



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

In the matter of an application for Judicial Review

The King on the application of
L S
(ANONYMITY DIRECTION MADE)

Applicant

versus

WARRINGTON BOROUGH COUNCIL

Respondent

ORDER

BEFORE Upper Tribunal Judge Bulpitt

HAVING considered all documents lodged and having heard from Ms H Foot of counsel for the applicant and from Mr M Paget of counsel for the respondent at a fact-finding hearing on 10 – 11 December 2024

IT IS DECLARED THAT:

- (1) The applicant was born on 12 March 2003 and she was an adult on her arrival in the United Kingdom on 21 August 2023.

IT IS ORDERED THAT:

- (2) The application for judicial review is dismissed for the reasons in the attached judgment
- (3) The order of 21 May 2024 granting interim relief is discharged

Costs

- (4) The applicant is to pay the respondent's costs of the total claim including the interim relief application in the agreed sum of £27,150
- (5) The applicant having the benefit of costs protection under section 26 of Legal Aid, Sentencing and Punishment of Offenders Act 2012) the amount that she is to pay is to be determined on an application by the respondent under regulation 16 of the Civil Legal Aid (Costs) regulations 2013.
- (6) There shall be a detailed assessment of the applicant's publicly funded costs.

Permission to appeal

- (7) Permission to appeal is refused because neither of the grounds relied upon are arguable and it is not arguable that I have erred in some other respect or that there is some other reason that the Court of Appeal should consider this matter.
- (8) Contrary to the assertion made in ground one (at [4] of the application for permission to appeal) the judgment is explicit at [22] that the evidence has been assessed holistically and that the order in which the judgment is drafted was for the purpose of providing clarity and does not indicate that documentary evidence was considered only after the appellant's account had been found not to be credible. Contrary to the assertion made in ground two of the application for permission to appeal, the evidence about what the applicant said to the Immigration Officers about the date of birth attributed to her by the German authorities, including the applicant's oral evidence at trial was considered at [37] and [38] of the judgment while the applicant's mother's date of birth was considered at [56] of the judgment.

Signed: Luke Bulpitt
 Upper Tribunal Judge Bulpitt

Dated: 10 January 2025

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): 10/01/2025

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-2024-LON-001502

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

10 January 2025

Before:

UPPER TRIBUNAL JUDGE BULPITT

Between:

THE KING
on the application of
L S
(ANONYMITY DIRECTION MADE)

Applicant

- and -

WARRINGTON BOROUGH COUNCIL

Respondent

Ms H Foot
(instructed by Duncan Lewis Solicitors) for the applicant

Mr M Paget
(instructed by Warrington Borough Council) for the respondent

Hearing dates: 10 - 11 December 2024

J U D G M E N T

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Upper Tribunal Judge Bulpitt:

Introduction

1. This judgment follows a fact-finding hearing conducted over two days on 10 and 11 December 2024 for the purpose of determining the applicant's age and date of birth. The applicant asserts that she was born on 12 September 2006 and so on the date of hearing was eighteen years old. The respondent's position is that the applicant was twenty six years old on the date of hearing with an attributed date of birth of 12 March 1998.

2. The dispute about the applicant's age and date of birth arose after the applicant was recovered from a small boat that arrived in the United Kingdom having crossed the English Channel on 21 August 2023. The applicant told immigration officers she was an Eritrean national and was 16 years old. Two officers assessed the applicant as being considerably older than eighteen years old and allocated her the date of birth of 12 March 1998. On this basis the applicant was treated as an adult seeking asylum. She was accordingly dispersed to a hotel in London and then to a hotel housing adult asylum seekers in Warrington.

3. On 28 September 2023 staff at the hotel made a safeguarding referral to the respondent because of concerns they had about the applicant's welfare and her continued insistence that she was seventeen years old. That referral led to an age assessment conducted by two social workers employed by the respondent. The assessment involved the social workers meeting with the applicant on 29 September 2023 and 25 October 2023 before completing an "Outcome of Age Assessment" dated 27 November 2023 ("the Age Assessment"). The conclusion of that assessment was that the applicant was assessed as being twenty five years old with a date of birth of 12 March 1998.

4. The applicant became aware of the Age Assessment on 6 December 2023 after she had sought assistance from the respondent's "Wellbeing Service." Once she appreciated the consequence of the Age Assessment, the applicant instructed solicitors who, on 6 March 2024, applied for permission to challenge it by way of Judicial Review and for interim relief while the challenge was being considered. Following a hearing on 21 May 2024 Mr Justice Sweeting granted the applicant permission to judicially review the Age Assessment and, in line with usual practice, transferred the judicial review proceedings to the Upper Tribunal. In the meantime Mr Justice Sweeting granted interim relief requiring the respondent to provide the defendant with appropriate support (including accommodation) as a child under the Children Act 1989. Since that grant of interim relief the applicant has been living in supported accommodation in the North West of England. Mr Justice Sweeting's judgment was published with the citation R (oao LS) v Warrington Borough Council [2024] EWHC 2872 (Admin).

The proceedings in the Upper Tribunal

5. Case management directions issued by the Upper Tribunal were sealed on 10 June 2024 and on 30 September 2024 and a hearing bundle was filed in accordance with those directions. I granted an application to file further evidence in an order dated 3 December 2024 and an application for an extension of time for the respondent to serve a skeleton argument in an order dated 5 December 2024. As a result of these orders an additional bundle of documents including very helpful skeleton arguments prepared by Ms Foot and Mr Paget was filed on 10 December 2024.
6. The additional bundle of evidence included a letter from two of the applicant's support workers (p111). Ms Foot accepted that this was late evidence, served contrary to directions and was not part

of the further evidence I agreed could be served in my order of 3 December 2024. Notwithstanding this, Ms Foot asked that the letter be admitted in evidence. Mr Paget opposed that application, pointing out the failure to comply with directions and late service of the evidence. In all the circumstances I did not admit this additional letter. The purpose of the directions as to service of evidence is to ensure a fair and just hearing in which both parties have a reasonable opportunity to consider and respond to evidence. The failure to serve this letter in accordance with those directions prevented the respondent from that opportunity. As both parties recognised, the letter is of limited probative value and in all the circumstances I considered that its late admission would have had an adverse effect on the fairness of the hearing.

7. The fact finding hearing took place at Field House on 10 and 11 December 2024. At the beginning of the hearing a further photograph was filed by the applicant and an application made for this photograph to be added to the additional bundle of evidence submitted. This application was not opposed by Mr Paget though it did give rise to an additional statement from the applicant's solicitor being served at the end of the first day of the hearing. I discuss this further photograph and statement later in my judgment. For now it is sufficient to record that, given their probative value and in the absence of opposition, I considered admission of this late evidence to be consistent with the overriding objective of a fair and just hearing. To enable a fair opportunity to consider the late evidence I delayed hearing the parties' submissions until 2pm on the second day of hearing.
8. The written evidence I have considered therefore consisted of:
 - The Hearing Bundle (HB) containing 458 pages
 - The Additional Bundle (AB) containing a further 110 pages (page 111 not being admitted)

- An additional photograph served at the beginning of day 1 of the hearing
 - An additional witness statement from the applicant's solicitor served at the end of day 1 of the hearing
9. The applicant gave oral evidence during the hearing. Having considered a report by Dr Sophie Jones, a Clinical Psychologist (AB p71), I treated the applicant as a vulnerable witness. This involved adjustments during the hearing including the fact the applicant was accompanied by her support worker Tamzin who assisted her with documents while she gave her evidence, breaks during the applicant's evidence as suggested by Dr Jones and the use of simple and concise language in questions asked of the applicant.
10. Having heard submissions I reserved my judgment.

Anonymity

11. Before this matter was transferred to the Upper Tribunal Mrs Justice Lang made an order prohibiting the publication of any particulars likely to lead to the identification of the applicant. In view of the protection issues arising in the applicant's case I maintain that order in accordance with rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Summary of the parties' competing cases

12. The applicant says that she was born in Asmara, Eritrea on 12 September 2006 and that she was baptised at an Eritrean Orthodox Church in the same city in November 2006. She lived with her mother in Asmara where she attended kindergarten and junior school. When she was seven or eight years old her mother left abruptly and she started living with her grandmother. The applicant has since discovered that her mother left Eritrea to flee persecution as a Pentecostal Christian.
13. When she was ten years old the applicant tried to cross from Eritrea to Ethiopia with her Aunt but they were caught by Eritrean

soldiers. The applicant was detained in traumatic circumstances for three days before being released and returning to live again with her grandmother. When she was eleven years old the applicant successfully left Eritrea with her Aunt (her mother's sister) and travelled to Adis Ababa in Ethiopia. She stayed in Adis Ababa for the next approximately five years, living with her Aunt. A year after moving to Adis Ababa she started attending school but approximately a year later she stopped attending when, in December 2020 conflict broke in Ethiopia and people were being rounded up on the streets. The applicant stayed at home throughout 2021 to avoid the unrest but in 2022 started photography and English classes. Those classes ended after about three months however when she became unwell with a gastric problem.

14. In May 2023 the applicant says she was told that she would be moving to live with her mother in Germany. Her uncle arranged the paperwork with the help of solicitors and provided her with documents for her journey. She flew alone to Frankfurt and then on an internal flight to Dusseldorf, where she was met by her mother. She lived with her mother, stepfather and siblings in Gelsenkirchen for about three months. During this time she attended a number of appointments with the German authorities regarding her status but she did not understand the content of those appointments and her mother dealt with all paperwork. She became depressed in Germany and, unhappy at her treatment by her stepfather, her inability to speak the language and lack of documentation she decided to leave. She did not tell her mother but got a train to Paris where she met other asylum seekers and travelled with them to Dunkirk. At Dunkirk she arranged for an old friend who lives in the USA to pay people smugglers the fee to transport her to the United Kingdom in a small boat. Having

arrived she gave her correct date of birth on arrival in the United Kingdom.

15. Having been placed in adult accommodation in the United Kingdom, the applicant says she stayed in her room and became suicidal. Staff at the hotel became concerned and the referral was made to the respondent. Since being treated as a child in accordance with the interim relief granted by Sweeting J, she has thrived in supported living accommodation. She has started college and wants to train as a nurse. She has irregular contact with her mother in Germany but was able to obtain a photograph of her mother's identity document which shows that her mother was born on 5 July 1987 and therefore the attributed date of birth cannot be correct. The applicant insists that the date of birth she provided is correct and she was 16 when she arrived in the United Kingdom.
16. The respondent's case sensibly adapted in the light of the late service of the applicant's mother's German identity document, which the respondent accepts to be genuine. In the light of that document the respondent accepts that the applicant's date of birth is not 12 March 1998. The respondent continues to assert however that the applicant was an adult when she arrived in the United Kingdom, and argues that her date of birth is within a range from 12 March 2002 - 12 March 2005. The respondent argues that having obtained leave to enter and live in Germany the applicant will have access to documents that could definitively prove her age. The respondent asserts that instead the applicant has chosen not to provide those documents because they would establish that she was an adult when she arrived in the United Kingdom and she considers it advantageous to not be treated as an adult.

17. I acknowledge at this juncture the careful, helpful submissions made by both parties and the constructive and sensible manner in which Ms Foot and Mr Paget presented their respective cases.

The Legal Framework

18. There was no dispute about the appropriate legal framework I must follow.

19. The primary guidance on the conduct of age assessments was provided by Stanley Burton J in R (B) v London Borough of Merton[2003] EWHC 1689 (Admin) (“the Merton case”), in which it was recognised that while there may be cases where it is very obvious that the person is over 18 (or very obviously a child) and in such cases there is normally no need for prolonged inquiry; in cases where the person concerned is approaching 18 or is only a few years over 18 it was impossible to decide objectively their age and in those cases: *“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 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 which reflect on each other”*.

20. The Merton case recognised that assessing age was difficult, but not complex, and judicialisation was to be avoided. The assessment could be done informally, as long as safeguards of minimum standards of inquiry and of fairness were observed. Except in clear cases, a decision could not be made on the basis of

appearance alone. It was not helpful to apply an onus of proof and an assessment must be made of the material available.

21. On a judicial review of an age assessment before the Upper Tribunal it is for the Tribunal to determine the applicant's age for itself, taking an inquisitorial role and deciding the question on the balance of probabilities - see R (SB) v Royal Borough of Kensington and Chelsea [2023] EWCA Civ 924. A procedural lapse in an assessment of age by a Local Authority, while relevant to whether permission to apply for judicial review should be granted "*is unlikely to play a part in the court's decision based on all the evidence, about the claimant's actual age, which is the court's real job in these cases...in most cases the Upper Tribunal's decision about the claimant's age will enable the Upper Tribunal properly to consider the legal significance of any procedural flaw*" (SB (above) at [86]).

Assessment of the evidence and findings of fact

22. For the purpose of clarity I set out my assessment of the evidence below using separate topic headings. I confirm however that I have assessed the evidence holistically.

Physical appearance and demeanour

23. When the applicant was first encountered by immigration officials she had just arrived in the United Kingdom having been recovered from a small boat which had undertaken the dangerous crossing of the English Channel. She told those officials that she was 16 years old. In their assessment, Immigration Officers Bailey and Orr record that despite what the applicant said about her age, they determined the applicant's physical appearance and demeanour very strongly suggested that she was significantly over 18 years old and in fact she was at least 25 years old. It is recorded that an

unnamed social worker was in agreement with this assessment and on this basis the applicant was treated as an adult.

24. Similarly, when they conducted the assessment which is under challenge a little over a month later, the assessing social workers Sharon Cosgrove and Danielle Jones comment that the applicant presents and looks much older than her claimed age and include this as part of their explanation for their conclusion that the applicant was born on 12 March 1998.
25. Contrary to the view taken by those who first assessed the applicant when she arrived in the United Kingdom and by the assessing social workers, in my judgment, this is not a case where the applicant's physical appearance is such that she is obviously over 18. I note that in the Merton case physical appearance was recognised as a notoriously unreliable indicator of someone's chronological age. This is especially the case where, as here, the person being assessed grew up on a different continent to the assessor and had recently experienced the trauma of an unauthorised crossing of the Channel on a small boat.
26. The features of the applicant's appearance the immigration officers identified as leading to their conclusion that the applicant was at least 25 years old are unconvincing. These included reference to "deep acne scarring", "mature skin", "fully developed hands", "mature fingers" and "defined jawline and cheekbones" without any further explanation of what these terms mean. Whilst I acknowledge the constraints within which the officers were working and the need for them to make swift decisions in trying circumstances, I do not consider their description of the applicant's appearance without more identifies factors which carry any great weight when assessing the applicant as significantly older than the age she claimed.

27. Likewise, I do not consider the observations made by the immigration officers and social workers about the applicant's demeanour carry any significant weight when assessing her age. The immigration officers who saw the applicant on 21 August 2023 comment on her calmness and confidence stating that she "*appeared to be too confident*" and that she presents more like an adult than a minor. I have significant reservations about a person's calmness or confidence being a reliable indicator of their age, noting that it is common to find confident children as well as adults who lack confidence and that a person might appear confident when in fact they are not. Equally I have significant reservations about how a person's confidence or calmness can be accurately assessed, especially where as is the case here, the person is in a novel environment and has been diagnosed as suffering from Post Traumatic Stress Disorder (PTSD).
28. Alternative evidence about the applicant's demeanour is given by Dr Parker, a clinical psychologist who met with the applicant on 10 April 2024 for the purpose of providing a report for these proceedings. In contrast to the social workers and the immigration officers, Dr Parker says that her impression of the applicant was not one of confidence and a demeanour that suggests the applicant is an adult. Dr Parker says that the applicant was at the time she saw her struggling to live in adult accommodation and was choosing not to engage with people when they appeared to trigger frustration or disappointment for her. Other reports from her time in adult accommodation suggest that the applicant stayed in her room and was suicidal.
29. The applicant has reacted positively to being moved from the adult accommodation and placed in supported accommodation following the granting of interim relief in May 2024. The Local Authority

records and the Respondent Disclosure include the applicant's Placement Plan the Child and Family Assessment and the Permanence Care Planning Meeting records. They reveal how the applicant has responded well to semi-independent living in which she resides in a private flat with formal support staff available. It includes the carer's contribution which is that the applicant *"is very independent, she is able to cook for herself and keeps her room clean and tidy. [the appellant] has started to become more confident with staff and has engaged in some of the activities we have arranged"*.

30. In general this evidence reveals the limitations on assessing chronological age by reference to demeanour and behaviour, which will vary vastly depending on a person's environment, opportunities and intentions. I attach little weight to the references to the applicant being "too confident" when speaking to the immigration officers and similarly little weight to the references to the appellant choosing not to engage with people who triggered frustration. What is evident is that the applicant has shown herself capable of independent living when in an environment where she feels comfortable and supported and equally, to be destructive when in an environment where she felt unheard and unsupported. Both reactions are in my judgment equally indicative of a young adult who has relatively recently turned 18, and a youth who is approaching 18.
31. Overall, I consider the applicant's circumstances demonstrate why physical appearance, demeanour and behaviour are considered such notoriously poor indicators of a person's chronological age, especially where the applicant is being assessed having arrived in an entirely new environment following a traumatic journey. I attach little weight to the observations about the applicant's physical appearance, demeanour and response to her placements

in isolation. In my judgment the applicant's appearance, demeanour and behaviour are equally consistent with her being someone approaching 18 or someone who has relatively recently passed that chronological milestone. These factors in my judgment all point to the fact that the applicant falls within the age range of 16 - 22. That she has reacted well to being supported and badly to feeling unsupported is unsurprising and is not necessarily indicative of her being any particular age within that range. The applicant therefore comes in the range of cases where as the Merton case recognises it is necessary to take a history from her with a view to determining whether it is true and where *"appearance, behaviour and the credibility of [her] account are all matters which reflect on each other."* It is therefore necessary to consider the applicant's appearance and behaviour in the context of her account.

The applicant's account about her age

32. I have set out already the history that the applicant has provided in her three witness statements. When assessing that history I remind myself that the issue I am considering is the age of the applicant and therefore my focus must be on the credibility of the applicant's evidence about her age rather than a more general assessment of credibility. This means that lies told about other aspects of her account do not necessarily mean the applicant is lying about her age.
33. I also have regard to the reports of Dr Parker and Dr Jones and in particular the opinion of Dr Jones that the applicant's past experiences and consequent vulnerabilities may result in her making late disclosures, contribute to inconsistencies in her account and result in memories being "jumbled." It is correct to note however that despite those vulnerabilities and the obvious stress involved in doing so, with reasonable adjustments having

been made, the applicant was able to give clear and considered evidence in the hearing.

34. The applicant first gave an account of her history, with the aid of an interpreter, to the immigration officers and the social worker who were present in Kent on her arrival in the United Kingdom. That account is recorded in the “Home Office Age Assessment” documents which consist of (i) the Age Assessment Minutes, (ii) a letter confirming the conclusion of the assessment incorrectly dated 21 August 20 (iii) Age Assessment Transcript, (iv) Assessing Officer’s report. Although those documents do not provide a verbatim record of what the applicant said, they are contemporaneous and comprehensive documents and as such they provide weighty evidence of the applicant's first account of her history and, most pertinent to the issue before me; her age.
35. Although those records are consistent about the fact the applicant said she was 16-years-old, there is a discrepancy in the records about the date of birth she provided. The minutes record that the applicant stated she was born on 1 September 2006 while the Transcript, Assessing Officer’s report and letter record that she stated she was born on 3 September 2006. The applicant says that in fact she told the officers she was born on 12 September 2006. I consider it likely the reference to 1 September 2006 in the minutes was inaccurate recording by the officers. Those minutes also inaccurately refer to the applicant as being a male and to an attributed date of birth of 12 March 1995. I disregard the reference to a date of birth of 1 September 2006.
36. I am further satisfied that the applicant is most likely correct when she says that the date of birth she gave to the officers was 12 September 2006 rather than 3 September 2006 as recorded by the officers in the transcript and subsequent report and letter. She has

maintained that her date of birth is 12 September 2006 in all subsequent dealings with authorities and pointed out what she says is an error in the officers records. A number of different dates were discussed in that initial interview with the immigration officers and the possibility of the officers recording her stated date of birth inaccurately cannot be discounted in the stressful circumstances that existed. I am satisfied that despite what is recorded, the applicant is likely to have stated that her date of birth is 12 September 2006, something which she has consistently maintained since.

37. The transcript of the interview with the applicant records that she later told the officers she came to the United Kingdom because the German authorities did not give her any papers. The transcript then records that when the officers put their assessment of the applicant being 25-years-old to her and asked her how old she was, she replied: "I told you my age. I claimed asylum in Germany but was not granted it". It is then recorded that the officers asked: "What date of birth did the German authorities give you" and she replied "on that one they gave me the 12 March 2002". When I asked the applicant about this recorded exchange she said she did not say that she had claimed asylum in Germany, she did not say that the German authorities had allocated her a date of birth and that the reasons for leaving Germany were because she did not have the right documents, she was not treated well by her step-father and she could not speak the language. When Mr Paget asked her, the applicant again denied telling the officers that the German authorities had attributed to her the date of birth 12 March 2002.
38. Notwithstanding the applicant's evidence in the hearing, I am satisfied that it is likely that the applicant did tell the immigration officers that she had left Germany because the authorities there

would not give her the papers (i.e. legal status) that she wanted. I am equally satisfied that she did tell the officers that the authorities in Germany had considered her the date of birth to be the 12 March 2002. Despite having good opportunity to do so prior to the hearing, the applicant has never challenged the accuracy of this part of the transcript (in contrast to her challenge to the accuracy of the recording of the date of birth she gave) and the exchange is too detailed to be simply a mistake or an inaccuracy. Further it is highly unlikely that the officers would have invented these questions and answers. In my judgment this exchange is highly significant because it suggests that either as a result of the documentation that was provided by the applicant, or as a result of their own independent assessment, the German authorities considered the applicant to be an adult and that the German authorities reached an adverse conclusion about the appellant being allowed to remain in the country. This would shed light on both the reason the appellant undertook such a perilous journey to the United Kingdom, and also why she has not provided any documentation in relation to her travel to and stay in Germany.

39. The lack of any documentation relating to the applicant's travel to, and stay in Germany was a significant factor in both the Home Office and the respondent's social workers' assessment of the applicant's age. Both sets of assessors refer to the likelihood of such documents being available and highly relevant to the age assessment. The social workers record in their assessment that they asked the applicant about the possibility of getting documents, pointing out that as her mother had applied for the applicant to stay in Germany she may have relevant documents. The social workers record that the applicant was very vague and gave inconsistent answers in response to this. By the time of the hearing before me the applicant had been in the United Kingdom for 16 months. Despite this, it remains the case that no

documentation relating to the applicant's travel to or stay in Germany has been produced, neither is there any witness statement or other evidence from the applicant's mother, or from the Aunt and Uncle she describes dealing with her paperwork while in Ethiopia, or from the solicitors who she told the immigration officers had arranged her journey to Germany.

40. The applicant's explanation to me for events in Germany and for the absence of any documentation from her time in Germany is unpersuasive. She describes going to a number of appointments in Germany as she and her mother sought permission for her to be able to stay in Germany, but claims she did not understand what was said at those appointments or what documents were provided and considered at those appointments. Similarly the applicant also says that she is not aware of what documents she used to enter Germany other than that she had one document which had her photograph on it and which got lost in Dunkirk. Whilst I appreciate that the applicant is unlikely to have a detailed knowledge of the immigration requirements in Germany or of the names of various of documents, I found her answers about the subject throughout her dealings with the respondent and during the hearing to be wilfully evasive and to indicate an intention to conceal rather than to be transparent.
41. The right to be able to stay in Germany and to obtain the "papers" that entitled her to do so was clearly important to the applicant. It took some time to obtain the highly valuable documentation that would enable her travel from Ethiopia and be admitted into Germany. Given this I do not consider it likely that the applicant would be ignorant of what documents were obtained while in Ethiopia, what was said at the appointments in Germany and what the German authorities required during the various appointments. There was speculation during the hearing about what documents

the applicant would have needed to gain entry to Germany, in particular whether a passport would have been a requirement or a visa or some other document. Any such speculation only arises because the people who know the answer and who arranged the trip and the documentation have not provided an explanation. This is despite the fact the applicant's mother is in a safe country, clearly has access to relevant documentation and is in regular contact with the applicant.

42. When asked why she had not got documents from her mother to prove her real age the applicant has variously said that it was because communication with her mother was not good, that her mother is pre-occupied with her other young children, that it can be difficult to get hold of her mother and that her mother has been ill. Not only are these explanations inadequate for such a significant failure to provide highly relevant information they are also inconsistent with other evidence. The statement of the applicant's solicitor about the record he saw on the applicant's mobile phone of her contact with her mother via WhatsApp indicates that there have been a significant number of phone calls between the two using this method. The applicant also mentioned contact with her family through other methods including Telegram yet there has been no disclosure of Telegram records.
43. The Child and Family Assessment prepared by those promoting the applicant's best interests while she is accommodated by the respondent, refers to the applicant speaking to her mother and sisters on the telephone "quite regularly" and the positive impact that doing so has on the applicant. I attach particular weight to this document because it has not been prepared for the purpose of this dispute but as part of the ongoing attempts to promote the applicant's best interests. Despite the applicant maintaining that the contact she has with her mother is not regular when I asked

her, I am satisfied that it is likely that the Child and Family Assessment is correct and the applicant does have regular contact with her mother and through that open channel of communication has had ample opportunity to obtain the documentation that would conclusively establish her age, but has chosen not to do so.

44. Instead, the applicant has provided a photograph of her mother's German identity document which the respondent accepts to be genuine and which establishes that her mother was born on 5 July 1987. As Mr Paget conceded, the implication of this document is that the date of birth attributed by the immigration officers and the respondent's social workers is likely to be wrong and the range of age for the applicant when she arrived in the United Kingdom in August 2023 is more realistically between 16 and 21. The timing and circumstances of the production of this document is however instructive when considering the applicant's failure to provide documents about her own stay in Germany. The applicant did not provide a photograph of the front of the document until late in these proceedings and only provided a photograph of the back of this document on the first date of hearing. When explaining why the photograph of the back of the document was being provided so late the applicant admitted that she had originally chosen to conceal that photograph because it contained her mother's address and she feared it might be used to return her to Germany. This indicated a willingness to conceal material if she considered it would not be advantageous to reveal it.

45. Overall, the overwhelming conclusion to be drawn is that despite the applicant having ample opportunity to obtain documentation that would establish her age from readily available sources, she has chosen not to do so. In my judgment the only sensible inference to be drawn from the applicant's failure to provide any documentation about her admission to and stay in Germany, is

that the applicant considers it advantageous to her claim to conceal it because those documents suggest that she was an adult when she came to the United Kingdom.

46. The applicant has provided photographs of two documents which she says relate to her time in Eritrea – a baptism certificate dated 3 December 2006 which says that the applicant was baptised on 30 November 2006 and has a date of birth of 12 September 2006, plus a Junior School report for the academic year 2018 from the Ministry of Education in Eritrea. These photographs were produced between the applicant’s first and second appointments with the assessing social workers. The applicant told those social workers that her Aunt and Uncle in Adis Ababa had sent her the photographs online. When I asked her about them the applicant said that her Aunt and Uncle had sent them to her using Telegram and that she still has contact with her Aunt and Uncle. The applicant has not disclosed any further details of her contact with her Aunt and Uncle and has not provided a record of her Telegram contact with either them or her mother. There is no statement or other evidence from the Aunt and Uncle despite the applicant’s ongoing contact with them.
47. Copies of the photographs were sent by the social workers to a Social Work Lead at the Home Office with the question “can we use these to say she is a child” and the response was given that little could be said about the documents which were scans and not originals and which were not official government produced documents.
48. I did not find I could attribute any significant weight to these documents. Given their significance and given the applicant’s ongoing contact with his Aunt and Uncle, whom she also says were also responsible for obtaining the documents she needed to enter

Germany with the help of solicitors, I would have expected to see some evidence establishing the provenance of these documents. In the circumstances I consider the absence of any evidence or disclosure relating to the applicant's contact with her Aunt and Uncle significantly undermines the assertion that these are original and accurate documents.

The applicant's general account

49. Although of less significance, because it does not relate directly to the applicant's age, I also consider the applicant's overall credibility to be undermined by a lack of cogency to her explanation for how she came to travel from Ethiopia to Germany and then to leave Germany and travel to the United Kingdom concealed on a small boat. I found the applicant's evidence about the process of being granted admission into Germany to be wilfully vague. Her evidence about what documents she took with her to Germany has shifted and she gives minimal explanation of checks that were undertaken when she arrived.
50. Having been given permission to enter Germany, the applicant's account is that she left by train having saved the money to pay for her ticket from money she was given by her mother. Having arrived in Paris by train she says that by chance she met other asylum seekers who paid for her to travel to Dunkirk. Once in Dunkirk she says she met people smugglers who told her she must pay \$1,000 to be transported to the United Kingdom. The applicant says she contacted a friend who lives in the USA and that two days later this friend paid the smugglers the fee over the phone. The applicant says she then travelled in the boat to the United Kingdom.
51. The applicant was cross examined about this account during the hearing before me. During that cross examination she revealed for the first time the name of her friend and claimed that the friend

had been a neighbour of hers when she lived in Adis Ababa. The applicant said that she had remained in contact with this friend using Telegram but that she had not had contact with her since February and that they had not discussed repayment of the money. The applicant said in cross examination that the people smugglers had asked for money in Euros and when the apparent discrepancy between whether the fee was paid in Euros or Dollars was put to her she said she was not sure in which currency the fee was paid.

52. I considered the applicant's account of her travel from Germany to the United Kingdom to lack coherence and that her account of the payment of the fee to the people smugglers to again indicate a willingness to conceal rather than a desire to be transparent. Again records of the full communication the applicant has had with her friend, whose name (Betty) and details were not provided until the applicant was asked directly during the hearing, have not been disclosed. I find the suggestion that she and Betty never discussed repayment of the fee and the suggestion that Betty has not contacted the applicant since paying the fee but that they have lost contact despite the applicant now being in a settled and secure environment inherently unlikely. Although the applicant cannot be expected to be familiar with the different currencies she was asked about in cross examination, the discrepancy in her account is indicative of the fundamental improbability of the applicant being able to arrange the complex payment of the smugglers through an old friend living on another continent, whilst still remaining ignorant of the detail of the transaction. I find it equally unlikely that asylum seekers she had known for less than an hour paid for the applicant's travel from Paris to Dunkirk.

Conclusion

53. Stepping back and considering how the veracity of the applicant; her appearance, behaviour and the credibility of her account reflect on each other, it is apparent that, unusually for a situation where a person arrives having been smuggled into the United Kingdom and without documents, the appellant was well placed to establish her age if she wanted to. I conclude in all the circumstances that the fact she has chosen not to do so strongly indicates that she was an adult when she arrived in the United Kingdom and wished to conceal that fact.
54. With the assistance of her mother, aunt and uncle and solicitors, the applicant was recently able to provide sufficient documentation about herself to persuade the German authorities to grant her entry into that country. Despite remaining in regular contact with her mother, and maintaining contact with her aunt and uncle, the only documents about herself she has provided to the authorities in the United Kingdom are photographs of two unofficial documents with no evidence of their provenance. The applicant's staggered late production of her mother's German identity document indicated a willingness to conceal information where she considered it advantageous to do so. Overall, the applicant therefore has been unwilling to provide relevant evidence and she has demonstrated a lack of transparency in her evidence about her age and documentation.
55. The applicant's account of her journey from Ethiopia to Germany and then her departure from Germany and travel to the United Kingdom lacks cogency. The most convincing explanation for why she left Germany and came to the United Kingdom and in my judgment the most likely to be true, is the account the applicant gave to the immigration officers on her arrival but has later denied saying, namely that her attempts to remain in Germany had failed in circumstances which involved the authorities in that country

concluding that she was born on 12 March 2002 and was therefore an adult.

56. Bringing this all together, I conclude that it is likely that the applicant was an adult when she arrived in the United Kingdom and that she has sought to conceal that fact by claiming that she was born in 2006. Equally, the date of birth attributed by the immigration officers and the social worker is unlikely to be correct given the date of birth of the appellant's mother. I consider the date of birth apparently attributed by the German authorities highly persuasive given they had access to documentation which has not been revealed to me, but in all the circumstances and particularly in view of the applicant's mother's date of birth, I conclude that it is most likely that the applicant's date of birth is one year later than that which the applicant said the Germans had attributed to her.

57. I therefore find that the applicant's date of birth is 12 March 2003 meaning she was 20 when she arrived in the United Kingdom and at the date of the age assessment and was 21-years-old at the date of hearing.

58. That is not to say that given her traumatic past experiences which on any account has involved a perilous journey across the English Channel in a small boat and under the direction of ruthless people smugglers, the applicant would not benefit from a supported and settled living environment. Indeed the evidence from the last seven months gives every indication that notwithstanding her challenges, with such support the applicant will thrive.

Disposal

59. The parties are invited to draw up an Order which reflects the terms of this judgment. The Order should address any ancillary

matters, including any application for permission to appeal and costs.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the applicant is granted anonymity.

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 the applicant without his express consent. Failure to comply with this order could amount to a contempt of court.”

Signed: Luke Bulpitt

Upper Tribunal Judge Bulpitt

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