



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/31732/2015
IA/31730/2015

THE IMMIGRATION ACTS

Heard at Field House
On 16th July 2018

Decision & Reasons Promulgated
On 20th August 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR REHAN KHAN (FIRST APPELLANT)
MRS NADIA KHAN (SECOND APPELLANT)

Respondents

Representation:

For the Appellant: Mr R De Mello, Counsel instructed by Ash Immigration Services
For the Respondent: Mr C Thomann, Counsel, instructed by the Government
Legal Authority

DECISION AND REASONS

1. Both appellants are citizens of Pakistan. They are husband and wife and for practical purposes the second appellant's claim is dependent upon the first. For simplicity, therefore, I shall refer to the first appellant simply as the appellant for these purposes.
2. On 28th August 2014 the appellant applied for leave to remain as a Tier 4 (General) Student Migrant. That application was refused on 15th September 2015.

Immigration History

3. On 28th June 2011 the appellant had been granted leave to enter the United Kingdom as a Tier 4 (General) Student Migrant until 27th November 2012. On 22nd February 2013 he had been granted a further leave to remain in the United Kingdom on the same basis until 3rd August 2013 after he had been granted a further leave on the same basis until 30th August 2014.
4. What was said in the decision is that, following the first grant of leave and in support of an application for the second, the appellant had submitted a TOEIC certificate from the Educational Testing Service (ETS) to the Home Office. The decision went on in these terms:

“ETS has a record of your speaking test. Using voice verification software. ETS is able to detect when a single person is undertaking multiple tests. ETS undertook a check of your test and confirmed to the SSHD that there was significant evidence to conclude that your certificate was fraudulently obtained by the use of a proxy test taker. ETS had declared your test to be ‘invalid’ due to the aforementioned presence of a proxy tester who sat the test in your place and scores have therefore been cancelled by ETS.”
5. The respondent went on to conclude on the basis that information that the certificate presented by the appellant was fraudulently obtained, accordingly the application made in August 2014 was refused under paragraph 322(2) of the Immigration Rules. That being so the appellant failed to meet the other requirements of the Immigration Rules and fell therefore to have his application refused.
6. He sought to appeal against that decision it being his consistent contention that he sat the test and exercised no fraud in relation to it. He puts the ETS to proof as to the methodology and reasoning which led to the conclusion as stated above.
7. The appeal against that decision first came before First-tier Tribunal Judge Anthony on 22nd September 2016. In a determination promulgated on 11th October 2016 the appeal was allowed.
8. That in turn was the subject of appeal by the Secretary of State of the Home Department, contending that the approach taken by the Judge to the evidence was materially flawed. That challenge was considered by Upper Tribunal Judge Hanson at a hearing on 28th November 2017, which resulted in a decision promulgated on 12th January 2018, upholding the Secretary of State’s contention that there were material errors of law in the determination of the First-tier Tribunal Judge. That decision was set aside. It was decided that the matter should be re-heard and retained within the Upper Tribunal.
9. Following a number of direction hearings the sole issue required to be determined in this matter is whether the appellant practised deception in connection with his application. It is upon that basis that the Upper Tribunal will remake the decision.

The matter falls to me to make that decision in the light of the documentation presented and of the submissions made to me and in the light of the appellant's own evidence to be presented. The documents are voluminous and I do not set them out in detail but would indicate that I have considered those passages to which my attention was specifically directed by the parties.

10. As a preliminary to calling the appellant to give evidence, Mr De Mello invited my attention to medical reports in the bundle and in particular to the more recent report of Dr Irshad, the Shields Medical Practice dated 11th July 2018. It confirms that the appellant has been suffering from anxiety for several years which has progressively worsened. Such affects memory and that he has become forgetful at times. Such lack of memory is more related to anxiety and stress rather than organic in nature. There are three witness statements prepared on behalf of the appellant. The first is undated to be found at page 613 of the consolidated bundle essentially reinforcing the contention which he makes that he has not used deception or false representations in obtaining the ETS English language certificate.
11. A second statement to be found at pages 615 and 616 of the bundle is dated 31st August 2017. In it the appellant sets out the circumstances leading to his going to that particular test centre. In his statement he indicated that the centre was an old style building with a big gate and had three floors the tests taking place on the first floor. He indicated that he did not exactly remember the contents of the tests. He remembered that he had to enter details into a computer and was given a piece of paper with a password on it that he was told to enter. His picture was taken. The tests were taken on two separate days multiple choice questions. He had to read out a text and had to describe a picture, somewhere he had to fill in the gaps, somewhere he had to select the right answer. At the end of the test he had to copy typed text into the space below which was on orange or yellow coloured paper.
12. A third witness statement came to light later on in the course of the proceedings also dated 31st August 2017. In it the appellant gives a little more detail, namely that the speaking test duration was about 20-25 minutes and the writing test duration was about 60 minutes.
13. The appellant gave evidence to the effect that he had come to the United Kingdom to study and initially studied at West George College between 2012 and 2013, acquiring initially a graduate diploma in management studies and later a postgraduate diploma in management studies. His attendance was more than 85% and the course was conducted in English.
14. The test, which is the subject of challenge, was taken by him at the Thames Education Centre on 12th December 2012. He went there at 9am in the morning having travelled overnight from Glasgow by the Megabus having taken a taxi from Victoria Coach Station to the centre. There is copy of the receipt relating to that Megabus journey together with evidence that he had withdrawn some cash from his account on that day at 13.08hrs at Bayswater London.

15. He had gone to that test centre to book the test in the early part of November and had paid for the test. He was advised at the time of his visit that it would be advantageous for him to attend preparation classes for the speaking and writing test, there were classes to be held at the centre on different days costing £95 for the three classes. He said he paid for those classes and attended them. This was prior to his formal test.
16. He confirmed that he had received from ETS via his solicitors the tapes relating to voice recordings said to have been taken at that centre on that day and bearing his particulars. He agreed that it was not his voice on any of those tapes but rather different people speaking. He ascribed the voices to two people having Indian or Pakistani accents. He said that fifteen to twenty people took the test on that day mostly males and one female, mostly Asian and Pakistani. He agreed that his photograph was taken in the exam.
17. He agreed when cross-examined that his leave expired on 27th November 2012 and that he required to have the English language test or English language qualification to submit that to the Home Office for him to have that leave renewed. He said that friends had advised him that there would be no early test date in Glasgow. He himself contacted the Glasgow Test Centre to be told that it was not possible to have such test before January. He also checked the availability of the centre in Edinburgh. He chose London because it was easy and cheap for him to go there. It was mentioned in his statement that he travels regularly to London and Glasgow as his best friend Mohammed Azam lives there. Mr Azam's brother-in-law also lives in Glasgow and he sometimes gives the appellant a lift.
18. The appellant chose the particular test centre in London because there were available spaces for the test. He was required to present himself at the test centre in order to book a place and this he did in early November although he does not precisely know the date. He paid the fee in cash. He also paid for the three classes that were offered. Those classes were held on consecutive days and he stayed in London with his friend to take those.
19. He had no receipts of the payments made to the test centre nor could he pinpoint exactly when he first went there or when the classes took place. He thinks that it was before a journey which he made to Birmingham on 9th November 2012 when he thereafter got a lift to London from his friend.
20. In terms of the enquiries made to find a test centre the appellant indicated that initially he had heard from his friend who was student in Glasgow that there were no available places in Glasgow. He had subsequently made his own enquiries in Glasgow and in Edinburgh. The test centre in London had been the suggestion of a friend. He agreed that no mention of any enquiries in Edinburgh had been set out in any of his statements. It was suggested that his evidence on that matter has been contradictory and in particular his attention was invited to paragraph 18 of the determination of Judge Anthony in which the following was recorded

“I note the appellant’s response that there were no tests available in Glasgow and he needed to sit the test as soon as possible. He did not look at other test centres as this was recommended to him by a friend. He was also able to stay with his friend, therefore presumably saving himself the cost of accommodation in another city.”

21. He stated that he paid cash because he had no option other than to do so. He was asked why his friend Mohammed Azam and Nazir Khan had made no statements connected with his stay with them or attended court and stated that he thought that Mohammed was on holiday with his children and thought that his other friend was in Pakistan.
22. He insisted that he had taken the test and that he had done nothing wrong.
23. The parties then made their representations to me. In summary:-
24. Mr Thomann invited me to find that the evidence as to a proxy had been used was compelling. The tapes which were provided from ETS at the request of those acting on behalf of the appellant, were accepted as not containing the voice of the appellant but were identified by the particular reference number that had been applied. My attention was drawn to the invalid test analysis at Annex C1 showing the sticker number 0044202560012005 and to the ETS Selt Source Data D1 which identifies that particular number as relating to the appellant and to the invalid test at the Thames Education Centre on a particular date. That is matched with the Mida Matched Data of the Home Office D2 bears the details of the appellant’s passport. Although the process was not infallible, I was invited to find that no good reason not to believe that the tapes were those that had been made at the hearing centre.
25. I was asked to find that the appellant lacked credibility as to the reasons given for choosing that particular centre.
26. I was invited to reject the account both as to its internal veracity, but also in the context, having regard in particular to the Project Façade, the criminal enquiry into the abuse of TOEIC relating to Thames Education Centre Hounslow, which indicated in general that there had been no valid tests recorded between 14th December 2011 and 5th February 2014. The detailed breakdown indeed of the tests taken on 12th December 2012 revealed both that the appellant’s test was invalid and that all the tests were invalid or questionable. I was invited to find that the reason the appellant chose that particular college was precisely because of its reputation to employ proxy exam takers.
27. Mr De Mello, on behalf of the appellant, invited my attention to his skeleton argument set out at page 617 of the composite bundle.
28. I was asked to find that the appellant was credible as to the manner of his enquiries and to the fact he undoubtedly was in London on the day that the test was taken.

29. I was asked in particular to be careful in upholding the continuity process as between the test taken on 12th December 2012 and the production of the tapes to those acting on behalf of the appellant from ETS. A particular set of questions had been posed to the ETS which were not in fact answered concerning process. The statements of Mr Middleton and Miss Collings made it clear that ETS were not to save recordings beyond 26 months, whereas the recording in question has been produced much later than that. Various possibilities as to how the recordings could have been corrupted or substituted are suggested though the question for my consideration is a focused one. I was asked to be very wary of accepting the tapes upon face value or indeed to give much weight the more wider calculation as has relied upon in terms of scoring at that particular centre.
30. In terms of the burden and standard of proof I am informed by the decisions of the **Secretary of State for the Home Department v Shehzad and Chowdhury [2016] EWCA Civ 615, SM and Qadir v Secretary of State for the Home Department (ETS - evidence - burden of proof) [2016] UKUT 00229 (IAC) and MA (ETS - TOEIC testing) [2016] UKUT 00450 (IAC)**. What evidence will be sufficient to enable a Tribunal to conclude that there has been deception or otherwise is an intensely fact specific matter involving the consideration of generic evidence as to the operation of the system by ETS and the recording of data together with particular evidence relating to the individual.
31. In terms of generic evidence that has been considered on a number of occasions, in particular the expert reports that have been disclosed as to methodology. In the early stages, the evidence of Miss Collings and Mr Middleton and the criticism made of that evidence by Dr Harrison was considered, particularly in the case of **Qadir**.
32. The Tribunal in **MA** considered further evidence particularly from Mr Stanbury and Professor Somner.
33. Both cases highlight issues in relation to the generic evidence and conclusions that had been made.
34. Where specific evidence is adduced which prima facie show deception on the part of the appellant, then the evidential burden shifts to that appellant to produce evidence that he did indeed take the requisite test.
35. It is of course for the Secretary of State to bear the legal burden proving on the balance of probabilities that the test taken was a false one in all the circumstances.
36. In terms of context the relevant document produced in the course of the hearing is the Home Office document "Project Façade - Criminal Enquiry into Abuse of the TOEIC Thames Education Centre, Hounslow", the document prepared on 15th May 2015.
37. It draws a helpful comparison between the Thames Education Centre in Hounslow and the Bloomsbury and Westminster Centre.

38. Consideration of the results at the Bloomsbury and Westminster between 11th April 2011 and 9th February 2011 indicates that the centre undertook 1,039 TOEIC speaking and writing tests, which ETS identified three as invalid, zero as questionable and 1036 as showing no evidence of invalidity.
39. A comparison with that result and the Thames Education Centre, Hounslow revealed that between 14th December 2011 and 14th May 2013 the Thames Education Centre undertook 1,293 TOEIC speaking and writing tests of which ETS identified 343 as invalid, 950 as questionable and zero as valid. The conclusion therefore from the report was that over that particular period there was organised and widespread abuse of the TOEIC taking place at that particular centre. Two ETS audits were conducted and on 16th May 2012 the ETS auditor observed imposters taking tests on behalf of the candidates. The suspected "pilot" taking the test was black but the identification provided showed a white person.
40. It is to be noted that the test allegedly taken by the appellant was on 12th December 2012 within this period. It is the respondent's submission that this college was a bogus college that had provided no proper tests.
41. Seemingly some 21 separate criminal investigations were taking place in relation to centres but for the purposes of this case clearly it is the Thames Education Centre, Hounslow which is the focus of concern.
42. Indeed the report has produced a printout of all the tests taken on 12th December 2012. It is significant that each candidate is provided with a distinct certification number in the case of the appellant 004420256001200,5 such being both on the sheet but also set out in the test analysis at C1 and the ETS Selt Source Data at D1. Of the 23 tests that were undertaken on that particular day all were found either to be invalid or questionable and indeed the one taken by the appellant is marked as invalid. There is a score of 200 points for speaking and 190 points for writing.
43. Such a snapshot for that particular day is reflective of the totality of the conclusion of ETS that no valid test had been taken.
44. Indeed in respect of the tapes disclosed to the appellant is accepted do not reveal his voice but the voices of others which is entirely consistent with the data that was extracted.
45. Although care must clearly be taken to avoid placing undue weight upon demeanour and appearance at the hearing, it was readily apparent at the hearing on 16th July 2018 that the appellant's command of English particularly in speaking it was poor. Clearly a Judge must avoid seeking to become an expert on public speaking. It is a matter of common sense however that the quality of speaking would be less good in 2012 or certainly no better. In the circumstances a score of the 200 points being the top score would seem to be improbable if indeed that test was taken by the appellant himself.

46. It is clear, and I so find from the general report, that ETS was able through its systems to distinguish between different colleges and test results. The suggestion that ETS somehow muddled up test results of the appellant with someone else who took the test, is speculative in its nature particularly when it would seem that no test was validly or properly taken at that centre at any time during that period and particularly on 12th December 2012.
47. Nevertheless it is the evidence of the appellant, which bears careful consideration, that he took the test. It is said that any manipulation or falsity in the tapes as produced or recorded was as a result of third party activity of which he remained unaware.
48. Mr De Mello in his skeleton argument sets out a number of possible ways in which candidates may cheat or indeed be cheated. These are largely extracted from the statements of Mr Middleton and from Kroll on Track and from Mr Stanbury:-
- (a) the candidate attended, had his photograph taken and then vacated his seat to allow the imposter to take the test for him;
 - (b) remote testing took place;
 - (c) candidate could manipulate files and replace audio records made during the TOEIC speaking examination;
 - (d) staff at the test centre had the opportunity to modify audio files before the test manager uploads the answers from examination to ETS servers;
 - (e) the test centre manager administrator has the option to allow the data at the speaking test to be taken outside the test centre before the answers are submitted to ETS where manipulation of the audio files could occur;
 - (f) there is an opportunity to manipulate a candidate's audio files on the computer running the TMA;
 - (g) candidate, test centre administrator or invigilator could connect a device such as USB thumb drive and copy the audio files of the computer and then have the candidates voice replaced at a later date using the files;
 - (h) the test centre might have used two test rooms, one for the proxy test takers and one for the candidates with clone PCs;
 - (i) the test administrator could falsify the test results;
 - (j) invigilator took the speaking test for the candidate;
 - (k) the invigilator assisted the candidate to take the speaking test.

49. It is suggested on behalf of the appellant that there were several innocent explanations as to why the voice recording was not his even though he took the speaking test.
50. It is readily apparent from the list of suggested possibilities that many of them could not take place without the knowledge and agreement of the person taking the test . The first possibility that is set out at (a) is of course that which was observed by the audit of ETS carried out at that particular test centre where there was a substitute proxy taker noted.
51. As to most of the other matters the question which arises for consideration is what benefit would the test centre manager or administrator have in interfering with the test or manipulating it? It is suggested by Mr De Mello that the motive would be one of producing good test results and thereby enhancing the reputation of the particular testing centre presumably therefore attracting clientele.
52. To employ others to be proxy test takers in addition to the candidates would seem to involve additional expense. The question arises as to how that expense is to be paid and by whom. It is difficult perhaps to imagine a profitable test centre to be run in a way when it is paying as much for proxy takers as for the genuine candidates paying their fees. The appellant speaks of a fee of £59, which would be exceeding modest for such an expensive operation. Mr Thomann suggests that the payment of the £95 for the classes was no more than a payment for other services.
53. The data set out in the Project Façade, to which reference has been made, is wholly reliant on the data supplied by ETS. It is difficult to conclude given the detailed nature of that data that it is so wholly inaccurate as to be creating a false picture. It was indicated that data has produced different results in different test centres. It indicates a degree of variation and approach. The evidence of Mr Millington and Miss Collings has been criticised in a number of ways but not so far as to their evidence about the raw data provided by ETS. I am satisfied that the reliance on the data for statistical purposes is justified. In the circumstances it is difficult to prove otherwise than that the Thames Education Centre was a fraudulent institution.
54. My attention was invited to **R (Abbas v Secretary of State for the Home Department) [2017] EWHC 78 (Admin)** a decision of Mr Justice Davies at [2] , focused upon the Thames Education Centre and referring to the expert evidence of Mr Sewell and of his analysis of the data between December 2011 and May 2013 at that particular centre That related to a speaking test on 21st March 2012. The relevance of this case for the present purposes is the methodology and comments of Mr Sewell, his comment in particular that in a genuine TOEIC test of a group of people one would expect to see a bell curved distribution with a majority of candidates scoring somewhere in the middle. In the case of the session of 21st March 2012 there were two statistical anomalies. First the results were heavily weighted towards the higher end of the scoring range with no scores at all in the middle lower range. Second that there were significant batches of results showing exactly the same score. Mr Sewell concluded that such anomalies were not consistent with the results of TOEIC tests taken by a group under true test conditions. He reached that view after consideration of data

from other test centres, including those at which there was no suggestion of fraudulent conduct. The same reasoning no doubt would apply could to the test taken by the appellant on 12th December.

55. Overall it is clear from the material that has been presented, in particular from the Project Façade, that there was significant circumstantial support for the proposition that anyone who had supposedly taken the TOEIC test at the Thames Education Centre was party to a fraud. Mr Thomann admits it would be a very odd state of affairs if the claimant had been the only genuine candidate on that day.
56. It is of course important however to analyse the evidence of the appellant with particular care to determine whether or not indeed the respondent has discharged the burden that the appellant was party to a fraudulent event or merely the unsuspecting victim of it.
57. It is therefore of importance to determine how and why the appellant chose this particular testing centre.
58. In that connection I note that the appellant has given varying accounts as to his investigations. At one stage he indicated that it was his friend who had notified him that the test centre in Glasgow had no spaces. Later he indicated that he himself had also made such enquiries to be notified that there was no spaces available until January. I note the appellant made no enquiries of test centres that were nearer to his home, although when pressed upon the matter in cross-examination, he indicated that he had spoken to the test centre in Edinburgh. He has produced evidence of trips to Birmingham, but has given no indication that a centre in that City was ever contacted or considered.
59. The suggestion of this particular test centre in London seems to have come from a friend, Faraz, in Glasgow. Significantly it is put in the statement of the appellant of 31st August 2017

“I looked for test centres in Glasgow was unable to get a date and I spoke to Hasheem. He said that the test centres in London had many dates available for the test. He asked me to speak to our other friend Faraz in Glasgow. I spoke to Faraz and he said there were no early dates in Glasgow and that I should take the test in London as that is where he also took the test. He then phoned the test centre for available dates”.

60. Following a telephone call by his friend to that centre, the appellant went down the next day to register. He indicates that it was important for him to do so in order to preserve the space. He has been unable to produce any documentation showing payment or indeed the particular journey down. Given the importance which he claims of securing his place for a test, I find it to lack credibility and that he would not have otherwise secured some confirmation of his booking particularly going all the way to London to register or produced evidence of his travel to do so.

61. This is compounded by the fact that the appellant claims that he undertook three consecutive sessions of preparation. No evidence has been presented as to payment or residence other than what the appellant had to say.
62. Although the appellant seemingly can remember some detail of the taking of the test of 12th December, he was less clear as to when he had taken the reading test or indeed when he had first applied to the college.
63. The appellant has produced at page 182 of the bundle a trip that he made from Glasgow to Birmingham on a coach on 9th November 2012. He said he then was given a lift to London by his friend. That was a social visit and it was his recollection that registration and the attendance at the preparation classes was before then. Making every allowance for his stress and the question of lack of memory, I do not find it credible that the appellant would not remember when it was that he actually went down to register and when it was that he undertook the training. Indeed it would seem to me to be somewhat surprising that if the test was on 12th December as booked that the preparation classes would not have been closer to the event than some time removed from them. There has no evidence from his friends as to assist with the timeline and process.
64. There was clearly a degree of urgency in November to take the test because of the expiry of his existing leave on 27th November. If indeed the appellant had commenced his enquiries at the early stage, it reinforces a significant lack of enquiries into other institutions closer to home.
65. Although the appellant has been able to produce certain records from Megabus.com to support his various visits to London, seemingly no documents have been produced at any stage to show that indeed he travelled to London in the early part of November nor stayed there for an appreciable period of time. There is nothing to show for example from his bank account that he made any withdrawals that would identify the period when he stayed.
66. Significantly his friend, who advised him as to that college according to the appellant's own statement, had taken the test at the college presumably at a time of the fraud. The lack of the making of obvious enquiries of other colleges leads me to conclude on the balance of probabilities that the appellant chose that college or had it chosen for him precisely because it was a college which employed the services of a proxy taker. By 12th December 2012 the appellant was in urgent need of having a successful test in order to report his application. Although the appellant has indicated that he did not need to take the test, it is abundantly clear that he urgently needed to do so. Had indeed he commenced his enquiries in early November, I do not find it credible that he could not have found a test centre to give him an earlier appointment and little reason indeed why the same could not have been booked over the telephone or online.
67. It is of course to stand in the favour of the appellant in this consideration that he attended London on the day of the test, as evidenced by the bus journey and by the cash machine withdrawal at 13.08. In that regard I note that in the statement of 31st

August 2017 that he was unable to remember the contents of the test other than that he was required to enter details on a computer and given a piece of paper with a password which he was told to enter and that his picture was taken. There were some multiple-choice questions, he had to read out a text and describe a picture, he had to fill in the gaps and select the right answer. Finally to copy typed text into the space on a yellow or orange coloured paper. In a statement also of the same date he indicated that the speaking test was about 20 to 25 minutes and the writing test 60 minutes. That material is present in the user guide produced by ETS for speaking and writing, a copy of which is set out indeed in the evidential bundle. There is little information therefore that the appellant could not have gained from reading those guidelines.

68. As the Regulations require there needs to be ID verification at the test centre and a photograph may be taken and reproduced. It is a requirement that the appellant should be at the hearing centre to comply with the various identity tests. Such however does not necessarily preclude the use of a proxy thereafter as was observed by ETS in the visit referred to.
69. Although the appellant in his statement of 31st August 2017 contends that he did not need to take the English language test for his leave to remain such was clearly not correct. I find that he was in urgent need of taking the test and that his command of speaking English was poor. I find therefore from the totality of the evidence that the appellant was recommended by his friend to use that particular college because the use of proxy takers would get a good result. The cash payments rather than payments which could be traced and the personal payment rather than online or credit card payments reflected that process.
70. I do not find, therefore, that the appellant was an innocent individual caught up in a web of deceit exercised by that particular hearing centre. It was not a charity but a business to operate with profit. In those circumstances I reject the suggestion that the college employed others unknown to the appellant to take the test for him or in another room. If staff would be used as claimed then payment would have no doubt as a matter of common sense be expected from the appellant accordingly. I find therefore there is merit in the suggestion made by Mr Thomann that the lack of any receipt was precisely because the appellant had paid cash for the services to be provided. Indeed I find that to be the only plausible explanation for the appellant going to London to register in the first place. It clearly is a requirement to take the test that there is identity. It seems to make little sense that one could not book a test at a reputable hearing centre over the telephone and pay the requisite fee. I find that the only reasonable explanation for any visit to London ahead of the test was to make arrangements to pass money clandestinely to fund the enterprise. Significantly the appellant in the case of **Abbas** claimed that he paid a fee due to Thames Education Centre in cash having made a particular journey to do so. I find that a bona fide institution would otherwise have accepted payment booking by phone or online. I note from the ETS instructions clearly set out at page 41 of the court bundle that it was possible to take TOEIC practice sessions online in speaking and writing to prepare for the tests. Test preparation could have been booked online to help prepare for the TOEIC speaking and writing tests. Therefore there was no necessity to go to London to take such preparation. I find that

the only reason for going to London was to make preparations for a test by a proxy test taker and not otherwise.

71. In all the circumstances and having considered all matters as a whole the respondent has discharged the burden to the requisite standard to establish that the appellant knowingly used a proxy test taker and was knowingly deceptive in the test which was taken and submitted.
72. I have turned therefore to the central question in this appeal, namely whether the appellant knowingly employed the services of a proxy in taking the TOEIC test for him. Bearing in mind the standard and burden of proof I am satisfied the Secretary of State has discharged the evidential burden in establishing that the appellant obtained his TOEIC certificate by deception namely by employing the services of a proxy test taker. In the circumstances the appellant's appeal against the decision of the respondent dated 15th September 2015 is dismissed.

No anonymity direction is made.



Signed

Date 7 August 2018

Upper Tribunal Judge King TD