



**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

'YNI'

(Anonymity direction continued)

Applicant

versus

Leicester City Council

Respondent

Anonymity direction - Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Applicant is granted anonymity, to the extent set out in this direction. No-one shall publish or reveal any information, including the name or address of the Applicant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court. For the avoidance of doubt, both parties are permitted to disclose the Applicant's identity and to share a copy of the judgment and order with the Secretary of State for the Home Department, with the Applicant's immigration solicitors and any other relevant body for the purposes of updating the Applicant's Home Office records. The reason for granting anonymity is that the Applicant has claimed asylum.

ORDER

BEFORE Upper Tribunal Judge Keith

HAVING considered all documents lodged and having heard Mr J Frost, of counsel, instructed by Bhatia Best Solicitors, for the Applicant and Mr L Parkhill, of counsel, instructed by Legal Services, Leicester City Council for the Respondent at a hearing on 19th to 20th December 2023, and handed down on 20th December 2023

IT IS ORDERED THAT:

- (1) The application for judicial review is refused for the reasons in the attached judgment.
- (2) This Tribunal makes a declaration that the Applicant was, at the time of the Respondent's assessment of him, an adult, with a date of birth of 12th November 2003.

Costs

- (3) The Applicant has failed in his primary aim in applying for judicial review, specifically a declaration of his date of birth as minor, at the date of the Respondent's assessment. However, the Respondent's initial decision dated 16th January 2023 was insufficient and it was not until 24th July 2023 that the Respondent reached a substantively considered decision. As a consequence, the Respondent is only entitled to recover its costs of defending the claim, which were incurred on or after 24th July 2023.

- (4) The Applicant shall pay the Respondent's reasonable costs of the claim incurred on or after 24th July 2023, with the sum payable to be determined in accordance with Regulation 16 of the Civil Legal Aid (Costs) Regulations 2013. The Applicant shall not be entitled to recover any of his costs from the Respondent.

Permission to appeal to the Court of Appeal

- (5) No application has been made for permission to appeal to the Court of Appeal. In any event, permission to appeal is refused, as there is no arguable error of law in my decision.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: 21st December 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): 02/01/2024

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-2023-LON-000936

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

20th December 2023

Before:
UPPER TRIBUNAL JUDGE KEITH

Between:
THE KING
on the application of
'YNI'
(Anonymity direction continued)

Applicant

- and -

Leicester City Council

Respondent

Anonymity direction - Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Applicant is granted anonymity, to the extent set out this direction. No one shall publish or reveal any information, including the name or address of the Applicant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court. For the avoidance of doubt, both parties are permitted to disclose the Applicant's identity and to share a copy of the judgment and order with the Secretary of State for the Home Department, with the Applicant's immigration solicitors and any other relevant body for the purposes of updating the Applicant's Home Office records. The reason for granting anonymity is that the Applicant has claimed asylum.

Mr J Frost
(Counsel, instructed by Bhatia Best Solicitors), for the Applicant
Mr L Parkhill
(instructed by the Legal Services Department, Leicester City Council) for the Respondent

Hearing dates: 19th and 20th December 2023 and handed down on 20th December 2023

Amended judgment issued under Rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008

APPLICATION FOR JUDICIAL REVIEW AMENDED JUDGMENT

Judge Keith:

- 1) These written reasons reflect my oral reasons, which I gave at the end of the second day of the hearing on 20th December 2023.
- 2) The Applicant applied on 3rd April 2023 for judicial review of the Respondent's decision of 16th January 2023 to assign the Applicant an age "of at least 23 years old." The Respondent has since carried a further age assessment, reaching a decision on 24th July 2023, after four assessment meetings from 5th to 13th July, that the Applicant was 19 years and 8 months, having been born on 12th November 2003. The Applicant has contended that his correct date of birth is 12th November 2006, so that when he entered the UK unlawfully on 10th January 2023, he did so as a minor, aged 16 years and two months, whereas on the Respondent's case, he was 19 years and two months.
- 3) The Respondent's first decision in January 2023 was taken after a brief visit by social workers and was based on photographs of the Applicant, taken with his consent. Those social workers concluded that the Applicant's age was clear and obvious and so they did not carry out a more detailed assessment.
- 4) The Applicant's solicitors wrote to the Respondent on 23rd February 2023, threatening legal proceedings and arguing that the lack of a full age assessment, and instead a reliance purely on photographs, was unlawful. The solicitors alleged that the Respondent had ignored the recorded observation of a police officer who had encountered the Applicant on his arrival in the UK, that the Applicant could be 16 or 18, but he did not look much older. In its reply of 13th March 2023, the Respondent maintained that a brief age assessment was appropriate where the Applicant was so obviously an adult, based on his appearance alone.
- 5) Following the Applicant's application for judicial review, in a decision of 10th May 2023, His Honour Judge Rawlings, sitting as a Deputy High Court Judge in the King's Bench Division, granted permission for the application for judicial review to proceed and transferred the claim to this Tribunal. Subsequent directions were issued by Upper Tribunal Lawyer Hussein on 23rd May 2023 and by Upper Tribunal Judge Mandalia on 24th August 2023. These included proportionate searches of the Applicant's social media accounts. An issue arose in the hearing before me about whether the Applicant has complied with his duty of candour and these directions, specifically in relation to what the Respondent says is missing TikTok evidence for the period when the Applicant says that he had such an account, namely in meeting on 6th July 2023, until the earliest records that he produced on 2nd August 2023.
- 6) Following the application for judicial review, the Respondent did not withdraw its previous summary decision, but conducted the full age assessment following meetings in July 2023, as already referred to. The Applicant accepts that the July 2023 age assessment adopted a more detailed process, including the provision of an appropriate adult, an interpreter and a 'minded to refuse' process but nevertheless maintains that the Respondent's July decision was flawed and tainted by the January 2023 decision. In particular, the later decision reiterated comments about the Applicant's physical appearance.

The chronology and the Applicant's case

- 7) I refer for the rest of these reasons to a bundle of relevant documents submitted by the Applicant. I will refer to page numbers in the format, "AB/[xx]". Elements of the chronology are agreed, whilst others rely on the Applicant's narrative of events before he entered the UK. In reciting the Applicant's chronology, I refer to two of the three witness statements which he adopted at the hearing before me at pages AB [E59-E62] and AB/[E126-E141]. For the avoidance of doubt, my findings later in these reasons do not bind any subsequent decision maker who considers the Applicant's asylum claim. This is because first, the asylum claim is not the focus of this decision; second, there is extremely limited evidence before me about events in Sudan; and third, there is no burden of proof in this age assessment, in contrast to an asylum claim, while the standard of proof (the balance of probabilities in this application) is different from an asylum claim.
- 8) The Applicant was born in Al Junayah city, Sudan, where he lived with his mother and father until he was three years old (paras 6-7, AB/[E127]). He does not have any siblings. His father worked as a farmer but when the Applicant was three, he alleges that there was conflict between the tribe of which he was a member, the Zaghawa tribe and what he described as the 'Arab' tribe. During that conflict, his village was set on fire; his family were forced to flee, his father disappeared and never returned; and his mother fled to Chad and never returned. He was taken to live with his maternal uncle in Al Jazeera, in a village called Kilo Khamsa. He claims not to have any further contact with his father since he disappeared and with his mother since she fled to Chad. Alternatively, he had repeatedly asked his father for his birth certificate while living with his uncle (AB/[E102]) and, alternatively, his mother was in contact with his uncle, with whom he lived, to see how he was getting on, but he always missed her calls (AB/[E95]).
- 9) The Applicant's cousins were able to attend a school in a nearby village, but the Applicant was not able, because he did not have identification documents. He first asked his age when he was seven years old, (AB/[E117]) as others were able to go to school and he was not able to. His uncle told him that he would need to wait for his father to return (para 22, AB/[E129]) although Mr Frost submits that this means he could not obtain a birth certificate 'unless,' his father returned, as opposed to 'until' he did so, and because his father never did so, the Applicant was never able to register for school. Alternatively, he first asked when he was six, (para 100, AB/[E139]) and was told he was too young, and to wait a year, which was how he knew his age. Alternatively, he did not know his age until his uncle told him when the Applicant was aged 14 (para 16, AB/[E61]). This was in the context of needing to know his age to be able to obtain a passport, although he never applied for one.
- 10) Instead of attending school, the Applicant worked unpaid for his uncle as a goat herd and when he was older, from the age of 14, making bricks, for which he was paid. One of his cousins, who worked as a money lender, went missing in 2019 and consequently, that cousin's customers, who claimed that the cousin owed money to them, came looking for the Applicant, because they thought he knew where his cousin was. They

threatened to beat or kill him. Consequently, the Applicant fled Sudan to go to Libya. He did so with his family's knowledge. He left Sudan in 2021 and believed that it was towards the end of 2021 (AB/[E94]) when he was around 17 years old, or alternatively when he was around 14 or 15 years old. He travelled from Sudan to Libya via Chad, on a journey that took approximately 7 days and he then lived in Libya for approximately for one year and one month (AB/E108-109); or for about a year (AB/[E96]) or for an unknown period (para 66, AB/[E135]). He then left Libya because of the instability in that country and arrived in Italy in around September 2022. He believed that he was around 16 when he arrived in Italy, although his solicitors explained to him that he must have been 15. He spent a few nights in Lampedusa, was transferred to a refugee camp in Milan where he was neglected and then decided to leave Milan and head to France. In total, he was in Italy for two months (AB/[E97]). He then travelled via Nice and Paris to Calais, without a train ticket. He stayed in Calais for approximately a month and half and then left Calais for the UK. He was France for around two months (AB/[E97]). He arrived in the UK on 10th January 2023, in the back of a goods lorry. He considered himself to be 17 years old at the time, although his solicitor has explained to him that he was only 16.

The Respondent's case

- 11) The Respondent did not believe that the Applicant was honest in his account of his claimed age, in particular in how he came to know his age and when; whether he was in contact with his parents; and the timings in his narrative of his journey to the UK, which did not add up. His accounts were inconsistent in the answers he gave in the July 2023 interviews and in the statements which he gave to his solicitors, parts of which he now says were not correct and he never told his solicitors some of the contents of the statements, despite his having confirmed those statements as true. The Respondent points out that the solicitors have not tendered evidence to support this nor do they claim to be professionally embarrassed.
- 12) In its July 2023 age assessment, the Respondent identified four areas of inconsistency. The first was the Applicant's initial claim to have had no contact with his father but then in the second age assessment meeting on 6th July 2023, saying that whilst living with his uncle, he had asked his father about his birth certificates lots of times (AB/[E102]). It was also implausible that his uncle would tell him to await his father's return, when the same uncle had told him that his father had disappeared.
- 13) Second, on one account, the Applicant had asked his uncle about his date of birth many times, whereas on other accounts, his uncle had only told him once when he was aged 14. He then suggested that this was an account put to him by his solicitor, which he had never said. However, the Applicant had adduced no evidence from the solicitors' firm indicating they had misunderstood the Applicant's evidence. Alternatively, he said that he might have made the comment, but he could not remember.
- 14) Third, the Applicant was inconsistent, with different narratives of whether he had asked his uncle aged six or seven, in the context of when children started school. When asked about the inconsistency, he merely reiterated

one version of his claim (to have asked first when he was aged six, and then repeatedly).

- 15) Fourth, the Applicant referred to having left Sudan at the end of 2021 when he was aged 17, but then claimed to have been aged 14 to 15 when he left. In addition, his narrative amounted to travel of around 16 to 18 months, or around a year and a half, which was not consistent with a claim to have left Sudan at the end of 2021 and having arrived in the UK on 10th January 2023.
- 16) Fifth, the Respondent relied on the Applicant's physical demeanour and appearance, consistent with someone over the age of 18, but it reiterated that this was not in isolation from the other factors.
- 17) In summary, the Respondent says that the Applicant was inconsistent about when and how many times he was informed about his date of birth; how old he knew he was at certain points in his life; the contact he had had with his father after moving to live with his uncle, and the timeline of his journey. The Respondent points out that almost all of the evidence is based on the Applicant's testimony, which in turn depends on his credibility. On one version of his account, he left Sudan aged 17, travelled for 16-18 months, and arrived in the UK in January 2023 aged 19 and was 19 years and 8 months at the date of the July 2023 assessment. It was probable that this was the version that the Applicant believed to be true, but was unwilling to reveal, but which was apparent from the various inconsistencies in his account.

The Hearing

- 18) I did not hear oral evidence from the Respondent's age assessors. It had been agreed that they would not provide oral evidence, in pre-hearing directions. I pause to note, in response to a submission from Mr Frost that the July 2023 assessment was tainted by virtue of the earlier January 2023 decision having expressed a clear view on the Applicant's age, that the two age assessors in the January 2023 assessment were different from the July 2023 assessors. There is no suggestion that the earlier assessors had any involvement in the second assessment, although the Respondent is clear that it maintains that the Applicant's physical demeanour and appearance remained relevant.

Witness evidence of those attending this hearing

- 19) I heard evidence from the following two individuals, who adopted their witness statements and who also provided additional oral evidence.
 - a) **Tracy Kabambe:** Ms Kabambe is a paralegal employed by Bhatia Best Solicitors, who has had day-to-day responsibility for the Applicant's legal representation. She volunteered to give witness evidence about the circumstances in which the Applicant had provided written witness statements which she had produced to assist him, as well as the evidence in relation to the Applicant's social media use. The Applicant's solicitors did not suggest that they were professionally embarrassed and the Applicant also waived privilege in respect of an attendance note, on which

Ms Kabambe had based the Applicant's second witness statement (AB/[E126-141]). I stress that the Respondent does not seek to criticise Ms Kabambe in any way, nor question her professional conduct or integrity. Similarly, I accept that she has attempted to assist me as best as she can and has been honest and careful in her evidence. She adopted three witness statements, (AB/[E66-67; E142-143; and E147-149]). The first two statements were in virtually identical terms and confirmed that the Applicant had instructed her that he was illiterate. As a consequence, she had read the Applicant's witness statements to him line-by-line, with the assistance of an Arabic interpreter by telephone. The Applicant had confirmed that the facts stated in his witness statement were true. She had explained to him that proceedings for contempt of court might be brought against anyone who made a false statement in a document verified by a statement of truth. The Applicant's statements had been verified by such statements. In each statement, the interpreter had been named and signed to confirm that the Applicant had told them that he understood the statement; and agreed and approved what was written in the statement. Ms Kabambe had been unable to find an attendance note for the Applicant's first statement and believed that this might have been because she typed what the Applicant had said directly into the witness statement which is in the Applicant's bundle. In respect of the Applicant's first witness statement, para 16 [AB/E61], in which the Applicant said that he was told his date of birth when he was 14 years old and this was the only time he was told and was in the context of needing to know because he wanted to get a passport, Ms Kabambe said that it could have been a misunderstanding, in the context of the Applicant speaking about his wanting a passport. However, she did not elaborate on whether it was her misunderstanding of what the Applicant had said, or whether he had misunderstood her question. In respect of the Applicant's second witness statement, para 22, AB/[E129], in which he had stated that he had asked his uncle on numerous occasions to send him to school but the uncle had said that the Applicant needed to wait for his dad to return, Ms Kabambe's attendance note referred to, *"need to wait for my dad to return... the school asked for my birth certificate so did not attend. At the time when asked him to go to school to study he said wait for dad to appear again and get birth certificate so had been waiting for dad to appear."* Ms Kabambe accepted that what was included in the Applicant's witness statement at para 22 was consistent with her attendance note. Regarding the Applicant's TikTok account and the fact that records only started from 2nd August 2023 whereas the Applicant had referred in the meeting with social workers on 6th July 2023 to having such an account, Ms Kabambe said that she had used a tool in TikTok to request an automated download of all records. She had not spotted, when doing so, that the Applicant referred to having TikTok during July and could not explain the absence of records for July.

- b) The Applicant:** I am conscious that the Applicant is, even on the Respondent's case, a young man who may, by virtue of his lengthy and arduous journey to the UK, have experienced trauma and distress. Mr Frost does not suggest that the Applicant has a mental health condition which would impair his evidence but I accept his submission, which I regard as realistic, that the Applicant's experiences in his journey to the UK may result in him being hesitant in his answers and perhaps not as forthcoming

in giving his best evidence and that as a consequence, I should not necessarily draw adverse inferences from the lack of detail in his answers. I checked with Mr Frost whether any supporting adult ought to be present and what other adjustments or accommodations I should make. He confirmed that no social worker needed to be present, and that the Applicant was content to give his evidence alone via an interpreter. We explored the issue of interpretation because the Applicant's case, at least in part, depends upon difficulties he says that he encountered in interpretation between those interpreters using what Mr Frost termed 'classical Arabic', as opposed to the Sudanese Arabic spoken by the Applicant. Consequently, I was keen to ensure that the Applicant and the interpreter in the hearing before me had had the chance to establish a rapport and confirm a common understanding. I also told the Applicant that should he have any difficulties in understanding or being understood, he should let me know straightaway. It was only at one stage, prompted by Mr Frost, rather than the Applicant himself, that when the Applicant gave evidence about the difficulties with a previous female interpreter as distinct from a male interpreter who understood him well, he switched to difficulties with an interpreter described as "he." Mr Frost submitted, based on his instructing solicitors having their own interpreter present who informed him, that there is no distinction between "he" and "she" in Sudanese Arabic. Whilst I accept this may be the case, there is also a danger, which I will come onto discuss in my findings, of over-extrapolating and seeking to explain core inconsistencies based on difficulties in interpretation, which are not appropriate. The Applicant adopted three witness statements: (AB/[59-62; 126-141; and 144-145]). Two briefly discuss the Applicant's background in Sudan, why he claims to know his age; the reason for leaving Sudan; and his travel to the UK. Apart from a minor inconsistency which he corrected, the Applicant adopted and confirmed each as correct in the hearing before me, despite them being inconsistent. I say more about this in my findings, later in these reasons. The third statement dealt briefly with the Applicant's social media accounts.

The Law

- 20) In terms of the law, it is undisputed and as a result I do not set it out in full, but I recite a number of key principles. First, I have to decide the Applicant's age as a question of fact, precisely in terms of his date of birth. There is no burden of proof, but I must decide matters on the balance of probabilities. I must adopt an inquisitorial approach, with a sympathetic assessment of the evidence, see CJ v Cardiff County Council [2011] EWCA Civ 1590. There is no margin of discretion to the Respondent's own view, rather that assessment is evidence to be considered with all other evidence adduced. Because there is an absence of corroborative documentary evidence, my starting point is the Applicant's own credibility, (see: R (AE) v Croydon LBC [2012] EWCA Civ 547), and how the Applicant knew his date of birth. I also make allowance for the fact that even on the Respondent's case, the Applicant is a young adult whose journey may have been traumatic, and this may impact on the coherence of his account. In relation to appearance and demeanour, almost all evidence of physical characteristics is likely to be of very limited value.

- 21) I also remind myself that I should not pick between the alternatives put forward by the parties but must rather decide the age myself, see N v Croydon LBC [2011] EWHC 862.
- 22) In relation to the 'benefit of the doubt' principle, while Mr Frost accepts that the gap between the two ages posited by the two parties is too wide to give the Applicant the benefit of the doubt, such a benefit might apply to inconsistencies in the time period in which the Applicant claimed to have been in Libya.

Findings and conclusions

- 23) Although I have considered the evidence holistically, I must start somewhere, and the best place is how and when the Applicant claimed to know his date of birth.
- 24) The practical difficulty is that the Applicant is inconsistent even on this first aspect of his account. I accept Mr Parkhill's submission that the inconsistencies are not sufficiently explained by differences or difficulties in interpretation, or the Applicant's reticence due to his age or hardships suffered in his journey. Even in respect of the elements which are not damaged by the inconsistencies, I also accept Mr Parkhill's submission that the Applicant's account is, in some respects, implausible.
- 25) The first inconsistency is the age at which the Applicant claims to have known his date of birth, either at six years' old, seven years' old, or 14 years' old. The reference to being 14 is not explained by any difficulty between the interpreter, at the second to fourth age assessment meetings from 6th to 13th July 2023, understanding him, in contrast to the Applicant's assertion that the male interpreter of the first meeting on 5th July 2023 understood him better. The claim of learning about his date of birth on the first and only occasion, aged 14, was contained in the Applicant's own first witness statement to his solicitors dated 29th March 2023 (AB/[E61]) which, as Ms Kabambe confirmed, was recorded in circumstances where the contents of the witness statement were read to the Applicant line by line in translation; in circumstances where he knew the importance of the truth of the statement, and confirmed it as true; and the Arabic instructor used by his own solicitors confirmed that the Applicant understood the statement and he agreed and approved what was written in it. Whilst I do not question Ms Kabambe's honesty or professionalism, she was careful not to say that there had been a misunderstanding but that there 'might' have been. In other words, she proffered this is a possible explanation. She did not say that she put the age of 14 to him, as he contended, and whilst the Applicant had sought to correct this in his second witness statement (para 104, AB/[E140]) even when specifically prompted by Mr Frost at the hearing before me, the Applicant confirmed the contents of the first statement as being true, including the reference to learning about his date of birth for the first time aged 14. In other words, the Applicant adopted the two inconsistent witness statements as being correct, even when prompted. The Applicant's claim of having learned his date of birth when he was 14 was not consistent with also having learnt about his age when he was younger because the Applicant makes clear that this was the only time he was told his date of birth. I also do not accept Mr Frost's submission that the

inconsistency might be explained because in his answer, the Applicant was focussing on wishing to know his age so he could get a passport, whereas he had asked about his date of birth at a different age, in the different context of wanting a birth certificate to attend school. To reiterate, at paras 16 and 18, AB/[E61], the Applicant says that the only time he was told or needed to give his date of birth was when he wanted to obtain a passport, and this was only when he was 14. This is not consistent with his alternative claim that he needed to give his date of birth to attend school.

- 26) On the second version, the Applicant knew his date of birth when he was either six, when he began to work as a goat herd and before he was due to start school, which children start aged seven (para 100, AB/[139]), or he first asked and knew when he was seven, because children usually start school aged five or six years old (AB/[E117]). I am prepared to accept that the difference between six and seven years old may, on the face of it, appear marginal, but what is more significant is the difference between wanting to attend school in a year's time with others, and the Applicant first knowing his age then; as opposed to only knowing after others had started school. That is a striking difference in a recollection of a key life event.
- 27) Moreover, I accept the Respondent's criticism that the account, regardless of whether the Applicant was six or seven, is not plausible, even accepting the general principle that questions of plausibility needed to be approached with significant caution when considering circumstances and cultures outside the UK. At para 22 of the Applicant's second witness statement (AB/[E129]) the Applicant is recorded as having asked his uncle on numerous occasions to send him to school but was told he would need to wait for his dad to return. Mr Frost has contended that there is a distinction between the hypothetical "unless" the Applicant's father returns, as opposed to the concrete "until" the Applicant's father returns, in response to the criticism that it is implausible that the uncle would have said this in circumstances where the Applicant's father had disappeared. In contrast, in the Applicant's oral evidence, he denied having made this part of the statement at all, (despite having previously confirmed it was correct) instead reframing it by stating that he had said that his uncle had said, in response to requests for his birth certificate, that only his mother or father could obtain it for him. I accept that the version in the Applicant's witness statement reflects Ms Kabamba's attendance note, namely that he would need to wait for his father's return. That lacks plausibility, when his father had disappeared and additionally, there was no reason why the Applicant would keep asking his uncle repeatedly, in order to attend school, when he already had a clear answer. Mr Frost's speculation that this might be natural curiosity and a desire to remember, given his illiteracy, ignores the Applicant's evidence that birthdays were not celebrated.
- 28) There is also the inconsistency during the interviews with social workers, where the Applicant refers to having asked his father for his birth certificate, whilst he lived with his uncle. The Applicant seeks to explain this on the basis that whilst he understood the female interpreter in this meeting, she might have had difficulties in understanding him, as evidenced by the fact that she had to ask him to repeat a number of his answers. In contrast to my concern that the Applicant may be willing in the hearing before me to give a 'yes' answer to a question eliciting a yes or no answer, when he

might not in fact know, the question put by the social worker in the interview at AB/[E102] was about whether the Applicant was studying in Sudan, to which he replied that he was not. He then elaborated, discussing his frequent requests to his father for his birth certificate. He continued, when asked a question based on asking his father, and he clearly distinguished between living with his uncle, when he asked his father for his birth certificate lots of time. Only in response to a third question, later in the interview, did he clarify that he did not have contact with his father. I also pause to observe that at AB/[E99], the age assessors identified that the female interpreter was different and asked the Applicant to confirm his understanding of the interpreter. In his witness statement which postdated the July interviews, the Applicant refers at para 103, AB/[E140], to the possibility that he was not sure that the interpreter had understood or was translating everything he said correctly because of a difference in Arabic, and denied being in contact with his father, but he did not dispute that he had said during interviews that he had asked his father. At its highest, there is a possible implication, but no more than that. On balance, I find that the Applicant did refer during the social worker interview on 6th July 2023 to having asked his father repeatedly for his birth certificate.

- 29) The Applicant was also inconsistent about his age when he had left Sudan. The Applicant has given oral evidence that the male interpreter in the first social worker meeting understood him better than the female interpreter in a later meeting. It was in this first meeting on 5th July 2023 (AB/[E94]) that the Applicant is recorded saying that he was aged 17 when he left Sudan, which he was asked to clarify and repeated. Only later in the meeting, when challenged about his age when he entered the UK and also said that he was 17, did he say that he was approximately aged 14 to 15 when he left Sudan. This inconsistency cannot be explained by difficulties with the interpretation, which he explained had been good, or a reluctance to elaborate.
- 30) Next, I have considered the apparent inconsistency in relation to the duration of the Applicant's journey, one explanation for which is that he left Sudan earlier than he claimed. The two periods of two months in each of France and Italy are not disputed. The dispute is the period spent in Libya. While the Applicant has since claimed not to know, (para 66, AB/[E135]) and says that he felt pressured into giving an answer, he repeated the references to a year or longer in different meetings, with different interpreters, including the male interpreter who understood him well (AB/[E96] and [E97]) and to the female interpreter, referring to a "year and a month" (AB/[E108]). I do not accept as reliable the Applicant's claim that he simply made a up a period, in the context of its repetition on different dates, in different meetings and without prompting. Considering that as a bare minimum, the Applicant spent at least a year in Libya, this means that the total period of travel was at least 16 months. This is not consistent with his claim to have left Sudan at the end of 2021 and when it is known that he arrived in the UK on 10th January 2023 and further damages the Applicant's credibility. It is consistent with having left Sudan in mid-2021, aged 17, having been born in November 2003. I have noted Mr Frost's submission in his skeleton argument that the Applicant's credibility should not be undermined, as the Applicant may have intended to refer to the end of the Islamic year in August 2021, including by reference to celebrations in Libya

(AB/[E81]) but this a hypothesis suggested by Mr Frost and the Applicant address it in any detail in his witness statement or oral evidence.

- 31) Finally, I have considered whether the Applicant has complied with his duty of candour in the context of the specific directions that he discloses details of his social media accounts, including TikTok. Those details had to include when he opened the account; the timeline of activity; and the closure of any account. In his third witness statement at AB/[E144-145], the Applicant has not specified the date when he opened the account. I bear in mind what was recorded in the interview with social workers on 6th July 2023 (AB/[E101]) that his account existed then. In contrast, the records which begin at AB/[I233] and run to hundreds of pages of entries, with multiple entries each day in the period to 26th September 2023, only begin on 2nd August. I find that the Applicant has accessed TikTok, with equal frequency, in the period between 6th July and 2nd August, but there is no record of this, nor any explanation. When asked, the Applicant claims not know the details of social media. Mr Frost was instructed that an initial text which had been sent which confirmed the account being set up had been deleted to save storage space, but there is no evidence or record of deletion of the activity history for nearly a month. I find that the Applicant did have a TikTok account during July 2023, used it, but has not disclosed its contents, mostly likely because it is a separate account. Where the contents of that account activity take either party's case cannot be known, but at the least, the Applicant's failure to comply with his duty of candour further undermines his credibility.
- 32) I am conscious that even though I have significant doubts about the Applicant's credibility, he may nevertheless have the date of birth which he claims. I am conscious of not simply choosing between either party's position. As best I can and having considered all of the evidence, I conclude, on the balance of probabilities, that the Applicant was 17 years old when he left Sudan (as he specifically claimed at one stage), and that he left Sudan in mid-2021, which is consistent with his journey taking around 16 to 18 months, until his arrival in the UK on 10th January 2023. I reject the version of his claims to have known his age from around six or seven years' old, given the inconsistencies and implausibility of those accounts and prefer, on the balance of probabilities, the version that he learned of his date of birth on the first occasion aged 14 because he wanted to get a passport. I find that in doing so, he became aware that he was born on 12th November, as the truth, but that he knew (and knows) that he was born in 2003, not 2006, when he was 14, in contemplation of wishing to leave Sudan. That date of birth is consistent with his reference to being 17 on leaving Sudan in mid-2021, before his eighteenth birthday in November 2021, as well as the period spent travelling of 16 to 18 months. I have placed little weight on the Applicant's physical presentation or demeanour in reaching my findings, as they do not assist, but equally they do not undermine my conclusions. It is unnecessary for me to resolve the issue of whether the Applicant has been in contact with his father.
- 33) For the above reasons, I conclude that the Applicant's date of birth is 12th November 2003.

Costs

- 34) On the question of costs, I considered the authority of M v London Borough of Croydon [2012] EWCA Civ 595, and the general principle that costs follow the cause. On the one hand, I accept Mr Frost's submission that it is implicit from my findings that the January 2023 assessment was not sufficient, and it was only after the Applicant applied for judicial review that the Respondent carried out the substantive assessment in July 2023, which was far more detailed. On the other hand, I accept Mr Parkhill's submission that the Applicant has, in reality, always known of his true date of birth. I therefore accept Mr Parkhill's submission in the alternative to the general principle (which was his primary position, that the Respondent should obtain all of its costs), that at the very least, it was not appropriate to award the Applicant his costs, and instead I should reflect the deficiency in the initial January 2023 assessment by only awarding the Respondent its costs from the date of the substantive age assessment, completed on 24th July 2023.

Permission to appeal to the Court of Appeal

- 35) While Mr Frost sought to reserve his client's position, he said that he was not instructed to make any application for permission to appeal today. I considered whether to grant permission to appeal to the Court of Appeal in any event, and refuse permission, because there is no arguable error of law in my decision.

Signed:

J Keith

Upper Tribunal Judge Keith

Dated: 21st December 2023

Amended version dated 2nd January 2024

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