



IAC-AH-KEW-V1

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

Appeal Number: IA/06853/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 7th March 2016**

**Decision & Reasons Promulgated
On 25th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MISS JING ZHANG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Haywood, instructed by Cahill De Fonseca Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of China born on 18th September 1989 and she appeals with permission from Upper Tribunal Judge Eshun against a decision of Judge of the First-tier Tribunal Geraint Jones QC. He dismissed her appeal under the Immigration

Rules against a decision of the respondent refusing her leave to remain further to paragraph 245DD(b) with reference to Appendix A paragraphs 35 to 53. The appellant had failed to provide specified evidence further to paragraphs 41-SD and 46-SD of Appendix A. Paragraph 36, table 4 of Appendix A, sets out the requirements for leave to remain (as at the date of the respondent’s decision.

Investment and business activity	Points
<p>(a) The applicant has access to not less than £200,000, or</p> <p>(d) The applicant:</p> <ul style="list-style-type: none"> (i) is applying for leave to remain, (ii) has, or was last granted, leave as a Tier 1 (Post-Study Work) Migrant, (iii) since before 11 July 2014 and up to the date of his application, has been continuously engaged in business activity which was not, or did not amount to, activity pursuant to a contract of service with a business other than his own and, during such period, has been continuously: <ul style="list-style-type: none"> (1) registered with HM Revenue & Customs as self-employed, or (2) registered with Companies House as a director of a new or an existing business. Directors who are on the list of disqualified directors provided by Companies House will not be awarded points, (iv) since before 11 July 2014 and up to the date of his application, has continuously been working in an occupation which appears on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the Codes of Practice in Appendix J, and provides the specified evidence in paragraph 41-SD. “Working” in this context means that the core service his business provides to its customers or clients involves the business delivering a service in an occupation at this level. It excludes any work involved in administration, marketing or website functions for the business, and ... 	<p>25</p>

2. The specified documents with reference to (d)(iii) above are set out in paragraph 41-SD and in particular refer to 41-SD(e)(iii) as follows:

“(iii) One or more of the following specified documents covering (either together or individually) a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application:

- (1) advertising or marketing material, including printouts of online advertising, that has been published locally or nationally, showing the applicant’s name (and the name of the business if applicable) together with the business activity, or where his business is trading online, confirmation of his ownership of the domain name of the business’s website.*
- (2) article(s) or online links to article(s) in a newspaper or other publication showing the applicant’s name (and the name of the business if applicable) together with the business activity.*
- (3) information from a trade fair, at which the applicant has had a stand or given a presentation to market his business, showing the applicant’s name (and the name of the business if applicable) together with the business activity, or*
- (4) personal registration with a UK trade body linked to the applicant’s occupation; and …………….”*

3. Challenge was made to the First-tier Tribunal Judge’s decision on the basis that the appellant had submitted 20 different items of evidence of marketing to the respondent in support of her application including business cards, orders and further orders for such cards, confirmation of bookings to attend networking events and tradeshow, a contract dated 13th May 2014, online printouts from her website, online printouts from her advertising of her interpreting service from her website and from ‘Yell’ (dated 4th August 2014) and contracts. The appellant advanced that the judge had erred in finding that the advertising material had to be ‘meaningful’, and erred in finding that the business cards combined with the attendance at networking events was not advertising and marketing, and that the re-ordering of business cards was not referable to any time period and thus that the advertising material was not referable to any time period.
4. The First-tier Tribunal Judge stated that the appellant’s bundle contained various documents between pages 8 to 22 but which was documentary evidence that was not available to the respondent at the time when the application was decided. The judge found at paragraph 7 of his decision, that the appellant’s witness evidence was that she attended various networking events in April, May and July 2014 and that “at such events she handed out business cards with such enthusiasm that it was necessary for her to purchase and pay for a second batch of business cards as evidenced by the invoices for such business cards at pages 118 and 120.” The judge concluded that “whilst it might well be that such events could present an opportunity to discuss one’s business with others and/or to network (as it is called) they are not documents evidencing the appellant engaging in business on her own account.” At paragraphs 8 to 11 the judge set out the following

- “8. It was submitted that the documents at pages 82 – 93 evidence the appellant engaging in business on her own account, as a translator. Page 82 is an invoice dated 11 June 2014 and at page 83 appears an invoice dated 05 June 2014. There are then specimen agreements or contracts for translation services before one gets to a document dated 02 June 2014 which, on its face, is an “Interpretation Agreement.” No invoices issued further to any services being provided under that agreement have been adduced.
9. The appellant entered into an agreement for website design on 13 May 2014 and evidence discloses that the website went live on 09 July 2014, some five weeks or so after the appellant made her application.
10. The appellant applied under the provisions in (d) of Table 4. Accordingly she had to provide one or more of the ‘specified documents’ set out in Appendix A covering a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of her application. One such document could be advertising or marketing material (including printouts of online advertising) that has been published locally or nationally, showing the applicant’s name and/or the name of the business if applicable, together with the business activity. In my judgment the respondent was correct to conclude that the business card relied upon by the appellant did not satisfy that requirement.
11. The appellant did not provide any articles or online links to articles showing the appellant’s name and/or business, together with the appropriate business activity. The appellant produced no documents showing any involvement at a trade fair and no evidence of any personal registration with a United Kingdom trade body linked with the applicant’s occupation.”

5. At paragraph [13] the judge added

‘the appellant has relied primarily upon the fact that she purchased business cards and the fact that she made a second purchase from which it can be inferred that she had used up the earlier supply. That evidence is not referable to any particular time period. It seems probable that the appellant was preparing to advertise her proposed business but that prior to her making her application she had not advance to the stage of meaningful marketing or advertisements through the time period, of a type specified in Appendix A’.

6. The grounds for application for permission to appeal advanced that Appendix A and paragraphs 41-SD did not demand inclusion of online print-outs in support of an application and the judge’s finding thereon was clearly erroneous. It was submitted that the phrase “including print-outs of online advertising” was just an example of the sort of material that could be sent in support of an application. In this instance leaving aside the evidence in relation to the appellant’s website she sent proof of repeated purchasing of business cards at a time when she was attending various networking events and contracts and/or invoices for work that she had obtained as a result of her promoting her business at these events.

7. In conclusion, I find the term 'meaningful' is not found within 41-SD and this would appear to be a rather unspecific term. Even if it is not correct that the judge has read in a stricter requirement in relation to the marketing material, the business card must have some meaning in order to be a business tool at all and it cannot be said to have no marketing value or it would not have adopted the wide international use that it has. The business card showed the appellant's name and could be dated by the invoices which were presented to the Secretary of State and could be relied on to satisfy the requirement. As Mr Haywood submitted by virtue of the documents which were dated prior to 11th July 2014 and which included the invoices it was clear that the appellant had been continuously engaged in business activity since prior to that date and the contract which she provided in her appellant's bundle at Section 5 and which Mr Walker confirmed were before the Secretary of State prior to the making of the decision showed invoices for her interpreting service dated 5th June 2014 and an interpretation agreement dated 2nd June 2014. This would comply with the requirements of Table 4(d)(iv) and the requirement for paragraph 41-SD(e)(iii). I note that the Secretary of State accepted in her decision letter that the appellant had been continuously engaged in an occupation (that is interpreting and translating) since prior to 11th July 2014. The only point of contention was the marketing material. The appellant did produce a contract and this was not a ground of refusal.
8. The fact that the appellant did not provide any articles or online links to articles was not a requirement. The requirements under 41-SD(iii) are in the alternative. I note on the application that the appellant had indicated that she had included twenty different marketing materials in her bundle presented to the Secretary of State although the writing is very unclear on the photocopy presented to the judge. It is clear from the documentation that the appellant set up this business on 30th May 2014 with Companies House as there is online documentation to that effect.
9. Mr Walker provided on behalf of the Secretary of State a copy of the appellant's business cards and noted that the invoices were dated 6th May 2014 and 20th July 2014 and 16th July 2014 were before the Secretary of State.
10. On the evidence provided I accept that there was provision of evidence of marketing material which was referable to dates and that the judge made a mistake of fact by concluding that the purchasing, using up and re-purchasing of business cards was not referable to any particular time period.
11. At the hearing before me Mr Walker conceded that with all the material supplied to the Secretary of State the Immigration Rules had been complied with.
12. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007) and remake the decision under section 12(2) (b) (ii) of the TCE 2007 and I allow the appeal.

Order

The appeal is allowed under the Immigration Rules.

Signed

Date 20th April 2016

Deputy Upper Tribunal Judge Rimington

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award because the documentation supplied was not easily assessed with reference to the Rules.

Signed

Date 20th April 2016

Deputy Upper Tribunal Judge Rimington

Approval for Promulgation

Name of Deputy Judge issuing approval:	Ms H Rimington
Appellant's Name:	Miss Jing Zhang
Case Number:	IA/06853/2015

Oral decision (please indicate)

I approve the attached Decision and Reasons for promulgation

Name:

Date:

Amendments that require further action by Promulgation section:

Change of address:

Rep:

Appellant:

Other Information: