



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

Appeal Number: IA012562015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17<sup>th</sup> February 2016**

**Decision & Reasons Promulgated  
On 8<sup>th</sup> June 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**JUNG OK YOON  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms K Reid (for Kothala and Co)

For the Respondent: Mr E Tufan (Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is the appeal of Jung Ok Yoon, a citizen of Korea born 27 February 1977, against the Respondent's decision of 17 December 2014 to refuse her application for further leave to remain as a student and to set removal directions against her under section 47 of the Immigration Asylum and Nationality Act 2006. The appeal having been dismissed by the First-tier Tribunal she now appeals to the Upper Tribunal with permission.

2. She was interviewed in the course of her application's consideration. There she is recorded as having said that she had originally worked as an accounts assistant and book keeper, but then hoped to combine beauty therapy with health and social care, before realising that her inclination was more towards a genuine office job. There had been legal and management elements in her health and social studies as well as in her ACCA course, so there was a close link between them. She would be able to work in any of these fields if necessary. She hoped eventually to open her salon. If her parents were unwell she would return home to look after them; otherwise she hoped to be a success in finance.
3. The refusal letter sets out that the Secretary of State was not satisfied that she genuinely intended to follow her proposed course of studies, because her proposed course, to study for an ACCA qualification at Greenwich London College, was thought inconsistent with her previous studies in Facial Massage Skincare and Body Therapy at the London School of Beauty and Make Up, and Health and Social Care Management and Health, Community and Social Care at Williams College. Her answers at interview suggested that she lacked any defined career path and her answers and her application fell to be refused under Rule 245ZX(O) because her interview responses and path of studies undermined her claim to be a genuine student.
4. In her witness statement Ms Yoon stated that she felt that was not permitted to fully answer the questions put at interview: the interviewer had repeatedly told her that she had said enough and at once moved onto the next subject. Because English was not her first language, her normal conversational style was to slowly explain her point, but the style of questioning had prevented her from so doing. When she first came to the United Kingdom she felt that she had had enough of office work and sought a change of direction, and undertook studies in different areas. However in time she came to appreciate that these courses would not give her any real opportunity to work in Korea, particularly given her age which would limit her opportunities in a new career. She therefore decided to start her own beauty salon upon return to Korea. She believed that learning accountancy would be very useful to run a successful business, particularly given that she had seen that it was those with professional skills who had survived the country's recent recessions whilst others failed, and additionally it would give her a fall-back position if her salon plans did not help.
5. A reference from Heather Jung, Director of JP Lagoon Ltd of Wimbledon, set out that she had employed the Appellant as an Accounts Assistant since early April 2015, and she had been a great help with their accounts functions, and they were happy with ACCA study and progression which she was keen to complete.
6. The First-tier Tribunal assessed her evidence and accepted that she had worked for an insurance company, dealing with cash flow, finance and taxation, in South Korea for 11 years before entering this country. She

arrived here in June 2006 and had been consistently lawfully present as a student. She had additionally worked, for Wasabi Take Away for two years, Pret a Manger for a year, Radisson Hotel/Spa for 18 months, at Selfridges in Groom for 18 months, and at a beauty salon, Wimbledon Lagoon for 8 months. She had undertaken various courses of study: in English in 2006, Beauty and Makeup in 2008, and subsequently Health and Social Care for two and a half years; since then she had begun her ACCA studies. She admitted that she had no intention to study when she first came here: her objective was to find a safe country in which to reside, and she only started to study English with a view to extending her visa.

7. Dismissing her appeal on 27 June 2015 the First-tier Tribunal found that, noting that the sole issue pressed before it was whether she was a genuine student, though accepting that in any event she had established some private life here. The Judge found her explanation that the experiences of other students in Health and Social Care put her off such a career “unconvincing”, and that her reasons for pursuing studies for an ACCA qualification were not credible, that being a specialised professional qualification, were incompatible with any “reasonable and sensible view” that her work experience in South Korea adequately equipped her to undertake the level of financial control necessary for a modest economic concern to thrive.
8. Grounds of appeal alleged that the decision was inadequately reasoned having regard to *MK Pakistan* [2013] UKUT 641 (IAC) as the reasons she had given for not wishing to work in healthcare (that it was too “emotional” an area for her, and there was a lack of demand in Korea) had not been addressed. Additionally her evidence given at the hearing that there were many aspects of managing a company with which she lacked experience, such as working with suppliers and taking loans, had not been challenged.
9. The Upper Tribunal granted permission to appeal on 9 December 2015 because it was arguable that the First-tier Tribunal had made over-generalised comments and overlooked the Appellant's bundle, witness statement and her reference from Heather Jung.

## **Findings and reasons**

10. The challenge to the decision below turns squarely on the reasoning of the First-tier Tribunal. As was stated by the Upper Tribunal in *MK Pakistan*:
 

“If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.”
11. The relevant Immigration Rule is this:
 

**“245ZX. Requirements for leave to remain**

To qualify for leave to remain as a Tier 4 (General) Student under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the applicant will be refused. ...

Requirements:

(o) the Secretary of State must be satisfied that the applicant is a genuine student.”

12. This was not a case where the claims made were inherently implausible. It is perfectly possible that a person would wish to pursue studies in accountancy in order to better equip themselves to run a small business. That was the Appellant's case as put in her detailed witness statement. It was consistent with the brief letter from her beauty salon employer. True it may be that the Appellant may have admitted that she was not originally disposed to study when she first arrived here, but she has nevertheless pursued a multiple courses of studies since then successfully, and been granted leave to remain to do so.
13. It seems to me that the reasoning below is inadequate to sustain the ultimate decision to dismiss the appeal. It is not explained why the contention that the adverse experiences of other students in the health and social care business as recounted to the Appellant discouraged her pursuit of that career path is “unconvincing”. I cannot accept that no reasonable Tribunal could conclude that an ACCA qualification would be thought useful by a person wishing to set up a small business: it is not a lengthy course, and having basic accounting skills would undoubtedly mean that she would be able to move between roles, industries and sectors.
14. This is not an appeal where there are meaningful findings upon which the Upper Tribunal can build, and thus it is allowed to the extent that it is remitted to the First-tier Tribunal for hearing afresh.

Decision:

Remitted to First-tier Tribunal for hearing afresh.

Signed:

Date: 17 February 2016

A handwritten signature in black ink, appearing to read 'M. A. Symes'. The signature is written in a cursive, somewhat stylized font. The letters 'M', 'A', and 'S' are prominent and clearly legible. The signature is positioned above the printed name.

Deputy Upper Tribunal Judge Symes