



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/17990/2019  
HU/17992/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 November 2020**

**Decision & Reasons Promulgated  
On 19 November 2020**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**JANAKI LAMA  
ROSHAN BASNET  
(NO ANONYMITY ORDER)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Lawrence Youssefian, Counsel instructed by Paul John & Co Solicitors

For the Respondent: Mr David Clarke, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants have permission to appeal against the decision of the First-tier Tribunal (First-tier Judge Hatton) dismissing their appeals against the respondent's decision on 23 October 2019 to refuse them leave to remain on human rights grounds with reference to an ETS/TOEIC English language test fraud said to have been committed by the principal appellant when she attended, or rather did not attend, a TOEIC test at the Premier Language Test Centre, in Wakering Road in Barking, London. The

appellants' evidence was that this was the closest ETS/TOEIC test centre to where the appellants then lived. The appeal of the husband, the second appellant, stands or falls with that of the principal appellant.

2. It was put to the principal appellant that the test she claimed to have taken took place on 26 June 2013 at the Premier Language Training Centre in Barking. The judge's typed Record of Proceedings recorded questioning as follows:

"Q. The test was at Premier Language Training Centre in Barking and it was taken on 26.6.2013 - we can see from your witness statement you say you took that test?

A. Yes

Q. Why did you pick that centre

A. My consultancy says to me and for a quick result to apply for the visa."

3. The principal appellant told the Judge that she took the DLR to West Ham, changed to another train to Barking and walked about fifteen or twenty minutes to Wakering Road on foot. The principal appellant told the First-tier Tribunal that when she came out of Barking Station she "tried to find out the test centre" but she could not remember which direction she went, or the exact date of the test she took.
4. The principal appellant told the Tribunal that she had checked the route on her phone on Google Maps and that in total the journey took more than half an hour, with 15-20 minutes of that being her walk from Barking underground station to the test centre in Wakering Road.
5. The First-tier Judge noted the variation in the principal appellant's speaking scores over a number of previous IELTS certificates which are in the bundle and her evidence that "Sometimes every test would be different maybe I couldn't talk properly on that day so that's the reason."
6. At [61] the judge held that the principal appellant was not confident in her ability to speak English to a consistently reasonable standard and that seven years before the hearing in February 2020, it was likely that she would have been insufficiently proficient in English to be confident of successfully sitting and passing a TOEIC test.
7. From paragraph 62 the judge set out his core reasoning in relation to the Premier Language Test Centre:

"62. In addition, I note that in her witness statement dated 24 February 2020 [Appellants' 2<sup>nd</sup> Bundle, pp.1-15], the First Appellant was conspicuously unable to confirm the date upon which she purportedly attended Premier Language Training Centre to sit her speaking and writing tests i.e. 26 June 2013. Indeed, the First Appellant simply states that '*The exam was booked for a date in June 2013*' [para.12].

63. Further, the First Appellant was conspicuously unable to confirm precisely how she arrived at Premier Language Test Centre. The

First Appellant simply stated as follows: *'On the day of the exam I took the DLR train from Woolwich arsenal [sic] station to West Ham station. I then took the train from West Ham to Barking. The centre was not far from the station and therefore I walked to the test centre.'* [para.13]

64. During her oral evidence, the First Appellant was asked to clarify precisely how she got to Premier Language Test Centre. She was unable to do so. Further, the First Appellant could not even confirm which direction she went after existing Barking station. I additionally note the First Appellant confirmed during her oral evidence that it took her *'fifteen or twenty minutes'* to walk to the test centre from the station.
65. *Having consulted a London A-Z, I note that Waking Road, where Premier Language Test Centre was situated, it literally just around the corner from Barking station. Accordingly, I consider it incredible that it took the First Appellant 15-20 minutes to walk to the test centre from Barking station.*
66. Correspondingly, I would reasonably expect the First Appellant to know that Premier Language Test Centre was just around the corner from Barking station, if she had genuinely attended the test centre on the date in question via the route claimed."  
[*Emphasis added*]

8. The First-tier Tribunal found the principal appellant's account to lack credibility and dismissed the appeal.
9. The appellants appealed to the Upper Tribunal.

### **Permission to appeal**

10. The appellants challenged the First-tier Tribunal's decision on four grounds, but permission was granted only on the permissibility or otherwise of the First-tier Judge's having consulted Google Maps after the hearing, to see which direction one went from Barking Station to the Waking Road test centre.
11. In the grant of permission First-tier Judge Boyes said this:
  - ...2. The grounds assert that the Judge erred in respect of the burden of proof (ground 1), by conducting post hearing research (ground 2), in the credibility assessment (ground 3), by displaying bias (ground 4) and in the Article 8 Assessment (ground 5).
  3. I have considered the grounds and the judgment.
  4. The only ground with merit and which is arguable is ground 2. It is not perhaps that the judge has consulted a map which is the main issue but that the judge had drawn a conclusion from the map which was not put to the appellants. ...
  8. Permission granted on Ground 2 only."

### **Submission for the appellants**

12. Mr Youssefian, who appeared for the appellants today, did not have any record of the evidence the appellants gave at the previous hearing. He was unable to produce or to identify in the hearing bundle either the test centre address, or the TOEIC certificate relied upon by the appellants. He could not assist the Tribunal as to how Wakering Road had been identified as the Test Centre address.
13. I did not call on Mr Clarke to make oral submissions.

## **Analysis**

14. All parties this morning have had an opportunity to look at Google Maps and to confirm that as the principal appellant said in her evidence to the First-tier Tribunal, Wakering Road is very near Barking Underground which is the route the principal appellant says she took.
15. I remind myself that the First-tier Tribunal is the fact-finding Tribunal and that the First-tier Judge had seen and heard the principal appellant give her evidence, which he considered unsatisfactory and lacking in credibility. Any error of law must be a material error of law if the decision of the First-tier Judge is to be set aside and remade.
16. I apply *AA (Nigeria) v Secretary of State* [2020] EWCA Civ 1296 and *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [90] and am conscious of the narrow circumstances in which the Upper Tribunal may interfere with a finding of fact.
17. I remind myself also that where, as here, the Secretary of State has discharged the evidential burden upon her of showing that the ETS/TOEIC certificate has been procured by dishonesty, it is for the appellants to provide an innocent explanation: see *SM and Qadir* (ETS - Evidence - Burden of Proof) [2016] UKUT 229 (IAC). In the present appeal, every single result from this particular test centre had been found to be invalid or questionable.
18. My primary conclusion is that for the judge after the hearing to have consulted Google Maps, which the principal appellant had herself relied upon in describing her journey from Barking to the test centre in Wakering Road, did not amount to impermissible post hearing research. The point, which was put, was that her description of her journey to the hearing centre (and even her knowledge of when she sat the test) was vague and lacking in detail.
19. Even if I am wrong, in the light of the evidence which the principal appellant gave about her journey and the judge's consideration of that evidence at [62] and following, I am not satisfied that had he asked the additional question with the map in hand, "Surely it did not take you fifteen to twenty minutes to walk round the corner from Barking Station", which I think is how it would have had to be framed, that any answer

which the principal appellant might have given would have resulted in a different outcome.

20. The principal appellant had already said that she did not know which direction she went, that it took her fifteen to twenty minutes from Barking Station but the entire journey, including a change of underground station from the DLR to the line for Barking took her about 30 minutes and that she used Google Maps on her phone to find the test centre.
21. Taken with all the other evidence before the judge, it was unarguably open to him to find that he was not satisfied that the principal appellant was a credible witness and to proceed on that basis in reaching his proper, intelligible and adequately reasoned conclusions and dismissing these appeals.
22. There is no material error of law in this decision and the appeal is dismissed.

## **DECISION**

23. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)  
Upper Tribunal Judge Gleeson

Date: 13 November 2020