

Neutral Citation Number: [2009] EWHC 2402 (Admin)

CO/3970/2009

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

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 27 August 2009

B e f o r e :

TIMOTHY BRENNAN QC
(SITTING AS A DEPUTY HIGH COURT JUDGE)

Between:
THE QUEEN ON THE APPLICATION OF MT_

Claimant

v

LONDON BOROUGH OF HILLINGDON_

Defendant

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WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

MR J AUBURN (instructed by STEELE AND SHAMASH) appeared on behalf of the
Claimant

MR D LINTOTT (instructed by LONDON BOROUGH OF HILLINGDON) appeared on
behalf of the **Defendant**

J U D G M E N T

1. THE DEPUTY JUDGE: This is an application on behalf of a female claimant for permission to apply for judicial review in respect of the London Borough of Hillingdon's decision that she was over the age of 18, in fact 19 years of age. The significance of the point lies in the local authority's duties under the Children Act 1989, particularly section 20.
2. The claimant arrived in the UK from Eritrea on 11 December 2007, putting herself forward as an unaccompanied minor seeking asylum. Hillingdon accepted that she was a minor and placed her with a foster carer, a Mrs G, in Tulse Hill. The claimant was granted asylum status on 15 May 2008 and she remained in her foster placement.
3. By December 2008, Mrs G was developing a suspicion that the claimant was older than she had presented herself as being. Mrs G told Hillingdon social workers and the social workers took the point up. In due course the claimant was the subject of an age assessment carried out by social workers. There was an interview on Tuesday 10 March 2009 via an interpreter, that interview lasted about one and a half hours. It was terminated because the social workers were not satisfied with the manner in which the interpreter was interpreting and the interview was re-commenced and continued on 17 March.
4. A detailed age assessment was completed. It is a lengthy document, rich in detail, and needs to be read as a whole. In substance and summary, the social workers came to the conclusion that the claimant was older than 18 years. They concluded that she was 19 years or older. This was based on their impression of her physical appearance, her demeanour (for example a tendency to raise her voice and become nervous when responding to questions relating to her age or which were date related) and aspects of her interaction with them during the assessment interview. They relied upon what she said about her family history, her education, her physical development, her ability to look after herself, her health and mental history, inconsistencies in the ways and matters of that kind.
5. It is common ground that on age assessment issues it is for the social workers to decide the age of the applicant, and that in the context of section 20 of the Children Act 1989, Parliament must have intended the local authority to take the relevant decisions. Those decisions are of course matters of evaluation, of judgment, and of impression. The Court of Appeal so held in *R(A) v London Borough of Croydon* [2008] EWCA Civ 1445. That decision is currently under appeal to the House of Lords but it has not been suggested that I ought to approach the present case on any different basis, still less to adjourn this application.
6. Another important feature to bear in mind is to be gleaned from the judgment of Stanley Burnton J in the well known authority of *R(B) v London Borough of Merton* [2003] EWHC 1689 Admin, where his Lordship said at paragraph 50:

"In my judgment, the court should be careful not to impose unrealistic and unnecessary burdens on those required to make decisions such as that under consideration. Judicialisation of what are relatively straightforward decisions is to be avoided. As I have stated, in such cases the subject

matter of decision is not complex, although in marginal cases the decision may be a difficult one. Cases will vary from those in which the answer is obvious to those in which it is far from being so, and the level of enquiry unnecessary in one type of case will be necessary in another. The court should not be predisposed to assume that the decision maker has acted unreasonably or carelessly or unfairly, to the contrary it is for the claimant to establish the decision maker has so acted."

7. Informed by those statements of principle, I turn to the four points of challenge which, on this renewed application, are put forward on behalf of the claimant. They were not put in precisely this way in the documentation which was before the court when permission was refused on the papers.
8. First, it is said, in summary, that it was procedurally unfair for the social workers not to put to the claimant the material which they included as a reason for their age determination, namely that other professionals had concerns about her age. In my judgment, that is to put too high a procedural hurdle in the way of the social workers. They carried out an extensive interview with the claimant spread over two occasions. The material about which complaint is made, that it had come to their attention that others thought that she was older, was in fact mentioned to her as a headline point but its real significance is that it sparked off the social workers' enquiry, although it is right to observe, as Mr Auburn stresses, that the views of other professionals were given in as a discrete reason for the social workers' conclusion. That is, to my mind, to subject the formal decision document to too critical a level of scrutiny. The important material had to be, and was, discussed with the claimant during the two interviews.
9. The second point that is made is that it should have been expressly put to, or perhaps more accurately disclosed to, the claimant, that Mrs G, the foster parent, having expressed her initial concerns as to the accuracy of the claimant's claimed age, had to some extent rowed back from that expression of concern. Mrs G said in effect that she was reluctant to put it in writing, although she did do that with the assistance of a social worker. She said that being a religious person she did not want to say anything which might not be true. In my judgment, again this is an element of the material which led to the social workers enquiry into the claimant's age, it is not a matter on which fairness required the claimant's oral comment. Indeed, it is not easy to see what she could usefully have said.
10. The third element of challenge is that the social workers relied on material gained during the first of the two interviews where the interpreter was regarded as not interpreting to a sufficiently high standard. Mr Auburn puts it on the basis that this was a "tainted interview" and, as I understood his submission, that the material obtained in that interview should not have been relied upon at all. It is important in my judgment to remember that the social workers were engaged in an exercise of subjective evaluation of the claimant's appearance, history, behaviour and consistency. Although it is significant that the interview had been terminated because of the inadequacy of the interpreter, fairness did not, in my judgment, require the social workers to put out of their heads absolutely everything learned during that long interaction with the claimant, so long as they approached the matter with appropriate caution. It is clear that they

were showing appropriate caution from the very fact that they terminated the first interview. They knew that the material might not be as reliable as might be hoped and that is why they continued with another interpreter. In those circumstances, for them to give such weight as they thought fit to such material as was disclosed in the first interview, does not in my judgment give rise to any procedural unfairness. Evaluation of the evidential weight of the material was a matter for them.

11. The fourth point which is advanced on behalf of the claimant is put by Mr Auburn as the "false precision" point: that the claimant was, as she says in a witness statement, pressed to be precise on matters on which precision could not fairly or reasonably be expected in respect of dates as to when particular incidents had happened in her childhood. When inconsistencies were identified in dates or recollections, this was used as material adverse to her position. Again, in my judgment, this point fails because the entire exercise was one for evaluation by the social workers. It was for them to make a judgment as to the extent to which what the claimant said could be relied on and the extent to which it was internally inconsistent. It is not a matter, in my judgment, which gives rise to procedural unfairness for them to carry out that exercise of evaluation as they did, over an interview spread over two occasions and a number of hours.
12. Accordingly, in my judgment, the four points which are advanced on behalf of the claimant on this renewed application do not, either individually or cumulatively, justify permission to apply for judicial review and I therefore refuse permission.
13. MR AUBURN: My Lord, if I can have one moment to take instructions.
14. THE DEPUTY JUDGE: Of course.
15. MR AUBURN: My Lord, I simply ask for a detailed assessment for the purposes of public funding.
16. THE DEPUTY JUDGE: Certainly.