the basis of her undoubted professional experience in this field and her lengthy contact with IG. There was no basis for Mr Lall's suggestion that Ms MacLeod was not objective. She plainly was.

Mr Rozario and Ms Nelson-Smith

26. Ms Nelson-Smith and Mr Rozario confirmed the views expressed in the Age Assessment which they had conducted jointly. Both are qualified and experienced social workers. Ms Nelson-Smith is an advanced social worker with 30 years' experience of working with children, young people and families, including those seeking asylum. Mr Rozario is a qualified social worker with 15 years' experience working with children and families coming to the UK seeking asylum. Both have considerable experience in conducting age assessments.
27. Mr Lall put a number of criticisms to Mr Rozario and Ms Nelson-Smith in cross-examination regarding the manner in which they had conducted the Age Assessment and the conclusions they had reached. In particular, first that they had asked leading questions which had led IG to say that she had become pregnant aged "15" when she had only said she was "*nearly 15*" and then 'jumped' on her answer to fuel their 'preconceived' view that she was over 18. Second, he said that it was wrong of them to have taken any account of IG's statement that her school was 150 to 200 kilometres away from home - and it only took her an hour to walk there - since this was clearly a mistake rather than a lie. Third, he was critical of the fact that their the Age Assessment report did not include any reference to what the assessors said they regarded as significant, namely, IG's story about meeting a Congolese couple at a monastery in Kinshasha who then voluntarily arranged and paid for IG and another couple to fly from Angola to London and accompanied them on the flight and then disappeared.

28. Both Mr Rozario and Ms Nelson-Smith were both impressive witnesses. They both struck me as professional, measured and fair. They stood by their age assessment and were unmoved by Mr Lall's cross-examination. I place considerable weight on their opinions set out in their Age Assessment report that IG was not a child but an adult.

Admission "nearly 15"

29. Ms Nelson-Smith and Mr Rozario rejected Mr Lall's suggestion that they had asked leading questions and effectively put words into IG's mouth. There is no valid basis for Mr Lall's suggestion. This is clear, in my view, from a reading of the salient part of the interview relied upon which I reproduce below (with names and punctuation added which comprises a series of perfectly proper open questions):

“Q. Nelson-Smith: Were you still at home?

A. IG: Mum separated from Dad for a long time.

Q. Nelson-Smith: I didn't get that, when did they separate?

A. IG: I don't know, there was trouble in the house.

Q. Nelson-Smith: How old were you?

A. IG: Nearly 15.

Q. Nelson-Smith: You said separated a long time?

A. IG: About 3 years ago.

Q. Nelson-Smith: Was he at home or go away with the army?

A. IG: He used to go and come back.

Q. Nelson-Smith: You said they separated at 15, but this was 3 years ago?

A. IG: Even 1 or 3 years is a long time

A. IG: When mum left I was pregnant.

Q. Nelson-Smith: 3 years ago?

A. IG: Yes.

Q. Nelson-Smith: You are 16?

A. IG: Yes 17 in October.

Q. Rozario: You said you were nearly 15 when your parents separated?

A. IG: Roughly, I was pregnant at 13, between 13-14

Q. Rozario: You said your parents separated at 15?

A. IG: Yes roughly.

Q. Rozario: The numbers don't add up.

A. IG: I'm saying "roughly". I did not memorise dates. I was pregnant between 13 and 15.

Q. Rozario: We need clarification. If you were nearly 15 when you number left you could not be pregnant at 13.

A. IG: My son is 3 years in April. When I got pregnant my mum left. There was a lot going ...”

30. In my view, the above passage in the interview contains telling admissions by IG. These admissions were entirely voluntary and unprompted. IG admitted that (a) she was “*nearly 15*” when her parents separated *and* that (b) she was pregnant at the time. This was telling as the assessors quickly spotted because, logically, if she was “*nearly 15*” when her parents separated *and* she was pregnant at the time, she must have been 18 years old at the time of the interview (30th July 2014) because her son was born in April 2011, *i.e.* over 3 years ago.
31. It is also telling that, realising her mistake, IG immediately tried to back-track by suggesting “*1 or 3 years is a long time*” and saying “*roughly*” and “*I was pregnant at 13, between 13-14*” etc. However, the mathematical difficulty having been fairly pointed out to her by Ms Nelson-Smith, IG was unable to recover the position and when asked for clarification she again confirmed that the two events of her getting pregnant and her mother leaving took place at the same time, *viz.* “*When I got pregnant my mum left...*”. Her fatal and simple error was to link her mother leaving and her pregnancy which enabled the assessors to calculate her current age.
32. During her oral evidence, IG sought to distance herself from these admissions in a number of ways, including by denying she has said these things at all and by saying anyway it was difficult to remember dates and details. I do not accept that she was telling the truth in this regard. She clearly did make these admissions. There is no challenge as to the accuracy of the notes taken by the independent observer. I do not believe that she could readily have forgotten or misremembered such important dates in her life. Pregnancy and a parent leaving home are both traumatic events which would tend to stick in one’s mind. It is unlikely that one would not know or forget (a) how old one was when was pregnant or (b) how old one was when one’s mother left home. It is unlikely in the extreme, in my view, that one would not know or forget one’s age where *both* events occurred at the same time.
33. Strikingly, IG is recorded as also admitting in her Home Office asylum interview that she was “*15 years old*” when her mother left Angola.

Distance home to school

34. In my judgment, the assessors were entitled to take account of IG’s somewhat bizarre assertion that her school was 150 to 200 kilometres away from home when assessing her overall credibility. It was clearly not true but, nevertheless, was relevant to their overall assessment because, as Ms Nelson-Smith, pointed out in evidence, it was something that IG was adamant about and repeated several times in the interview and even wrote down. To my mind, it smacked of someone who had been schooled with a story, misremembered some of it, but was keen to stick to it.

Congalese couple story

35. IG’s story about the Congalese couple was redolent with improbabilities and unanswered questions which further undermined her credibility. As presaged above, IG said in her interview and gave evidence that she met a Congalese couple at a monastery in Kinshasha who befriended her and another couple and and said they would arrange for them to travel

somewhere away from Kinshasha. She said she did not know initially where she was travelling to and only discovered later on they were flying to London. The Congolese couple paid for IG's and her son's airline tickets and the other couple's airline tickets and all other expenses. The Congolese couple then accompanied IG and the other couple on the flight. After landing at Heathrow and getting through immigration she was driven by them to Croydon where they left her in the queue at the immigration office and promptly disappeared – taking with them, it would seem, her birth certificate which she had given them and whatever passport or other travel document she had to get her through Heathrow immigration.

36. It is telling that IG had no explanation for why the Congolese couple were prepared to do all this for her and fund her trip. IG had no explanation for what happened to her birth certificate or her passport or other travel documents which had enabled her to pass through immigration at Heathrow. The only document she was left with (conveniently) was one which had no photograph or means of linking it to the bearer. The "*Cédula Pessoal*" she was carrying could, however, have belonged to anyone.
37. In my judgment, it was not necessary for the assessors to list in the conclusion to their Age Assessment Report or rehearse every single point which led them to their eventual conclusion that IG was over 18.

Other inconsistencies in Claimant's case

38. There were numerous other telling and unsatisfactory aspects of IG's evidence which undermined her credibility and/or pointed to her being older than she admitted. First, IG gave various different versions of when she became pregnant varying from "*at 13*", "*between 13-14*", "*12 going on 13*", and "*about 14*". Second, she said that the man who had made her pregnant, Chico, was in his 20s, that she had met in the market and that it was 'normal' in Angola for young teenagers to have relationships men in their 20s. This latter suggestion seemed to me both improbable and self-serving. As Mr Lane pointed out in cross-examination, the fact that IG was prepared to have a consensual relationship with a man in his 20s suggested that she was older than she admitted. Second, her evidence about whether she was at primary or secondary school, what the school was called and what time school started in the morning was oddly unclear and confusing. Third, at various stages IG suggested that she had not known her precise age until her father had told her. However, in her witness statement she said she had "*always*" known her age. She certainly seemed to have no difficulty in reciting her parents' and brothers' ages. Fourth, her evidence as to when and why she was given the "*Cédula Pessoal*" was contradictory. At one stage she said that her father had obtained it for her so she could register her son's birth. But at another stage she indicated that she had always had it. Fifth, the Claimant's elaborate basis for her claim for asylum including fear of persecution and membership of FLEC was more the construct of an adult than child (and was rejected by the Home Office as unreliable). IG was not a satisfactory witness.
39. In the witness box, IG struck me as a confident and mature woman such as described by Ms MacLeod, trying to draw a veil over her actual age.

Claimant's credibility

40. In my judgment, the Claimant has not been truthful about her age at any stage. She sought to weave in strands of truth into her story about her family and her upbringing in Angola. But this does not, as Mr Lall sought to suggest, salvage her case on the crucial question of her age to lend credibility to her assertion that she was 16 years old on arrival at Heathrow. In my view, IG sought to tailor what she said in interview and her evidence to conform to the “*Cédula Pessoal*” which she was carrying and which stated her date of birth to be 31st October 1997. But her undoing was the slip she made linking the date of her mother leaving home to her pregnancy (see above). The reason for the slip was the difficulty of trying to construct a plausible chronology which fitted with both the “*Cédula Pessoal*” and her life story whilst being questioned.

Interview was Merton compliant

41. I am quite satisfied that the Age Assessment interview was carried out in a completely fair manner. IG was asked open questions and given a fair opportunity at every stage to correct, clarify or explain what she had said or take any breaks she needed. I reject Mr Lall’s (somewhat makeweight) suggestion that the interview was not *Merton* compliant. In my view, it was a model interview which was arranged and conducted by Ms Nelson-Smith and Mr Rozario in an exemplary manner.

Conclusion

42. In my judgment, the Claimant has been lying throughout about her age. I am satisfied that the Claimant was well over 18 years old when she entered the UK on 16th July 2014. I find as a fact that the Claimant is now 22 years old.