Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/23617/2018
HU/23621/2018
HU/23624/2018

THE IMMIGRATION ACTS

Heard at Field House
On 3 October 2019

Decision & Reasons Promulgated
On 10 October 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

NARINDER [K]
KAWALJIT [S]
[G S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Murphy, instructed by Farani Taylor
For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are a husband and wife and their three-year-old daughter. I shall refer to the first appellant as 'the appellant'; the appeal turns upon her English-language test result of February 2013 and the other appellants may only succeed in their appeals if she succeeds. By decision dated 9 November 2018, the appellant's human rights claim was refused. The appellants appealed to the First-tier Tribunal which, in a decision

promulgated on 4 July 2019, dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.

2. The judge upheld the Secretary of State conclusion that the appellant had obtained an English-language certificate in 2013 fraudulently by the use of a proxy test taker and went on to dismiss the appeals on Article 8 ECHR grounds. The appellant asserts that the judge has erred in law in her analysis of the evidence relating to the test and in concluding that the Secretary of State had discharged the burden of proving that the appellant had acted fraudulently. First, the appellant complains that the judge attached insufficient weight to evidence that the appellant had taken and passed an English-language test to IELTS standards prior to the disputed language test. Secondly, the appellant asserts that the judge rejected her explanation as to why she had travelled from her home in Hounslow to South Quay College in Whitechapel to take the test without having regard to the oral evidence of the appellant in which she had provided an explanation for having travelled so far to take the test.

3. As regards the first ground, I find that it has no merit. The judge was well aware that the disputed test had taken place six years before the First-tier Tribunal hearing. Accordingly, the judge appears to have treated with some caution the appellant's English language ability as exhibited at the tribunal hearing [48]. However, it is clear that the judge was entitled to take the view that the appellant's English was still not 'particularly impressive' at the hearing in June 2019. It is the case that the judge does not refer in terms to the previous test undertaken by the appellant but I have no reason to believe that the judge was unaware of that test as it is referred to in the appellant's written evidence. I am satisfied that the judge has considered all the evidence in reaching her determination. I find that the judge has reached findings following an examination of the totality of the evidence which included the respondent's evidence regarding the disputed test, the appellant's previous success in an English-language test and her limited ability in English as exhibited at the Tribunal hearing. As a result of employing that methodology, I find that the judge has unarguably reached findings of fact which were available to her. Given that I find that the judge was aware of the previous test but under no obligation to make specific reference to it, it does not follow, as the appellant asserts, that the outcome of the judge's analysis should necessarily have been different solely on account of the fact that the appellant may have satisfied examiners in an English-language test prior to 2013. Accordingly, I find that the first ground of appeal amounts to no more than a disagreement with findings available to the judge on the evidence.

4. As regards the second ground of appeal, I find this has no merit. At [49], the judge stated that she could 'see no reason why any genuine student living in Hounslow wishing to take these tests would have gone to South Quay College in Whitechapel when there was clear evidence before me that the directors were ranging from pilots to sit the tests over a long period.' The wording is a little obscure but it is clear that the judge was

concerned that the appellant would have travelled from West to East London (ignoring other colleges in between which might offer the same test) to take the test at a particular college which the Secretary of State's evidence plainly reveals allowed candidates to use proxies. Further, it is not the case that the judge has ignored the appellant's explanation given in oral evidence because she has recorded that explanation at [17]: '[the appellant] took the test in Whitechapel because a college informed her there was a college where she could sit the test which was in Whitechapel. At the time she was living in Kingsley Avenue Hounslow. She had checked it had not found any colleges in Hounslow.' Notwithstanding the appellant's explanation, I find that the judge was entitled to be concerned and draw an adverse inference from the fact that the appellant travelled so far from her home to sit the test at this particular college. I do not consider that the judge has fallen into error by failing to give a more explicit rejection of the appellant's explanation.

5. In the circumstances, I find that the judge has not erred in law for the reasons advanced in the grounds of appeal or at all. The appeals are dismissed.

Notice of Decision

These appeals are dismissed.

Signed Date 3 October 2019

Upper Tribunal Judge Lane