Case No: C1/2011/2348

Neutral Citation Number: [2012] EWCA Civ 547
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM High Court of Justice
Queen's Bench Division
Frances Patterson QC
CO/35202010

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/04/2012

Before :

LORD JUSTICE LLOYD
and
LORD JUSTICE AIKENS

- -

Between :

The Queen on the Application of AE	**Appellant**
- and -	
London Borough of Croydon	**Respondent**

- -
- -

Azeem Suterwalla (instructed by **Harter & Loveless**) for the **Appellant**
Tony Harrop Griffiths (instructed by **Chief Executives Office**) for the **Respondent**

Hearing dates : 13/03/2012

- -

Judgment

Lord Justice Aikens :

The Case so far

1. This is an appeal in an "age assessment" case. The appellant, whom I shall call AE, is an unaccompanied asylum seeker from Iran. Since his arrival in the UK on 3 September 2009 he has always claimed that he was born on 3 September 1995. The question for this court is whether that is correct.

2. The issue of a young unaccompanied asylum seeker's exact age is legally important for at least three reasons. First, by ***section 20(1)*** of the ***Children Act 1989*** local authorities have to provide accommodation for any child (i.e. someone under the age of 18) in need within their area who appears to need it because (amongst other things) there is no person who has parental responsibility for him. The local authority may also have to provide material support beyond the age of 18 and in some cases beyond the age of 21. Secondly, a decision on the young person's exact age is relevant to the way the Secretary of State for the Home Department ("SSHD") is required to discharge her immigration and asylum functions "*having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom*": see ***section 55*** of the ***Borders, Citizenship and Immigration Act 2009.*** Lastly, a favourable finding will enhance AE's credibility in his claim for asylum.

3. Young asylum seekers who arrive in the United Kingdom often do not have a birth certificate or other documentary proof of their age that is reliable. In practice, an assessment of the young unaccompanied asylum seeker's age is carried out by immigration officials with what evidence they have available. In disputed or doubtful cases the immigration officials will refer the age assessment to be made by the relevant local authorities. Some of them, such as Croydon, have established protocols for this exercise. There is no statutory procedure. If, as often is the case, the age assessment has to be made by means of indirect evidence because there is no birth certificate or other reliable documentary evidence, other, this may lead to controversy. In ***R (A) v Croydon LBC [2009] 1 WLR 2557,*** the Supreme Court held that if, after an age assessment by a local authority, there remains a dispute, then it is the court that has to resolve the issue of the young person's age as a matter of fact. This is because the determination of the young person's age is a "precedent fact" to the local authority exercising its statutory powers under ***section 20(1)*** of the 1989 Act. There is a right and a wrong answer and that, ultimately, is for the court to decide.[1]

4. It is not now disputed by the respondent, whom I shall call "Croydon", that AE was under 18 at the time that he entered the UK and, indeed, is still under 18, because Croydon now accepts that AE was born on 3 September 1994. But AE continues to assert that he was born on 3 September 1995,

5. The present appeal is from an order dated 1 July 2011 of Ms Frances Patterson QC sitting as a deputy judge in the Administrative Court. By that order the deputy judge declared that AE was a child and that his date of birth was 3 September

[1] See the judgments of Baroness Hale of Richmond JSC at [25-27] and Lord Hope of Craighead at [51]-[54].

1994. In making that order the judge differed from the age assessment that had been made by Croydon, which had concluded that AE's birth date was 3 September 1993.

6. This appeal is brought by permission of MacFarlane LJ, who granted leave after a renewed application made orally. He gave permission to argue the three grounds of appeal that had been identified by counsel for the appellant, Mr Suterwalla, although MacFarlane LJ made it plain that, in his view, the most important of those three was the last one, viz. whether the judge misunderstood and misapplied the evidence of one witness, Miss Mohieldeen, who had taught AE for a period of months after he had arrived in the UK. She gave oral evidence before the Deputy Judge of her impression of AE's age.

7. The other two grounds advanced are: (1) that the judge's rejection of AE's own claim to have been born on 3 September 1995 was perverse and devoid of reasoning given the overall positive view of AE's credibility taken by the judge; and (2) the judge placed too much reliance on her own assessment in court of the demeanour and presentation of AE in arriving at her conclusion of his age.

The Facts

8. For the purposes of this appeal, I can summarise the dramatic facts leading up to AE's departure from Iran and arrival in the UK as follows. AE is an Iranian national. He prefers to speak Farsi although his family language is Asari. He lived in Tehran with his mother and elder sister. His father died and his mother remarried. He was subjected to regular beatings by his stepfather. The trigger that led to AE's journey and arrival in the UK was a beating by his stepfather, who on the same occasion also beat AE's sister. The stepfather then took her into a different room. AE was so angry with his stepfather that he fetched a kitchen knife and went into that room where he discovered his sister naked. AE, who remained very angry, thought his stepfather was about to make a sexual attack on his sister. He stabbed his stepfather in the back. Subsequently the stepfather died.

9. AE tried to escape, but was caught. He was summarily tried and imprisoned and told he would be hanged when he was 18. However, he managed to slit his left forearm with a razor blade that was smuggled into the prison by an uncle. AE was taken to a hospital and the uncle then managed to smuggle AE from the hospital and out of Tehran. Eventually AE was smuggled into the UK in the back of lorries crossing Europe. He arrived at Croydon where he was taken or went to the Home Office centre and claimed asylum. That was, coincidentally, on the anniversary of his birthday, 3 September 2009.

10. The Deputy Judge heard this history from AE himself. There was no corroborative evidence other than scars on his left forearm, which a witness, a specialist in accident and emergency medicine, confirmed were of the sort that one would expect to see as a result of self inflicted wounds. The doctor also thought that the scars were not more than 12 months old.

11. The judge's conclusion was that this story was generally credible apart from the last part about AE's actual arrival at the Home Office in Croydon, which she did not find either convincing or credible.[2]

The Age Assessments by Croydon Borough Council

12. AE was then the subject of three age assessments by Croydon. As the judge noted, there is no statutory scheme for the assessment of the age of young persons such as young asylum seekers. Practice Guidelines for age assessment of young unaccompanied asylum seekers have been devised by Croydon and Hillingdon LBCs. These are commonly used by other local authorities when carrying out age assessments. The deputy judge set out the relevant guidelines at [7] of her judgment. Further guidance has been given in the important decision of Stanley Burnton J (as he then was) in ***R(B) v Mayor and Burgesses of London Borough of Merton,*** [3] the relevant parts of which were quoted at [8] of the Deputy Judge's judgment.

13. The first age assessment of AE was accepted as being defective soon after it was done. The second age assessment was carried out on 16 October 2009 by Peter Tucker and Leslyn Jones. They gave their decision on 20 October 2009. In the assessors' report of the interview with AE they state that AE was asked how he knew he had arrived at the UK. Mr Tucker's contemporaneous manuscript note of AE's responses to this question was as follows:

> "He was drop [sic] at the train station by someone and shown him HO. He was [asked/assessed] the second time regarding same question, he stated an Afghan boy had showed him to go to the Home Office".

14. There are two further relevant manuscript notes which are recorded on the form that Croydon uses when a young asylum seeker is interviewed. The first records that AE said:

> "The lorry dropped him off. He was taken to the train station by a guy and showed [sic] where the Home Office was".

15. The second note records AE as saying:

> "He believes second lorry brought him to UK. I realised I was in UK. I went to Home Office".

16. In the report for the second Age Assessment, AE's response is reported as follows:

> "He stated that he did not know until he got to the Home Office. He said he was dropped at a train station and shown the Home Office by the agent. He was asked again how he

[2] See [56] and [60] of the judgment.

[3] ***[2003] EWHC 1689***

> knew he had arrived in the UK at a later stage during the interview. [AE] stated that an Afghani boy had showed him the Home Office, who he had met when he was dropped off by the agent in a car. [AE] gave inconsistent answers which Assessors view evasive and vague".

17. In the Assessors' analysis of the information gained for the second age assessment this passage is repeated. The analysis continues:

> "The question was put to [AE] that he had given assessors two different versions about how he knew he had arrived in the UK and the Home Office. [AE] could not respond".

18. The assessors summarised their decision as follows: (1) AE was unable to provide any documentary proof of his age; (2) his answers were vague at times in respect of his journey; (3) his level of maturity and thinking during the assessment suggested that AE was functioning above the age he claimed; (4) AE's physical presentation, demeanour and attitude were more consistent with an older person than his claimed age, especially as that would have made him 14 less than two months ago; (5) the credibility of his account was questionable. He was evasive about the name of the prison where he had been held and the hospital he had attended when he had cut himself.

19. The assessors rejected AE's statement on his date of birth and assessed his date of birth to be 3 September 1993, ie. they concluded that AE was two years older than he said that he was. As at 20 October 2009, therefore, they assessed AE's age to be 16 years, one month and 17 days.

20. The third age assessment was carried out on 8 July 2010 after those advising AE threatened to bring judicial review proceedings about the second assessment. The assessors on this occasion were Natasha Payne and Stanford Katore. They gave their decision on 15 July 2010. Their conclusion was as follows:

> "[AE] did not provide any documentary evidence as to his claimed age and therefore it was necessary to have regard to his oral account amongst other factors. Whilst [AE's] oral account tended as a whole to support his claimed age of 14 (subject to the issues noted above regarding [AE's] answers relating to dates, times, events and other matters relating to the issue of age), it is the assessing workers professional opinion, even after applying the benefit of the doubt, that [AE's] physical appearance, demeanour and interaction as [a] whole during the assessment would tend to indicate that he is significantly older than his claimed age of 14 years".

21. Accordingly, they assessed AE's age as being 16 and that he would be 17 on 3 September 2010. They too estimated his date of birth as being 3 September 1993.

22. AE successfully sought permission to bring judicial review proceedings against that decision. As already recounted, the deputy judge allowed the judicial

review and declared that AE was born on 3 September 1994, so that AE's age at the time of the judgment was just short of 17 years and 10 months.

This court's approach to the findings of fact of the deputy judge

23. In ***R(CJ) v Cardiff City council [2011] EWCA Civ 1590,*** this court was of the opinion that when it conducts the fact finding exercise to determine a young person's age, the court is, effectively, acting in an inquisitorial role in which it must decide, on a balance of probabilities, whether the young person was or was not a child at the material time: see [22] and [23] of Pitchford LJ's judgment with which Laws LJ and Lloyd Jones J agreed. In doing so the court must clearly consider all relevant evidence. Ultimately, however, the court has to make its own assessment based on the evidence before it.

24. Many cases have emphasised that there is very limited scope for this court to interfere with a conclusion of primary fact that has been reached by the fact finding tribunal. There may be more scope for an appellate court to interfere with an assessment that is made on the basis of the judge's findings of primary fact and other evidence. But the scope for interference by an appellate court remains limited. In ***Laker Vent v Templeton***[4] I attempted, at [57], to summarise the law concerning the position of this court when it was asked to interfere with a conclusion of the first instance court which had made an assessment by reference to a particular legal concept. I think that this approach, is, generally speaking, applicable to the present situation where the first instance court, be it the Administrative Court or the Upper Tribunal, has to make an assessment of the young person's age based on all the evidence before it. So I would summarise this court's position as follows:

> "… where a court of first instance has to make an assessment of a young person's age for the purposes of deciding his or her age on arrival in the UK as an immigrant or asylum seeker and this assessment does or may involve the application of findings of primary fact, the evaluation of other facts, opinions (particularly of experts) impressions and even nuance[5], which all have to be weighed by the judge in reaching his conclusion, then an appellate court has to take particular care before deciding it can safely interfere with the judge's assessment. There is no single test for when an appellate court can interfere. But, generally speaking, the more the first instance judge's assessment is dependent on oral evidence, or the overall assessment of a number of factors, the less willing an appellate court is likely to be to interfere with the judge's conclusion."

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[4] ***[2009] EWCA Civ 62***

[5] See the speech of Lord Hoffmann in ***Biogen Inc v Medeva Plc [1997] RPC 1 at 45,*** which concerned the question of whether an invention was "obvious", where Lord Hoffmann refers to the nineteenth century French philosopher Ernest Renan: *"la vérité est dans une nuance".*

How did the deputy judge arrive at her decision and upon what evidence?

25. If, as I believe, that is the approach that this court should adopt, it is therefore first necessary to summarise the judge's conclusions on the evidence that was before her. It is to be noted that the deputy judge concluded[6], first, that there was no documentary evidence available to the court to assist either way in reaching a concluded assessment on AE's age. Secondly, the deputy judge concluded that there was no medical or dental evidence relied on by either side that could assist the court. The deputy judge concluded that " *the fact finding exercise that the court has to undertake in this case rests exclusively upon the oral evidence that the court has heard and the second and third age assessments carried out by [Croydon] together with any supporting notes".*[7] The witness evidence consisted of witness statements and oral evidence. The only opinion evidence before the judge was that of the doctor who assessed the nature and age of the scars on AE's left forearm. Ultimately that evidence only went to the credibility of AE's evidence on how he managed to escape from Iran.

26. As the deputy judge correctly remarked, at the heart of the case is the credibility of AE himself. First of all, the deputy judge heard his evidence. She recites, at [50], that AE's mother kept important documents, including AE's birth certificate in a special bag. The deputy judge said, on this topic:

> "*It is possible and indeed, more likely than not, that at least on one occasion if not more, the clamant saw his birth certificate and learned his date of birth. It is highly regrettable that he did not have a copy of the document*…",

However, the judge went on to find that this was entirely understandable given the circumstances in which AE left the family home and Iran and given the nature of the regime in power there.[8]

27. Effectively, the deputy judge accepted AE's account of how he came to leave the family home, his imprisonment, his escape and his journey to the UK. But the deputy judge noted that AE had given differing accounts of how he had arrived at the Home Office in Croydon: in one he arrived in a lorry and was told to get on a train, from which he was directed to the Home Office; whereas in another he was dropped off by a car.[9]

28. The deputy judge found, at [56]:

> "*I accept that [AE] has given different accounts. It was notable that when his evidence on arrival at the Home Office was being tested in cross-examination, [AE] was studiously vague. I did not find his evidence on that part of his journey convincing or credible.*"

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[6] At [47]
[7] [47]
[8] [50]
[9] [55]

29. The deputy judge's conclusion, at [60], was:

> "*In conclusion, I found the claimant's account of the incident of his early life in Iran and journey mostly credible but having seen the claimant in the witness-box, over several hours, felt that his demeanour and presentation were more consistent with someone older than the claimant said that he was. I, therefore, go on to consider other evidence as to the claimant's age."*

30. Secondly, the deputy judge had evidence from AE's foster carer in the UK. The deputy judge placed no weight on that evidence and that assessment of the carer's evidence is not challenged. Thirdly, there was the evidence of Bana Banafunzi, an experienced Panel Adviser to the Refugee Council Children's Panel. The deputy judge found his evidence to be clear and rational. It favoured AE's account and his age claim.[10] Fourthly, the judge had evidence from Parivash Ghanipour, who is also an experienced panel Adviser to the Refugee Council Children's Section. The judge noted that her evidence was that matters had to be simplified for AE and he seemed reluctant to engage with the adult world. The judge found this evidence both convincing and revealing but she said that it had to be contrasted with the more confident and direct manner in which AE had given his evidence in court.[11]

31. Fifthly there was the evidence of Miss Mohieldeen. The deputy judge described her as a highly experienced teacher. She had taught AE from May to October 2010 when he attended college. She had seen him since then. Her evidence was that she had initially thought that AE was between 14 and 15 years old. She taught him English by himself to start with then in a class with a 10 year old and a 13 year old. Miss Mohieldeen considered that his interests would not fit with a class of 16 year olds and that his giggling and behaviour were more akin to the behaviour of a young boy than an immature 16 year old.

32. The deputy judge summarised Miss Mohieldeen's evidence at [65],

> *"Through her teaching experience in the Lebanon she had experience of 13 and 14 year olds who were teenagers in character but not in appearance given that they matured early. Her view of the claimant's age was because of his behaviour, which was immature. She said that she thought the claimant was 14 or 15. By July 2010 she felt the claimant was exhibiting the behaviour of a young 14 year old. By that time the claimant had been in the country for 10 months. It would be reasonable to assume that he had adjusted at least, to some degree, to his new life and in his dealings with Miss Mohieldeen the claimant had no reason to dissemble. I regard her evidence as significant and*

[10] [62]
[11] [63]

reliable, and it supports or goes to support the claimant's claimed age. Significantly though, she assessed initially his age as 14 or 15."

33. Sixthly, there was evidence from Mr Peter Tucker who is a social worker and has been AE's social worker from November 2009. He was also one of the assessors at the second age assessment in October 2009, whose note of a part of AE's questioning at that assessment I have quoted above. The deputy judge found Mr Tucker to be a completely honest and reliable witnesses, who was able to admit mistakes when they had occurred, eg as to the use of the wrong Iranian date of birth of AE. However, the deputy judge noted that Mr Tucker had had no training on age assessment when he carried out the second age assessment on AE with Miss Leslyn Jones, although he had "*shadowed"* other social workers who were carrying out age assessments.[12]

34. Miss Jones was the seventh witness. She said she had little independent recollection of the second age assessment. The judge found her to be an honest witness.

35. Lastly the deputy judge heard evidence from Miss Natasha Payne, who was one of the two assessors for the third age assessment. The judge concluded that she was an honest and credible witness. As the judge commented, social workers are experts and their expertise is to be respected. But, the judge continued, at [72]:

> "*... there is no suggestion that they can assess the claimant's age on an empirical basis on wholly objective factors. There is a strong element of subjectivity in their assessment as there has to be in mine. Further, they have not had the advantage of hearing from witnesses other than the claimant, as I have and thus being able to make a decision based on the totality of the evidence before me*".

36. The judge expressed her conclusions on all this evidence at [73] – [76], which I will quote:

> *"73. That means that upon analysis I have found the evidence in this case to be finely balanced. Whilst I accept that evidence can be deceptive to the fact-finder, it would be misleading for me not to record my impression, having observed the claimant over three days and seen him give evidence over several hours.*
>
> *74. The claimant looked older than 15 but younger than someone who will be 18 in September. His demeanour, when he gave evidence, was of a confident and*

[12] [68]

comparatively mature young person. He smiled a lot. Not, in my judgment, due to any nervousness but simply that that is something that he does when he talks. The inconsistencies in his evidence in particular at the end of the journey and when he arrived at the Home Office, have led me to conclude that he cannot be the age that he claims.

75. His expressed interest in driving also, while a very small piece in the overall jigsaw, is indicative of greater maturity.

76. On the other hand, Miss Mohieldeen's evidence, although impressionistic, was based upon knowing the claimant over a period of time and was completely independent. In my judgment that tips the balance from the assessed age. As a consequence, in this case, where there is a dispute over a relatively narrow age range, and doing the best that I can, I assess the claimant to be aged 16 now, who will be 17 on 3rd September 2011."

The arguments of the parties on the appeal

37. For the appellant, Mr Suterwalla had four principal arguments. First, he submitted that once the deputy judge had concluded that AE's evidence was generally credible, she should have accepted his evidence that he knew his birthdate. Mr Suterwalla pointed out that AE had given evidence, which was not specifically challenged, that he had seen his birth certificate several times and also that he knew his age because he knew he had to start school aged seven.

38. Secondly, Mr Suterwalla submitted that the deputy judge misconstrued the evidence about AE's arrival at the Home Office in Croydon and, upon a proper analysis, there were no inconsistencies. Even if there were, the deputy judge failed to give any reason why that inconsistency should lead to the conclusion that AE's evidence about his birth certificate and his age should be rejected. The conclusion of the deputy judge on that was neither logical nor rational.

39. Thirdly, the deputy judge relied too much on AE's "demeanour" when giving evidence to reach her decision that AE's birthdate was 3 September 1994. There was no proper explanation for the conclusion that AE's age was one year less than that assessed by Croydon, but one year more than that claimed by AE.

40. Lastly, Mr Suterwalla submitted that the deputy judge had misunderstood Ms Mohieldeen's evidence and so her conclusion based on that evidence was flawed.

41. For Croydon, Mr Harrop-Griffiths accepted that, given that there was no documentary evidence of AE's age, the credibility of AE was at the heart of the case. He accepted that AE was not cross-examined on the question of whether he was told his age by his mother; nor about seeing his birth certificate. Mr Harrop-Griffiths also accepted that he had not submitted to the deputy judge that AE had been mistaken about the date on his birth certificate, so that, before the

deputy judge, Croydon's case was simply that AE was lying about his age. Mr Harrop-Griffiths further accepted that there was no specific finding by the deputy judge to that effect. He submitted that the deputy judge must, inferentially, have concluded that AE was mistaken about the date on his birth certificate.

42. Mr Harrop-Griffiths also submitted that, given all the evidence before the deputy judge on the issue of AE's arrival at Croydon and the Home Office, she was entitled to make the conclusions that she did. The consequence of the deputy judge's conclusion was that it went into the overall balance that had to be struck when making a finding on AE's age. The deputy judge was entitled to take AE's demeanour into account and the extent to which she did so was not something that could be attacked in this court which had not seen nor heard AE.

43. As for the evidence of Ms Mohieldeen, Mr Harrop Smith submitted that the deputy judge took proper account of all her evidence and was entitled to reach the judgment that AE's age was one year less than that assessed by Croydon.

Analysis and conclusion

44. We accept that, in the absence of any documentary evidence of AE's age nor any reliable dental or medical evidence, the starting point for the deputy judge's task of assessing the age of AE was the credibility of his own evidence. AE's evidence in his witness statement on his age was that he was told his age by his mother many times and that he knew his birthdate by the Iranian calendar as the 12th day of the 6th month of the year 1374, which equates to 3 September 1995.[13] AE confirmed his witness statement when giving oral evidence before the deputy judge. In cross-examination he described the birth certificate as being like a notebook, with his name and date of birth on the first page, together with his place of birth and his parents' names. He said that this was shown to his second school which he joined aged 12. AE also stated in cross-examination that he had seen his birth certificate several times and that when a child went to school he had to know how old he was. He described how he had seen the birth certificate in a special bag his mother kept.[14] It was not put to AE that he was lying about any of this or that he was mistaken about the date on the birth certificate. It was, however, put to him that he was 17 and not 15.

45. The deputy judge deals with AE's evidence about the birth certificate at [12] of the judgment. There is no comment at that stage about the veracity of this evidence. At [50], which I have quoted above, the deputy judge does not suggest that AE was either not able to see his birth date on the certificate or that he was mistaken in his recollection of what he read on it. There is no reference to AE's evidence about the birth certificate under the heading "*Overall"* in which the deputy judge draws her conclusions at [73] -[76] of her judgment.

46. Given the deputy judge's conclusion on AE's age, the inevitable inference is that she did not accept his evidence about the birth certificate. But she gave no reason for not doing so. The inference must be that the deputy judge decided that because of the inconsistencies in his evidence about his arrival at the Home Office

[13] Para 2 of witness statement.

[14] Transcript pages 6-7

and because she did not find that part of AE's evidence credible, that enabled her to conclude that his evidence about the birth certificate was not reliable and could not be accepted.

47. There is an illogical jump from a finding that one specific part of AE's evidence is not credible to a further, implicit, unreasoned finding that his evidence on another topic cannot be accepted, particularly when the deputy judge held that she found his account of the incident of his early life in Iran and his journey "*mostly credible".*[15] In my view the deputy judge erred by failing to confront the fact that AE had given evidence about his birth certificate which was not challenged in cross-examination as either being a lie or that he was mistaken about his recollection of the date he saw on it. The deputy judge should either have accepted that evidence or she should have explained why it was not to be accepted. The only possible basis for not accepting it was her conclusion that AE's evidence about his arrival at Croydon and the Home Office was inconsistent and not credible. So it is necessary next to examine the evidence on that issue.

48. I have quoted above the part of the report of the second age assessment which states that AE's answers on how he knew he had arrived at the UK and at the Home Office were *"evasive and vague".* That appears to have been based on the various notes, which I have also quoted above. But, in my assessment, there is no evasion or vagueness in the notes themselves, nor is there any inconsistency as reported.

49. Mr Suterwalla also referred to the Screening Interview that AE had undergone immediately upon his arrival in the UK. It is dated 3 September 2009. The note of AE's answer to the question "when and where did you arrive in the UK" states:

> "Arrived UK on 03/09/2009 early in the morning…when the lorry stopped a white man opened the door, got me out, took me to a train station, bought a ticket did not sit near me…then he showed me this office and went away".

50. Lastly, AE dealt with the sequence of events of his arrival at paragraph 15 of his witness statement which he confirmed in evidence before the deputy judge. That states that he got out of the lorry; was taken by a man to a train station who then bought him a train ticket; that he left the train and saw some Afghan people whom he asked where he could find food and they gave him directions, which led him to the Home Office.

51. Mr Harrop-Griffiths cross-examined AE on this passage and on the report of the second age assessment. AE confirmed his statement and said that the part in the second age assessment report about being dropped off by the agent in a car was not correct. The transcript of the cross-examination does not give the impression of AE's evidence being "*studiously vague"* which is the deputy judge's description at [56]. If by that she meant deliberately vague, then the record of his evidence does not bear that out.

[15] [60]

52. It does seem to me that, apart from the reference to a car in the second age assessment report, there is no material inconsistency in the statements that AE has given about the circumstances in which he came to the Home Office building at Croydon. I certainly cannot see any basis on which the deputy judge could conclude that AE's evidence about his birth certificate and his birth date on it was not credible because of a lack of credibility in his evidence about the circumstances of his arrival at the Home Office building in Croydon.

53. Accordingly, it seems to me that the deputy judge erred in not accepting AE's evidence about the birth certificate and his date of birth recorded on it and his evidence about knowing his age because he needed to know it for school.

54. Mr Suterwalla criticised the deputy judge's reliance on AE's demeanour when he gave evidence, as recorded at [74] of the judgment. I am sure that the deputy judge's impression of AE is accurately stated there. The deputy judge was entitled to take that impression into account. But there is force in Mr Suterwalla's point that the deputy judge saw AE for only a few hours. The various social workers and Miss Mohieldeen had seen him over much longer periods. The weight to be attached to their impression of his age, which they must have judged by examining his behaviour over a long period, must be greater than that to be given from seeing a witness for only a comparatively short time. Moreover, in my view it does not follow that because the deputy judge concluded that AE's demeanour was that of a person older than he claimed to be, she had to reject his otherwise credible evidence about his birth certificate; at least, if it were to be rejected it must be for a good reason. None was given.

55. That leads me last of all to the deputy judge's evaluation of Miss Mohieldeen's evidence. Miss Mohieldeen had given a witness statement dated 7 December 2010. In this she said that AE's behaviour was that of a "*young 14 year old".* She also stated that the birthday that AE had given, viz. 3 September 1995, would accord with her own view of his age.

56. Miss Mohieldeen had also written a letter to AE's solicitors, dated 22 August 2010, that is over two months after she had begun to teach AE. This stated:

> *"Regarding [AE]; I am surprised that he has been assessed to be 16 years of age. I have now been teaching [AE] for 2 months and can honestly say that I would put his age at 14 to 15 years old…"*

57. Miss Mohieldeen gave oral evidence and she was cross-examined by Mr Harrop-Griffiths. In evidence in chief Miss Mohieldeen said that when she first saw AE she thought he was "*about 14, maximum 15…".* In cross-examination, Mr Harrop- Griffiths asked:

> "Q. But by the time he came to see you in May of 2010, he was 15.
>
> Yes, but I thought he was 14, maybe 15, but in my mind I thought he's 14".

In re-examination, Mr Suterwalla asked Miss Mohieldeen a further (albeit leading) question on that point:

> "You are aware that he has claimed that his date of birth is 3 September 1995. So, it is correct, is it not, that on his claimed date of birth, and I appreciate that this is obviously in dispute in these proceedings, but on his claimed date of birth, when you met him he was in fact 14 years old, not 15, as was suggested to you by Mr Harrop- Griffiths. Is that right?"

Miss Mohieldeen replied: "Yes".

58. Mr Suterwalla submitted that the deputy judge misunderstood or misinterpreted the evidence of Miss Mohieldeen. First of all he attacks the judge's statement, at the last sentence of [65] , that Miss Mohieldeen had initially assessed AE's age as 14 to 15. Mr Suterwalla argued that it is not clear where the deputy judge got that evidence from. It is certainly not contained in Miss Mohieldeen's witness statement, which states at both paragraphs 4 and 9, that, at the time of her witness statement, she put his age at 14 to 15 years, which would put his birth date at September 1995, not September 1994. On the basis of the letter of 22 August 2010, AE's birth date would have been in either 1996 or 1995.

59. It may be that the deputy judge was relying on Miss Mohieldeen's answers in her oral evidence and in particular her answer to Mr Harrop-Griffiths's question that I have quoted above. That is not a very solid basis for a conclusion that Miss Mohieldeen's evidence was that she had initially assessed his age as 14 or 15, because Mr Harrop-Griffiths's question was made on the assumption that Croydon's case was correct. That is made clear by Miss Mohieldeen's answer in re-examination.

60. The deputy judge clearly relied heavily on Miss Mohieldeen's evidence in making her final assessment of AE's age; for her it tipped the balance in his favour. In my view her evidence supports AE's own evidence about his birth certificate and the date of birth stated on it.

Conclusion

61. I have come to the conclusion that the deputy judge erred in her analysis of the evidence of AE. She did not take into account at all his evidence about his birth certificate and his birth date on it. That was, effectively, unchallenged evidence. The deputy judge came to the conclusion that AE's evidence was, generally credible. If she wished to conclude that his evidence about the birth certificate was not credible, then she was obliged to explain why she reached that conclusion. She did not. Moreover, I cannot accept that there were such "inconsistencies" or a "vagueness" in AE's evidence about his arrival at the Home Office at Croydon that would have entitled the deputy judge to conclude that AE's evidence about the birth certificate was not credible.

62. Given the deputy judge's view on the credibility of Miss Mohieldeen's evidence, that supports AE's case. This is particularly so if her answer to Mr Harrop-

Griffiths's somewhat loaded question is read bearing in mind her answer in re-examination.

63. The deputy judge recognised, as we must recognise, that social workers in this field are experts and that their evidence, when found to be honest, reliable and carefully stated, must be given due weight. The deputy judge gave due weight to their evidence. However, she failed to analyse properly the evidence of AE himself and then to take account of Miss Mohieldeen's evidence, properly understood.

64. Accordingly, I would allow this appeal. Mr Harrop-Griffiths submitted that if we were to allow the appeal then we should remit the case to the Administrative Court or the Upper Tribunal for a retrial. Mr Suterwalla submitted that we should make a finding ourselves on all the evidence now before us.

65. There may be cases where a remission for a retrial is inevitable. In my view it is not necessary or desirable in this case. Based on the evidence of AE about his birth certificate and the date on it, the judge's own view about AE's credibility generally and my view that the deputy judge erred in her analysis of AE's evidence about his arrival at the Home Office, I think we can decide the case here. Taking all the evidence before the deputy judge into account, and adopting her approach apart from the areas where I respectfully conclude that she erred, I am satisfied, on a balance of probabilities, that AE's birth date is 3 September 1995. I would be prepared to grant a declaration to that effect.

Postscript.

66. In ***R(Z) v Croydon LBC***[16] it was noted that there were, on 12 January 2011, 64 "age assessment" cases in the Administrative Court's list at various stages of progress. Permission to challenge a local authority's assessment will only be granted if there is a realistic prospect or arguable case that the court would reach a conclusion that the claimant was of a younger age than that assessed by the local authority.[17] If the claim before the Administrative Court or Upper Tribunal[18] is on the factual question of whether the age assessment was right or wrong, the court has to make its finding of fact. The circumstances in which permission to appeal to this court will be granted from the conclusion of the Administrative Court or Upper Tribunal will be very limited, given that the decision is one of fact. The combination of circumstances that led to Macfarlane LJ giving permission in this case and to my conclusion that the appeal should be allowed will be very rare. However, the fact that this court is having to consider an appeal on a pure point of fact and that it is the fifth time that this young man's age has been determined do perhaps suggest that more thought needs to be given to the question of whether this is the best way to deal with such disputes.

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[16] ***[2011] PTSR 748*** at [4] in the judgment of Sir Anthony May PQBD

[17] *Ibid* at [6]

[18] At [31] of ***R(Z) v Croydon LBC,*** Sir Anthony May PQBD noted that age assessment cases could be transferred from the Administrative Court to the Upper Tribunal and such a transfer should always been considered.

Lord Justice Lloyd

67. I agree with all that Aikens LJ has said in his judgment, and would therefore allow the appeal.