



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

JR-2022-LON-001468

Field House,
Breams Buildings
London
EC4A 1DZ

3 & 4 April 2023

BEFORE
UPPER TRIBUNAL JUDGE RINTOUL

Between

K
(anonymity order made)

Applicant

and

London Borough of Islington

Respondent

ORDER

BEFORE Upper Tribunal Judge Rintoul

UPON having read the bundle produced for the purposes of the hearing on 3 and 4 April 2023 and the skeleton arguments of both parties

AND UPON having heard on 3 and 4 April the oral evidence of the applicant, Ms. F. Mohammadi, Ms. K Rychlicka, Ms. G. Couchman and Mr. D. Christian

AND UPON having heard on 4 April 2023 the oral submissions of counsel for both parties

IT IS DECLARED THAT the applicant was born on 1 January 1996

IT IS ORDERED THAT:

- (1) The application for judicial review is dismissed (see attached for reasons).
- (2) (as agreed between the parties) the applicant shall pay the respondent 75% of their costs on the standard basis, to be assessed if not agreed, but subject to costs protection under section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- (3) There shall be a detailed assessment of the applicant's publicly funded costs.
- (4) Permission to appeal is refused because I am not satisfied that my decision involved the making of any error of law.

Signed: **Jeremy K H Rintoul**
Upper Tribunal Judge Rintoul

Dated: **3 May 2023**

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): *11 May 2023*

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).



Case No: JR-2022-LON-001468

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

3 May 2023

Before:

UPPER TRIBUNAL JUDGE RINTOUL

Between:

THE KING
on the application of
K
(by his litigation friend, the official solicitor)
Applicant

- and -

THE LONDON BOROUGH OF ISLINGTON
Respondent

Ms S Wright
(instructed by Just for Kids Law) for the applicant

Mr H Harrop-Griffiths
(instructed by London Borough of Islington) for the respondent

Hearing date: 3 and 4 April 2023

J U D G E M E N T

JUDGE RINTOUL: The applicant has applied for a judicial review of the respondent's decision of 23 February 2022 that he was not the age claimed. The applicant seeks a declaration that he is the age claimed; that he was under 18 at the time; and, a quashing of the age assessment.

2. The hearing took place between 3 to 4 April 2023 in person.

Chronology

<u>Date</u>	<u>Events</u>
1 December 2004	Applicant's stated date of birth.
December 2021	Applicant arrived in the United Kingdom, via a small boat, Home Office assigning a date of birth of 1 January 1996; his asylum claim processed as an adult.
16 February 2022	Applicant is referred to the respondent by Just for Kids Law.
23 February 2022	Short-form assessment carried out by the respondent
27 May 2022	These proceedings are commenced in the High Court.
14 September 2022	Permission granted on the papers; application transferred to the Upper Tribunal
28 September 2022	Directions issued by the Upper Tribunal
22 November 2022	Directions varied
11 January 2023	Further Directions issued

3 March 2023	Directions varied
20 March 2023	Directions issued permitting the applicant to adduce a report from Dr Heke
3 to 5 April 2023	Hearing

Procedural History

3. The Upper Tribunal issued directions for the future conduct of the case on 28 September 2022, setting out a timetable for the service of documents and other matters. Further directions were given on 11 November 2022 and on 20 March 2023 as set out above.

The Applicant's Case

4. The applicant is a citizen of Afghanistan. He comes from Baghlan Province where his father was a farmer. The family lived some 20 to 25 minutes' drive from Baghlan town. His father was killed by the Taliban after an incident in which he refused to hand over rice he had grown to them.
5. The applicant left Afghanistan with the assistance of his mother and maternal uncle travelling first via Iran to Turkey and then overland in various stages until he arrived in the United Kingdom
6. The applicant maintains that he was born on 1 December 2004 and that he is at risk from the Taliban on return to Afghanistan.
7. The applicant's case is that he has consistently told the truth about his date of birth and that he has given an accurate and truthful account of how and why he left Afghanistan, his journey to the United Kingdom and that he is uneducated and illiterate.

The Respondent's Case

- 8.** The respondent's case is that the applicant has not given a consistent or credible account of his circumstances or how it is that he came to the United Kingdom to claim asylum. Inferences are taken as to his behaviour, appearance and inconsistencies in his account, such that he is not to be believed. In the circumstances the respondent maintains its age assessment and is of the view that the assessment that he was born on 1 January 1996 is one which is fair, reasonable and open for it to make; and, that it was appropriate to conduct a short-form assessment given that the applicant is significantly over 18.

The Hearing

- 9.** At the outset of the hearing, I checked that the applicant understood the interpreter and explained to him what was going to happen. In light of the report of Dr Heke, indicating that the applicant is a vulnerable witness and recommending that steps be taken in line with the vulnerable and child witness guidance, I proceeded on the basis that he is a vulnerable witness. I checked whether any particular steps should be adopted. It was explained to the applicant that he could take breaks if needed and that if he had any questions or did not understand anything then he should ask and we would do our best to assist him. While bearing in mind the guidance regarding questioning as set out in Dr Heke's report, of which both Counsel were aware, at no stage was it suggested that any of the questioning was improper or contrary to the guidance.
- 10.** I heard evidence from the applicant and Ms F Mohammadi as well as Ms K Rychlicka on his behalf. I also heard evidence from Ms G Couchman and Mr D Christian on behalf of the respondent. Both representatives made submissions relying on their respective skeleton arguments.

- 11.** In addition to the above I also had before me the following: -
- (1) Applicant's bundle paginated from 1 to 241.
 - (2) Supplementary bundle paginated from 243 to 306.
- 12.** Both representatives agreed that these contained all the material upon which I would need to rely and that if anything else was required this would be drawn to my attention. As I have explained there were in addition three larger bundles which had been served earlier which contained material additional to that in the trial bundle which had been prepared for the hearing.

The Law

- 13.** In R (FZ) v LB of Croydon [2011] EWCA Civ 59 the Court of Appeal set out guidance as to how the court should ascertain the fact of age. In addition to that summary, it is appropriate to consider additional decisions.
- 14.** In R (CJ) v Cardiff City Council [\[2011\] EWCA Civ 1590](#) the Court observed at paragraph [23]:

"Where the issue is whether the claimant is a child for the purposes of the Children Act it seems to me that the application of a legal burden is not the correct approach. There is no hurdle which the claimant must overcome. The court will decide whether, on a balance of probability, the claimant was or was not at the material time a child."

Also in R (B) v LB of Merton [2003] EWHC 1689 at [28] and [37] , Stanley Burnton J held:

28. Given the impossibility of any decision maker being able to make an objectively verifiable determination of the age of an applicant who may be in the age range of, say, 16 to 20, it is necessary to take a history from him or her with a view to determining whether it is true. A history that is accepted as true and is consistent with an age below 18 will enable the decision maker in such a case to decide that the applicant is a child. Conversely, however, an untrue history, while relevant, is not necessarily indicative of a lie as to the age of the applicant. Lies may be told for

reasons unconnected with the applicant's case as to his age, for example to avoid his return to his country of origin. Furthermore, physical appearance and behaviour cannot be isolated from the question of the veracity of the applicant: appearance, behaviour and the credibility of his account are all matters that reflect on each other.

And at [37]:

37. It is apparent from the foregoing that, except in clear cases, the decision maker cannot determine age solely on the basis of the appearance of the applicant. In general, the decision maker must seek to elicit the general background of the applicant, including his family circumstances and history, his educational background, and his activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the applicant's statement as to his age, the decision maker will have to make an assessment of his credibility, and he will have to ask questions designed to test his credibility.

- 15.** It is also relevant to consider R (AM) v Solihull Metropolitan Borough Council (AAJR) [2012] UKUT 00118 (IAC), in which the Vice President of the Upper Tribunal stated at paragraph [15]:

"In the present case the evidence is wide ranging. It may therefore be appropriate to make some general observations about the impact of evidence of various sorts and from various sources in this type of case. First, we think that almost all evidence of physical characteristics is likely to be of very limited value. That is because, as pointed out by Kenneth Parker J in R (R) v Croydon [2011] EWHC 1473 (Admin) there is no clear relationship between chronological age and physical maturity in respect of most measurable aspects of such maturity."

- 16.** He also stated at paragraph [19] to [21]:

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

observations of demeanour and interaction with others made over a long period of time by those who have opportunity to observe an individual going about his ordinary life. But we find it difficult to see that any useful observations of demeanour or social interaction or maturity can be made in the course of a short interview between an individual and a strange adult. There may of course be cultural difficulties in such an interview but there are the ordinary social difficulties as well.

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

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

17. I accept that a holistic approach must be taken; neither physical appearance nor demeanour can or should be determinative. As both Counsel accepted, the assessment of age could be based on physical appearance, behaviour/demeanour, and credibility. But, as the case law makes clear, there are significant dangers in attaching much weight to physical appearance and behaviour/demeanour.

Analysis of the Evidence

18. In reaching my decision I have taken into account all the material presented to me, even if it is not mentioned expressly. I have paid particular attention to the parts of the evidence drawn to my attention, paying particular attention to those passages referred to me in submissions from both Counsel. I have

conducted a holistic assessment of the totality of the material, noting that neither party bears the burden of proof.

- 19.** In evaluating the applicant's evidence, I bear in mind that he may be a minor and may be illiterate and uneducated. I bear in mind also that he may have suffered abuse during his journey, having spent an extended time in what would on any view be unsuitable circumstances on his journey from Afghanistan via Iran, Turkey, Greece, Serbia and France. I am aware also that he says he was beaten in Iran and witnessed others dying.
- 20.** In addition, I have applied the guidance in AM (Afghanistan) v SSHD [2017] EWCA Civ 1123. At the outset of the hearing (as set out above) I asked the applicant's representatives if there were a need for adjustments to be made other than the need to take breaks but no specific requests were made.
- 21.** I have also assessed the applicant's evidence in the light of MVN v London Borough of Greenwich [2015] EWHC Civ 1942 at [27 to 28].
- 22.** There is no documentary evidence to support the applicant's assertion that he was born on 1 December 2004.
- 23.** It is appropriate to commence an analysis of the evidence, and in particular that of the applicant, with the report prepared by Dr Heke given its relevance to the assessment of what he said. I am satisfied that she is entitled to be treated as an expert witness. She has given the appropriate declarations in her report. I accept she is a consultant clinical psychologist who is currently a clinical lead in the area of trauma.
- 24.** The report was prepared after an assessment of the applicant of two hours' duration carried out at the offices of his solicitors with the assistance of a Pashtu interpreter. She confirms that she had

sight of the Tribunal bundle, the agreed statement of facts and issues, and sets out [2.0] instructions from the solicitors. She confirms that she carried out a comprehensive diagnostic assessment of major depression, post-traumatic stress disorder (“PTSD”) and other comorbid mental health problems. Having set out at section [3.2] the applicant’s responses to issues, she concluded [4.2] although he did not meet the full criteria for PTSD he does have:

“considerable trauma related symptoms caused by rumination about his situation, which leads him to experience intrusive images to his past, especially those on his journey to the UK from Afghanistan and the inhospitable and very challenging circumstances he had to endure. K does in my opinion present with a comorbid severe major depressive disorder. He does not meet the clinical threshold for a specific anxiety disorder as he did not describe any specific anxiety related thoughts or physiological arousal.”

- 25.** Dealing with cognition and cognitive difficulties of impairment, Dr Heke set out [5.1] that this is difficult to assess through an interpreter and where the individual’s educational attainment and performance is limited. She considered [5.1.4] that the applicant’s account of how he had lived in Afghanistan was highly typical of children growing up in rural areas of Afghanistan and that there were “significant limitations in [K]’s comprehension and understanding of my questions”.
- 26.** Dr Heke believed that the applicant does have an intellectual ability below that expected of a young man that had been afforded the opportunity of attending school and that he has no literacy skills. She concluded that his cognitive difficulties and comprehension is limited, complicated by his lack of access to any formal education never having achieved any degree of literacy.

She considered that although he did not meet the clinical threshold for a diagnosis of PTSD this should not minimise the impact of his past traumatic experiences on functioning. She noted [5.4.1] that the applicant had not engaged with self-studying via the internet despite his repeated insistence this is his only goal but this could reflect his lack of motivation due to depression, but also that he does not understand how to learn independently and unassisted.

27. Dr Heke considered also that the applicant's mental health problems had increased due to the challenges he had experienced in proving his age and applying for leave to remain in the United Kingdom exacerbated by the "considerable resilience that K demonstrated in the face of the repeated and accumulative traumatic experiences whilst growing up in Afghanistan and then making a harrowing and very traumatic journey to the UK". She observes also the significant losses in his life with his father being killed and lacking contact with family and these experiences may be why he is entirely preoccupied with engaging to study.

28. With regard to the applicant's memory [5.8], Dr Heke noted that the applicant expressed concerns regarding his ability to recall with specificity his past traumatic experiences, that he required patience and support with focused questioning in order to provide his account but even then struggled to respond directly to questions. She considered it was also well recognised that inconsistencies in accounts were common in refugees seeking asylum, inconsistencies becoming more common where there are severe levels of PTSD and depression [5.8.2]. She did not believe that any young person with the applicant's background could present as one would expect for a young person growing up in the safety of a family environment and being able to engage with normal childhood activities such as attending school, and having read all the evidence provided to her and considered how he

presented in the course of assessment found his account to be plausible and credible from a clinical perspective.

- 29.** Dr Heke did, however, consider that he was fit to be cross-examined so long as proper support was in place.
- 30.** There is no direct challenge to the diagnosis of a major depressive disorder or that there is a degree of PTSD, albeit below the clinical threshold for such a diagnosis.
- 31.** I bear in mind Dr Heke's experience in dealing with young people who have suffered trauma particularly refugees, and I accept that she has viewed witness statements provided including that of Daniel Christian and the assessments.
- 32.** Dr Heke has not, of course, observed the applicant in court or seen or heard his responses to questions. I also note it is not expressly indicated whether she considered that the applicant was exaggerating or feigning any symptoms.
- 33.** Dr Heke has, of course, based her opinion on the assumption that the applicant is telling the truth. It is, however, worrying that she bases some of her diagnosis on the assumption that the applicant had faced repeated and accumulative traumatic experiences whilst growing up in Afghanistan. Ms Wright was able to direct me to references to the applicant being unable to attend school as a consequence of safety concerns posed by the Taliban. I do not accept that this meets the threshold of "repeated and accumulative" nor do accept that meeting that threshold could be inferred from what he is recorded as having said. Although she accepted his account of his father being killed by the Taliban, that is not a cumulation of events; it is a single event. I accept that there are problems in the area owing to a fear of attack by the Taliban but that is all but I do not accept that what has been

described could properly be an accumulation given the lack of relevant detail.

- 34.** In light of the diagnoses reached (and as noted above) I have proceeded on the basis that the applicant is a vulnerable witness and needs to be treated as such. It does not, however, mean that I must accept everything he says.

Physical Appearance

- 35.** As Ms Wright submitted, only the appearance of the applicant's skin and whether he shaves appears to have been taken into account in assessing his appearance; no account appears to have been taken of his height or weight. Whilst that is correct, the normal range is considerable and both of these measures may vary from country to country. That average height for adult males varies significantly from country to country is a matter of which I take judicial notice.

- 36.** As with many age assessments, there has been an unhelpful focus on whether a young man shaves or not; or, the age at which he began to do so. The appearance of facial hair is a secondary characteristic following on from male puberty. The onset of puberty is, as is well-known, something which occurs within a wide age range. Similarly, and perhaps just as obvious, stubble is more likely to show in somebody with dark hair. It should be born in mind also that whether a young man develops facial hair will also vary considerably from country to country.

- 37.** That said, I do note the consistent account of those witnesses who appeared before me (with the exception of Ms Mohammadi) that the applicant's physical appearance was of somebody, owing to his skin in particular, considerably older than his claimed age.

- 38.** It is, however, necessary to observe that whilst there are clear difficulties in assessing age through physical appearance, at opposite ends of the age spectrum – for example, in the case of somebody who is over 40 or under the age of 12 – it may be more obvious. With a narrower age range, it is much more difficult to attribute age with any degree of accuracy.
- 39.** I attach little weight to Ms Mohammadi’s evidence. When asked about the applicant’s appearance, having given evidence about whether or not he shaved or not and his skin appearance, she started talking about people from the south of Afghanistan. When it was put to her that the applicant was from Baghlan, in the north of Afghanistan, in fact the area from which she is from, she became flustered and then said that Baghlan covered a bigger area, some parts further south than others and that Pushtu people had moved there. Her evidence became more confused when it was explained to her the applicant had said that he came from no more than twenty to 25 minutes’ drive from Baghlan city which, as maps indicate, is significantly to the north of Kabul. Insofar as Ms Mohammadi’s evidence relates to the applicant’s behaviour with her, as Mr Harrop-Griffiths submitted, her interaction with him was on three separate occasions in total less than an hour. Further, as with an interview or a court hearing, this could not be seen as a “natural” situation. The applicant was being seen by her in a capacity where she was seeking to assist him or put him in touch with those who could assist him.

Behaviour/Demeanour

- 40.** It is difficult to attach much weight to any of the evidence on this issue. Nearly all the evidence before me arises from how the applicant has been observed in artificial circumstances: interviews in terms of the age assessment on two separate occasions with the

assistance of two different interpreters using a mobile phone; and, the applicant's appearance in court. The difficulty with the submissions made on these issues is that it is based on value judgments as to how teenagers or for that matter adults would appear. For the respondent it is said that he has shown he is confident and calm; the applicant submitted that this is him being compliant. In short, I do not consider, given the limited nature of the evidence as to behaviour/demeanour, that adverse inferences can be drawn.

Credibility

- 41.** Although I heard evidence from Ms Couchman and Ms Rychlicka, this was concerned with primarily what had happened at the interview regarding social media. The evidence relates to possible inconsistencies as to what was said at the meeting. Given that I have not found it necessary to attach weight to that meeting, and given that the inconsistencies are perhaps one of perception and minor in nature, and bearing in mind that what was undertaken was not a forensic questioning session, nothing turns on that.
- 42.** In assessing the applicant's credibility, I bear in mind carefully what Dr Heke has said. In particular, I bear in mind that the applicant may, as he says, be entirely illiterate, uneducated and in entirely unfamiliar surroundings. He suffers from a major depressive disorder and has symptoms of traumatic stress and in the circumstances care must be taken in drawing adverse inferences from inconsistencies.
- 43.** I do not consider that much weight can be attached to whether the applicant had given the date of birth on which he now relies - 1 December 2004 - to the Home Office. As Ms Wright submitted, the circumstances in which he was interviewed, just after he had been plucked from a boat which had crossed the English Channel and it

may be that he was simply asked his age rather than a specific date of birth.

44. I do, however, find that the applicant has been inconsistent about whether he knew his brothers' or sisters' dates of birth. His evidence in his witness statement is as follows: -

“3. I know I am 17 because my father and mother told me my birth date, and every year on my birthday they told me what the day was. We never celebrated the day, but we kept track of when it was. The same for my siblings”.

45. The applicant was not, however, able when asked in cross-examination to say what his siblings' date of birth was. He said “they must have told them, I keep forgetting”. His witness statement was put to him and he said that he did not remember now. Last time he knew his parents told about his brothers and sisters when their birthday was he said he was told but he did not know about that and kept forgetting and that they must have been told.

46. There is some inconsistency regarding the applicant's age of when he had been to school and given, that he said it was for about two years from age 12 or 13. If, as he says, he is effectively uneducated, little weight can be attached to the slight discrepancies over this but he was not able to mention either the season when he began or started school, explaining that he had no memory and it had been a long time. If, however, the applicant is telling the truth about his age, then this was only about four years ago. That is an inconsistency to which I consider some weight can be attached despite the qualifications due to his vulnerabilities, albeit not determinative.

47. The applicant's account of being given a Samsung Smartphone whilst in Serbia and that the people he was with asked him his age causes me doubt as to his credibility. The applicant is recorded as

saying that he had told the people who had set it up that he was 17. When questioned about this, he said that people say 17 as once an age is passed we go on to the next year. I find this explanation unsatisfactory, Dr Heke's report notwithstanding.

48. I now turn to the evidence about the applicant being seen in a butcher shop in Dalston on 6 June 2022. The applicant was, as he accepts, seen by Daniel Christian, one of the social workers who had conducted the age assessment, on that date. It is not disputed that he was at a butcher's shop, nor that Mr Christian took a photograph of him using his mobile phone. There are, however, inconsistencies in how the applicant came to be there, what he was doing there, how long he was there on that occasion as well as what, if anything, he said to Mr Christian.

49. The applicant's oral evidence was that he knew the butcher as on one occasion he had been passing the shop, the butcher called out to him and spoke to him. He was Afghani and spoke Pushtu. The applicant had explained that the food in the hotel was not good and the butcher had taken pity on him giving him food which he obtained from a takeaway.

50. In cross-examination he said that he had told the butcher his name; the butcher was from Ningarhar in Afghanistan but that he did not know his name as he had never asked him. He did, however, know that he had a wife and three children. He said that he had visited about once a week for some months but when asked what they would talk about said that there was nothing particular, they had not discussed what his life had been like in Afghanistan or about his journey to the United Kingdom. He said that he still sometimes goes to the shop and gets food there. He accepted on a couple of occasions he had cut up chicken when shown what to do.

- 51.** The applicant said that he had never worked in the shop and would not be able to do so as he did not speak the language by which he meant English. He said he had not been paid for any work there.
- 52.** Mr Christian's evidence is that he had been passing through the market, pushing his bike when he had seen the applicant. He took a photograph of him which shows the applicant wearing a white coat and standing behind the counter in the butcher's shop. He says that he went towards the applicant and spoke to him having seen him chopping meat. He said the applicant immediately tried to leave the butcher's and was paid money by the other man. In oral evidence Mr Christian said that he spoke to the applicant in English and that he had recognised him. He had told him that he should not be working and he had replied that he has his status.
- 53.** Mr Christian passed by the shop again, in his oral evidence saying this was approximately two hours later, on this occasion he had seen the applicant working there again alone on this occasion chopping meat.
- 54.** The applicant's evidence about what had happened on the first and second occasions that Mr Christian had passed by the shop is a little confused. The account given by both the applicant and Mr Christian is to an extent consistent. Mr Christian saw the applicant, recognised him and took a photograph. The applicant then left the shop, and they moved away in a similar direction. The applicant denies accepting money.
- 55.** When asked about this incident in cross-examination the applicant said that he had gone there, accepting this was in the morning, and that he had just come to the shop. He said that he had come to eat something but had just gone away. I find that

implausible. I find it implausible also that the applicant would have given a slightly different account.

56. Mr Christian's evidence was clear. It was put to him that he could have misunderstood what the applicant had said to him in response to being asked whether he was permitted to work. I find that this was not disturbed and I accept Mr Christian's evidence on that point, that, in itself, indicates a degree of knowledge on the part of the applicant and a degree of English that he had learned that he was able to understand the question and to give an answer which accorded with the question. It also indicates that he was aware that once he had status as a refugee he would be entitled to work.

57. It is unclear why the applicant said to Dr Heke that he had met the butcher elsewhere, that is, not at the shop. That casts some doubt on the accuracy of his evidence. I find also that the applicant has not provided a reasonable explanation why he did not know the butcher's name despite meeting him on at least a weekly basis over a period of months. I find his evidence as to what they talked about to be so lacking in any detail to be incredible. The applicant was simply unable to explain what they discussed, despite having met regularly. I do not accept that there is anything in Dr Heke's report which would explain that or the inconsistencies referred to above relating to the applicant's relationship with the butcher. The reality is that the applicant was seen working in a butcher's shop, wearing a white coat as might well be expected from someone working there, and sought to leave when he was seen by a social worker whom he recognised. I see no reason not to prefer Mr Christian's evidence on this point, nor to accept that money was seen to change hands.

- 58.** There is also a degree of inconsistency in this indication that the applicant had in fact been working in a butcher's shop (and indeed was so later that day) and having someone to whom he could turn to get food on a regular basis and saying that he is completely isolated and alone and making no mention of that. On the contrary, his first witness statement stresses how isolated and alone he is and how he has no one to talk to. This is not just an inconsistency as to events occurring but as to the nature of a relationship. I find that it does indicate the applicant is untruthful and seeks to exaggerate his situation.
- 59.** Dr Heke's report simply does not explain how the applicant could be so inconsistent about whether he was working or not.
- 60.** Taking all of these factors into account and viewing the evidence as a whole, and bearing in mind Dr Heke's report, I find that the applicant has lied about what he was doing at the butcher's shop and I find that he was in fact working there. His account put forward to explain it is lacking in any credibility and undermines his claims as a whole. That, taken with the inconsistencies regarding how he knew his age and that of his siblings, leads me to the conclusion that his evidence is wholly unreliable, lacks credibility, and accordingly I reject his account as to his date of birth.
- 61.** Having rejected the applicant's evidence, on the balance of probabilities, I must decide what his age is. While I bear in mind the dangers of relying on physical appearance, it still remains part of the holistic approach to age assessment and, given the unreliability of the applicant's evidence and the unreliability of any evidence as opposed to demeanour and behaviour, I find that the only evidence which I can safely rely on in assessing the applicant's age is the consistent evidence of the social workers and

the assessment that he is at least 26 years of age. I find that is consistent with a date of birth of 1 January 1996 and I am satisfied that is his correct date of birth.

62. For these reasons I dismiss the application. I find that the applicant's true date of birth is 1 January 1996.~~~~0~~~~