



## **DECISION RECORD**

<b>AGENT</b>	Nancy Lan Sin Ng
<b>COMPLAINT NUMBER/S</b>	CMP-48516
<b>DECISION</b>	Caution – 6 months
<b>DATE OF DECISION</b>	24 May 2022

## **Terms used for reference**

1. The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>BVA/B/E</i>	Bridging Visa A, B or E
<i>FOI requests</i>	Requests under the <i>Freedom of Information Act 1982</i>
<i>MARN</i>	Migration Agent Registration Number
<i>PIC</i>	Public Interest Criteria
<i>Section 308 notice</i>	Notice issued by the Authority under section 308 of the Act
<i>Section 309 notice</i>	Notice issued by the Authority under section 309 of the Act
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Regulations</i>	<i>The Migration Regulations 1994</i>
<i>The Agent</i>	<b>Nancy Lan Sin Ng</b>
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	<i>The Migration (Migration Agents Code of Conduct) Regulations 2021</i> prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i>
<i>The Former Code</i>	Code of Conduct prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i> by regulation 8 and Schedule 2 of the <i>Migration Agents Regulations 1998 – repealed on 1 March 2022</i>
<i>The Department</i>	The Department of Home Affairs
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>The Agents Regulations</i>	<i>Migration Agents Regulations 1998</i>
<i>VEVO</i>	Visa Entitlement Verification Online

## **STATEMENT OF REASONS**

### ***Background***

2. The Agent was first registered as a migration agent on 7 March 2008 and was allocated the MARN 0848911. The Agent's registration had been renewed annually to date, with the most recent registration commencing on 12 March 2021.
3. The Register lists the Agent's business name as Ntrust (Singapore) Pte (sic) Ltd (Ntrust).

### ***Prior Disciplinary action***

4. The Agent does not have any history of prior disciplinary action.

### ***Complaint***

5. The Authority received a complaint on 26 November 2019 from Mr KA concerning an Agent's conduct.
6. Mr KA had lodged a complaint against Mr PS who is allegedly the owner and 'principal consultant' of Ntrust. On 25 March 2021, the Authority wrote to the Agent listed as the registered migration agent for Ntrust on the Ntrust website. Ms NLSN (the Agent) confirmed her involvement in Mr KA's case. In her response, dated 29 March 2021, she advised that she was in charge of this case with her staff assisting on relevant administrative matters. On the basis of her advice, the Authority accepted that she was the registered migration agent engaged to assist Mr KA.
7. The complainant, Mr KA, alleged that:
  - Mr KA engaged the Agent's services in Singapore on 19 November 2019 for a consultation and paid \$250 as a consultation fee.
  - This consultation was conducted with Mr PS, who Mr KA thought was a registered migration agent.
  - Mr KA claimed he paid a further SGD \$4968 on 20 November 2019. He provided an "Official Invoice" on Ntrust letterhead, for this amount, dated 19 November 2019, which stated that payment was for "Being the assigned fee (Cost Agreement dated 19 November 2019)." Mr KA also provided a screen shot from his bank account showing this amount was transferred on 20 November 2019.
  - Subsequently Mr KA's phone calls and emails were completely ignored by Mr PS.
  - Mr KA sought a refund of the payment on 21 November 2019, but was told by Mr PS that "his name is already lodged in to the Australian visa system and cannot be cancelled".
  - Mr KA claimed that he believed that he was part of a scam and found several claims of a scam and negative reviews published on the internet as well as on Ntrust's Facebook page.
  - Mr KA subsequently found out that Mr PS is not a Registered Migration Agent. The two people whose names are referred to on Ntrust's website as registered migration agents (one of them being the Agent's) were not part of the organisation and were never present at the Ntrust's office. The office is operated mainly by Mr PS and two other administrative support staff.
  - Mr KA also alleged that the official invoice from Ntrust had the total sum of \$8280 in the total section and a sum of \$6165 unofficially written on the bottom of the page.

8. Mr KA provided the following documents in support of his complaint:
- Records of text messages, phone calls and emails, dated between 19 November 2019 and 21 November 2019.
  - Invoice for a total of \$4968, dated 19 November 2019.
  - Evidence of payments of \$150 and \$4968, dated 19 and 20 November 2019 respectively.
  - "Official quotation" on Ntrust's letter head, dated 19 November 2019.
  - Business card in the name of Mr PS as principal consultant of Ntrust.

### ***Departmental Records***

9. Records held by the Department of Home Affairs (the Department) and its former manifestations indicate that the company (Ntrust) and the Agent did not lodge any applications on behalf of Mr KA.

### ***Notice under section 308 of the Act***

10. On 20 April 2021, the complaint was provided to the Agent for comment. Under subsection 308(1) of the Act, the Agent was requested to provide a written response to specific questions asked by the Authority and to provide evidence from Mr KA's client file.
11. The complaint raised possible issues under clauses 2.1, 2.10, 2.16, 2.23, 5.2, 7.1, 7.2, 8.1, 8.2 and 8.3 of the former Code.

### ***The Agent's response to the Authority's section 308 notice***

12. The Agent provided a response by way of a statutory declaration dated 14 May 2021 and supporting documentation from the client file for Mr KA. In summary within her response the Agent made the following claims/submissions:
- Mr KA engaged the Agent's services to seek assistance with his SC491 visa application.<sup>1</sup>
  - Mr KA was provided advice by the Agent in respect of the following matters:
    - The appropriate nominated occupation based on Mr KA's education and work experience.
    - The skills assessment body and their assessment criteria.
    - The need to obtain the required test scores for the English language test.
    - The state nomination and designated area sponsorship based on the availability during the time of consultation and sign-up.
    - The points test and the number of points that could be claimed based on Mr KA's eligibility criteria.
    - The requirements for health and character checks.
    - Render verifiable supporting documentary evidence to the various authorities.
  - The Agent stated that on the basis of Mr KA's eligibility, he was qualified to apply for a subclass 491 visa.
  - The Agent acknowledged that Mr PS is a consultant in the Singapore office. The Agent advised that Mr PS spent a total of 1.5 hours with Mr KA on consultation, "combing through the legislative criteria and recommending the best possible strategy in ensuring the highest

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<sup>1</sup> *Skilled Work Regional (Provisional) visa (Subclass 491) is a General Skilled Migration (GSM) points-tested visa to assist regional Australia, for applicants nominated by a State or Territory government agency or sponsored by an eligible family member residing in a designated regional area who have been invited to apply for the visa.*

possible successful outcome.” The Agent advised that Mr PS was working “under guidance by an RMA.” The Agent did not provide details of this guidance.

- v. In response to the question put forward to the Agent regarding services provided to Mr KA in return for the payment of \$4968, the Agent stated that she:

- Revisited all the file notes and sign up process for Mr KA.
- Reassessed Mr KA’s eligibility in line with the Migration Act, Migration Regulations and Procedures Advice Manual (PAMS) with regard to relevant sponsorship, nomination and visa class.
- Perused the forms, templates, guidelines and instructions to Mr KA to initiate the application.
- Led the team discussions in relation to details of Mr KA’s casework, re-confirmation of eligibility, processing priority, application timeline and strategy.
- Verified that all relevant forms and checklist for initial skills assessment with VETASSESS were prepared correctly.

- vi. Mr KA was refused a refund of the fee as the Agent has a turnaround time of 24 hours.

- vii. The Agent reiterated that Mr PS is a Singapore-based immigration consultant, an employee of Ntrust and is the person who consulted with Mr KA.

- viii. In regards to the question of what services were provided to Mr KA, the Agent referred the Authority to the “Scope of Services” section in the *Australia Immigration Agency Agreement* she provided in support of her response. This section listed the following services:

- “Provide advice relating to the Applicant’s migration goals and their choice of visa category;”
- “Ascertain if the Applicant’s credentials be met as set out in the Migration Act, Migration Regulations, and Procedures Advice and if required, to recommend such alternative pathways or strategies so as to increase the chances of a successful outcome;”
- “Examine all supporting documents to the application that reflects the achievements of the Applicant and/or spouse (if required) in his/her profession.”
- “Prepare and lodge an application under a State Migration Plan;”
- “Assist the Applicant with an Expression of Interest (EOI) to the Department of Home Affairs;”
- “Upon receipt of the Invitation to Apply (ITA) prepare the legal submission and lodge the relevant application forms and supporting documents with the Department of Home Affairs;”
- “Keep the Applicant informed of any developments concerning the progress of the application;”
- “Advise the Applicant in writing within a reasonable timeframe of the outcome of the application; and”
- “Comply with the Code of Conduct for Registered Migration Agents (the Code) in ensuring the highest possible standards of professionalism, competency and ethical conduct during the entire period of the application including in the event the Code (which may change from time to time) is inconsistent with the Agent’s obligations, the Agent and the Applicant agree to vary this agreement to comply with Code, to the extent of any inconsistency.”

- ix. The Agent advised that “this case was presented to the Small Claim Tribunal in Singapore and subsequently withdrawn by client.”

13. In support of her response, the Agent provided the following documents:

- An “Australia Immigration Agency Agreement,” dated 19 November 2019, between “Ntrust (Singapore) Pte Ltd, under Migration Agent Registration Number 0848911” and Mr KA. The Agreement stated that “the visa that the Agent will apply for... shall be Subclass 190... or Subclass 491...” and the professional fees for this service would be \$8280.
- An “Applicant Acceptance” letter addressed to Mr KA, on Ntrust letterhead, dated 20 November 2019. This letter introduces Ms NY as the Accounts Manager assigned to Mr KA, confirms receipt of payment, and outlines the criteria that Mr KA must satisfy (including documents required in support of the application).
- A courier receipt, showing delivery on 22 November 2019, as evidence of the Applicant Acceptance Letter being delivered to Mr KA.
- A UOB Bank statement for an Ntrust bank account, for November 2019, showing a payment of \$4968 made by Mr KA.
- A document on Ntrust letterhead in regards to undertaking IELTS testing.
- An Order of Tribunal from the Small Claims Tribunal in Singapore, dated 27 February 2020, showing that Mr KA withdrew his claim.

#### ***Notice under section 309 of the Act***

14. On 26 August 2021 the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning her, or suspending or cancelling the Agent’s registration under section 303(1) of the Act.
15. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent’s obligations under clauses 2.10, 2.1, 5.1, 5.5, 7.1B, 7.2, 8.1 and 8.2 of the former Code.
16. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter.

#### ***The Agent’s response to the Authority’s section 309 notice***

17. The Agent provided a response by way of submissions from her legal representative, Ms SLC. The submissions were accompanied by a statutory declaration dated 08 October 2021, signed by the Agent, declaring that the “statements of fact made in the submission are true and correct.” The Agent also provided a copy of the client file for Mr KA. In summary Ms SLC submissions stated:
  - i. The Agent has worked as an employee of Ntrust since January 2008.
  - ii. Mr PS is the managing director of Ntrust.
  - iii. The Agent works closely with Mr PS, who is the consultant based in the Singapore office.
  - iv. Mr PS obtained all the relevant information from Mr KA and relayed the instructions to the Agent.
  - v. The Agent assessed the information and advised Mr KA, through Mr PS, regarding estimated points, skills assessment and body/state migration plans.
  - vi. The Agent claimed that the following advice was provided to Mr KA:
    - He may be eligible for a subclass 491 and/or a subclass 190 visa;
    - He was advised what the appropriate nominated occupations were.

- He was informed of the relevant assessment body, assessment criteria, the required English language test scores and availability of State Nomination and Designated Area Sponsorship
- On the basis of the available information, Mr KA was advised that he may qualify for a subclass 190 and a subclass 491 visa.
- vii. The Agent provided the following chronological summary of events, of relevance:
  - On 6 November 2019:
    - Mr KA applied for a preliminary assessment of his chances to qualify for an Australian visa.
    - The Agent assessed the applicant as having a fair chance based on information provided and invited Mr KA for a detailed consultation. Mr KA was told he would meet a member of the consultation team.
  - On 19 November 2019:
    - The Agent “instructed Mr PS on the estimated points awarded/ possible nominated occupations / skills assessment body/state migration plans for Mr KA with notes on the points test pre-calculated before consultation.”
    - Mr PS “meets with Mr KA for 1.5 hours to go over applicant’s eligibility highlighting all areas of potential risks and mitigation factors.”
    - Mr KA gave instructions to proceed with the sign-up.
    - The “documentation team” prepared an “Applicant Acceptance Form” (AAF) and other necessary documents and “uploads all documents to corporate dropbox.” The Agent stated that the AAF confirmed her name and MARN details and involvement in the process. However, the Agent stated: *“although regrettably this document was not provided to Mr KA.”*
    - The Agent checked the documents.
    - Mr PS reviewed all documents, including the Statement of Services Agreement.
  - On 20 November 2019:
    - Mr KA was informed that “NTUST have initiated the process such that all documents will be prepared which he would receive shortly.”
    - The Agent met with her support staff to discuss Mr KA’s case.
    - “In compliance with instructions, stage 1 of the visa application process commenced by preparation of the Applicant Acceptance Letter, all forms and supporting documents for initial skills assessment with VETASSESS.”
  - 21 November 2019:
    - A package for Mr KA, containing instructions and documents “in satisfaction of stage 1 of work” was picked up by a courier company to be sent to Mr KA.
    - Mr KA sought a partial refund “stating that he has had an emergency in the family and will pay the balance of the fees in 1-2 months.”
    - Mr KA was instructed to contact Mr PS, who in turn “on compassionate grounds ... offers to extend a personal interest free loan to tide the family through this emergency.” Mr KA declined this offer.
  - 22 November 2019:
    - Mr KA received the package sent by courier.
  - 28 November 2019:
    - Ntrust followed up with Mr KA in regards to returning the documents sent.

- Ntrust received a letter from the Small Claims Tribunal.
- 27 February 2020:
  - Hearing of Small Claims Tribunal in Singapore. Mr KA withdrew the claim.
- viii. The Agent agreed that Mr KA met with Mr PS for a consultation on 19 November 2019. She stated that it was standard practice of Mr PS to introduce himself initially and identify himself as the “Principal Consultant.”
- ix. The Agent expressed concern that Mr KA may have formed the impression that Mr PS was a registered migration agent, which was not the case. *“Mr PS did not say that he was an RMA and he did not expressly state that he was not a migration agent.”*
- x. Mr PS’s “business card does not refer to himself as an RMA or have a MARN recorded on it.”
- xi. The Agent confirmed that Mr KA paid the fees as alleged.
- xii. In regards to Mr KA’s phone calls and email being ignored, the Agent stated that when he called Ntrust on 21 November 2021, he was told to speak to Mr PS and was contacted by him on the same day.
- xiii. The Agent denied that Mr KA asked for a refund of his fees. The Agent stated that Mr KA told Mr PS that one of his relatives met with an accident and he needed the money back urgently. At that stage Mr KA did not inform Mr PS that he wanted to terminate Ntrust’s services or wanted a refund. Mr PS offered Mr KA a personal loan on compassionate grounds.
- xiv. The Agent stated that Mr PS denied the allegation that he told Mr KA that his name was already lodged into the Australian visa system and could not be cancelled.
- xv. The Agent stated that Mr KA never expressed any concerns over the service he was getting nor did he mention the negative social media reviews he raised in the complaint. The Agent claimed that the majority of the reviews and testimonials for Ntrust are positive.
- xvi. The Agent reiterated that she is an employee of Ntrust and has been since 2008. The Agent stated that during the COVID19 pandemic, she was working remotely and mostly performed her duties via email, telephone or video conferencing.
- xvii. In response to the concern over the amount of \$6165 unofficially written on the bottom of the invoice provided to Mr KA, the Agent claimed that a total of \$8280 was charged by Ntrust for all three stages of work and the other figure of \$6165 was a reference to the disbursements associated with the application as specified in the Agreement for Services and Fees.
- xviii. The Agent agreed that no application was lodged for Mr KA. This was because Ntrust was only at the first stage of scope of work as outlined in the Agreement for Services and Fees.
- xix. The Agent stated that she was the registered migration agent who gave guidance to Mr PS in regards to Mr KA’s application process. The AAF, which is the company’s internal form, was issued on 19 November 2019 and has her name on it as the registered migration agent, confirming her involvement in the services provided to Mr KA.
- xx. The Agent confirmed that the scope of work consisted of three stages. The first stage was largely completed and the only stage charged for. No work was commenced on stages two and three.
- xxi. The Agent reiterated that Ntrust always allocates a registered migration agent to all its clients. The company has two registered migration agents whose MARNs are displayed on the Ntrust’s website.
- xxii. The Agent stated that the above (point xxi) should not preclude the use of additional staff to meet clients and assist with the preparation of their applications. She further added that Ntrust’s website states that it uses a consultation team and documentation team in addition

to a legal team. Whilst the legal team comprises of registered migration agents who are responsible for looking into the legal aspects of every case, the consultation team comprises other members of the company who consult with clients. The documentation team liaises with clients and does the administrative aspects of the paperwork. The Agent agreed that the structure of the staff and their procedure for business practice needs to be reviewed.

- xxiii. The Agent stated that Mr PS was part of the consultation team while Ms NY was part of the documentation team. The respective roles of the Agent, Mr PS and Ms NY were identified in the AAF issued on 19 November 2019.
- xxiv. The Agent “confirms that she was the RMA who had settled all documents and had given instructions to Mr PS on the instructions he was to confirm, and the lines of enquiry to make, with the Applicant.”
- xxv. The agent accepted that Mr KA “was not given (the Agent’s) name albeit her MARN identified her as such.” The Agent acknowledged that her name should have been stated expressly on the Agreement. She stated that she will raise this matter with her employer, Ntrust.
- xxvi. The Agent reiterated that Mr PS and Ms NY only assisted Mr KA with the visa application, however all advice and documents were looked after by her.
- xxvii. The Agent “is unaware of either Mr PS or Ms NY having ever indicated that either was Mr KA’s allocated RMA.” Further, the Agent “is not aware of Mr KA having ever asked about his allocated RMA. (The Agent) appreciates that it may have been helpful for her name to be stated expressly in the services agreement or other communications but her details, including her MARN, appear on the NTRUST website.”
- xxviii. In her response, the Agent stated that Ntrust’s website refers to representation and advocacy carried out by the legal team consisting of registered migration agents. The Agent’s representative stated “Whilst Ng apologises if that impression was formed by Mr KA, she respectfully considers that it is not a view that might reasonably have been formed by an objective client. As a matter of fact, Mr KA did receive immigration assistance from Ng his allocated RMA. Other members of the other teams also assisted as outlined in the Ntrust website.”
- xxix. In regards to the concern raised in relation to the Agent’s involvement in the case and the level of communication between her and Mr KA, the Agent responded that she was the registered migration agent behind Mr PS who organised all the documents and the Agent gave all the instructions to Mr PS.
- xxx. She further elaborated her guidance and involvement with the case as follows:
  - RMA advised consultant on the estimated points awarded/possible nominated occupations/skills;
  - RMA provided assessment body/state migration plans for the applicant;
  - RMA checked through calculated points test, quotation and file notes for applicant And gave approval;
  - RMA perused the forms, templates, guidelines, and instructions for the sign-up;
  - the consultation and documentation teams and RMA met to discuss details of the client’s casework for re-confirmation of eligibility, processing priority, application timelines and strategy;
  - the documentation team prepared the Applicant Acceptance Letter, all forms and supporting documents; and
  - for initial skills assessment with VETASSESS, RMA perused the relevant forms, checklist for initial skills assessment with VETASSESS and ensured that they were prepared accordingly.



- xxxi. The Agent stated that Mr PS and Ms NY were part of the consultation and documentation team respectively and all roles were identified in the AAF issued on 19 November 2019.
- xxxii. The Agent once again agreed that her name was not given to Mr KA and now agrees that her name should have been expressly stated on the services agreement. The Agent was not sure if Mr PS mentioned her name to Mr KA or if Mr KA ever asked regarding his allocated registered migration agent. However, she stated that she will take up this miscommunication issue with Ntrust.
- xxxiii. In regards to the concern raised regarding misleading information on Ntrust's website, the Agent stated that her MARN appears on the website and it does not appear anywhere that Mr PS and Ms NY are RMAs. She further stated that the website indicates the role of other teams and it was regretful that Mr KA formed the belief that Mr PS was the RMA appointed to him. She said she had no intention of misleading Mr KA and it did not occur to her that such a misunderstanding might have arisen.
- xxxiv. The Agent claimed that whilst she acknowledged that her name was not expressively written on the Statement of Services nor was it directly given to Mr KA, the AAF identified the respective roles of Ms NY, Mr PS and the Agent clearly.
- xxxv. The Agent confirmed that Mr PS and Ms NY are not registered migration agents. She stated that the MARNs of the registered agents are displayed on the website as well as the roles of Mr PS and Ms NY. The Agent further stated that she can only apologize if Mr KA formed the belief that Mr PS was a registered migration agent but in fact she was the one performing all the actual work.
- xxxvi. In regards to the \$4968 fees charged from Mr KA, the Agent stated that it was paid in accordance with stage one of the agreed work and was charged prior to any request of a refund. She confirms that the stage one work was completed within a 24 hour period and considered that the fees charged were reasonable.
- xxxvii. According to the Agent, stage one included "on assignment and being for consideration of the applicant's eligibility, associated legislation in the Migration Act and Regulations and for all the initial liaison with the applicant". She further stated that Mr KA made initial contact on 6 November 2019 and met with Mr PS on 19 November 2019. Mr KA agreed to go ahead with stage one of the scope of work on the same day and the work was completed and sent to Mr KA the next day for review and signing. Mr KA called on 21 November 2019 to ask for some money back due to an emergency, however by then stage 1 work was completed. The Agent claimed that there was no request from Mr KA for a refund and if requested, it would have been reasonable for Mr KA to do so. She added that Mr KA did not deny during the small claims tribunal hearing that he did not ask for a refund but in fact asked for the money due to family emergency.
- xxxviii. In regards to declining Mr KA's request for a refund just after 24 hours, the Agent reiterated her claim that Mr KA did not ask for a refund or wanted to end the migration services they were offering. Mr KA asked for a partial refund to support a family emergency. However, the Agent recognised the issues that may have arisen in relation to the absence of an itemised Statement of Services.
- xxxix. In relation to the issue raised regarding a Statement of Services and completion of block of work, the Agent stated that an invoice or Statement of Services was issued for stage one of the scope of work under clause 4(a) of the Services Agreement. The Agent accepted that no itemised invoice was issued to Mr KA, which may have caused the misunderstanding. The Agent stated that until she sought legal representation, she was under the belief that the combination of the scope of services listed under clauses 2 and 4(a) of the Services Agreement with the invoice reference was sufficient itemisation. However, later she understood and accepted that it was not the right practice. The Agent stated that she is an employ of Ntrust and did not pay attention to the invoices.
- xl. In response to the concern raised regarding a separate account for money paid by clients for fees and disbursements, the Agent stated that Ntrust's accounting protocols are in line with and operated in accordance with Singapore laws. The Agent apologised for not having a separate account for client fees and will raise it with Ntrust.

- xli. In relation to the concern raised regarding the Agent's control over advice, assistance and supervision, the Agent referred to the summary of events stated in point 17 of this notice. The Agent insisted that she was directly supervising all the proceedings including the completion of all documents and the provision of advice to Mr KA. The Agent also claimed that her role as part of the legal team is defined on Ntrust's website. The Agent denied that she deceived Mr KA and apologised again if he formed the opinion that Mr PS and Ms NY were registered migration agents. She claimed she would take steps so that such misunderstandings do not occur again.
- xlii. The Agent reiterated that she gives guidance, supervision and checks all documents either via video conferencing or physically in the office. She has worked in the immigration service industry for 13 years and this is her first complaint. She claimed that Ntrust has been operational for 18 years and has provided their services to thousands of families. The Agent considers herself to be a person of integrity and does her job with utmost professionalism.
- xlili. Furthermore, the Agent claimed that there was no deception regarding who was providing the services and what part each team took in the provision of those services. The Agent insisted that the description on Ntrust's website might have caused the confusion, however there was absolutely no intention to mislead or deceive Mr KA. She claimed that despite the lack of direct contact with Mr KA, she was directly involved with the provision of services to him.
- xliv. The Agent acted in good faith at all times and was under the impression that this matter was settled after Mr KA withdrew his claim from the Small Claims Tribunal in Singapore. The Agent would accept a breach if it occurs, although she came to the understanding of the alleged breaches after obtaining her solicitor's advice.
- xlv. The Agent also claims she has recommended her employer (Ntrust) to refund the full fees paid by Mr KA.
- xlvi. In response to a sanction affecting her financial earning capacity, the Agent stated that she is a divorcee with three children under her care. The children reside with her and are completely dependent on her financially. A sanction would have a huge impact on the livelihood of the Agent and her children.

18. In support of her response, the Agent provided:

- i. Character reference from Mr PS for the Agent, dated 28 September 2021. Mr PS is the Managing Director of Ntrust and in this reference, Mr PS described the Agent as a hardworking, meticulous and competent worker. He further stated that the Agent has provided her services to more than 400 families and has never received a complaint.
- ii. Character reference from Mr CMS, dated 5 September 2021. Mr CMS is a former client of the Agent and described the Agent as a person of simplicity, utmost integrity, professionalism and a treasure to the Australian immigration industry. He further stated that the Agent not only helped him and his family immensely migrating to Australia but helped them later as well in relation to settling down.
- iii. Character reference from Mr NJKH for the Agent, dated 3 October 2021. Mr NJKH is a former client of the Agent. The Agent helped him and his family with applying for a visa for Australia in 2015. Mr NJKH attested that the Agent and her team are migration agents with integrity and professionalism.
- iv. Character reference from Ms FLL for the Agent, dated 4 September 2021. Ms FLL is former client of the Agent. The Agent helped Ms FLL achieving her visa grant successfully in 2011 after a 3 year long migration process. Ms FLL described the Agent as a person of integrity and professionalism.
- v. Character reference from Mr EL for the Agent, dated 11 September 2021. The Agent helped Mr EL in 2012 with his visa application and he successfully migrated to Australia in 2013. Later the Agent and Mr EL became friends and he described her to be of highest repute and a fit and proper person to perform her role as a migration agent.

- vi. Letter of completion for Graduate Certificate in Australian Migration Law and Practice from TC (Acting Director), the Australian National University (ANU), dated 2 January 2008.
- vii. MARA Certificate of Registration, granted by the Authority, dated 7 March 2008.
- viii. National Police Certificate to certify that there are no disclosable court outcomes recorded against the Agent, dated 6 May 2021.
- ix. Order of Tribunal from Small Claims Tribunals Singapore, dated 27 February 2020.
- x. Application Approval Form (AAF) on Ntrust's letterhead, dated 19 November 2019.
- xi. Certificates of Registration of Birth of the Agent's children.
- xii. Proof of the Agent's divorce. << Removed for privacy >>

### ***Jurisdiction***

19. The Authority performs the functions prescribed under section 316 of the Act.
20. The functions and powers of the Authority under Part 3 of the Act and Agents Regulations are the functions and powers of the Minister. The Minister has delegated the powers under Part 3 of the Act and the Agents Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.

### ***Relevant legislation***

21. The functions of the Authority under the Act include:
  - to investigate complaints in relation to the provision of immigration assistance by registered migration agents (paragraph 316(1)(c)); and
  - to take appropriate disciplinary action against registered migration agents (paragraph 316(1)(d)).
22. The Authority may decide to cancel the registration of a registered migration agent by removing his or her name from the register, or suspend his or her registration, or caution him or her under subsection 303(1), if it is satisfied that:
  - the agent's application for registration was known by the agent to be false or misleading in a material particular (paragraph 303(1)(d); or
  - the agent becomes bankrupt (paragraph 303(1)(e); or
  - the agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance (paragraph 303(1)(f); or
  - an individual related by employment to the agent is not a person of integrity (paragraph 303(1)(g); or
  - the agent has not complied with the Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
23. Subsection 314(2) of the Act provides that a registered migration agent must conduct himself or herself in accordance with the Code. Regulation 8 of the Agents Regulations made under the Act prescribes a Code.
24. Before making a decision under subsection 303(1) of the Act, the Authority must give the agent written notice under subsection 309(2) informing the agent of that fact and the reasons for it, and inviting the agent to make a submission on the matter.

## **Migration Act 1958 (Cth)**

### *Section 276 Immigration assistance*

- (1) For the purposes of this Part, a person gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:
- (a) preparing, or helping to prepare, the visa application or cancellation review application; or
  - (b) advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or
  - (c) preparing for proceedings before a court or review authority in relation to the visa application or cancellation review application; or
  - (d) representing the visa applicant or cancellation review applicant in proceedings before a court or review authority in relation to the visa application or cancellation review application.
- (2) For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:
- (a) preparing, or helping to prepare, a document indicating that the other person nominates or sponsors a visa applicant for the purposes of the regulations; or
  - (b) advising the other person about nominating or sponsoring a visa applicant for the purposes of the regulations; or
  - (c) representing the other person in proceedings before a court or review authority that relate to the visa for which the other person was nominating or sponsoring a visa applicant (or seeking to nominate or sponsor a visa applicant) for the purposes of the regulations.
- (2A) For the purposes of this Part, a person also gives **immigration assistance** if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:
- (a) preparing, or helping to prepare, a request to the Minister to exercise his or her power under section 351, 391, 417, 454 or 501J in respect of a decision (whether or not the decision relates to the other person); or
    - (aa) preparing, or helping to prepare, a request to the Minister to exercise a power under section 195A, 197AB or 197AD (whether or not the exercise of the power would relate to the other person); or
  - (b) advising the other person about making a request referred to in paragraph (a) or (aa).
- (3) Despite subsections (1), (2) and (2A), a person does not give immigration assistance if he or she merely:
- (a) does clerical work to prepare (or help prepare) an application or other document; or
  - (b) provides translation or interpretation services to help prepare an application or other document; or
  - (c) advises another person that the other person must apply for a visa; or
  - (d) passes on to another person information produced by a third person, without giving substantial comment on or explanation of the information.
- (4) A person also does not give immigration assistance in the circumstances prescribed by the regulations.

### *The Code of Conduct, under section 314 of the Act*

#### *1.10 The aims of the Code are:*

- (a) to establish a proper standard for conduct of a registered migration agent;
- (b) to set out the minimum attributes and abilities that a person must demonstrate to perform as a registered migration agent under the Code, including:
  - (i) being of good character;

- (ii) *knowing the provisions of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, in sufficient depth to offer sound and comprehensive advice to a client, including advice on completing and lodging application forms;*
- (iii) *completing continuing professional development as required by the Migration Agents Regulations 1998;*
- (iv) *being able to perform diligently and honestly;*
- (v) *being able and willing to deal fairly with clients;*
- (vi) *having enough knowledge of business procedure to conduct business as a registered migration agent, including record keeping and file management;*
- (vii) *properly managing and maintaining client records;*
- (c) *to set out the duties of a registered migration agent to a client, an employee of the agent, and the Commonwealth and its agencies;*
- (d) *to set out requirements for relations between registered migration agents;*
- (e) *to establish procedures for setting and charging fees by registered migration agents;*
- (f) *to establish a standard for a prudent system of office administration;*
- (g) *to require a registered migration agent to be accountable to the client;*
- (h) *to help resolve disputes between a registered migration agent and a client.*

1.11 *The Code does not list exhaustively the acts and omissions that may fall short of what is expected of a competent and responsible registered migration agent.*

1.12 *However, the Code imposes on a registered migration agent the overriding duty to act at all times in the lawful interests of the agent's client. Any conduct falling short of that requirement may make the agent liable to cancellation of registration.*

### ***Migration Agents Regulations 1998, regulation 9***

#### ***Complaints***

*For paragraphs 316 (c) and (e) of the Act, any person or body may make a complaint, including:*

- (a) *a client of the registered migration agent or lawyer;*
- (b) *an official;*
- (c) *an employee or member of the Institute;*
- (d) *an employee of the Authority;*
- (e) *a parliamentarian;*
- (f) *a tribunal or court;*
- (g) *a community organisation;*
- (h) *the Department.*

#### ***Evidence and other material***

25. In reaching the following findings of fact the Authority considered the following evidence:

- Documentation contained in the Authority's complaint file for CMP-48516
- Information held by the Authority in relation to the Agent; and
- The supporting documentation provided by the Agent in response to the section 308 notice and the 309 notice, being:
  - A Statutory Declaration in response to the Section 308 notice on 14 May 2021, including supporting documents.
  - A Statutory Declaration in response to the Section 309 Notice signed by the Agent and a submission from the Agent's legal representative on 8 October 2021, including supporting documents.

## **DECISION AND REASONS**

### ***Paragraph 303(1)(d) of the Migration Act 1958 - Application for registration was known by agent to be false or misleading in a material particular***

26. "Pursuant to paragraph 303(1)(h) of the Act, the Authority may caution a registered migration agent or suspend or cancel their registration if the agent has not complied with the Code as in force at the time of the conduct which is the subject of this decision."
27. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agents obligations under clauses 2.10, 2.1, 5.1, 5.5, 7.1B, 7.2, 8.1 and 8.2 of the former Code.
28. My findings and full reasons for the decision are set out as per the below.

### ***Misleading advertising***

29. A registered migration agent is expected not to engage in false or misleading advertising and is expected to deal with his/her clients competently, diligently and fairly.
30. The complainant, Mr KA alleged that the Agent did not represent him at any stage of his application process rather he dealt solely with Mr PS. Mr KA subsequently learned that Mr PS was not a registered migration agent. Mr KA was under the impression, after looking at the website of the Agent's company (Ntrust) that he would be assisted by a registered migration agent.
31. The Ntrust website [www.ntrust.com.sg](http://www.ntrust.com.sg) states<sup>2</sup> on the home page that "their business has an edge over others because of their team of Registered Migration Specialists who are allocated to all clients". The home page also has two Migration Agent Registration Numbers displayed, one of them being the Agent's. The website tab 'About us,' under the heading "Registered Agent/Legal Team" stated that 'your case will be represented and advocated only by a registered Australian migration agent throughout the entire application process.' Further, the 'Frequently Asked Questions' (FAQ) page on the website states that "*All our agents are registered under the Migration Agents Registration Authority (MARA) of Australia. Their details are posted on our homepage. NTRUST reviews the work of its agents to ensure they are the best in the industry and strictly follow the Code of Conduct for your protection.*"<sup>3</sup>
32. Furthermore, the "Australia Immigration Agency Agreement," dated 19 November 2019, states that the agreement is between NTRUST under MARN 0848911 and Mr KA. The Authority's records indicate that MARN 0848911 is the Agent's MARN.
33. In her response to the Section 309 notice the Agent acknowledged that it was Mr PS who consulted with Mr KA in respect of his visa application and also provided him advice. The Agent asserted that she worked closely with Mr PS and was working in the background in terms of assessing the case and providing information for Mr PS to relay to Mr KA. In addition the Agent worked remotely and mostly performed her duties via email, telephone or video conferencing due to COVID19 restrictions.
34. The Agent confirmed that Mr PS is an immigration consultant and an employee of Ntrust. Additionally, the AAF the Agent provided to the Authority with the response stated that Ms NY was assigned to Mr KA's casework and would assist through the visa application with the help of other consultants and immigration law specialists. The Agent claimed that Mr PS and Ms NY only assisted Mr KA with the visa application, however all advice and documentation was prepared by herself. Notably, the Agent stated that the AAF was "regrettably" not provided to Mr KA. Further, in her response to Section 309 notice, the Agent accepted that Mr KA was

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<sup>2</sup> Accessed on 27 July 2021

<sup>3</sup> Migrate to Australia from Singapore | Established since 2003 ([ntrust.com.sg](http://ntrust.com.sg)) viewed on 4 June 2021, 11.50 AM (AEST)

not told about her involvement. The Agent also accepted that while her MARN was stated on the Services Agreement, her name should also have been clearly stated on that Agreement.

35. The available evidence suggests that there was no communication between the Agent and Mr KA. In spite of the fact that the Agent's MARN appeared on the Agreement for Services and Fees provided to Mr KA and the Ntrust website advertised that services would be provided by a registered migration agent, no registered migration agent appears to have had any involvement in Mr KA's matter. Further, it appeared that Mr KA was not aware that the Agent was his appointed registered migration agent as he did not mention her name in the complaint at any stage. As accepted by the Agent, the document outlining her role in the case, the AAF, was not provided to Mr KA. As such, evidence indicates that Mr KA was provided advice and assistance solely by Mr PS, with support from Ms NY.
36. The Authority's records indicated that Mr PS and Ms NY were not registered migration agents. It appears that Mr KA was not informed about this at any stage and he believed he was receiving assistance from a registered migration agent when he liaised with Mr PS. The Agent's website gave the impression to her clients that all their matters at Ntrust are dealt by registered migration agents, leading Mr KA to believe that he was liaising with a registered migration agent when he was liaising with Mr PS.
37. Mr KA was deceived by Ntrust into thinking that he will be provided with immigration assistance from a registered migration agent. This deception was possible due to the Agent's MARN being published on the company's website, and utilised in the Agreement for Services and Fees. The fact that only the Agent's MARN and not her name were included in the Agreement for Services and Fees further fuelled the deception, as it prevented the client from being aware of the identity of their appointed registered migration agent. Further, the website advertised that "your case will be represented and advocated only by a registered Australian migration agent all throughout the application process." These factors combined led Mr KA to believe that he would only be dealing with a registered migration agent throughout the process.
38. Persons providing immigration assistance overseas do not need to be registered with the Authority. As such, it is acknowledged that Mr PS could have provided immigration assistance to Mr KA without registration. However, on the basis of information contained on the website, Mr KA was under the impression that he would be receiving immigration assistance from a registered migration agent, and this information likely persuaded Mr KA to engage Ntrust's services. The fact that Mr KA was provided with immigration assistance from an unregistered person contradicts the claims on the website, and information provided in the Agreement for Services and Fees.
39. There was no genuine attempt to alert Mr KA to the fact that Mr PS was not registered with the Authority. The Agent, in her response to the s309 notice, claimed that it was unfair to derive limited excerpts from their website and disregard other pages. I acknowledge that there are other pages on the website which describe the roles of other team members, including Mr PS and Ms NY. However, as previously discussed there is no evidence that the Agent had any contact with the client (Mr KA) and he was not made aware of any work conducted by the Agent in the background. I acknowledge that it is common workplace practice of businesses to have separate administration teams to look after various tasks. However, I am satisfied that in this case Mr KA was deceived as there is no evidence that a registered migration agent was involved in his matter. It would have been appropriate if the relevant team involved in Mr KA's case was introduced to him in the beginning and relevant roles were defined, in particular the role of the Agent.
40. There were several occasions where Mr KA could have been informed that Mr PS was not his agent but Ms Ng was. The evidence before me indicates that even throughout several interactions with Mr PS and other employees of Ntrust, Mr KA was never informed that the Ms Ng was the actual Agent in the company. Even if the Agent's claim is to be believed that she was the one working in the background and giving advice to Mr KA's via Mr PS, the question arises that why this was not communicated clearly to Mr KA. The Agent's name could also be displayed on the Agreement for Services and Fees provided to Mr KA but again, no name was displayed. This further raises the suspicion that there was an attempt to conceal who the

actual registered migration agent was. This shows that there was no intention to tell Mr KA that the Agent was allegedly who was looking after his case, as advertised on Ntrust's website.

41. In the absence of evidence from the Agent to the contrary, I am satisfied that the Agent engaged in false or misleading advertising, specifically advertising that clients were assisted by registered migration agents only. I accept that registered migration agents can seek help of other staff members for administration and management of documents, however in this case it has been established that there was no direct communication between the Agent and the client. Thus I am satisfied that the Agent breached her obligations under clause 2.10 of the former Code, by falsely advertising that "all throughout the application process " a client's case would be dealt with by a registered migration agent, when this is not the case.
42. Further, as a registered migration agent, the Agent was expected to act in accordance with the legitimate interests of the client which extends to being forthright with the client in respect of what services they will receive and from whom. Mr KA was provided with immigration assistance by a person with no recognisable qualification, contrary to his reasonable expectation. In response to the Section 309, the Agent stated on several occasions that she is not to blame that Mr KA formed the wrong impression of Mr PS being his registered migration agent. However, it seems that this information was hidden from Mr KA deliberately and no importance was given to his interests or benefits. As noted initially in this decision, the Authority had to first confirm who gave immigration assistance to Mr KA as there was no indication that the Agent worked on this case. It was when the Authority wrote to the Agent, she revealed that she was looking after this case for Mr KA. By just displaying MARN on the website and on the Agreement for Services, without an affiliated name, and by not introducing herself to Mr KA, the Agent did not act in the legitimate interest of her client.
43. Therefore, I am satisfied that the Agent's conduct, in allowing Mr KA to be misled into thinking that he was receiving immigration assistance from a "registered Australian migration agent" was not in Mr KA's legitimate interests. As such, I am satisfied that the Agent breached her obligations under clause 2.1(a) of the former Code.

### **Statement of Services**

44. Clause 5.5 of the former Code stipulates that a registered migration agent is not entitled to be paid a fee or other reward for giving immigration assistance unless the client is provided with a Statement of Services that is consistent with the Agreement of Services and Fees provided before work is commenced. Further part 7 of the former Code outlines an agent's financial obligations as a registered migration agent. Clause 7.2 requires that money paid by a client must be held in the agent's client account until an agreed block of work has been completed and an invoice has been issued to the client for the services performed.
45. The available evidence suggested that no Statement of Services showing an itemised list of services against the fees paid to the Agent was provided to Mr KA. The *Australia Immigration Agency Agreement* the Agent provided with her response to the Section 308 notice appears to be more consistent with an *Agreement of Services and Fees* required pursuant to clause 5.2 of the Code. It stated the scope of services and appeared to be a generic suggestion of services available and proposed. It did not provide any information in regards to estimated fees or disbursements.
46. The *Australia Immigration Agency Agreement* did not provide an actual confirmation of the particulars of each service performed and the charge made in respect of each such service. Evidence provided by Mr KA suggested that the Agent did not provide all of the services agreed to. Specifically, there was no evidence to indicate that the Agent provided the following services outlined in the Agreement for Services and Fees:
  - Preparing and lodging an application under a State Migration Plan;
  - Assisting the Applicant with an Expression of Interest ("EOI") to the Department of Home Affairs;



- Upon receipt of the Invitation to Apply (ITA) prepare the legal submission and lodge the relevant application forms and supporting documents with the Department of Home Affairs.
47. In response to the Section 309 notice, the Agent claimed that the above mentioned scope of work was not part of stage one and that is why there was no evidence to suggest that it was completed. However, this was not clearly written on the Services Agreement for the client to understand what scope of work falls under stage one and subsequently under stage two. The Service Agreement simply lists the "Scope of Services" in one list, without reference to any particular stages of work. The Agent accepted in her response that she recognised now that not issuing an itemised Statement of Services may have caused issues.
48. The Agent appears to be an accomplice in taking advantage of her unique position as a registered migration agent and the trust placed in the company (Ntrust) by the client. The Agent did not provide a Statement of Services, and appears to have intended to obtain a financial advantage without performing the services that she were paid to provide. The client engaged Ntrust's services as a professional, and paid money to them in good faith, on the expectation that the Agent would provide the immigration assistance that had been paid for.
49. As a registered migration agent, the Agent was expected to issue a Statement of Services, and hold an amount of money paid to her by Mr KA for an agreed block of work until each service was performed. The available evidence and the fact that the Agent did not provide a refund to Mr KA at that time, indicates that the Agent did not keep in the client's account the amount of money paid by Mr KA for the agreed block of work until the work had been performed and an invoice was issued. This indicates that the funds have not been treated in line with the Code and have potentially been mismanaged.
50. In response to the s309 notice, the Agent claimed that Mr KA never asked for a refund but in fact claimed that he had a family emergency and needed the money back urgently. In return, Mr PS offered a personal loan rather than refunding the money. The Agent did not provide any evidence to support her claims. It seems implausible that someone with no previous affiliation with another person would offer a personal loan for any reason. I have also considered that Mr KA brought a complaint to the Authority's notice, and stated that he was seeking a refund. I find it unlikely that he would not have sought a refund from the Agent in the first place.
51. I have considered that once the complaint was brought to the Agent's attention by the Authority, the full amount of \$4968 was refunded to Mr KA on 21 October 2021 and proof of payment was provided. However, it seems that this would not have been the case if a complaint was not raised and the Authority was not involved.
52. Given the above, I find that the Agent had no entitlement to all of the funds as she did not perform all of the services agreed to, did not provide a Statement of Service or an itemized invoice and appeared to have mismanaged the funds. Therefore I am satisfied that the Agent breached her obligations under clauses 5.5, 7.2 and 7.1B of the former Code.

### ***Supervision of staff and control of office***

53. As a registered migration agent, the Agent is expected to have effective control of her office and provide her staff with appropriate supervision for work carried out for the purpose of giving immigration advice and assistance.
54. As per the Agent's own statement, she accepted that she was the registered migration agent appointed to Mr KA's case. On the basis of her website, and likely the Agreement for Services and Fees, Mr KA was under the impression that he would be assisted by a registered migration agent. However, there was no evidence to suggest that the Agent assisted or planned to assist Mr KA at any stage, or was involved in his case in any way. As discussed elsewhere in this notice, Mr KA was initially assisted by Mr PS and potentially later by Ms NY. These persons were not registered migration agents but employees at Ntrust.

55. Although persons overseas can provide immigration assistance without registration, the fact that the Agent potentially deceived Mr KA (through advertising) into believing that he was receiving assistance from a registered migration agent, placed a responsibility on the Agent to ensure that the immigration assistance he received was in line with the Code. As such, the Agent had a responsibility to ensure that persons assisting Mr KA who were not registered, did not provide immigration assistance.
56. The Agent's statement to the Authority, and in particular the statement that Mr PS spent a total of 1.5 hours with Mr KA on consultation, "combing through the legislative criteria and recommending the best possible strategy in ensuring the highest possible successful outcome," indicates that Mr PS, who was not a registered migration agent, provided the immigration assistance to Mr KA. The Agent provided no evidence to the Authority to indicate that she properly supervised the work undertaken by Mr PS. Further, there is no evidence to indicate that the Agent reviewed the work undertaken by Ntrust staff, or guided them in any way. The evidence the Agent provided indicates that she allowed unregistered persons to provide immigration assistance on her behalf and under the guise of her MARN. Contrarily, as the registered migration agent at Ntrust with carriage of Mr KA's matter, the Agent was expected to assist Mr KA and to properly liaise with by Mr PS and Ms NY, to ensure that they did not provide immigration assistance under the guise of her MARN.
57. In the response to the Section 309 notice, the Agent denied that she deceived the client and reiterated that she was directly involved in supervising the advice given and preparation of documents. The Agent claimed that her and her colleague's roles were clearly defined on their website and it was unfortunate that Mr KA formed this opinion that Mr PS and Ms NY were registered migration agents. The Agent apologised and agreed to take steps so these kind of incidents can be avoided in future.
58. As discussed elsewhere in this document, even if I consider the claim that the roles were defined clearly on Ntrust's website, this does not drive away from the fact that there is no evidence to suggest that the Agent was directly involved in providing immigration assistance or was in contact with Mr KA. It seems that Mr PS initially assisted Mr KA and subsequently Ms NY was going to continue to support the ongoing process. Even if the Agent was working remotely on the case, there should have been proper management of the work Mr PS was doing on her behalf regarding Mr KA's case and clear communication between the client and the Agent. The Agent should not have allowed Mr PS to provide immigration assistance under the guise of her MARN.
59. On the basis of the available evidence I am satisfied that the Agent did not have effective control of staff in the Ntrust office and did not exercise appropriate supervision of the work carried out by Ntrust's employees. Therefore I am satisfied that the Agent breached her obligations under clause 8.1 and 8.2 of the former Code.
60. For completeness, it is acknowledged that the Agent provided evidence of an "Order of Tribunal" in Singapore, dated 27 February 2020 indicating that in a matter between Mr KA and Ntrust, Mr KA withdrew his claims. The document provided no details in respect of the claims made before the Tribunal, and as such as I do not place any weight on the document as evidence of the Agent's compliance with the Code of Conduct for registered migration agents.

### ***Consideration of Appropriate Disciplinary Action***

61. In deciding to discipline the Agent under section 303 of the Act I have taken into account all of the circumstances of the case, including the following:
  - (a) Whether the Agent's behaviour is of a minor or serious nature. The Authority has identified the following behaviour as extremely serious and therefore likely to result in discipline at the higher end of the scale:
    - i. criminal behaviour;
    - ii. fraudulent behaviour;

- iii. behaviour that demonstrates fundamental lack of knowledge of the law; or
  - iv. involves a blatant disregard for or a significant degree of indifference to the law;
  - v. repeated occurrences of the conduct described in subsection 303(1) (d)-(h) and/or;
  - vi. agent behaviour that has resulted in significant harm or substantial loss to clients.
- (b) Any aggravating factors that increase the Agent's culpability including but not limited to previous conduct.
- (c) Any mitigating factors that decrease the Agent's culpability including but not limited to evidence that the Agent's health has contributed to the Agent's culpability or where the Agent has undertaken steps to remedy the situation.

### ***Seriousness of behaviour***

62. In deciding to discipline the Agent under section 303 of the Act, I have taken into account all of the circumstances of the case, including the severity of the Agent's behaviour and any mitigating or aggravating circumstances which may exist.
63. Having regard to the Complaint Classification Matrix, I have considered that the Agent's conduct falls within the Moderate classification for the following reasons:
- (a) The allegations referred to a potential indifference or lack of understanding of obligations.
  - (b) The allegations referred to dishonest or at least reckless behaviour;
  - (c) The Agent has no previous history of complaints and has been co-operative during the Authority's investigation;
  - (d) The Agent's conduct may cause some reputational damage to the migration advice profession.

### ***Aggravating factors***

64. I consider the Agents conduct falls short of the standard expected of a registered migration agent and has breach multiple clauses of the Code.
65. The Agent was complicit in misleading advertising, as her MARN was and continues to be displayed on the Ntrust's website, which at the time of Mr KA's matter stated that a client will always be serviced by a registered migration agent. This indicates to potential clients that they will receive immigration assistance from qualified and registered persons. Contrarily, in this case, while the Agent's MARN was included on the Agreement of Services and Fees, she had no direct contact with the client and provided no evidence to indicate that she has been involved in the matter at all.
66. The Agent has not taken full responsibility for her wrong-doing, and has sought to place blame on the client for forming the wrong impression in regards to who his appointed migration agent was.
67. The Agent failed to conduct proper supervision of the use of her MARN by the staff of Ntrust and allowed non-registered persons to provide immigration assistance under the guise of her MARN.

### ***Mitigating Factors***

68. The Agent has provided the following submissions to be taken into account in making this decision.
69. The Agent provided numerous client testimonials which expressed great satisfaction with the services provided by the Agent. Many of the client testimonials also refer to the Agent's knowledge, professionalism and competency. Mr PS provided a character reference, in which he described the Agent as a hardworking, meticulous and a competent worker. He expressed his ongoing support for the Agent, stating that "As a hardworking and honest RMA, she has an enviable track record of successful client outcomes. In fact, more than 400 families have benefitted from her services as an RMA having successfully completed all the requirements and having their residential visas approved. To date we have also noted ZERO client complaints."
70. The Agent does not have any previous record of disciplinary breaches, and following the Authority's investigation has issued a refund to Mr KA.
71. I have also taken into account that a disciplinary decision would affect the Agent's financial earning capacity and livelihood. The Agent is the sole income provider in her family, and has sole responsibility of her 3 sons. << Removed for privacy >> I am satisfied that a decision to suspend or cancel the Agent would exacerbate the Agent's financial hardship.

### ***Consumer Protection***

72. Consumers of professional services of registered migration agents are often vulnerable and place a high degree of trust in their registered migration agent. Consumers are therefore entitled to a high level of professional service from their registered migration agent.
73. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. However, I consider that the Agent does not pose a significant risk to consumers. The Agent has expressed understanding of how the client may have misunderstood who his appointed registered migration agent was when dealing with Mr PS. The Agent agreed to look into the process of introducing staff to new clients and how the above issue can be avoided. The Agent has also agreed to amend Ntrust practices regarding providing itemized invoices.
74. Nonetheless, I consider that a disciplinary decision is warranted and that the Agent requires further education and training to address the conduct the subject of this decision, and in the interests of consumer protection.

### **DECISION**

75. Following consideration of the information before me, I have decided to **caution** the Agent under paragraph 303(1)(c) of the Act. The caution is to remain on the Register for a period of **6 months** and until the Agent has met the following conditions:
  - (a) Evidence that the Agent has successfully completed 6 hours of private face-to-face tuition with an Accredited Specialist in Immigration Law on Ethics and Professional Practice. The private tuition must cover the registered migration agent's obligations in regards to her General duties as referred to in Part 2 of the *Migration (Migration Agents Code of Conduct) Regulations 2021* and include a discussion of the issues that are the subject of this decision.
  - (b) The Agent must commence the private tuition within two months from the date of this decision and provide a copy of this decision to the tutor.

- (c) Upon commencement of the private tuition, the Agent must provide to the Authority in writing, details of the individual providing the tuition and the date of commencement of the private tuition.
- (d) The individual providing the Agent with the tuition must provide a report to the Authority confirming the tuition provided.
- (e) Evidence that the Agent has corrected advertising on the Ntrust website.
- (f) Evidence that the Agent has implemented appropriate procedures in respect of provision of immigration assistance, in line with her obligations as discussed in this decision.

Khurram Hayat

Senior Professional Standards Officer

Office of the Migration Agents Registration Authority

Department of Home Affairs

Date of Decision: 24 May 2022