



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

R (on the application of MR) v Derby City Council AAJR [2013] UKUT 00255 (IAC)

**Heard at Field House
On 17th and 18th April 2013**

Before

**UPPER TRIBUNAL JUDGE STOREY
UPPER TRIBUNAL JUDGE PETER LANE**

Between

THE QUEEN ON THE APPLICATION OF MR

and

DERBY CITY COUNCIL

Applicant

Respondent

Representation:

For the Applicant: Azeem Suterwalla (instructed by Bhatia Best Solicitors)
For the Respondent: Tom Amraoui (instructed by the Solicitor, Derby City Council)

JUDGMENT

Introduction

1. The task of the Tribunal in these proceedings is to decide, as a matter of fact, the date of birth of the applicant, a citizen of Iran, who claims to have arrived in the United Kingdom in January 2012. Our task arises as a result of the bringing by the applicant of judicial review proceedings to challenge the respondent's assessment, made on

24th September 2012, which concluded that the applicant was, on that date, over the age of 18. Permission to bring those proceedings was granted by a Deputy Judge of the High Court on 4th January 2013, following which the application for judicial review was transferred to the Upper Tribunal.

2. The applicant's case is that he was born on 22nd May 1996 and was, accordingly, aged 15 years and 8 months at the time of the September 2012 age assessment. An earlier assessment undertaken by the respondent on 11th April 2012 (and subsequently withdrawn) had concluded that the applicant was born on 1st January 1995.

The proceedings

3. The Tribunal sat on 17th and 18th April 2013. We heard oral evidence from the applicant, Ms Pavan Rana and Ms Charlotte Parsons. Ms Rana and Ms Parsons are the social workers who undertook the September 2012 assessment. Judgment was reserved on 18th April.
4. The applicant spoke with the assistance of an interpreter. The Tribunal had regard to and followed, as appropriate, the provisions of the Joint Presidential Guidance Note No. 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. In particular, the applicant was informed of his ability to request breaks, as necessary. Irrespective of any such specific requests from the applicant, we remained mindful of the need to ensure that the applicant did not become overtaxed, whilst giving his evidence. Counsel were encouraged to frame questions in a manner appropriate to a person of the applicant's claimed age.

The law

5. Following the judgment of the Supreme Court in R(A) v Croydon LBC [2009] 1 WLR 2557, the basic purpose of these proceedings is, as we have already indicated, to resolve the issue of the applicant's age, as a matter of fact. In R(AE) v London Borough of Croydon [2012] EWCA Civ 547 Aikens LJ said that:-

"This is because the determination of a young person's age is a 'precedent fact' to the local authority exercising its statutory powers under section 20(1) of the [Children Act 1989]. There is a right and a wrong answer and that, ultimately, is for a court to decide." [3]

6. In carrying out that exercise, the Tribunal must, effectively, act in an inquisitorial role and decide, on the balance of probabilities, whether the applicant was or was not a child at the time of the age assessment: R(AE) at [23] and R(CJ) v Cardiff CC [2011] EWCA Civ 1590 at [22] and [23].
7. There is no burden of proof in these proceedings - R(CJ) at [22]. We are mindful that at [21] of R(CJ) the court made it clear that, whilst there is no formal "benefit of the doubt" principle, the Tribunal is not thereby expected to eschew a "sympathetic assessment of evidence" and:-

“In evaluating the evidence it may well be inappropriate to expect from the claimant conclusive evidence of age in circumstances in which he has arrived unattended and without original identity documents. The nature of the evaluation of evidence will depend upon the particular facts of the case.”

A. Credibility of the applicant's own evidence

8. In R(AE) v London Borough of Croydon [2012] EWCA Civ 547 the Court of Appeal considered that “in the absence of any documentary evidence of AE's age or any reliable dental or medical evidence, the starting point for the Deputy Judge's task of assessing the age of AE was the credibility of his own evidence.” In the present case, both parties agreed that the credibility of the applicant's own evidence was the key issue. Not only is there no dental or medical evidence; there is, effectively, no evidence, other than the applicant's account of his experiences in Iran, as recounted in his various statements, asylum interview and age assessments; and the social workers' observations of the applicant's appearance and demeanour during those assessments.

(a) The applicant's account

9. In essence, the applicant's stated reasons for leaving Iran are as follows. Whilst working in his father's shop, the applicant was enticed by a neighbour into assisting in smuggling petrol and, later, political literature expressing hostility to the Iranian regime. This literature was stored in the shop, which was raided by the authorities and the applicant's father apprehended. Arrangements were made, involving the applicant's mother and the Kurdish oppositionists responsible for the literature, to have the applicant removed from Iran and sent to a safe country.

10. As given to us at the hearing, the applicant's account of how he came to know his age is as follows. Prior to the events which we have described, the applicant's mother sought to ascertain the applicant's age, in order to determine whether he was ready to begin the Muslim practice of fasting. Being illiterate (as was the applicant) she asked a neighbour, Mr Ata Nasri, to translate an identity document in respect of the applicant, known as a shunasnameh. Reading from this document, Mr Ata Nasri informed the applicant's mother that the applicant was born on 22nd May 1996 (in the western calendar). Having been informed of this date, the applicant has remembered it, notwithstanding that his concept of dates and times remains undeveloped.

(b) Alleged inconsistencies regarding the documentation disclosing the applicant's age

11. The respondent put considerable store on the assertion that the applicant, when interviewed by Ms Rana and Ms Parsons on 24th September 2012, contradicted himself in respect of how he had come to know his age. At tab 10/66 the age assessment states as follows:-

“[Applicant] cannot read or write. He also confirmed that he can only count to ten in figures. He was asked how he then knew his date of birth. He initially stated that he had always known it and that he saw a birth certificate. He was asked what information was recorded on it but stated that he cannot read or write so he does not know. He stated that his mother had informed him of his date of birth and age just before he turned 15 years old. He also never celebrated his birthday.

[Applicant] also confirmed that his parents cannot read or write. He was asked if he kept track of the date/calendar. He stated that his mother did.

Later during the assessment, [applicant] was asked if he had any seen any identification document stating his age, his response was no, he had not. He was therefore asked how sure he was of his age. He stated that a neighbour who can read and write assists them.”

12. The respondent sought to persuade us that this inconsistency was a “glaring” one, which seriously damaged the applicant’s credibility. We do not accept this submission. Our reasons are as follows.
13. Carrying out an age assessment is, we fully accept, a difficult task and it can be all too easy, after the event, to level criticism at the way social workers have gone about it. There are, however, significant problems with what is recorded at tab 10/66 and the inferences sought to be drawn from it.
14. Ms Rana and Ms Parsons each made notes of the interview with the applicant, which began in the early afternoon and concluded (it seems) more than three hours later. Neither Ms Rana nor Ms Parsons’s notes can properly be said to record the appellant having first said that he had seen documentation recording his age and, later, having denied that he had seen any such documentation. Furthermore, the statement at 10/66 that the applicant “initially stated that he had always known it” (i.e. his date of birth) is directly contradicted by the manuscript notes of Ms Parsons which record (tab 21/161) “everyone should know when they are born”. This subtle but important distinction (to use Mr Suterwalla’s phrase) has, we find, been misinterpreted as a point against the applicant, whose evidence precisely accords with Ms Parsons’s record.
15. The applicant’s evidence to us was that, when referring to the birth documentation about which he was aware, he had meant his shunasnameh, which the neighbour had translated for the applicant’s mother. Insofar as he might have been asked later whether he had ever seen any identification documentation stating his age, the applicant told us that he would have replied that he had not seen everything in this regard, but that he had seen the shunasnameh. As described by the applicant, the shunasnameh is not a birth certificate but, rather, a national identification document issued some time after birth, bearing (amongst other things) a photograph of the applicant.

16. Under cross-examination, Ms Parsons was adamant that there was a discrepancy, albeit one not reflected in her notes. We prefer the applicant's evidence, not least because Ms Parsons, in oral evidence, very fairly and properly acknowledged that the categorical statement at paragraph 6.3 of her witness statement (tab 15/98), that the applicant "gave inconsistent and confusing answers on most if not all aspects of his life" was fundamentally incorrect, as a reading of the age assessment makes plain.
17. Ms Rana, whose evidence was both fair and nuanced, accepted under cross-examination that she might have used the word "birth certificate" in her earlier questions, before later asking the applicant if he had seen any formal documentation with his age on it. At this point, we find that the general import of the evidence supports the applicant's case that when he was later asked "if he had ever seen any identification documents stating his age", he understood this to be a question as to whether he had seen any *other* documents, over and above the document which Mr Ata Nasri had translated for his mother.

(c) Timing and reasons of information as to date of birth

18. We accept that the applicant's answers at the assessment interview suggested that he had been told his date of birth "just before he turned 15 years old". In oral evidence, the applicant struggled to grasp the meaning of questions designed to explore whether he was, on the one hand, not quite 15 years old when this happened or, on the other hand, already 15 years old. We did not get the impression that the applicant was dissembling; rather, his confusion struck us as genuine and an example of a fact that he still has a somewhat limited grasp of these matters. There was also an initial lack of clarity regarding whether the applicant had already begun to fast when he was told his age by his mother. However, we accept the basic thrust of the evidence, which was that the purpose for asking Mr Ata Nasri to translate the shunasnameh was to confirm that the applicant was, indeed, of an age when it was appropriate to expect him to fast.

(d) Ability to know date of birth if illiterate

19. Initially, Ms Parsons was adamant that it was not possible for the applicant, being illiterate, to know what was stated in his birth documentation. Both she and Ms Rana, however, acknowledged that it was possible for even an illiterate person to carry in their head a date of birth that had been told to them. It is apparent that, once one accepts that hypothesis, there ceases to be any material discrepancy between the applicant's claiming to know his date of birth and otherwise being vague as to dates.

(e) Home Office interview and first age assessment

20. The respondent sought to make an issue of the fact that the applicant's Home Office interview record did not contain any reference to age documentation, such as the shunasnameh. However, the applicant does not appear to have been asked any specific question about this. Although there is a case for saying that he should,

nevertheless, have volunteered information about it, given the short time between entering the United Kingdom and being interviewed, together with the fact that (whether or not he is the age claimed) the applicant would still have been a teenager, the absence of such a reference is, we find, not material.

21. The applicant was asked in oral evidence whether he had told those interviewing him in connection with his first age assessment about the shunasnameh. He replied that he had, but they would not have recorded it correctly. Mr Amraoui submitted that this reply detracted from the applicant's credibility, since there was nothing about the shunasnameh recorded in the first age assessment. Given that the thrust of the questioning at the hearing was about the second age assessment and that the first one was undertaken almost six months earlier, we do not give this matter any material weight.
22. In his Home Office interview, the applicant had been asked how old he was when he first started working for his father (questions 61 and 62). In response, the applicant did not give an age. The respondent contended that this was a further incidence of the applicant's refusal to be forthright on this issue. In cross-examination, Ms Rana appeared to extend this criticism to what was said (or not said) by the applicant at the second age assessment interview. There is, however, nothing in the social workers' notes that suggest the applicant was specifically asked what age he was when he started to work in the shop. At tab 21/151 Ms Rana's notes record:-

"Helped dad in shop sometimes till 15 every day. After 15 another job."

23. It does not appear that the interviewing officer indicated to the applicant that his answers to questions 61 and 62 were unsatisfactory, nor does the Secretary of State's letter of refusal of 9th July 2012 make a specific issue of the alleged failure. On its face, Ms Rana's record does not suggest that the applicant was being evasive. Overall, we reject these credibility concerns of the respondent.

(f) Applicant's failure to obtain age documentation from Iran

24. It is a matter of concern that the applicant's solicitors appear to have failed to respond to the respondent's written enquiry as to whether attempts have been made to obtain from Iran the documentation recording the applicant's age, which he says exists in that country. The applicant's evidence is that he has no means of getting in touch with his mother and that Mr Ata Nasri has no telephone. It is possible that this issue may have significance in connection with the outstanding claim made by the applicant to the Secretary of State to be in need of international protection. On the present state of the evidence, however, we are not satisfied that the apparent failure to make enquiries in Iran can be said to be due to the applicant's unreasonable refusal to cooperate by providing all reasonable information. In particular, it does not appear that the assistance of the Red Cross has been sought, or that the Secretary of State has yet seen fit to take up the matter of tracing.

25. Thus, whilst we accept that this issue remains problematic for the applicant's age case, we do not find that the credibility of his evidence has been significantly damaged by it.

(g) The applicant's claim to be in need of international protection

26. Both Ms Rana and Ms Parsons told us that they had no reason to doubt the truth of the applicant's claim to be in need of international protection. When Ms Rana was asked whether, if that was so, the lack of any reason to doubt the applicant's credibility on that score ought to have had an impact upon the assessment of credibility as to age, Ms Rana said that it was not her job to assess the "asylum story". When pressed, however, Ms Rana accepted that, for example, discrepancies between a person's various accounts regarding a claim to be in need of international protection could well be relevant or, indeed, even important in determining credibility for the purposes of age assessment.

27. Ms Parsons, on the other hand, asserted that the view taken by the social workers of the credibility of the international protection claim had been considered as part of the age assessment exercise. She could not, however, point to any passage in the written assessment that demonstrated such consideration.

28. The Tribunal, of course, accepts that it is not the function of social workers to make a determination of a person's international protection claim. That is the job of the Secretary of State and, on appeal, the First-tier Tribunal. However, as Ms Rana belatedly acknowledged, the assessment of credibility for the purposes of age assessment may well involve an examination of what a person has said in respect of their international protection claim.

29. In the present case, nothing that the applicant had said in the written materials that were available to the social workers, or which had otherwise been recorded, gave them cause to doubt the credibility of his account of how he came to need international protection. Whilst, in itself, this would plainly not compel the social workers to ignore any concerns they might have had about the credibility of the applicant's own evidence concerning his age, it was, in the circumstances, wrong to ignore this aspect entirely. It is possible that Ms Rana and Ms Parsons did so because they regarded the applicant as having an incentive to have his date of birth accepted as 22nd May 1996, even if that were false; whereas there was no such incentive to lie as regards other aspects of the applicant's account of events in Iran. But the evidence touching on the claim to be in need of international protection plainly did not fall within that category. Recognition as a refugee or a person entitled to the grant of humanitarian protection is a valuable benefit for those wishing to remain in the United Kingdom, whether or not such persons merit that recognition.

30. Accordingly, the respondent's stance regarding the applicant's credibility for the purposes of the present proceedings fails to have regard to the complete relevant picture. In making our credibility findings, we have borne in mind that no material

discrepancy or implausibility in the international protection claim has been relied upon by Mr Amraoui on behalf of the respondent.

(h) Failure to put matters of concern to applicant

31. At the end of three or more hours of questioning of the applicant on 24 September, Ms Rana and Ms Parsons withdrew to discuss their findings. They then re-entered the room where the applicant was sitting, with the interpreter and an appropriate independent adult, and read to the applicant a set of conclusions and reasons, now to be found at tab 10/71. So far as credibility was concerned, these conclusions and reasons were as follows:-

“ ...

3. You remained adamant that you are aware of your date of birth as your mother informed you, however you confirmed that you cannot read, write or count and that you have not seen any formal documentation with your date of birth recorded. In addition to this your mother is also illiterate. This questions your credibility and makes it possible for you to be older than the given age.
4. Furthermore, you presented as very unsure and hesitant around dates and timescales. You also confirmed that you have never celebrated your birthday. This also suggest (sic) that the information you have provided may not be accurate.”

32. Whilst we accept that the applicant was given an opportunity to respond, Ms Rana, again fairly, acknowledged that she may not have explained in terms that the conclusions and reasons were, in fact, provisional and that (to use her expression) if the applicant gave compelling evidence in response, then she and Ms Parsons would have felt obliged to consider that evidence, before reaching any final conclusion. We accept the applicant's evidence, that he was unaware of the actual status of the “conclusions and reasons” at this point. In the circumstances, even leaving aside the lateness of the hour, we consider that this explains why the applicant failed to go into any detail by way of response. Furthermore, it is not apparent from the conclusions and reasons that the applicant was being informed, in terms, that he had allegedly been inconsistent on the issue of whether he had seen any age documentation in Iran.

33. We have borne these matters in mind in considering credibility, as set out above. In particular, we are mindful that the hearing in these proceedings has effectively been the first occasion for the respondent's credibility concerns to have been properly articulated and put orally to the applicant.

(i) The applicant's evidence to the Tribunal

34. We should record here that, albeit covering a limited number of matters, the applicant gave his evidence to us in a straightforward manner and that he gave no indication that he was dissembling or exaggerating any aspect of his account.

(j) Conclusions as to credibility of applicant's own evidence

35. In conclusion, whilst the respondent has rightly highlighted some credibility concerns regarding the applicant's age, upon analysis (and viewed in the round) we do not find that these concerns are such as to conclude that the applicant lacks credibility on this issue. At worst for the applicant, the credibility issue is, as Mr Suterwalla submitted, finely balanced. As such, applying the sympathetic approach to the evidence earlier described, the applicant emerges from the analysis with his credibility essentially intact, so far as these proceedings are concerned.
36. Finally on this issue, we agree with Mr Suterwalla that it is pertinent to note that the applicant's account of how he came to know his age concerned a point in time before the events took place, which are said to have caused the applicant to leave Iran. Thus, there was not, on the face of it, any ulterior motive for the applicant's mother to provide the applicant with an inaccurate date of birth. This contrasts with the position where persons are told their date of birth only immediately before they are removed from the country in which a real risk to their life or person is said to have arisen.
37. In the light of our findings regarding the credibility of the applicant's own evidence, he is, in the circumstances of this case, entitled to succeed, unless the evidence concerning appearance and demeanour is of such cogency as to require a finding that, although the applicant's own evidence is more likely than not to represent the truth of what happened and what was said to him in Iran, the applicant has in reality been deceived as to his own age by persons in that country.

B. The respondent's age assessment

(a) Demeanour

38. The first part of the analysis section of the age assessment of September 2012 deals with the applicant's demeanour at the age assessment interview and the view taken as to his emotional maturity:-

"During the assessment [the applicant] has displayed a very high level of assertiveness, confidence and maturity. He has at points presented as argumentative. [The applicant] maintained strong eye contact with the female assessors and confidently interrupted the assessment on occasions to ask if he could go home. He also interrupted and talked over the interpreter. This level of confidence and assertiveness is not consistent with that of a 16 year old child and is more consistent with someone who is at the latter stages of adolescence.

With regards to the emotional maturity, [the applicant] appears to have the coping mechanisms of an adult rather than a child. He displayed very little emotion when discussing the separation from his family, the likely torture and death of his father with whom he was very close. It was taken into consideration that [the applicant] has undertaken previous assessments and has discussed his life events before. However, it is still expected that a 16 year old will display some emotion with discussing traumatic

events. [The applicant] was very well composed and only displayed emotional when he was irate, particularly when it was suggested that it is possible that he could be over 18 years old.”

39. Both Ms Rana and Ms Parsons were persuaded that the applicant’s demeanour during the age assessment interview, variously described in the assessment as frustrated, irritated, self-assured, assertive, confident, aggressive and challenging, was indicative of the applicant’s being an adult. When pressed by Mr Suterwalla for more details, however, both social workers essentially prayed in aid their experience in dealing with both children and adults in similar contexts. The Tribunal acknowledges, and gives weight to, the expertise of Ms Rana and Ms Parsons (both of whom have conducted many age assessments). But, in order to overcome the consequences of our positive credibility findings regarding the applicant’s own evidence, very substantial weight would have to be given to the views of Ms Rana and Ms Parsons. In all the circumstances, we consider that to do so would be unwarranted. It would, in effect, amount to our according undue deference to the views of the social workers. We say this for the following reasons.
40. Ms Rana appeared to accept that there were inherent limitations in even a social worker’s ability to draw robust conclusions on age, based on observations of a person’s demeanour conducted over a single meeting of some three and a half hours. Indeed, Ms Rana told us that if she were in a situation where the only available information concerned demeanour and appearance, and where there were no inconsistencies (i.e. credibility issues), then she would take longer to do the assessment, possibly requiring “a few days”. Since, for the reasons we have given, we do not find that Ms Rana and Ms Parsons were on solid ground in reaching their negative credibility findings, it follows that we must exercise a degree of caution in assessing the weight to be given to their observations on demeanour and emotional maturity, following a single encounter with the applicant.
41. We record at this point that the applicant’s demeanour when giving evidence to us did not exhibit any of the traits observed by Ms Rana and Ms Parsons. This is in no way to doubt the genuineness of their views; merely to state that in the admittedly different context of a Tribunal hearing we observed nothing that might lead us to accord their views greater weight than would otherwise be the case.
42. Although Ms Rana and Ms Parsons informed us that they had taken account, in making their findings, of the fact that the applicant had already undergone one age assessment process, we were not persuaded that they paid any, or any adequate regard, to what had been observed in that first assessment. One of the matters that impacted upon Ms Rana’s view of the applicant’s emotional maturity was his calm and matter of fact way of describing the events in Iran, which led to his departure from that country; in particular, what had happened to his father. But, several months earlier, at the first assessment, it had been recorded that, when speaking about his family in Iran, the applicant’s “eyes glazed over at this point suggesting he was upset”.

43. Likewise, the first age assessment recorded that, when the applicant “was asked if he was in a relationship or married he said he did not have a girlfriend. [The applicant] was shy about this question and giggled nervously which could suggest he has not reached full maturity”.
44. In cross-examination, Ms Rana appeared to accept that the applicant’s background, working at a young age with those older than him in what can only be described as challenging and dangerous circumstances, might have had an effect upon his emotional development. Despite Ms Parsons’s assertion that this background had been taken into account, the written assessment does not so indicate and, overall, we are satisfied that neither of the social workers factored this in to their assessment of demeanour. Once again, we consider they effectively disregarded the account given by the applicant in the context of his claim to international protection.
45. It was apparent that both Ms Rana and Ms Parsons placed particular weight upon the action of the applicant in tearing up the piece of paper upon which Ms Rana had recorded the “conclusions and reasons”, now to be found at tab 10/71. They both regarded this as adult behaviour. However, in oral evidence Ms Parsons described the applicant as being “distraught” at this point, which, we must remember, came after more than three hours of questioning and in circumstances in which, as we have found, the applicant was unaware of the still provisional nature of the findings. We do not ascribe any particular weight to this action of the applicant.
46. In conclusion, we do not find that the evidence regarding the applicant’s demeanour and emotional maturity comes close to being of the required cogency described in paragraph [37] above.

(b) *Physical appearance*

47. The “conclusions and reasons” at tab 10/71 state: “Lastly, your physical appearance strongly suggests that you are over the age of 18”. Elsewhere in the assessment it is recorded that the applicant did not have any facial hair or stubble, but “it was noted that he has previously presented to the offices with some stubble indicating that he does shave”.
48. Understandably, given that the applicant would, on his own account, have been over 16 when seen by Ms Rana and Ms Parsons, little is made on behalf of the respondent as regards the issue of shaving. Indeed, Mr Amraoui did not seek to persuade us that, in the circumstances, what the age assessment had to say about the applicant’s physical appearance is capable of having any significant weight, whether on its own or in combination with other factors.
49. Ms Rana accepted in cross-examination that physical appearance can significantly vary between individuals of the same age and that “people age differently”. She also agreed with Mr Suterwalla that, in terms of physical appearance, the applicant was “not obviously over 18”.

C. The Tribunal's assessment of the applicant's age

50. The respondent's attack on the applicant's credibility fails. We find that the applicant is more likely than not to be telling the truth as to the circumstances in which he was informed that he was born on 22nd May 1996. Nothing in the respondent's age assessment, or in any of the other oral and written evidence, causes us to find that what the applicant was told about his age was more likely than not to be untrue and that he was already 18 when seen by Ms Rana and Ms Parsons on 24th September 2012.
51. We shall accordingly make a declaration that the applicant was born on 22nd May 1996. We shall hear Counsel if they cannot agree the format of that order or the terms of any further order sought, in particular on the issue of costs.



Signed

Upper Tribunal Judge Peter Lane