



**In the Upper Tribunal
(Immigration and Asylum Chamber)
Judicial Review**

JR/1050/2021

In the matter of an application for Judicial Review

The Queen on the application of
'LS'

(Anonymity direction continued)

Applicant

Versus

London Borough of Brent

Respondent

Anonymity direction - Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Applicant is granted anonymity, to the extent set out in this direction. No-one shall publish or reveal any information, including the name or address of the Applicant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court. For the avoidance of doubt, the Respondent is permitted to disclose the Applicant's unanonymised identity pursuant to its statutory powers and obligations, including, if requested, by the Secretary of State for the Home Department.

ORDER

BEFORE Upper Tribunal Judge Keith

HAVING considered all documents lodged and having heard *Mr L Johnson*, instructed by Instalaw Solicitors, for the Applicant initially, following which the Applicant was not legally represented, and *Mr A Lane*, instructed by the Respondent at hearings on 26th, 27th April and handed down on 7th July 2022

IT IS ORDERED THAT:

- (1) The application for judicial review is refused, for the reasons in the attached judgment.
- (2) This Tribunal makes a declaration that the Applicant was, at the time of the Respondent's assessment of him, and is, an adult, with an allocated date of birth of 12th June 1998.
- (3) The orders sought by the applicant are refused.

Costs

- (4) The Applicant has failed in his primary aim in applying for judicial review, specifically a declaration of his allocated date of birth as minor, at the date of the Respondent's assessment. The Applicant shall pay the Respondent's reasonable costs, to be assessed, of not agreed, in accordance with the Civil Legal Aid (Costs) Regulations

2013 and CPR 47.18. No costs award shall be enforced without the permission of the court.

Permission to appeal to the Court of Appeal

- (5) No application has been made for permission to appeal to the Court of Appeal. In any event, permission to appeal is refused because the decision does not disclose any arguable error of law.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: 7th July 2022

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): *7 July 2022*

Solicitors:

Ref No.

Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

**Upper Tribunal
Immigration and Asylum Chamber**

JR/1050/2021

Field House,
Breams Buildings
London
EC4A 1WR

Heard on: 26th and 27th April 2022
Handed down on 7th July 2022

**BEFORE
UPPER TRIBUNAL JUDGE KEITH**

Between

The Queen (on the application of LS)
(Anonymity direction granted)

Applicant

v

London Borough of Brent

Respondent

Anonymity direction - Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Applicant is granted anonymity, to the extent set out in this direction. No-one shall publish or reveal any information, including the name or address of the Applicant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court. For the avoidance of doubt, the Respondent is permitted to disclose the Applicant's unanonymised identity pursuant to its statutory powers and obligations, including, if requested, by the Secretary of State for the Home Department. .

Representation

The Applicant was initially represented by Mr L Johnson, Counsel, instructed by Instalaw Solicitors. They withdrew, after becoming professionally embarrassed, in circumstances outlined in these reasons. The Applicant then represented himself.

Mr A Lane, Counsel, instructed by the London Borough of Brent

**APPLICATION FOR JUDICIAL REVIEW
JUDGMENT**

The application

- (1) A sealed copy of the Applicant's application has not been provided to me. The Applicant applied on or around 9th February 2021 for judicial review of the Respondent's decision of 9th November 2020, in which it assessed the Applicant as being aged 22, with no assigned date of birth. The Applicant claimed to have a date of birth of 12th June 2003, so, a minor, aged 17 when he was assessed.
- (2) The Respondent's decision followed an initial meeting on 25th September 2020 and assessment interviews on 9th and 27th October (documents related to which are at pages [211] and [215] of the agreed bundle) and a round-table meeting on 5th November 2020, at which points were put and then a decision made (page [218]).
- (3) The Applicant then submitted further evidence in letters from the "Young Roots" charity, who supported him, dated 9th December 2020 and 14th January 2021 (pages [87] and [89]), which confirmed the view of the authors that those who had interactions with the Applicant believed him to be a minor.
- (4) The Applicant challenges the original decision and the Respondent's failure to review the further evidence and reconsider its decision.

The proceedings

- (5) It is not necessary to recite the full history of the litigation, except to say that the Applicant's claim was originally presented in the Administrative Court and was subsequently transferred to this Tribunal pursuant to a decision of Clive Sheldon QC, sitting as a Deputy Judge of the High Court, who granted permission to apply for judicial review, in orders made on 8th June 2021.

The Applicant's case

- (6) I set out below the Applicant's case. For the avoidance of doubt, these findings do not bind the Secretary of State for the Home Department, or any First-tier Tribunal, when considering any separate claim for asylum, which I understand has been made, in which a different standard of proof applies.

- (7) The Applicant claimed to have entered the UK unlawfully on or around 3rd September 2020, across the Channel, via a dinghy/boat. On arrival, he was encountered by the UK authorities, fingerprinted and interviewed and after three days transferred to hotel accommodation in Wembley.
- (8) The Applicant is an Eritrea national, who claimed to have left Eritrea with his mother, when he was three years old, in 2006. He claimed to know this because his mother told him years later, when he was older. She had left Eritrea with him, carrying him on her back. They travelled to Sudan, but did not stay there long, instead travelling onwards to Ethiopia. In Ethiopia, the Applicant attended school until the age of 10, but then left school because he wanted to support financially his mother. Her livelihood was selling tea and coffee in the street. He had never known his father and was an only child.
- (9) The Applicant claimed to have left Ethiopia in or around June 2018, just after his 15th birthday. He knew this because he was then old enough to understand and follow a calendar. He knew of his birthday because every year, his mother would light candles and tell him his age. They would celebrate with traditional bread. He left Ethiopia because he and his mother faced discrimination and abuse for being Eritrean and neither had legal status to remain in Ethiopia.
- (10) The Applicant then claimed to have travelled to Sudan, and onwards to Libya, where he lived for around a year and six months and where he was ill-treated. On payment demanded by traffickers, which he supposed (but did not know) was paid either by his mother or a maternal aunt who lived in Sudan, he travel onwards to Italy, then to France and Belgium. He was not fingerprinted in any of these countries. He had initially claimed to the Respondent's age assessors that he had avoided being fingerprinted in Italy by feigning sickness, being admitted to hospital and then leaving the hospital unannounced. He confirmed in a later witness statement that this part of his account was a fabrication. He had not been fingerprinted but had made up an account of how he had avoided been fingerprinted because the age assessors had kept asking him questions as to why he had not been fingerprinted and he wanted to stop the questions.
- (11) On the Applicant's account, he learned while in Belgium that his mother had died. He had not initially revealed this to the age assessors, because he was still grieving and it made him upset to talk about the fact. The Applicant disputed being

vague about his family's details and their involvement in, or facilitation of, his travel to the UK. He did not know the full details of his aunt's involvement in how he was able to travel, but assumed that after he spoke to his mother when he was held by traffickers in Libya, his mother had asked for financial help from her sister. However, he had never spoken to the aunt directly. After his mother had passed away, he did not have any contact with his family.

(12) The Applicant challenged the Respondent's age assessment as being unlawful on public law grounds, on five bases (see §28, page [48]):

- a. The Respondent's assessment was procedurally flawed as the Respondent had failed to give the Applicant a chance to address its concerns before reaching its decision - as per the case of R (FZ) v Croydon LBC [2011] EWCA Civ 59. Whilst there was no prescriptive way in which the person assessed ought to be given a fair opportunity to deal with any adverse points, it was not clear that during the second interview, that all adverse points had been put to the Applicant. The opportunity to respond was particularly important, given the Applicant's vulnerability as a young person, who was unable to speak English.
- b. The assessors had failed to have any or adequate regard to the views of those who had had regular contact with the Applicant. The staff at the hotel at which the Applicant had stayed were not sure of his age, but thought he could be the claimed age (§34 of the grounds). The Respondent had also failed to revisit her decision in light of the comments the 'Young Roots' staff, who were used to working with children and young adults.
- c. The assessment placed too much weight on unreliable factors such as the Applicant's physical appearance and demeanour (see R (AM) v Solihull MBC (AAJR) [2012] UKUT 00118 (IAC)). Whilst the Respondent had referred to the Applicant's skills and resolve, the Respondent failed to recognise that his presentation (which might appear older than he was) was informed by his experiences. The Respondent failed to give him the benefit of any doubt.
- d. The assessment was wrong to conclude that the Applicant lacked credibility.

- e. The decision was irrational, on the basis that there was an absence of any substantive reasoning that the Applicant was not a child.

The Respondent's case

- (2) The primary case for the Respondent is that the Applicant is not a credible or honest witness. The age assessment was carried out by two experienced social workers, using recognised 'Merton-compliant' procedures (see: R (B) v Merton LBC [2003] 4 All ER 280). The Applicant had been provided an interpreter, as well as an independent advocate at the relevant meetings. The Respondent accepted that the Applicant had maintained his age since the initial meeting, on the basis of what his mother had told him.
- (3) As set out in the assessment document at page [12], the assessors described the Applicant during the initial interview speaking confidently and with the demeanour of a mature person. His physical appearance suggested a developed young man with a deep voice, not a 17 year old. His facial features were distinctive and had characteristics of maturity and ageing, which do not typically appear until early 20s. The assessors accepted that this could be as a result of his arduous journey and physical trauma, but based on their experiences of working with unaccompanied minors, the assessors concluded that the Applicant was aged between 22 and 26.
- (4) The assessors reached this conclusion, noting a number of factors. First, they considered the Applicant's interactions during the assessment, when he was calm and did not appear distressed.
- (5) Second, the assessors also considered the Applicant's description of his family background and journey to the UK.
- (6) In terms of his family background, he initially suggested that he was last in contact with his mother when he had travelled through Italy (page [14]), but then claimed that his last contact was when he was in Belgium, in February 2020. He only mentioned his mother's death when the assessors asked if they could contact his mother to confirm his age and date of birth. The Applicant referred to his mother in the present tense, despite asserting that his mother had died and also

appearing undisturbed when he first revealed that his mother had died, when asked why his mother could not be contacted to confirm the details of his date of birth. The assessors also did not accept as credible that if he was in any doubt about his mother's death, he would not have made direct enquiries of previous neighbours in relation to her death (page [20]). He instead relied on what he had been told by friends, who in turn had spoken to his mother's neighbours.

- (7) The assessors noted that the Applicant had provided limited information about his family or childhood growing up in Ethiopia. He claimed to have never known his father, and to have no siblings, nor did he describe any friends. He had been unable to provide any dates in relation to his education (page [18]).
- (8) The Respondent took into account the views of the hotel staff (page [21]) but these were not professionals who had any experience or qualifications in relation to assessing age. The assessors had requested Eurodac information, but had not yet received a response. Whilst the Applicant asserted that he had been baptised, many people from Eritrea and Ethiopia used baptism certificates as a form of identification, but the Applicant claimed not to have a copy of his certificate.
- (9) In terms of his journey, the Applicant claimed to his assessors that his fingerprints were not taken when he arrived in Sicily, because he was taken directly to hospital on arrival, from where he then absconded. He felt sea-sick, but pretended to have itchy skin to avoid giving fingerprints. His reason for not giving fingerprints was because he would then have to stay in Italy. He did not wish to stay there, because he wanted to have a good education and wanted to be in Britain. He explained that he had learned of Britain because he had seen British football matches on TV.
- (10) The Applicant described travelling backwards and forwards between Belgium and France, waiting for the moment to travel from Calais to the UK. The assessors regarded this as a complex journey, navigating several countries, with the choices he made along the way requiring a level of maturity much beyond his claimed age of 17 years. The assessors also noted what they regarded as inconsistencies in the Applicant's account of living in Sudan and Ethiopia before travelling to Europe, while also claiming to have staying in Sudan for only two days. The assessors noted the Applicant's ability to travel independently, crossing many countries and faking illness to

avoid being fingerprinted. The Applicant also took pride in his presentation, with a good standard of hygiene, without prompting, which showed a level of independent living and maturity beyond the claimed age of 17 years' old.

(11) More generally, the assessors also referred to the Applicant not always answering questions asked of him (page [16]).

(12) The assessors reached the following conclusions (page [23]):

- a. The Applicant's physical appearance and demeanour was consistent with a more mature male.
- b. His interactions with the assessors, and his confidence and knowledge in dealing with them showed a mature presentation and understanding.
- c. His decision making, independence, skills and resolve were consistent with a more mature age than his claimed age.
- d. There were material inconsistencies in the Applicant's account.
- e. The Applicant did not provide information about his education, family and social background that could indicate he was of his claimed age.
- f. The Respondent had initially assessed the Applicant as being aged 25 (although this was later reduced to 22, in 2020, so with a year of birth of 1998).

The hearing

(13) As well as considering the witness statements of one of the assessing social workers, Ruby Adams, I heard evidence from the following individuals, who spoke to their witness statements and also provided additional oral evidence: -

- a. **The Applicant:** When giving oral evidence, the Applicant had the assistance of an interpreter in Amharic. I was conscious that in the context of his disputed age,

even on the Respondent's case, the Applicant is a young person now aged 24, who claimed to have suffered traumatic experiences and whom I was prepared to accept, taking his case at its highest, as a potentially vulnerable witness. In that context, I was prepared to accept that his recollection of chronology and dates might therefore be more limited. I also checked that the Applicant was comfortable in giving evidence in Amharic, as his solicitors had suggested in pre-action correspondence that the use of an Amharic interpreter, as opposed to an interpreter in Tigrinya, had affected his ability to give accurate evidence to assessors. However, the Applicant confirmed to me that he was comfortable giving evidence in Amharic, which he understood and was able to converse in without difficulty.

- b. **Daniel Smith:** Mr Smith is a senior youth case worker with the "Young Roots" charity. The charity specialises in supporting young asylum seekers and refugees between the ages of 11 and 25 and Mr Smith has worked in the refugee sector since 2017. In previous roles, he worked closely with young people from East Africa, many of whom have been age assessed. He had worked directly with approximately 70 young people, whose ages ranged between 14 and 25. While he does not have formal social worker qualifications, he has experience working with a variety of age groups. For reasons I will come on to discuss, I regarded him as a careful and honest witness, willing to accept the limits of his knowledge and also willing to disclose matters which the Applicant had attempted to conceal from this Tribunal. I mention this as I was satisfied that Mr Smith was an independent witness, who gave evidence in good faith, and whose candour I accept.

Discussion

- (14) The purpose of this judgment is to decide, as a fact, the Applicant's date of birth. There is no burden of proof on either party and the standard of proof is on the balance of probabilities. In reaching my decision, I have considered all of the evidence, whether I refer to it specifically or not, as well as the written skeleton arguments and oral submissions of the parties.

- (15) While I have considered all of the evidence holistically, I start

with an assessment of the Applicant's credibility, noting with caution that the issue of credibility is only one part of the my assessment of the Applicant's date of birth.

Credibility - the Applicant's evidence generally

- (16) I previously gave directions on 27th April 2022, with detailed reasons, at the conclusion of the second day of the hearing. The reasons for them explained why the Applicant's Counsel and solicitors had to withdraw at the lunchtime on the second day of the hearing, because they were professionally embarrassed. At the same hearing, the Applicant had then sought to withdraw his application for judicial review, which I refused. I reiterate the reasons the Applicant's legal representatives' withdrawal, because they are relevant to the Applicant's credibility. Specifically, the Applicant had been asked by his Counsel to clarify oral evidence that he had given to this Tribunal, about which Counsel and his solicitors had knowledge, in relation to the Applicant's fiancée's Facebook account. (The existence of a fiancé had not been revealed before the hearing and only became apparent on the second day, following enquiries that the Applicant's solicitors had made about the existence of a Facebook account). The Applicant refused to provide clarifying evidence and his Counsel and solicitors then withdrew from representing the Applicant. In the circumstances, there was a heavy question mark about the reliability of the Applicant's evidence and his credibility.
- (17) Before discussing in more detail the Applicant's credibility, I am very conscious that even if parts of the Applicant's evidence are not credible and even where he has been attempting to mislead this Tribunal or conceal evidence, the core of his account, and in particular, his claimed age may still be true. I am also conscious that even on the Respondent's case he remains relatively young, aged 24 and may, as a result of traumatic experiences (as to which I make no findings), be reluctant to disclose matters for fear of either getting into trouble himself or putting others in trouble.
- (18) Nevertheless, even taking into account natural reticence and fear of getting others into trouble, together with possible difficulties of recall in terms of chronology, I am satisfied that the Applicant is not a witness of candour. He has sought deliberately to mislead this Tribunal and has a motive for doing so, namely to conceal his true age.

- (19) At various stages, when the Applicant was asked specific questions, he would repeatedly use the phrase “I do not remember”. He did so even in circumstances where this was highly implausible. Only when I reminded him specifically of the importance of being truthful, as his own Counsel did so, did he then immediately change his position and recall specific matters. One example of this was when he indicated that he could not remember the family name of the woman to whom he claims to be engaged to be married (I will come on to discuss why I find, on the balance of probabilities, on the evidence before me, that they are in fact married). He promptly then disclosed her family name, after I warned him about the need for truthfulness. This was not the only instance where the Applicant’s inability to recall matters could not, in my view, be credibly explained by a lack of recall, trauma or vulnerability, or relative youth. Also, and weighing against the Applicant, was his own concession that when faced with inconsistencies in explanations with the age assessors, he had deliberately made up accounts, and in his words, *“said whatever was in his head”* in order to stop the questioning. He gave one specific example in his second witness statement at §29, page [100], where he said:

“I told the age assessors that I faked an illness in Italy so I could go to hospital to prevent being fingerprinted, however this did not happen. I made up the fact that I went to hospital in Italy as they were asking me too many questions about why I did not get fingerprinted, so I just made something up so they would stop asking me the same questions over and over.”

- (20) He similarly accepted that he had stated to the age assessors, that:

“After arriving in Sicily, everyone was asked to take fingerprints, my fingerprints was not taken as I was sick ...”

- (21) He now claimed that instead, not everyone was asked for their fingerprints and that his friends were not asked any questions, nor did they encounter the Italian authorities. Once again, he accepted that he had made up matters and he did so because he had not initially been believed in his answers to questions, which he wanted to stop. He explained that he had not understood the seriousness of his making matters up in his interview with the Respondent’s assessors.

- (22) There were areas where, in fairness to the Applicant, he had sought to correct some of the misleading comments he made and in particular in his second witness statement he clarified that he was not stopped by the Italian authorities (§12 at page [98]). However, a number of the comments he made in oral evidence before me were plainly inaccurate and deliberately untruthful. In particular, the Applicant claimed in oral evidence not to be in contact with anyone in Ethiopia and Eritrea apart from an unsuccessful attempt to telephone his friends. He claimed only to be in contact with his one friend in the UK and after he left Ethiopia, had had no way of contacting anyone in Ethiopia, or his aunt in Sudan. He said that he did not have any other contact with anybody else and had no means of doing so. He only had his mother's telephone number and it was a neighbour who had answered the telephone number when he attempted to call her when in Belgium, who had then spoken to his friends. He had changed SIM cards on at least two occasions after travelling from Calais to the UK. He had discarded the last SIM card he had with any contact numbers on it, shortly after his arrival in the UK, because it did not work. When he was confronted with the social media evidence on his Facebook account, which his solicitors searched and disclosed after my enquiry as to whether all relevant evidence had been disclosed, it was clear that he was in fact in contact with people in Ethiopia. He had two SIM cards. Both before he travelled from Calais and after he arrived in the UK, he continued to both send and accept friend requests on Facebook. In addition, Mr Smith confirmed in oral evidence that the Applicant had revealed to him that he was in contact with people from Ethiopia. The Applicant sought to explain that these were Facebook connections with people who were only friends on Facebook and not people he knew in person, but it nevertheless fundamentally undermined his assertion that he was not able to be in contact with anyone from Ethiopia and had not done so. Indeed, as it now transpires, on his own account, he has communications with people in Ethiopia and Eritrea.
- (23) There was also a direct contradiction in his evidence about the SIM cards in question. He initially suggested in oral evidence that the SIM card he had in the UK (he initially referred to only one SIM card) was the one that he had had in Belgium, which he had used to call his mother before she died. He then then asserted that he had thrown his mobile phone in the sea, while in a dinghy crossing the English channel, having been advised by those trafficking him to do so along with everyone else *"because otherwise it would reveal information about*

them". He alternatively claimed to have removed the SIM card, retained it and had only thrown the phone into the sea. When asked why then he could not contact people in Ethiopia if he still had the SIM card with him, he then claimed to have discarded the only SIM card he had almost immediately upon arrival in Dover, because it had not worked. He then changed his position again, disclosing the existence of two SIM cards. All of these answers demonstrated the Applicant's tendency to change his account, in order to avoid a line of questioning which he anticipated would cause him potential difficulties, namely an answer indicating possession of a SIM card which had contact details of family members, including, most likely, for his mother.

- (24) Another significant factor weighing against the Applicant's credibility was his failure to disclose material circumstances, even to those whom he trusted. He accepted in oral evidence that he trusted Mr Smith. Yet he had never discussed with Mr Smith, despite their close and trusting relationship since January 2021, that even on his own account, he had proposed marriage in a formal ceremony at some point in the summer of 2021, which had been photographed and witnessed. He explained in oral evidence that he had not told Mr Smith as he regarded this as a "*private matter*". While I regarded Mr Smith as a candid and wholly honest witness, it is clear that the Applicant sought not only to withhold facts from this Tribunal, but also from Mr Smith. This inevitably meant that the comments that Mr Smith provided in relation to the Applicant, particularly in relation to his participation in, for example, board games and such like at the club at which he worked which, in Mr Smith's view, were tending to show the Applicant as having a younger age, were not the full picture. In particular, the fact that the Applicant, even on his own case, was engaged either shortly before or shortly after his 18th birthday, on 12th June 2021, to a woman he claims is four years older than him, fundamentally undermined Mr Smith's evidence. Put simply, Mr Smith was an honest witness, experienced in working with different age groups but was clearly not aware of material parts of the Applicant's circumstances, which the Applicant had intentionally concealed from him.
- (25) Turning to specific parts of the Applicant's narrative, I make no specific findings as to the circumstances of the Applicant's travel from Ethiopia, via Sudan, Libya, Italy, Belgium and France. It is unnecessary to do so for the purposes of the age assessment, as I am not determining an asylum claim and do not wish in any way to curtail enquiries in relation to that

assessment. The only observation I make is that I am far from satisfied that even now, the Applicant has provided full disclosure including the SIM card that he had with him whilst in continental Europe, which might provide important evidence as to his transit and his mother's contact details, and I am also far from satisfied that I have before me relevant evidence as to whether in fact the Applicant was fingerprinted in Italy. The Respondent accepted that EURODAC enquiries had not been followed up. On the Applicant's own account, as now revealed, his evidence as to whether he was or was not fingerprinted and the circumstances in which he avoided being fingerprinted is confused and he accepts that he attempted to mislead the age assessors on this point.

The Applicant's birthday celebrations in Ethiopia

- (26) I consider the question of the Applicant's memories of celebrating his birthday in Ethiopia with his mother. The Applicant claimed in his written witness statement that every year on the 12th day of each sixth month, his mother would light candles and say "this is what your age is". He recalled celebrating when he was 14 or 15 years old but did not recall earlier celebrations. When asked why he did not recall earlier celebrations, the Applicant could not remember. While I am very conscious of the effects of trauma and the Applicant's age, even on the Respondent's case, as I have already mentioned, the Applicant also gave a similar answer that he could not remember, when it was plain that he did remember, such as his fiancée's/wife's family name. He was also able to recall in his oral evidence, which he had not disclosed before, the existence of end-of-year school reports until aged 10, when he left education, which stated his name and date of birth. He had a distinct recollection of the school reports as he had looked at them a number of years later, but was unable to explain why he had not mentioned this fact before.
- (27) In summary, I am not satisfied that the Applicant's explanation for why there were no birthday celebrations before he was 14 or 15, namely that he could not recall, is likely to be accurate, when he could recall with confidence school reports when he was aged 10 and was already willing, without hesitation, to claim a lack of recall, when that lack of recall was plainly not truthful. This in turn affects the reliability of his claims about his 14th and 15th birthday celebrations. While I accept that it is likely that he celebrated his birthday with his mother, I do not accept the reliability of his evidence on his claimed ages on the two birthdays before

he left Ethiopia.

The Applicant's religious ceremony/wedding in 2021

- (28) The first point is that the Applicant had never voluntarily revealed the fact any relationship with his partner, let alone any religious ceremony with her. It was only when I asked his then solicitors to confirm they were satisfied that they had disclosed all relevant documents, further to the duty of candour, in relation to social media and other electronic communications, that he revealed the fact of his relationship. As already indicated, the Applicant had not revealed that even to Mr Smith, with whom he has a close and trusting relationship.
- (29) The fact of the relationship was plainly apparent from photographs on his Facebook account, which showed him with his partner, in what appeared to be a formal religious ceremony. As already noted, he had initially claimed to be unaware of his partner's family name. I find that he did so to attempt to divert attempts to identify her as one of his Facebook "friends" or contacts. When he did identify her, that prompted his and the respondent's representatives to review her Facebook account, which was an open account, without privacy settings. That in turn resulted in the Applicant's representatives ceasing to act for him, as his oral evidence about his partner was not accurate, and he refused to clarify that evidence, or indeed give any further evidence at all.
- (30) Before his representatives ceased to act, the Applicant was asked about the date on which the religious ceremony had taken place, at the Kidane Mehret Eritrean Orthodox Church in Willesden Junction. He said that it was around the New Years' Day celebration for 2014, using the Ethiopian calendar. When he was asked when Ethiopian New Year was, he was unsure. He explained that there were differences between the Eritrean and Ethiopian calendars (he was from Eritrea) and he could not remember the precise difference. He accepted, however, that he was educated in Ethiopia and was taught the Ethiopian calendar. The reference to the Eritrean calendar is, in my view, irrelevant.
- (31) To the extent that the Applicant's lack of recall of the date of the religious ceremony might be explained by a lack of knowledge of the European calendar, this is answered in two

respects. First, he was able to do so by reference to his claimed European calendar birthday, although he was inconsistent on this. He first gave evidence that it was before his claimed 18th birthday in June 2021, but later gave evidence that the ceremony was in September 2021. Second, when he was asked whether there was any document which might indicate the date of the ceremony, he specifically denied this. That was evidence was, I find, deliberately untruthful, as the Respondent has since discovered a photograph relating to such a document, which I come on to describe below. The Applicant's inability to recall reliably the date of his religious ceremony is not in my view explained by relative youth or any particular vulnerability, particularly when he knows that there is a document that will verify the date of the event, the existence of which he has attempted to conceal. Rather, it is explained by the Applicant's desire to reveal as little information about himself as possible, for fear of the consequences of disclosure.

- (32) The Applicant was also asked about the nature of the ceremony. He claimed that it was an engagement ceremony at the church, and that the couple were planning to marry in the future. It was a simple blessing, with only three present other than the couple, only one of whom the Applicant knew, who were dressed in ceremonial robes. His fiancée was originally from Eritrea and was born on 5th October 2000. When asked whether they had discussed the claimed age gap between the two, he responded that he was 18 at the time of marriage in 2021.
- (33) Following the discovery and review by the Applicant's solicitors of the Applicant's partner's Facebook account on the evening after the first day of the hearing 26th April 2022, which was possible because the partner could now be identified by her family name, Ms Nessa, solicitor acting for the Respondent, also viewed that account, which contained photographs of the couple, in what appeared to be formal ceremony poses. Friends of the partner had added their comments to the photographs of the ceremony, stating: 'happy wedding'; 'happy marriage'; 'happy married life'; and 'May God bless your marriage'. The photographs on the Applicant's partner's account, in contrast his account, showed a far greater number of people than just the couple and three attending male witnesses, as the Applicant had claimed, as shown in the photographs on his account. There were unnamed women dressed in formal attire, mostly likely bridesmaids, and a significant crowd of people together with a priest.

- (34) Crucially, there is also a posed photograph of the couple standing beside one another, leaning forward to an ornately furnished table, before a robed individual, in which the Applicant's partner puts a pen to what appears to be a certificate. The Applicant chose not to address this evidence from his partner's account, having declined to correct his evidence from the previous day that there was no documentary evidence relating to the ceremony.
- (35) Having viewed the evidence myself I have little doubt that the photograph is of the couple signing a marriage certificate, in a formally posed photograph, as is common at many weddings. I also have little doubt that the photograph supports the Respondent's position that the Applicant is married; and that the certificate will reveal the Applicant's age as he believes it. His reason for attempting to conceal the existence of the document is to conceal that fact, namely a document bearing what he regards as his true age.
- (36) I also infer that he is unwilling to disclose his marriage certificate because it does not support his claimed age. I also bear in mind the absence of witness evidence from the large group of people who appear to have attended the couple's wedding. There is likely to be a wealth of potential witness evidence that the Applicant could have adduced as to those who know him through his family and support network other than a professional, Mr Smith. Once again, this gravely undermines the Applicant's credibility.

The Respondent's age assessment

- (37) Turning to the Respondent's age assessment, it is not the purpose of this judicial review to assess the legality of it, save to the extent that it is necessary to consider what weight to attach to that analysis. The practical difficulty that the assessors faced an applicant, who, on his own account, intentionally misled them on aspects of his narrative (inventing an account of feigning illness and fleeing a hospital to avoid having his fingerprints taken). The assessors themselves were concerned about his confidence and physical demeanour, his fortitude in traveling across Europe, and also the inconsistencies in his account. Mr Smith, for his part, raised concerns about such generalisations, noting in particular that in his experience of dealing with young people, many children even younger than the Applicant had displayed

similar fortitude and might also be reticent, which would explain omissions. In his words, children might, during interview, be “stropky”. I attach limited weight to the assessors’ views of the Applicant’s demeanour or his physical presentation. There are significant risks of basing an age assessment on these two factors, notwithstanding the experience of the assessors. I remain conscious that the Applicant may have presented an account that lacks credibility but he may still be telling the truth about his core age.

- (38) That being said, the Applicant has not only sought to mislead the assessors but also, in the context of a close and trusting relationship with Mr Smith, did not disclose the material part of his life relating to his wife. That must, as already indicated, undermine substantially Mr Smith’s evidence, which dwelt on matters such as the social activities, such as games, he had observed the Applicant engaging in. Observations of such social activities are of limited relevance where Mr Smith was unaware that the Applicant was married, in front of an apparently wide circle of people.
- (39) I turn then to how this might all be relevant as to the Applicant’s age, which is the central focus of this enquiry. I have attached limited (but some) weight to the assessors’ report because of the generalised nature of some of their comments about his appearance and demeanour, and also because they were misled by the Applicant. Where their report, which assessed the Applicant as being 22, in 2020, has more force, is in relation to the inconsistencies in the Applicant’s account, and those inconsistencies are in fact even greater than they could have appreciated. Mr Smith has, in a different respect, also been misled, and I attach limited weight to his evidence.
- (40) The Applicant’s claimed date of birth is 13th June 2003. On the best assessment I can make, I think it likely that this is the Applicant’s birthday, but he has been untruthful about the year of his birth. While he claims to have been born in 2003, he has been willing to be deliberately untruthful and has a strong motive to do so. On his account, his wife was born on 5th October 2000. The Applicant was asked whether he and his wife had ever discussed the issue of an age gap between them, based on her being three years’ older than his claimed age. I make no assumptions about cultural norms of those with different ages marrying. I do, however, regard it as not credible that they would not have discussed the issue at all. I

conclude that the reason that the Applicant was unwilling to comment on the issue, was what those questions would reveal about their respective ages and whether she is older at all. I infer that the opposite is most likely, and that the Applicant is older than his wife.

- (41) While I have noted the limitations in the Respondent's age assessment and have attached correspondingly limited weight, I have not attached no weigh to it. Added to this are the facts as I have found, that the Applicant is older than his wife, born on 5th October 2000. While I am not confined to choosing between the position of the parties (see R (W) v London Borough of Croydon [2012] EWHC 1130, the best assessment I am able to make on the evidence before me, is that it is more likely than not that the Applicant has a date of birth of 12th June 1998, so he is around 20 months older than his wife. This is consistent with, but at the younger end of the Respondent's initial assessment of his age, which also reflects Mr Smith's comments on the behaviour and fortitude of even relatively young people (around 22 to 23, when Mr Smith met him).

Decision

- (42) I find that the Applicant has an allocated date of birth of 12th June 1998.

J Keith

Signed: _____

Upper Tribunal Judge Keith

Dated: **7th July 2022**