



OFFICIAL

DECISION RECORD

AGENT	Eidy Douglas
COMPLAINT NUMBERS	CAS-14922-V4Q3 & CAS-04701-J8N1
DECISION	Barring for 2 years
DATE OF DECISION	15 April 2024
TERMS USED FOR REFERENCE	Refer Appendix A
ATTACHMENTS TO THIS DECISION	Refer Appendix B

Jurisdiction

1. The Office of the Migration Agents Registration Authority (the Authority) performs the functions prescribed under section 316 of the *Migration Act 1958* (the Act).
2. The functions and powers of the Authority under Part 3 of the Act and *Migration Agents Regulations 1998* (the Agents Regulations) may only be exercised by the Minister or by a delegate 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

3. 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 or former registered migration agents (paragraph 316(1)(d)); and
 - In performing its function under paragraph 316(1)(c), the Authority may start, or complete, an investigation of a complaint about a person at a time when he or she is no longer a registered migration agent (paragraph 316(1A)).

OFFICIAL

4. Section 311A(1) of the Act provides that the Authority may decide to bar a former registered migration agent from being a registered migration agent for a period, if after investigating a complaint about him or her in relation to his or her provision of immigration assistance while he or she was a registered migration agent, it is satisfied that the subject matter of the complaint is made out.

AGENT BACKGROUND

Agent Registration

5. The Former Agent was first registered as a migration agent on 7 July 2015, and was allocated the migration agent registration number (MARN) 1573017. The Former Agent's registration had been renewed annually until 6 July 2023. The Former Agent requested to deregister as a registered migration agent (RMA) on 1 February 2024 and it has not been renewed to date.
6. While registered as a migration agent, the Register listed the Former Agent's trading name as EMD Migration with an Australian Business Number of 16141591077.

Prior disciplinary action

7. No disciplinary action has previously been taken against the Agent.

BACKGROUND

Allegations – the Authority's investigation

8. The Authority received two complaints about the Former Agent's conduct as a RMA from:
 - Mr N P on 15 July 2021 (CAS-04701-J8N1);
 - Mr H H on 11 January 2023 (CAS-14922-V4Q3).
9. Mr P and Mr H nominated RMA Mr D E as their authorised representative for their respective complaints.
10. The complaints about the Former Agent were in relation to her provision of immigration assistance within the meaning of section 276 of the Act.
11. The allegations about the Former Agent's conduct as a registered migration agent forming the subject matter of the complaints are that she:
 - Lodged visa applications and review applications with no hope of success;
 - Did not have sound working knowledge of relevant migration legislation and due regard for her client's dependence on her knowledge;
 - Unnecessarily incurred additional significant costs to her clients; and
 - Did not act competently and failed to provide any evidence of any notes of interaction with her clients.

CAS-04701-J8N1-Mr N P

12. In summary, Mr P alleged:

- In March 2019, the Former Agent was engaged to assist Mr P with a subclass 187 visa application in association with a nomination application for his nominated employer RTT.
- Mr P was already employed and sponsored by RTT under the Temporary Work (subclass 457) scheme.
- Mr P paid the Former Agent \$7,000 in migration agent fees for the application.
- On 11 May 2019, the Former Agent lodged the 187 visa application on behalf of Mr P knowing at the time of application he had not satisfied the English language competency requirements.
- The Former Agent told Mr P 'don't worry' about not satisfying the English language competency requirements as he could pay \$10,000 for Adult Migrant English Program classes after his visa application was lodged.
- On 27 June 2019, the 187 visa application was refused by the Department as Mr P did not satisfy the English language competency requirement.
- The Former Agent requested a further \$1,787 in fees from Mr P to lodge a review of the refusal decision with the Administrative Appeals Tribunal (AAT).
- In November 2020, Mr P sought advice from RMA D E regarding his situation. Mr P was informed by Mr E that he could not win the appeal at the AAT as he had not met the required English language competency before applying for the visa. At this point, Mr P terminated the services of the Former Agent.
- As the newly appointed agent for Mr P, Mr E requested a copy of Mr P's file from the Former Agent. It took considerable time and several requests from Mr E for the Former Agent to forward the relevant documentation to him.
- Mr P suffered financial losses in terms of the visa application charge and the Former Agent's professional fees for an application that had no chance of success. Mr P was 43 years old at the time of his complaint and feared he would lose his chance of permanent residency once he turned 45. As a result of the refusal of the subclass 187 visa application, Mr P was only able to apply for a limited number of prescribed visas whilst onshore¹.
- Mr P was forced to depart Australia for approximately three months to enable him to lodge a valid application offshore. Whilst offshore, he suffered a loss of wages of approximately AUD\$36,800 from his annual salary of AUD\$147,214. He also incurred additional costs by employing another agent to assist with his AAT review and subsequent visa application.

¹ Subject to section 48 bar.

CAS-14922-V4Q3-Mr H H

13. In summary, Mr H alleged:

- In March 2019, the Former Agent was engaged to assist Mr H with a subclass 187 visa application in association with a nomination application for Mr H's nominated employer RTT. Mr H was employed and sponsored by RTT under the Temporary Work (subclass 457) scheme from 2014. His base salary was over AUD\$140,000 per annum.
- Mr H paid the Former Agent approximately \$7,000 in migration agent fees for the application.
- On 27 May 2019, the Former Agent lodged a 187 visa application on behalf of Mr H.
- Mr H's 187 visa application was refused as he had not satisfied the 'competent' English language requirement.
- The Former Agent requested a further \$1,787 in fees from Mr H to lodge a review of the refusal decision with the AAT.
- In late 2021, RTT reached out to RMA D E for assistance. Mr E assisted RTT in various correspondence with the Former Agent, including trying to obtain a copy of the client file to ascertain what had gone wrong and to give the Former Agent a chance to rectify the situation. The Former Agent subsequently engaged a solicitor with whom Mr E corresponded over the course of the following months.
- Mr H is now in the position of having effectively lost the opportunity for permanent residence in Australia despite having resided and worked in Australia since 2004.
- Mr H informed the Former Agent that he did not have 'competent' English language before he lodged the 187 visa application. He is in this predicament because of negligent advice given by the Former Agent.
- RTT wished to continue sponsoring Mr H, however as a result of the 187 visa refusal he is barred under section 48 of the Act and this is no longer possible.
- Mr H can only apply for a limited number of prescribed visas whilst he is onshore.

Notice pursuant to section 308 of the Act (section 308 Notice)

14. On 26 June 2023, the Authority sent a section 308 Notice to the then registered Former Agent, requiring her to answer questions relevant to the allegations and to provide copies of the client files for Mr P and Mr H.
15. On 25 July 2023, the Former Agent's legal representative provided submissions to the Authority in response to the section 308 Notice.

Notice pursuant to section 309 of the Act (section 309 Notice)

16. On 15 January 2024, the Authority sent a section 309 Notice to the then registered Former Agent advising that the Authority was considering cautioning, or suspending or cancelling her registration under section 303(1) of the Act.

17. The Former Agent's response was originally due on 23 January 2024, however an extension was sought by the Former Agent's legal representative, which was approved, extending the due date to 2 February 2024.
18. On 1 February 2024, the Authority deregistered the Former Agent in accordance with her written request dated 31 January 2024.
19. On 2 February 2024, the Former Agent's legal representative provided submissions to the Authority in response to the section 309 Notice.
20. The Former Agent made admissions to some of the alleged conduct and attempted to explain and mitigate the remainder of the alleged conduct. The Former Agent claimed that she had misunderstood the relevant legislation and that she had provided agreed settlements with both clients. In addition, the Former Agent stated she had requested to be deregistered as a migration agent and that she would no longer be providing immigration assistance in Australia.²

Notice pursuant to section 311D (1) of the Act (section 311D Notice)

21. On 9 February 2024, the Authority sent a section 311D Notice to the Former Agent advising that the Authority was considering barring her from being a registered migration agent for a period of up to five years pursuant to section 311A in Division 4A of Part 3 of the Act.
22. On 8 March 2024, the Former Agent provided submissions in response to Authority's section 311D Notice.
23. The Former Agent stated that she:
 - Made a genuine mistake by misinterpreting the law related to the subclass visa application but did not intend to deliberately mislead or cheat anyone;
 - Entered into confidential settlements with Mr P and Mr H which included a refund of their costs and fees relating to their unsuccessful visa applications;
 - Has not had any other complaints whilst performing as an RMA prior to these complaints;
 - Was completely devastated by the complaints which have impacted her personal and professional life adversely;
 - Has no intention of re-applying for registration as an RMA in the future;
 - If she changed her mind and decided to re-apply for registration as an RMA, she would not repeat the mistakes made, would keep up to date with the migration law and would satisfy the requirement for continuing professional development;
 - Would consider barring her from registration to be harsh, unjust and oppressive as the sanction would impact her future employment, earning capacity and livelihood;
 - At nearly 62 years of age, the door of opportunity to start a new career is closing and finding alternate employment could be a challenge;

² Attachment B & C- Former Agent's responses to section 308 and 309 Notices

- Has only a small amount of savings and is not eligible for any Australian Government benefit until she reaches pensioner age; and
- Would suffer financial hardship and find it challenging to support herself if she could not find employment.

THE AUTHORITY'S INVESTIGATION

Evidence and other material

24. In reaching the findings discussed in this decision record, the Authority has considered the following evidence:
- Documents contained in the Authority's complaint files CAS-04701-J8N1 and CAS-14922-V4Q3;
 - Information held on departmental records in relation to the matters raised in the complaints;
 - Information held by the Authority in relation to the Former Agent; and
 - Information provided by the Former Agent to the Authority in response to the section 308, 309 and 311D Notices.

Findings on material questions of fact

25. Having regard to the relevant evidence before the Authority, I am satisfied that:
- (a) the subject matter of the complaints made by Mr P and Mr H has been made out; and
 - (b) while registered, the Former Agent failed to comply with her obligations under the former Code³.
26. My findings and full reasons for my decision are set out below.

Provision of Immigration Assistance

27. The Former Agent has not disputed that both Mr H and Mr P were her clients and she provided immigration assistance to both individuals when she was an RMA. As such I find that Mr H and Mr P's complaints relate to the Former Agent's provision of immigration assistance as defined in section 276 of the Act.

The subject matter of the complaint

28. In respect of Mr P and Mr H, the Authority alleged the Former Agent failed to demonstrate competence and a sound working knowledge of the *Migration Regulations 1994* (the Regulations), specifically clause 187.222 (a) & (b). Despite the time of application requirement that her clients have 'competent' English language, the Former Agent knew that her clients only had 'functional' English language and knew or ought to have known that they could not meet this

³ The former Code of Conduct for registered migration agents being Schedule 2 to the *Migration Agents Regulations 1998*, as in force prior to 1 March 2022

requirement. Regardless, the Former Agent submitted the applications in which she stated her clients only had 'functional' English language.

29. The Former Agent's lack of knowledge with regard to clause 187.222 of the Regulations, was also apparent in her email correspondence with the Department about Mr H's visa application process.
30. On 18 July 2019, the Former Agent sent the Department a letter advising that while Mr H did not meet the requisite criteria at the time of application lodgement, according to her interpretation of the relevant legislation, Mr H was exempt from the requirement of 'competent' English language as he could pay a second instalment fee.
31. On 7 August 2019, the Former Agent was sent a request for more information from the Department, specifically evidence of Mr H's English language ability.
32. On 22 August 2019, the Former Agent provided a response to the Department in which she reiterated her understanding of the legislation, which was that Mr H could pay the second instalment fee. The Former Agent included copies of the relevant legislation with her response however she did not include evidence of Mr H's English language ability.
33. On 9 September 2019, the Department sent the Former Agent a further request for more information, specifically evidence of Mr H's English language ability. Included in the request checklist was information in relation to the second payment instalment. The Former Agent was advised that *'There are no payment exemptions for the primary applicant on a TRT 187 visa. This second instalment you highlighted is only applicable to secondary applicants on a visa.'*
34. The Former Agent responded to this request on 3 October 2019 citing Mr H's English language ability as 'vocational' and informed the Department that Mr H *'still believes that he is entitled to an option to pay for second instalment'*. The Former Agent also stated that *'The applicant was intending to take another English test but as stated in your letter, the applicant should not organize an English Test as the result can only be accepted before the application lodged, he has decided not to proceed with the test.'* [sic]
35. On 15 October 2019, the Former Agent was sent an email from the Department advising that unless Mr H was exempt, then he had to demonstrate 'competent' English language ability. The Former Agent responded to this email with her belief that this information contradicted other criteria in the legislation.
36. On 24 October 2019, the Former Agent was sent further clarification from the Department about the relevant legislation and confirming that Mr H was not eligible to pay the second instalment fee.
37. Mr H's application was refused on 20 November 2019.
38. It is concerning that the Former Agent claimed Mr H's eligibility to pay the second instalment fee on several occasions despite advice from the Department that he was not eligible. Moreover, the Former Agent had received the refusal notification from the Department for Mr P, four months prior to the Former Agent's correspondence with the Department in relation to Mr H's visa application. Mr P's visa application was also refused because it did not meet the criteria for clause 187.222 of the Regulations. Of further concern is the application the Former Agent lodged on behalf of Mr M R (Mr R) on 16 July 2019, two months after P's refusal notification. Mr R's application also showed he had not achieved the requisite 'competent' English language

required at the time of application. This should have further prompted the Former Agent to ensure that her understanding of the requisite criteria was accurate.

39. A diligent and competent agent would have withdrawn Mr H's visa application to enable him to sit another English test before lodging another application, with the proviso that he met the 'competent' English language requirement.
40. In the Former Agent's response to the section 308 Notice, she stated that she thought Mr P and Mr H could pay the second instalment fee to meet the English language requirement because they had 'functional' English, and now she understood this fee can only be paid if the applicant was exempt from showing 'competent' English. This is not correct. On 9 September 2019, the Former Agent was advised by the Department that the second instalment option was only available to secondary applicants on Temporary Residence Transition (TRT) Scheme visa applications. This indicates that the Former Agent still did not have a sound understanding of this criterion.
41. On 03 October 2019, the Former Agent responded to the Department, by email, stating that Mr H '*still believed*' he was entitled to pay the second instalment. As Mr H's appointed RMA, and given the Former Agent's statement that according to her interpretation of the legislation Mr H was eligible to undertake this process, it would be reasonable to consider that Mr H continued to believe he was eligible to apply as he relied upon the advice which the Former Agent gave him. In addition it would be reasonable to consider that he decided not to sit another English test based on her advice also.
42. In the Statutory Declarations provided in the Former Agent's response to the section 308 Notice, she conceded that she advised both applicants⁴ that they were eligible to pay the second instalment fee, as they did not have 'competent' English at the time of application.
43. In addition, the Former Agent stated in her response to the section 308 Notice, that RTT was not her client. Departmental records indicate that the Former Agent was the RMA on record for lodging the associated nomination applications and supporting documentation for RTT. Accordingly, it follows that RTT was the Former Agent's client, and was concerning that the Former Agent failed to recognise this fact.
44. Irrespective of whether the Former Agent charged RTT fees for lodging the associated nomination application, she was obligated to provide advice regarding the outcome of Mr H's visa refusal, and potential options for moving forward. However, it appears that the Former Agent failed to do this, which resulted in representatives from RTT approaching Mr E, seeking the assistance and advice that the Former Agent should have provided them.
45. It follows that the Former Agent's performance as the RMA for RTT, Mr P, Mr H and Mr R was not of the standard expected of an RMA; demonstrated a lack of professionalism and diligence; and a failure to maintain a working knowledge of the Regulations. The Department provided the Former Agent clarification about the meaning of the relevant legislation on a number of occasions despite which the Former Agent proceeded with the applications. The Former Agent's actions also show a lack of competence and diligence, which negatively impacted the applicants

⁴ Paragraphs 7 to 9 in the Statutory Declaration relating to Mr P and paragraphs 8 to 10 in the Statutory Declaration relating to Mr H

referenced this matter. Mr P and Mr H have both lost their employer sponsored permanent residency pathway⁵.

46. As a result of the Former Agent's lack of understanding of the visa application requirements, she did not provide her clients with accurate and timely advice and submitted visa applications for her clients that had no hope of success. The evidence before me also shows the Former Agent failed to confirm her clients' instructions in writing demonstrating a disregard for their dependence on her knowledge and experience.
47. For this reason I find that the Former Agent failed to deal with her clients competently, diligently or fairly. It follows that I also find that the subject matter of the complaints in this regard have been made out.
48. It was alleged the Former Agent carried out her work for her clients in a manner that unnecessarily increased costs to Mr P and Mr H, and their employer RTT; failed to maintain proper client records for either client, and failed to deliver all documents for each client to their new RMA upon termination of the Former Agent's services in a timely manner.
49. The Former Agent's lack of knowledge of clause 187.222 of the Migration Regulations, caused the refusal of Mr P, Mr H and Mr R's visa applications. This resulted in additional costs to the applicants for their subsequent appeals to the AAT, which were also unsuccessful, and the additional fees associated with Mr E's services as the newly appointed RMA in Mr P and Mr H's case.
50. The Former Agent's actions also resulted in Mr P having to travel offshore for a period of 77 days, loss of wages for that period, additional costs for a subsequent visa application, and costs associated with travelling offshore and returning to Australia. Mr P may have also lost his opportunity of an employer sponsored permanent residency pathway in Australia, which was contingent on his continued sponsorship with RTT.
51. Mr H was also required to travel offshore for approximately three months, which resulted in a loss of wages for that period, the additional costs for a subsequent visa application, and costs associated with travelling offshore and returning to Australia. He may also have lost his opportunity of an employer sponsored permanent residency pathway in Australia. His ability to apply for a subclass 186 visa, and seek permanent residency will also be dependent on the continued sponsorship with RTT.
52. Mr R had to depart Australia after being employed in Australia for 17 years and remains offshore.
53. RTT also incurred additional unnecessary costs by engaging Mr E and having to look for additional skilled workers to fill Mr P and Mr H's positions.
54. RTT, Mr P, Mr H and Mr R were relying on the Former Agent's knowledge and experience as their RMA, to assist them in making their respective applications. After investigation, it has been shown that the subclass 187 visa applications had no hope of success, as none of the applicants had the requisite English language ability to meet the legislated criterion for the visas.
55. The visa applicants were in vulnerable positions, with a limited understanding of the English language, migration law, and associated processes. This resulted in them being heavily

⁵ Subclass 187 visa is no longer available for new applications. Will not meet eligibility requirements for a subclass 186 visa.

dependent on the Former Agent's knowledge and experience as their RMA. The Former Agent's subsequent performance regarding their respective visa applications appears to have been inadequate, and resulted in significantly increased costs and serious longstanding ramifications for all three individuals, as well as their nominated employer.

56. On 26 January 2021, Mr P effectively terminated the Former Agent's appointment as his RMA. Mr E sent the Former Agent an email on 09 February 2021, requesting a copy of Mr P's complete file. The email included a signed 'Authority to Transfer Documents' to him.
57. In the Former Agent's response to the section 308 Notice, she claimed that she did not believe that there was a delay in transferring the requested documentation to Mr E.
58. On 12 February 2021, the Former Agent sent Mr E some of the requested correspondence by email. Mr E replied to the Former Agent's email on 13 February 2021, requesting she send the refusal decision and all documentation that had been uploaded to Mr P's ImmiAccount.
59. On 15 February 2021, Mr E sent the Former Agent another email, asking when she was going to provide the requested documents. The Former Agent responded to Mr E's email on the same day, stating she would send the remaining documents by Wednesday 17 February 2021.
60. On 17 February 2021, Mr E sent the Former Agent an email indicating that he still had not received the requested documents. The Former Agent responded to this email and attached some of the requested documentation, however she did not include any of the supporting documents for the application. Mr E sent the Former Agent a further email on this date, requesting the supporting documentation.
61. On 21 February 2021, Mr P sent the Former Agent an email requesting that she send all requested documentation to Mr E. The Former Agent replied to Mr P indicating that she would send the documentation the following day (22 February 2021).
62. On 22 February 2021, Mr E sent the Former Agent an email requesting all documentation to be sent by close of business that day. At 4.15pm, on this day the Former Agent sent the requested outstanding documentation to Mr E by email.
63. Based on this evidence, it took the Former Agent 13 days and several requests to supply Mr E with all requested documentation, which should have been readily available from Mr P's ImmiAccount.
64. From reading all of these requests from Mr E, the Former Agent's responses, and considering that the requested documentation appeared to be or should have been readily available to her, it would be reasonable to consider the Former Agent was withholding this documentation, or did not have complete files for her clients. It also appears that the Former Agent may not have supplied all of the requested documentation had Mr E not sent multiple requests. Notwithstanding, the Former Agent's obligation was to supply complete files within seven days.
65. Accordingly, it has been shown the Former Agent carried out her work associated with Mr P, Mr H and Mr R's respective visa applications, in a manner that unnecessarily increased the costs to them. In addition, it has also been shown the Former Agent failed to have due regard for her client's dependence on her knowledge and experience as their RMA. Furthermore, it has been shown that the Former Agent lodged applications on her client's behalf which had no chance of success as they did not meet the requisite criterion for the visa, of which she was fully aware of. Moreover, due to the lack of supporting documentation and evidence from the Former

Agent, it has been shown there was an unreasonable delay in supplying the client files for Mr P and Mr H to Mr E and the files were incomplete.

66. In addition, the Former Agent lodged visa applications which did not meet the legislated criteria, resulting in increased costs, and other serious ramifications to their clients (as previously referenced in this complaint), demonstrating a lack of professionalism and inability to maintain a fundamental understanding and awareness of Migration law and Regulations. Such conduct is also indicative of a disregard for the reputation of the migration advice profession, and a disregard for his/her obligations under the Code.
67. As the Former Agent has not denied any of the allegations included in the section 311D Notice, and in the absence of any evidence from her to the contrary, I am satisfied that the subject matter of the complaint has been made out.
68. Accordingly I am satisfied that the Former Agent breached her obligations under clauses **2.1 (b), 2.3, 2.4, 2.8, 2.17, 2.23 and 5.3**, of the former Code whilst she was a RMA.

CONSIDERATION OF WHETHER OR NOT TO BAR THE FORMER AGENT

69. In reaching my conclusion with respect to being satisfied that the subject matter of the complaint is made out, I have considered the strength of the evidence and the level of satisfaction required in accordance with the grave and serious consequences for the person the subject of the decision in terms of his or her livelihood and reputation.
70. In deciding whether or not to bar the Former Agent under to subsection 311A(1) of the Act, I have taken into account all of the circumstances of the complaints, including the following.

Seriousness of behaviour

71. In reaching a decision that a barring sanction under subsection 311A(1) of the Act is appropriate in this case, I have taken the following factors into account.
72. As a registered migration agent, the Former Agent was obligated under the Code to possess and maintain a high standard of conduct in order to maintain the reputation and integrity of the migration advice profession.
73. The Former Agent has demonstrated behaviour of a serious nature, which was negligent, incompetent and unfair to her clients. I am satisfied that the Former Agent has acted with a significant degree of indifference towards her clients, the Authority and her obligations as a member of the migration advice profession. I am further satisfied that if the Former Agent were to be registered again, vulnerable consumers would be subject to her unprofessional conduct.
74. I consider that the Former Agent's behaviour:
- Has resulted in significant financial loss and mental stress to her clients; through additional costs of engaging another RMA, loss of wages, travelling offshore and returning back to Australia;
 - Has breached multiple clauses of the former Code, indicating systemic poor practices;
 - Has shown blatant disregard or significant degree of indifference to her professional responsibilities, her clients, another RMA, and the Authority; and

- Has, or is likely to have an adverse impact or undermine the reputation of the migration advice profession.

75. Applying these factors, I have determined that a barring decision is appropriate as the Former Agent had engaged in conduct that has resulted in significant financial loss for three clients who had to depart Australia whilst exploring other potential visa pathways, due to their visa applications having no chance of success, which the Former Agent knew, or ought to have known. I have also found that the Former Agent, while registered, had breached multiple clauses of the Code on at least two occasions in relation to the two complainants.

Aggravating Factors

76. I consider the Former Agent's conduct falls well below the standard expected of a RMA, particularly her apparent indifference towards her obligations to her clients and the Department. I find the following are aggravating factors that increase the severity of the sanction:

- The Former Agent stated in her responses to the section 308, 309 and 311D Notices that she made a genuine mistake which resulted in the subject matter of these complaints. However, the Former Agent was advised by the Department of the refusal of the original nomination application (for Mr P), which mirrored the same reasons for refusal as the other applications mentioned in this Notice. In addition, the Former Agent was provided with an explanation of the legislation by a Departmental officer, specifically that the relevant legislation related to secondary visa applicants only. Despite which, she continued on the same path for both clients resulting in the refusals of their nomination and visa applications.
- The Former Agent has demonstrated misconduct of a serious nature by failing to deal with her clients competently, diligently and fairly, which resulted in her clients incurring significant adverse consequences through lost visa opportunities, financial loss, having to depart Australia for a period of time and the emotional stress involved.
- The Former Agent has demonstrated a poor standard of immigration assistance and communication for multiple clients, which was contrary to the Former Agent's obligations when she was a RMA.

77. I am satisfied that the Former Agent's conduct has the potential to tarnish the reputation of the migration advice profession, and would be viewed by other RMAs within the profession as unacceptable.

78. I consider the Former Agent's conduct falls short of the standard expected of a RMA, and that the conduct poses a serious risk to migration consumers and to the integrity of the migration advice profession.

79. Given the aggravating factors considered, in particular going against the advice of a Departmental officer, I am not satisfied that the Former Agent would not continue to display the same unprofessional and reckless conduct if she was registered as a migration agent, posing an ongoing risk to consumers.

Mitigating Factors

80. In respect to the section 308, section 309 and section 311D Notices, the Former Agent included the following mitigating factors which were considered prior to a disciplinary decision being made:
- She made a genuine mistake by misinterpreting the law related to the subclass visa application, but did not intend to deliberately mislead or cheat anyone;
 - She entered into confidential settlements with Mr P and Mr H, which included a refund of their costs and fees relating to their unsuccessful visa applications;
 - She would consider barring her as harsh, unjust and oppressive as the sanction would impact her future employment, earning capacity and livelihood;
 - At nearly 62 years of age, the door of opportunity to start a new career is closing and finding alternate employment could be a challenge; and
 - She has only a small amount of savings and is not eligible for any Australian Government benefit until she reaches pensioner age.
81. I have considered the Former Agent's claim that she made genuine mistakes relating to her clients referenced in this complaint, and had not previously been the subject of a sanction or disciplinary action by the Authority. However, the same mistakes were repeated after receiving advice from the Department relating to a previous nomination application, which mirrored the same circumstances as the two nomination applications referenced in this complaint. These repeated mistakes resulted in significant costs to both clients and their employer, resulting in both clients having to travel offshore, engage another RMA, then return to Australia, along with their employer being left without skilled workers for significant periods. It is highly likely these mistakes would have also resulted in associated mental stress for both clients and their families, from the impact of the aforementioned events. I am of the view that this does not mitigate the seriousness of the conduct which is the subject of this decision.
82. I have also considered that the Former Agent has entered into confidential settlements with both clients, however this was not done until after the lodgement of these complaints and with the intervention of Mr E into these matters. This raises the question of whether these arrangements would have been entertained by the Former Agent if the complaints had not been lodged against her.
83. In considering whether a disciplinary decision would affect the Former Agent's earning capacity, her ability to find future employment, and livelihood, I note that the Former Agent requested the withdrawal of her registration as an RMA, a day before her response to the section 309 Notice was due. The response to the section 309 Notice, provided by the Former Agent's legal representative indicated that the Former Agent *'will no longer be providing immigration assistance in Australia'*. The Former Agent also stated in her response to the 311D Notice that she had *'no intention to apply for re-registration as an RMA at any time in the future'*. I am therefore satisfied barring the Former Agent from applying for registration for a period does not have a bearing on any of these factors.

Consumer Protection

84. Consumers of professional services of RMAs are often vulnerable and place a high degree of trust in their RMA. Consumers are therefore entitled to a high level of professional service from their RMA.
85. The behaviour demonstrated by the Former Agent falls short of the reasonably expected standards of a RMA. I consider that the Former Agent would pose a serious risk to consumers if she was registered as a migration agent. I am satisfied that if the Former Agent were to practice as a RMA, she would not demonstrate the requisite competency expected of a RMA. I consider that a disciplinary decision is warranted to address the conduct that is the subject of this decision, and in the interests of consumer protection.
86. I expect that a decision to sanction the Former Agent would more likely than not deter other RMAs from engaging in similar conduct and ensure that public confidence in the migration agent profession is maintained.

DECISION

87. I have decided to bar the Former Agent from being registered as a migration agent for a period of 2 years that starts when she is taken to have been given this Notice under section 332H of the Act and ends at the expiration of 2 years after this date.

Kind Regards,

J. Graham

Investigations Officer
Office of the Migration Agents Registration Authority (OMARA)
Department of Home Affairs

APPENDIX A: TERMS USED FOR REFERENCE

The following abbreviations may have been used in this decision:

ABN	Australian Business Number
AAT	The Administrative Appeals Tribunal
BVA/B/E	Bridging Visa A, B or E
MARN	Migration Agent Registration Number
Section 308 Notice	Notice issued by the Authority under section 308 of the Act
Section 309 Notice	Notice issued by the Authority under section 309 of the Act
The Act	The Migration Act 1958
The Regulations	Migration Agents Regulations 1998
The Authority	The Office of the Migration Agents Registration Authority
The Code	The Migration (Migration Agents Code of Conduct) Regulations 2021 prescribed for the purposes of subsection 314(1) of the Migration Act 1958
The Former Code	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</i> – repealed on 1 March 2022
The Department	The Department of Home Affairs
The Register	Register of migration agents kept under section 287 of the Act
VEVO	Visa Entitlement Verification Online

APPENDIX B: ATTACHMENTS TO THIS DECISION

A copy of the following documents has been attached to this Decision:

- Attachment A – details of the complaints that are subject of this Decision
- Attachment B – section 308 Notice
- Attachment C – section 309 Notice
- Attachment D – Former Agent's responses to the section 308 & 309 Notices
- Attachment E – section 311D Notice
- Attachment F – Former Agent's response to the section 311D Notice
- Attachment G – legislation relevant to this Decision
- Attachment H – definitions relevant to this Decision