



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

Appeal Number: IA/16764/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 27 November 2013**

**Determination
Promulgated
On 2 December 2013**

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Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

MS QIANQIAN XU

Appellant

Respondent

Representation:

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer

For the Respondent: No appearance or representation

DETERMINATION AND REASONS

1. The appeal is that of the Secretary of State who appeals against a decision of Judge of the First-tier Tribunal Sangha who in a determination promulgated on 30 August 2013 allowed the appeal of Ms Qianqian Xu against a decision of the Secretary of State to refuse her leave to remain as a Tier 1 (Entrepreneur). Although the Secretary of State is the appellant in the appeal before me, I will for ease of reference refer to her

as the respondent as she was the respondent before the First-tier Tribunal. Similarly, I will refer to Ms Qianqian Xu as the appellant as she was the appellant before the First-tier Tribunal.

2. There was no appearance by or on behalf of the appellant. The appellant had stated in her original appeal form that her address was 2/2, 3 Halmiltonhill Gardens G22 5PR. I consider that it is likely that she meant to write the address as Hamiltonhill Gardens. The notice of hearing was sent to 2/2, 3 Halmilton Gardens G22 5PR. Given that the postcode was correct and given that the address is virtually correct I considered that it would not be appropriate or necessary to re-reserve the notice and that it was appropriate to determine the appeal in the absence of the appellant.
3. The appellant is a citizen of China, born on 1 August 1986. Having studied at Glasgow University she made an application for leave to remain as a Tier 1 (Entrepreneur) under the points-based system. That application was refused by the Secretary of State. There were two reasons for the refusal. The first was that although the appellant had provided a job title that was listed in Appendix J she had not submitted appropriate evidence to show that she was active in the occupation of her business, Xu's Chinese Translation & Interpreting Limited and that the advertising material which she had submitted did not fulfil the requirements of the Rules. Secondly, it was stated that she had not given appropriate evidence that she had the funds necessary for the application.
4. The appellant appealed. In her grounds of appeal she referred to an advertisement which she had submitted and stated that she was submitting an updated advertisement which contained her full name and therefore met the requirements of the Rules. She also stated that she had submitted a bank statement letter and balance statement to show that she had access to funds held in the Bank of Scotland.
5. The appellant did not request an oral hearing of the appeal. It was therefore dealt with on the papers before the judge at Birmingham on 19 August. The judge set out his findings of fact and conclusions in paragraphs 12 onwards. He considered the advertisement which the appellant had submitted after the refusal and considered that it met the requirements of the Rules. He stated that therefore "assuming that all the other requirements are met and, there is nothing in the respondent's refusal letter to show that they have not been met, I am satisfied that the advertisement that the appellant has annexed to the grounds of appeal does show his (*sic*) full name and therefore that would meet the requirements listed at paragraph 41-SD(c)(iii) of Appendix A of the Rules." He therefore allowed the appeal.
6. The Secretary of State appealed pointing out firstly that the advertisement which had been submitted and which the judge found met the requirements of the Rules had not been submitted before the decision and therefore under the provisions of Section 85A that was not admissible.

Moreover, the grounds argued that the judge had been wrong to find that the appellant had access to funds.

7. I have considered the grounds of appeal. It is correct that the judge relied on the advertisement which was submitted after the date of decision and clearly he was wrong to do that. More importantly perhaps however there is no evidence whatsoever that the appellant had access to the relevant funds. It is unclear why the judge considered that she would meet that requirement of the Rules. I therefore consider that there are material errors of law in the determination of the judge and I set aside his decision.
8. In re-making the decision, for the reasons which I set out above I find that the appellant has not met the requirements of the Rules. Not only had she not provided the requisite financial evidence but also she had not provided an advertisement which met the requirements of the Rules.
9. For those reasons, having set aside the decision of the Immigration Judge I re-make the decision and dismiss this immigration appeal. It was not argued that the rights of the appellant under Article 8 of the ECHR were infringed by the decision and I can see no basis on which that conclusion could be reached.

Decision.

This appeal is dismissed.

Signed

Date

Upper Tribunal Judge McGeachy