

IN THE UPPER TRIBUNAL

R (on the application of Rustami) v Staffordshire County Council and Secretary of State for the Home Department IJR [2015] UKUT 00171 (IAC)

Field House  
London

16 March 2015

**BEFORE**

**UPPER TRIBUNAL JUDGE SOUTHERN**

**Between**

**THE QUEEN ON THE APPLICATION OF**

**MUSTAFI RUSTAMI**

Applicant

**and**

**STAFFORDSHIRE COUNTY COUNCIL**

Respondent

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Interested Party

**Representation**

The Applicant did not appear and was not represented

Mr V. Mandalia, instructed by the Solicitor, Staffordshire Country Council

**JUDGMENT**

1. The applicant has been granted permission to bring a judicial review against the decision of the respondent to refuse to accept that, on arrival in the United Kingdom on 4 February 2014, he was then a child. Two preliminary issues arise to be considered before that question is addressed.

2. First, the appellant was, until Friday 13 March 2015, which was the working day before the hearing, represented by solicitors who had public funding to represent him in these proceedings. On 13 March 2015 they notified the Upper Tribunal that public funding had been withdrawn and that they were no longer acting for the applicant. The Litigation Friend also withdrew. The Tribunal was informed that these events had been discussed with the applicant who said that he would appear in person at the hearing so that he could continue to pursue his challenge without legal representation.
3. On 16 March 2015 the applicant did not appear. I was satisfied that he was aware of the date and time of the hearing and, as no request had been received for an adjournment and no other explanation was provided for his absence, I decided to proceed with the hearing in his absence.
4. The second preliminary issue is that it appears to be clear that the application for permission was made out of time. The decision under challenge was made on 6 February 2014. The copy of the claim form in the bundle prepared by the applicant's former representatives is unsealed and undated, as is the copy held by the respondent. As this application was transferred to the Upper Tribunal by the Administrative Court, the Upper Tribunal's records do not include details of when the claim form was lodged. However, since that claim form was prepared by the applicant's former representatives and as they did not request a copy of the age assessment documents until 23 May 2014 it is hard to see that the claim form, together with its detailed grounds, could have been submitted before then. In the summary grounds of defence the respondent raises this concern and points out that there has been no application made for an extension of time.
5. Although this was not specifically dealt with by the order of the judge who granted permission, Mr Mandalia agrees that the Upper Tribunal should proceed on the basis that it is implicit in the grant of permission to bring a judicial review that the judge must have intended to extend time.

6. The issue to be resolved in these proceedings is the appellant's age, which is in dispute between the parties. The applicant does not know his date of birth but says that he was a child aged 16 years old on arrival in the United Kingdom on 4 February 2014 as an unaccompanied minor seeking asylum. He says he knows this from what he was told by his mother before he left the family home in Pakistan, then aged 14, to travel to Iran and because he knows that he was two years older than his oldest sister when she died aged 14 and he is able to deduce from that his age on arrival in the United Kingdom as he knows also when his sister, together with other family members, lost their lives. He has asserted a date of birth of 1 January 1998, not because he has any reason to believe that is, in fact, his date of birth but because, if he had been born in 1998, as he claims to be the case, that would place him at the youngest end of the range of ages possible.
  
7. Having claimed to be a child, the applicant was placed in the care of the respondent, who did not accept his asserted age. On 6 February 2015 an age assessment was carried out by the two social workers who have given oral evidence in these proceedings. The outcome of that age assessment was a conclusion that the applicant was an adult. For reasons founded upon logical deduction from facts asserted by the applicant, they decided that his most likely date of birth was 15 October 1995, which meant that the applicant was considered then to be 18 years and 3 months old.
  
8. Thus, the applicant says that he was aged 16 years 1 month at the date of the age assessment on 6 February 2014 so that he is, at the date of the hearing before the Upper Tribunal, 17 years 2 months old whereas the respondent says that the applicant was aged 18 years 3 months at the date of the age assessment which would mean that he is now 19 years 4 months old. There is, therefore, a difference of 2 years and 2 months between the parties in their estimate of the applicant's true age.

9. In granting permission to bring a judicial review on 30 July 2014, at which date the applicant claimed to be 16 ½ years old, Ms Geraldine Clark, sitting as a Deputy Judge of the High Court, said this:

“I give permission because I could not say it was not arguable that C is under 18. On the balance of probabilities, based on the extensive evidence before me he is over 18. He did not challenge the age assessment for over 3 months after it was made... The age assessment appears to have been conducted properly and C has no real explanation for his giving different accounts of when his family died and his nationality.”

Despite granting permission, the judge refused to grant the interim relief sought with the result that the applicant remained in detention until later granted bail on a date that is not disclosed by the evidence before me.

10. That might not appear to be a promising start to these proceedings for the applicant but, of course, I now have the benefit of the totality of the evidence upon which the parties seek to rely, including oral evidence of the two social workers who carried out the age assessment. Although the applicant chose not to attend and was not represented, I sought to raise with those witnesses the points which, based upon the written evidence, I anticipated the applicant would have wished to raise with them.
11. For the avoidance of any possible doubt, I embark upon the search for an answer to the question now to be addressed, which is not simply the applicant’s age but his most likely date of birth, without any “predisposition” that the applicant is or is not a child.
12. Before descending into a detailed analysis of the evidence, it is helpful to set out an overview of the applicant’s history, as he has described it, and the evidence relied upon by the parties. As we shall see, the timelines that can be drawn from the

applicant's evidence of events are problematic in the sense that the threads of his account do not sit comfortably together in terms of chronology.

13. The applicant was born in Pakistan to parents of Afghan extraction but he is clear that he is a citizen of Pakistan. Having completed his school education he moved to Iran in search of work, his parents and siblings remaining in Pakistan. He says that he was then aged 14. He describes how, in February 2013, he lost contact with his parents and he believes that they, and his two sisters, were killed in a suicide bombing in another district of Quetta, to which area they had travelled to attend a wedding. After this, the applicant decided to travel to the United Kingdom, funding his journey, which was arranged by an agent, with the money he saved from his employment. He said that he left Iran either in late 2013 or early 2014 and, after a gruelling 8-month journey, which included a lengthy period of detention in Greece, he arrived in the United Kingdom, concealed in the back of a lorry, on 4 February 2014.
14. That last aspect of his account illustrates the chronological difficulties in the applicant's account because, plainly, an 8 month long journey ending with arrival in the United Kingdom on 4 February 2014 cannot have commenced in late 2013 or early 2014. However, since the applicant has confirmed that he was detained in Greece for about five months and that he spent up to two months in Calais, making repeated attempts to gain access to a lorry, it is entirely plausible that at least 8 month elapsed between his departure from Iran and his arrival in the United Kingdom.
15. When encountered on arrival, he was taken into police custody and, after a short stay in the care of the respondent as a result of having claimed to be a child, he was, following the age assessment on 6 February 2014, transferred to immigration detention.

16. The applicant then claimed asylum, on the basis that in the same way that his parents and sister had been killed in a suicide bomb attack, if he were returned to Pakistan he too would face a real such risk.
17. The applicant's appeal against refusal of that claim was dismissed by First-tier Tribunal Judge Mayall following a hearing on 13 March 2014. In those proceedings, throughout which the applicant was legally represented, he was treated as an adult with a date of birth of 15 October 1995, and he raised no issue concerning his age.
18. It is notable that in his asylum interview, the transcript of which has been produced, the applicant's date of birth is given as 15 October 1995, the date identified in the age assessment carried out by the respondent. Even assuming that to have been inserted by the interviewing officer, the transcript shows that other entries in the preliminary part of the interview record that might be thought to have been entered in advance from information already available have been altered, presumably because the applicant pointed out that they were incorrect. Perhaps more significantly still, in his witness statement, prepared by his solicitors for those appeal proceedings, the applicant said in the opening paragraph that his date of birth was 15 October 1995.
19. In his written evidence in these proceedings the applicant has offered no real explanation as to why he did not pursue any challenge in respect of his age or why he adopted the date of birth assigned by the age assessment process, without complaint, in his written and oral evidence to Judge Mayall. Indeed, it was only after his asylum appeal had been dismissed and he had been refused permission to appeal by both Tribunals that his lawyers renewed the challenge in respect of the applicant's age. That, incidentally, was also after removal directions set for Pakistan were vacated because the request for an emergency travel document was refused when the applicant told the Officer from the Pakistani Embassy who had interviewed him in that regard that he was a citizen of Iran.

20. In dismissing the appeal, Judge Mayall said that the outcome did not turn upon issues of credibility. That was because the judge accepted that, in the light of the country evidence, the appellant was at risk on return to his home area in Pakistan on account of being a Hazara Shia but no such risk existed outside Quetta and the surrounding area and so it was open to the applicant to settle elsewhere in Pakistan and it would not be unduly harsh to expect him to do so because:

“The appellant is a young, resourceful man. He has survived an arduous journey from Pakistan and has lived, on his own account, in Iran for two years earning a living whilst still young. There is, in my judgment, nothing inherently unreasonable in expecting him to settle in a different part of his own country. On his own account he is able to get by in several languages. He does not, so far as I am aware, have any health issues.”

21. Having concluded that the outcome of the appeal did not turn on the applicant’s credibility, the judge made no findings of fact in respect of the applicant’s account of the death of his parents and sister in a suicide bomb attack in February 2013.

#### The applicant’s case

22. In support of his claim to have been 16 years old on arrival in the United Kingdom in February 2013 the applicant relies on the following:

- a. When he started school in Pakistan he was told by his mother that he was in his sixth year, although he told the social workers conducting the age assessment that he was either 6 or 6 ½ years old when he started school. He spent five years at primary school and two years at High School;
- b. About a month after having left school, and being unable to find suitable work locally, with approval from his father he moved to Iran to find work. He was told by his mother that he was 14 years old when he went to Iran

and the applicant says this was in 2012. That is how he knows that he must have been born in 1998;

- c. Because he was under 18 when he moved to Iran, he was unable to get a passport and so could not cross into Iran through official channels and instead, with the help of an agent, travelled over the mountains into Iran;
- d. The applicant knows that the eldest of his two sisters, Sakina, was 13 or 14 years old when she died along with his parents in a suicide bombing in Quetta in February 2013. The applicant knows also that this sister was two years younger than him. The applicant says that the social workers were wrong to record him as having said only that his sister was 14 when she died;
- e. Although the applicant agrees that he does not know the day or month of his birth, he does know that he was 14 years old when he left for Iran in 2012 so that he must have been 16 years old when he arrived in the United Kingdom in February 2014.

23. The applicant relies upon two further pieces of evidence in the form of letters from Mr Francesco Jeff of the Children's Section of the Refugee Council and Ms Lauren Cape-Davenhill of the Gatwick Detainees Welfare Group, both of whom have had dealings with the applicant and express the view that he is of the age he claims to be.

#### The respondent's case

24. The respondent relies upon the age assessment carried out on 6 February 2014 by its two social workers, David Atherton and Lisa Nelson. As I have said, for the reasons set out in their report, they concluded that the applicant was 18 years old on arrival. By a process of logical deduction from the evidence he had provided,



they arrived at an age of 18 years and 3 months, which led them to identify a probable date of birth of 15 October 1995.

25. I have also heard oral evidence from those two social workers.

The legal framework.

26. The law in this area is settled and it is sufficient to provide the following brief summary. Where the age assessment of the local authority is in dispute it is for the court to reach its own assessment of age as a matter of fact. It was recognised by Lady Hale in *R (A) v Croydon LBC* [2009] UKSC 8 that this was not a task without difficulty:

“But the question whether a person is a "child" is a different kind of question. There is a right or a wrong answer. It may be difficult to determine what that answer is. The decision-makers may have to do their best on the basis of less than perfect or conclusive evidence. But that is true of many questions of fact which regularly come before the courts. That does not prevent them from being questions for the courts rather than for other kinds of decision makers.”

27. In *R (B) v Merton LBC* [2003] EWHC 1689 (Admin), the following guidance was given by Stanley Burnton J as to the correct approach to that task:

“The assessment of age in borderline cases is a difficult matter, but it is not complex. It is not an issue which requires anything approaching a trial, and judicialisation of the process is in my judgment to be avoided. It is a matter which may be determined informally, provided safeguards of minimum standards of inquiry and of fairness are adhered to.”

Having made the point that, except in clear cases, the decision maker cannot determine age solely on the basis of appearance, he continued:

I do not think it is helpful to apply concepts of onus of proof to the assessment of age by local authorities. Unlike cases under section 55 of the Nationality, Immigration and Asylum Act 2002, there is in the present context no legislative provision placing an onus of proof on the applicant. The local authority must make its assessment on the material available to and obtained by it. There should be no predisposition, divorced from the information and evidence available to the local authority, to assume that an applicant is an adult, or conversely that he is a child..."

28. In the skeleton argument prepared by the applicant's former representatives, reliance was placed upon observations made by Mr Ockelton, VP in *R (AM) v Solihull MBC* [2012] UKUT 00118 (IAT)

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

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

Reactions from the individual's peers are also likely to be of assistance if they are available. We do not suggest that other young people are qualified specifically to give evidence about the age of a colleague of theirs, nor should they be encouraged to do so. But those who work with groups of young people see how they react with one another and it seems to us likely that evidence of such interaction, if available,

may well assist in making an age assessment, particularly if any necessary allowance for cultural differences can be made.”

The point being made on the applicant’s behalf appears to be that, unlike the respondent’s social workers, who had only a relatively brief opportunity to engage with the applicant, the two persons from whom he obtained letters of support, were able to observe him over a longer period.

### Analysis of the evidence

29. The chronological difficulties with the applicant’s account of events are plainly apparent. He relies both upon what he says he was told by his mother and by establishing his age by reference to events that he feels able to identify in terms of how long ago they happened. He says he left Pakistan and travelled to Iran about one month after finishing school and that he was told by his mother, just before he left, that he was then 14. But he says also that his mother told him that he started school “in my sixth year” which presumably means when he was 5 years old, although he told the social workers he was either 6 or 6 ½ years old when he started school. As he is clear that he spent 7 years at school, he would have been 12 years old if he had started aged 5 or 13 years old if he had started aged 6.
30. It is convenient to begin with an examination of the age assessment report and to consider the challenges to that report that have been raised.
31. As we shall see, the reasoning of the social workers that led them to conclude that the applicant was, at the time of that assessment in February 2014, 18 years and 3 months old, is founded upon an acceptance of the information he himself had provided. The steps in that reasoning process were:
  - a. There was no documentary evidence as to the applicant’s age or date of birth. The social workers considered that his “interaction” during the interview indicated a level of maturity exceeding his asserted age;

- b. The applicant explained that the elder of his two sisters was 14 years old at the time of her death in the suicide bomb attack in Quetta and that had occurred “about two to two and a half years ago”;
- c. It was 13 months after discovering that his parents and siblings had been killed in the bomb attack that he left Iran in order to travel to the United Kingdom.

This led to the following conclusion:

“Mustafa states that his sister died at the age of fourteen and this incident occurred two to two and a half years ago. Mustafa confirmed on several occasions that there was a two-year gap between him and his sister with him being two years older than her. Therefore if his sister died at the age of 14 as asserted by Mustafa then he must have been sixteen at the time of her death. If the death occurred two to two and a half years ago this would make Mustafa over eighteen. Mustafa’s physical presentation also indicated that he could be even older than currently assessed.”

This was reinforced by what was written in the previous section of the report, which is headed “Adverse Provisional View”:

“The reason for coming to the conclusion that Mustafa is over 18 is that he was given several opportunities to alter the discrepancy of his age raised by his assertion of the age difference between him and the age of his sisters. On each occasion he confirmed the age difference and the age of his sisters at their death. When it was put to him that this could only mean that he was over 18 he at first stated that he may be older but not 18 and then to say that it was possible that his mum had made a mistake.”

- 32. The applicant raises two challenges to that reasoning. First, he insists that he did not say that the elder of his two sisters was 14 at the time of her death, but that he said she was *either* 13 or 14 years old. Secondly, he says that had he been asked not

how long ago his family had been killed but when they had been killed he would have said that this happened in February 2013 and so the calculation of age flowing from the date of that event would have been different and, even applying the same reasoning process, the social workers would have found him to be one year younger than they did.

33. Dealing with the first of the two challenges raised by the applicant, it can be seen that this has been dealt with in robust terms by both social workers. Mr Atherton said in his witness statement:

“The claimant told us that his family were killed in an explosion. When first asked how long ago his family were killed in an explosion he said it was two years. When he was asked again he said it was less than two years ago. When asked a further time he said that the explosion in which his family died occurred two to two and a half years before the age assessment. When it was pointed out to him that he had given different answers to the same question the claimant settled on the explosion occurring two years before the age assessment interview. The claimant told us that his sister Sakina, was 14 years of age at the time of her death, that he was two years older than her, and that Sakina died two years before, in an explosion. We asked the claimant to confirm that each of those three pieces of information was correct at least five or six times. Each time he was asked he confirmed that it was correct that his sister, Sakina, was 14 when she died, that he was two years older than her and that she died two years before the date of the age assessment interview.”

And in her witness statement Ms Nelson said this:

“At first the claimant gave differing accounts as to how long before the age assessment his family were killed. The claimant first claimed they were killed two years ago, then less than two years ago and then 2 to 2 ½ years ago. I pointed out to the claimant that he had given three different answers to the one question asking how long ago his family had died. He then told me that the explosion occurred two years before the age assessment interview. He settled on the explosion occurring two years before the age assessment. The claimant told us that his older sister,

Sakina, was 14 when she died (in the aforementioned explosion) and that he was two years older than his sister. I asked the claimant to confirm that his sister, Sakina, was 14 when she died, that her death occurred two years before the age assessment and that he was two years older than her. The claimant confirms that each of those three pieces of information was correct on a number of occasions.”

34. Both witnesses addressed the assertion by the applicant that they had misreported his evidence and that he had said not that his sister had been 14 at the date of her death but 13 or 14, but both reject that assertion in clear and unambiguous terms, pointing also to the fact that a contemporaneous note of the interview made no mention of any reference to the possibility of the applicant’s sister being 13 years old at the date of her death. In her statement Ms Nelson observed:

“There was never a mention of 13 to 14 years of age.”

35. Both Mr Atherton and Ms Nelson have also confirmed in their oral evidence that, so far as they are concerned, there is no room here for ambiguity or doubt. The applicant said only that his sister was 14 when she died. Mr Atherton explained that it quickly became apparent that if the timeline being set out by the applicant in the interview was true then he could not have been under 18 years of age on arrival in the United Kingdom. Therefore, they went over this again and again to make sure that the applicant was clear about the difficulties that were arising in his account of his age. They pointed out that if his sister had lost her life two to two and a half years ago and she was then 14, that could only mean that the applicant himself must then have been 16 years old and as he said that he had remained in Iran for 13 months after that, before embarking on an 8 month long journey to the United Kingdom, his claim to have been a child on arrival cannot be correct.

36. Both Mr Atherton and Ms Nelson said in oral evidence that they were concerned that the applicant had given different accounts during the interview of when various events had occurred and were anxious to ensure not just that he understood the significance of what he was saying and the logical outcome in terms

of his age, but also that he had ample opportunity to correct any errors. All of this is confirmed also by the contemporaneous handwritten notes made of the interview.

37. I have no doubt at all that the social workers did all they could to provide the applicant with every possible opportunity to set out the account upon which he wished to rely and that the account upon which the applicant settled as to when various events had occurred was the one that he regarded as correct. This was not a case of an interviewer seizing upon an ill-considered remark in order to justify any particular conclusion. On the contrary, the tensions in the applicant's account were repeatedly pointed out and their consequences explained after which the applicant was allowed to say whatever he wished, after thought and reflection.

38. Ms Nelson observed also that at no point did the applicant offer a date for the bomb attack. If that had been known to him then there was ample opportunity for him to have confirmed it and it would have been reasonable to expect him to do so, in response to these questions. The fact that he was asked how long ago an event occurred did not preclude a response in the form of a date rather than a period of time that had since elapsed.

39. The applicant's former representatives have included in the bundle some news reports of a bomb attack in Quetta on 16 February 2013 in which something in the region of 63 people were killed and 180 were injured. However, the evidence before Judge Mayall illustrated that there have been many other bomb attacks in Quetta before that, including in 2012 which would have been about two years before the age assessment interview. That was the basis upon which the judge reached his conclusion that there was a real risk of the applicant coming to harm should he return to Quetta.

40. There is, therefore, a conflict of evidence to be resolved. Having heard oral evidence and having looked carefully at all that has been offered in written evidence I have no doubt at all that the account of Mr Atherton and Ms Nelson of what the

applicant said at the age assessment interview is correct. Given the terms in which they have given evidence about this there is no room for error. Either they are telling the truth about this or they are not. They have no reason at all to give dishonest evidence which they know to be incorrect and their recollection is supported by a contemporaneous handwritten note as well as by the typed record of the information provided by the applicant contained in the age assessment report that was prepared shortly afterwards.

41. The applicant's case is founded upon the bomb attack being the one that occurred on 16 February 2013. The fact that the date of that suicide bomb attack is 16 February 2013 generates significant problems of chronology for the applicant. If his parents and sisters were indeed killed in that attack then his account of remaining in Iran for a further 13 months saving up the money to fund his agent assisted journey to the United Kingdom, a journey that took some 8 months including a period of detention in Greece (the applicant told the social workers that he was detained in Greece for five months), which would mean a period of 21 months between the date of the bomb attack and his arrival in the United Kingdom, cannot be correct as he arrived in the United Kingdom on 4 February 2014 which was just less than 12 months after the date of the bomb attack, if that occurred in February 2013.

42. This gives rise to two possibilities. Either the applicant's account of these events and the chronological happening of them is hopelessly inaccurate simply because he is unable reliably to provide an accurate timeline of events that did in fact occur, but more quickly than he had thought, or his account is untrue.

43. For the following reasons, I am satisfied that the applicant has not given a truthful account of his family being killed in the bomb attack on 16 February 2013.

44. First, if it were true that the applicant was aware of the attack because his family were all killed in the explosion, and that, as he claims, he could have given the



actual date upon which it occurred had he been asked, then it is impossible to understand why he did not do so during the age assessment interview. It is plain from what is written that he was made aware that the event was being discussed in conjunction with his sister's known age in order to establish his own age, which he knew was in dispute. It is clear that he was not anxious or under pressure at the time. It is also beyond doubt that this was something that was examined repeatedly and with care during the interview, so as to ensure that there was no error in establishing just what it was that the applicant wished to say. The only sensible explanation for him not providing the date is that he did not know it.

45. Further, his account of arriving at the conclusion that his family had been killed in the attack in February 2013 is completely lacking in credibility. As I have observed, 63 people were killed in this attack but, perhaps as might be expected, a much larger number, according to one of the news reports more than 200, were injured. Therefore, if the applicant's family had been present in the vicinity of the explosion there was much more of a chance that they would have been injured than killed. The news report records that this bombing was carried out in a market. One report refers to it as a vegetable market. The applicant said that his family had gone to this location, which was a 20 minute journey from the family home, to attend a wedding. There is no indication in the news reports that there were casualties among people attending a wedding. The applicant offered no explanation at all why he assumed that all four of his family members must have been killed, rather than injured, and nor why he made no enquiries to see if they had received medical attention at local hospitals or at the hospitals in Karachi where, according to the news reports, the injured were taken.

46. It might be noted also that in a news report provided by the applicant's former representatives we see this:

"The Balochistan governor, under whose charge the province had been placed last month, announced Rs1 million as compensation to the heirs of each of the victims.

He said that those who were critically injured would be shifted to Karachi for better treatment.”

There appears to be no reason to assume that the applicant’s former representatives would not have discussed with him the evidence submitted on his behalf and no explanation is offered why the applicant, who is presumably the only surviving heir of four relatives he said were killed in the explosion, did not pursue this either.

47. There is other evidence which does not sit comfortably with the applicant’s account of the death of his family. As this evidence is untested, and the specific source of the information is unidentified, it carries no weight in itself but at least it can be seen not to be inconsistent with my finding of fact that the applicant’s account of the death of his family is untrue. At paragraph 14 of his witness statement, Mr Guest, manager of the children’s home where the applicant was accommodated at the time of the age assessment, said this:

“Also at point on 5 February 2014 I understand that the Claimant told a staff member that he lived in France with his friend for 4 weeks and also that his family remained in Pakistan and Afghanistan.”

48. I am further reinforced in my conclusion by other matters disclosed by the applicant’s account. In the age assessment interview he said that he had been detained in Greece for 5 months. Thus, although he described continuing to work in Iran for 13 months or so *after* hearing in February 2013 of the death of his family, in order to raise the money for his journey to the United Kingdom, that cannot be correct either because there was only 12 months or so between the date of the bomb attack and his arrival in the United Kingdom and, if 5 of those months were spent on Greece, that would leave just 7 months for the period of work in Iran to raise the money and for the rest of what he described as an 8 month long journey.

49. There is, of course, other evidence to consider. On the one hand, the applicant relies upon the views offered by Mr Jeff and Ms Cape-Davenhill and on the other, the respondent relies upon the professional evaluation of Mr Atherton and Ms Nelson based upon their own observation of the applicant.

50. Mr Francesco Jeff is employed by the Refugee Council in the Children's Section and describes himself as a Children's Advisor for Age Dispute cases. He has been working with children for 12 years and before moving to the United Kingdom from Italy was employed as a primary school teacher. He has also worked with children in Sudan and Iraq. He has provided a letter dated 22 June 2014, addressed to the applicant's former representatives, in which he says this:

"I have Visit (*sic*) Mustafa on 16/06/2014 at the centre and I spend about an hour with him. As an experienced staff member of the Children's Section I strongly believed that Mustafa is the age he claimed to be on arrival. My views are based on our daily interactions and observations of him made in various contexts (one-to-one advice sessions, social gathering, group work, etc).

Mustafa may look older physically than a 16 year old to some people, however, when you spend some time with him, you realise that Mustafa's behaviour strongly indicates that he is 16 years old. If you pays (*sic*) closer attention it becomes clear some of his traits (such as his newly grown facial hair) strongly indicate that he is not an adult. Above all, Mustafa's demeanour and behaviour, which I address above, are consistent with one of a 16-year old person. Mustafa has learned to speak English really well since he has been in the UK. A child of 16 and younger tends to learn languages faster than someone who is 18 years old or older. Since 16/05/14 I spoke to him on a daily basis and some time several times daily on the telephone and these interactions have confirmed my view that he is a child.

...

I am extremely concerned that this vulnerable young man is detained with adults."

51. I do not find Mr Jeff's evidence of much assistance at all. He has not attended to give oral evidence and so has not made himself available for cross examination on behalf of the respondent. That, of course, does not in itself negate any value that might be drawn from his letter but it is not altogether easy to see precisely what his evidence is. He speaks of a single, hour long visit and many telephone conversations, but also of group work and one to one advice sessions. He speaks of having "addressed above" in his letter the applicant's demeanour and behaviour but in fact his brief letter is silent as to those issues. It seems he bases his view on matters of physical appearance, which he accepts may suggest to others that the applicant is older than he claims to be; an assessment of facial hair and impressions from interaction, which may have been to a significant extent by telephone. Also, his views are to be contrasted with those of the staff at the centre where the applicant was staying at the time of the age assessment who told Mr Atherton and Ms Nelson that:

"... there was a general belief that he is older than he is saying and that his physical presentations suggests that he is a lot older than the other young people in the placement."

52. Further, Mr Jeff's description of the applicant as "a vulnerable young man" goes entirely unexplained, as does Mr Jeff's expression of concern arising from that asserted vulnerability.

53. For all of those reasons I am unable to attach any real weight to the view expressed by Mr Jeff.

54. The applicant relies also upon a letter from Ms Lauren Cape-Davenhill of Gatwick Detainees Welfare Group, dated 30 June 2014. She describes herself as a Detainee Advocacy Co-ordinator of that charitable organisation in which capacity her role is "to provide advice and support, including emotional support, to individuals in immigration detention". She says that she has dealt with "approximately 4 or 5 age

disputed individuals” and that “almost all of those individuals I have been involved in referring as age disputed have subsequently been released from detention and found to be minors”.

55. I do not find that assertion compelling at all. With such a small number of case examples the vagueness with which the numbers of cases she has dealt with and the outcomes of them are reported is, I find, telling. The use of the expression “approximately 4 or 5” does not inspire confidence in the accuracy of her recollection and, frankly, to say that “almost all” have found to be minors is not persuasive in terms of accuracy either since it would be reasonable to expect a clearer recollection of the outcome of such a small sample, even if records or case notes were no longer available to check.

56. In any event, the view expressed by Ms Cape-Davenhill is founded upon such limited contact with the applicant that I am unable to afford any real weight to her views. She spoke of a single visit since when her contact with the applicant has been by telephone. She says that after speaking with the applicant’s former representatives she arranged for a volunteer to visit the applicant on a weekly basis but nothing at all is offered by that person, or those persons, about what was discerned as a result.

57. Further, Ms Cape-Davenhill’s assessment, set out in her final paragraph, directly contradicts the view of Mr Jeff, who accepted that the applicant’s physical appearance suggests he is older than he claimed to be. Conversely, Ms Cape-Davenhill said:

“I believe that Mustafa Rustami is likely to be under 18 years old. When I met him in person on 6<sup>th</sup> June 2014, he appeared physically young: he is of slight build and has little facial hair, and looked to me like a teenager (under 18) rather than an adult...”

Ms Cape-Davenhill went on to say that:

“... his behaviour also suggested that he is likely to be under 18 years old – he came across as quite young and naïve about his situation.”

But she offered nothing to explain what it was about his behaviour that informed that view.

58. There is evidence also, in the form of a witness statement, from Mr Mark Guest, who is the manager of the children’s home at which the applicant was staying at the time of the age assessment. He said this:

“The views of the staff were that he had presented as a confident young man and seemed older in his appearance and attitude than the Unaccompanied Asylum Seeking Children who staff had previously worked with. The staff considered that the Claimant was aged between 20 and 22 years of age but could not be sure. The consensus was that he was older than 18 years old.”

Mr Guest added that he communicated this information to Mr Atherton after he had completed the age assessment, explaining:

“I decided to speak with David Atherton about the views of the staff as I was concerned because the Children’s Home is registered to look after people who are under 18 only.”

59. For the same reasons I gave already given, this evidence is of limited value in terms of the weight that can be given to it. The expression of collective views of the staff is impossible to test in oral evidence and nothing is known about the experience of the staff members concerned or why their views are or are not likely to be accurate. Nothing is known about the level of contact or interaction that generated those views. All that can be said is that the manager of the home was sufficiently persuaded by his view of the applicant and those of his staff to be motivated to

speak to Mr Atherton about his concern that someone as old as he thought the applicant to be should be placed with the children under his care.

60. All that remains is whatever can be drawn from the age assessment report and the written and oral evidence of Mr Atherton and Ms Nelson.

61. The age assessment report is in familiar form under the usual headings. As for the applicant's demeanour:

"During the interview Mustafa appeared relaxed and not at all nervous. He was happy to answer questions and did not seem ill at ease in the presence of adults. Staff at the children's home... reported he was eating well and had cooked himself some food effectively. Mustafa did not express or display any distress when talking about his family."

62. Drawing all of this together, I reach the following conclusions.

63. I recognise that I cannot weave together into a single thread the various strands of the applicant's account of the matters upon which he relies to establish his age. For example, one cannot say simply that because his mother told him he was 14 when he left school and moved to Iran, as he says he spent a total of 2 years and 3 months working in Iran and 8 months on his journey to the United Kingdom, therefore he must have been 16 years and 11 months old on arrival (14 + 2 years 3 months + 8 months). That is because first we do not know whether he had only recently passed his 14<sup>th</sup> birthday or whether he was approaching his 15<sup>th</sup> birthday, on his mother's account, when he left Pakistan and secondly, for the reasons I have already given, there is good reason to doubt the reliability of the account of his mother having accurately informed him of his age at the time.

64. I have found as a fact that the applicant's account of the death of his family is untrue. But that does not mean that what he says about that is of no assistance. On

the contrary, I am satisfied that this provides the most reliable means of establishing the applicant's true age. The age assessment interview was a carefully and sensitively operated process which provided the applicant with the best possible forum for disclosing information about himself and his family to inform the age assessment process.

65. There is no reason at all to doubt that the applicant was 2 years older than his sister, Sakina. Indeed, that is further confirmed by the applicant's description of their respective journeys through school years. There is no reason either to doubt that the applicant knew how old she was at any particular time. Although I have no doubt that his account of his sister's death about 2 years or so before the date of the age assessment interview was untrue, that does not mean that his assessment that, at that time, she would have been 14 years old so that he at that time would have been 16 years old should not be accepted. Therefore, on the applicant's own account, in February 2012 he was 16 years old. That means, as a matter of simple arithmetic, that he would have been 18 years old on arrival in the United Kingdom on 4 February 2014.

66. The arithmetic, unfortunately, is not quite as simple as that. The applicant, as I have observed, does not know the day or month of his birth and so there remains open a 12 month range of ages within the conclusion that he was 18 years old on arrival. Explaining the reasons why he and Ms Nelson arrived at an age of 18 years and 3 months, Mr Atherton said in his witness statement:

"If the Claimant was aged 16 at the time of his sister's death then he must have been 18 years plus X at the time of the age assessment. As detailed above the Claimant told us that his sisters died 2 - 2 ½ years ago. If it had been the case that his sisters had died 2 ½ years before the age assessment then that would make the Claimant's age closer to 19 years. Lisa and I agreed to err on the side of caution as regards an assessed date of birth and therefore calculated that 18 years and 3 months was the youngest that the Claimant could have been. It seemed appropriate to put his date



of birth in the middle of the month hence him having an assessed date of birth of 15 October 1995.”

67. I agree with that approach and adopt it. There is a clear and sound evidential basis for concluding that the applicant was 16 ½ years old in February 2012 so that he was over 18 years of age on arrival in the United Kingdom on 4 February 2014. The date of birth identified by the age assessment process of 15 October 1995 reflects not just an arithmetical calculation but also was informed by the observations and conclusions of two experienced social workers who carried out a careful, fair and “Merton compliant” age assessment. That resulted in a date of birth that was adopted by the applicant without complaint for the purpose of his asylum appeal. That conclusion chimes also with the views said to have been expressed by the staff at the children’s centre that the applicant appeared to be older than the other young people accommodated there.

68. For all these reasons, I find that at the date of the age assessment on 6 February 2014 the applicant was an adult aged over 18 years of age, his most likely date of birth being 15 October 1995.

## **Conclusion**

69. I find that the applicant’s most likely date of birth is 15 October 1995.