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DECISION RECORD

AGENT	Jing Xin Wu
COMPLAINT NUMBER	CAS-13655-K6Q0
DECISION	Cancelled
DATE OF DECISION	30 August 2023
TERMS USED FOR REFERENCE	Refer to Appendix A

JURISDICTION

1. 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 (paragraph 316(1)(d)).
4. 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

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- 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 of Conduct prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
5. Subsection 314(2) of the Act provides that a registered migration agent must conduct himself or herself in accordance with the Code of Conduct. The *Migration (Migration Agents Code of Conduct) Regulations 2021* made under the Act prescribes the Code.
 6. The Code of Conduct for registered migration agents in force at the time of the conduct forming the subject of this decision was the Code of Conduct for registered migration agents current from 18 April 2017 (former Code).¹
 7. On 1 March 2022 the Code of Conduct (the Code) replaced the former Code and is also relevant to the conduct of the Agent. It is the instrument *Migration (Migration Agents Code of Conduct) Regulations 2021*.

AGENT BACKGROUND

Agent Registration

8. The Agent was first registered as a migration agent on 28 September 1999 and was allocated the MARN 9904341. The Agent's registration had been renewed annually to date, with the most recent registration commencing on 27 September 2022.
9. The Register lists the Agent's main business as Huatai Immigration Finance and Tax Advisory Services with the ABN 21 176 936 117.

Prior disciplinary action

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

ALLEGATIONS – THE AUTHORITY'S INVESTIGATION

11. The Authority received information from the Department about 11 Protection visa applications where no registered migration agent had declared their immigration assistance to the visa applicants.
12. According to the Department, the applications were linked to the Agent and the Agent's migration business, Huatai Immigration Finance and Tax Advisory Services. These links included that the applications were lodged from Internet Protocol (IP) addresses which were associated with the Agent's ImmiAccount; and that the visa application charges had been paid for by credit cards in the Agent's name. Records also show that Visa Entitlement Verification Online (VEVO) checks had been made by the Agent's business, Huatai Immigration Financial and Tax Advisory Services prior to the lodgement of the protection visa applications. To undertake a VEVO check on a client or potential client a registered migration agent must have firstly received permission from the client to access their personal information.

¹ Refer Attachment A

13. A review of the Agent's cases in the partner visa program was undertaken because of the significant proportion of visa refusals in that particular program area. The Authority examined 42 applications where the partner visa applications were refused by the Department's delegate due to very limited, or lack of, evidence to demonstrate that there was a genuine and continuing relationship between the sponsor and the visa applicant.
14. Following an investigation into the Agent's conduct, the Authority formed the preliminary view that the Agent:
 - Had not notified the Department that he provided immigration assistance to 11 visa applicants whose Permanent Protection (XA 866) visa applications (Protection visa application) he had submitted to the Department, contrary to section 312A of the Migration Act;
 - Had not acted in accordance with the law and the legitimate interests of his clients contrary to clause 2.1 of the former Code;
 - Had not shown due regard for his clients' dependence on his knowledge and experience contrary to clause 2.4 of the former Code;
 - Had not been frank and candid with his clients about the prospects of success of their respective applications under the Act and Regulations, contrary to clause 2.6 of the former Code;
 - Made statements in support of applications under the Act or the *Migration Regulations 1994* (the Regulations) which the Agent knew or believed to be misleading or inaccurate contrary to clause 2.9 of the former Code;
 - Did not inform clients in writing that their applications were vexatious or grossly unfounded and did not obtain written acknowledgement from clients that they still wished to lodge the application contrary to clause 2.17 of the former Code; and
 - Failed to take all reasonable steps to maintain the reputation and integrity of the migration advice professional contrary to clause 2.23 of the former Code.
15. Further, it was alleged that the Agent's actions demonstrated the Agent was not a person of integrity or fit and proper person to provide immigration assistance as per paragraph 303(1) of the Act.

Notice under section 309 of the Act

16. On 14 February 2023, the Authority sent the Agent a notice pursuant to section 309(2) of the Act (section 309 notice), advising the Agent that the Authority was considering cautioning him, or suspending or cancelling his registration under section 303(1) of the Act.
17. 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 section 312A of the Act and clauses 2.1, 2.4, 2.6, 2.9, 2.17 and 2.23 of the former Code. Further, it was put to the Agent that the Authority may be satisfied that he was not a person of integrity or otherwise not a fit and proper person to provide immigration assistance as per paragraph 303(1)(f) of the Act.
18. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter (**Attachment B**).

19. In summary, the Authority alleged the following in its section 309 notice.

Failure to notify the Department about giving of immigration assistance

20. The section 309 notice discussed the 11 Protection visa applications the Agent had submitted to the Department between 28 August 2019 and 17 October 2022.
21. Several common features of the applications indicated to the Authority that the Agent had lodged the applications without declaring his immigration assistance. These features were:
- Eight of the 11 Protection visa applications were linked to the IP addresses that were associated with the Agent's ImmiAccount XXXXXX;
 - All of the 11 Protection visa applications were paid for by credit cards in the Agent's name;
 - Visa Entitlement Verification Online (VEVO) checks were conducted by the Agent's business Huatai Immigration Finance and Tax Advisory Services on each of the applicants for the 11 Protection visa applications prior to the lodgement of the applications;
 - All of the 11 Protection visa application forms asked if a registered migration agent had provided assistance with the form and in each instance the question was answered with "No".
22. Having regard for the above, the Authority alleged that the Agent may have acted contrary to section 312A of the Act and clauses 2.1 and 2.9 of the former Code.

Submitting vexatious applications to the Department

23. In the section 309 notice, the Authority alleged that the Agent may have lodged a significant proportion of non-genuine visa applications in his partner visa caseload. As part of its investigation, the Authority examined 42 partner visa applications for which the Agent had provided immigration assistance between 2016 and 2022.
24. The review of these applications indicated to the Authority that the Agent had knowingly lodged partner visa applications that were not supported by evidence and had poor prospects of success.

Notice under section 305C of the Act

25. On 29 May 2023, the Authority sent to the Agent a notice pursuant to section 305C of the Act (section 305C notice). The Agent was required to provide client files by 13 June 2023 for five specified clients who applied for partner visas.
26. The section 305C notice also informed the Agent that his claim that the Minister or the Department had breached sections 306AC and 306AE of the Act were not a relevant consideration because sections 306AC and 306AE were repealed by the *Migration Amendment (Regulation of Migration Agents) Act 2020* from 11 August 2020.
27. The Authority explained that as Division 3AA of Part 3 of the Act had been repealed, it would be beyond the powers of the Minister in 2023 to refer any registered migration agent to the Authority due to a high refusal rate for a particular type of visa.

Agent's response to section 309 notice

28. On 13 March 2023, the Agent provided a response by written argument (**Attachment C**). The Agent's responses, as relevant are summarised below.

Failure to notify the Department about giving of immigration assistance

29. The Agent stated that he admitted that the allegations in paragraphs 10 to 16 in the section 309 notice about not declaring to the Department his immigration assistance and representation of 11 Protection Visa applications were true.
30. The Agent accepted the possible finding in the notice that his failure to act in accordance with section 312A of the Act resulted in a breach of clause 2.1 of the former Code, in that he had not acted in accordance with the law in that respect.
31. The Agent also stated that he did not declare his immigration assistance for those applications to the Department as he *"didn't want visa refusals to damage"* his reputation. From time to time he had potential clients enquiring and hoping he would assist with applications but he declined many of those.²
32. The Agent said that he had made a genuine mistake as he was not aware of the notification obligations under section 312A of the Act until he received the Authority's section 309 notice. The Agent further stated that he would not risk a *"heavy penalty"* had he known about it and checked the relevant section of the Act.
33. The Agent accepted the possible finding that he breached clause 2.9 of the former Code *"only in the context of"* having answered 'no' to the question in the Protection visa application form which asks if a registered migration agent has provided assistance with the form.
34. The Agent stated his concerns about the weaknesses of the Authority's possible findings that he breached clauses 2.4, 2.6, 2.9, 2.17 and 2.23 of the former Code. He stated that he *"could not accept in full for other five points of allegations."*³

Lodging vexatious applications to the Department

35. The Agent stated that the investigation of the complaint had not followed proper procedure and relevant law and therefore was not acceptable. He stated that the Department should have checked the Procedural Instructions⁴ and sections 306AC and 306AE before referring him to the Authority⁵.
36. The Agent referred to the note under clause 2.17 of the former Code about subsection 306AC(1) of the Act and contended that the Minister had referred the Agent to the Authority on the grounds that he has a high visa application refusal rate, but has not invited the Agent to make a submission on the matter, with the result that there has been no consideration of

² Paragraph 12 of response to section 309 notice

³ Paragraph 9 of response to section 309 notice

⁴ Procedural Instructions are policy guidelines written for Departmental staff who process visa applications. Registered migration agents can access them from their subscriptions to LEGEND but they do not apply to registered migration agents.

⁵ Sections 306AC and 306AE were in Division 3AA of Part 3 of the Act. Division 3AA was repealed on 11 August 2020

any submission. In other words, the Agent contends that the Minister and the Authority have not complied with section 306AE of the Act.

37. The Agent stated that his refusal rate for partner visa applications is 6% which is much lower than the 75% determined by the Minister. As evidence of his claimed refusal rate the Agent provided a document he labelled Appendix 1 to evidence his calculation. Appendix 1 lists applications lodged by the Agent between 1 January 2016 and 31 December 2022. According to the Agent's document, he lodged 471 Stage 1 Partner visa applications, 210 Stage 2 Partner visa applications, and four Protection visa applications in the seven year period.
38. The Agent provided a second document labelled Appendix 2 which he stated was a screenshot of his ImmiAccount for partner visa cases lodged in the past seven years. He had lodged 471 Stage 1 partner visa applications and 210 Stage 2 partner visa applications according to his ImmiAccount.
39. The Agent rejected the possible findings set out in paragraphs 20 to 41 of the section 309 notice about shortcomings in the partner visa applications as lacking in relevance and importance as he has not reached the refusal rate threshold.
40. The Agent discussed his interpretation of various terms used in paragraph 19 of the section 309 notice. His understanding is that the term "adverse outcomes" refers to refused applications and that refused applications are regarded as non-genuine applications or vexatious applications.
41. The Agent revisited the partner visa cases which were listed in Appendix B of the section 309 notice. There were 13 cases where applications for review were lodged with the Administrative Appeals Tribunal (Tribunal). There were cases where a *"clause 2.17 warning notice signed"*, or the client changed to another migration agent, or the matter was withdrawn on the instruction of the client.
42. The Agent stated that in partner visa applications it is difficult for an agent to *"fully get hold of the true that from deep in the heart of the visa applicant and sponsor as things can be changed by minutes, one confrontation, one single quarrel or any issues of unpredictable nature."*⁶[sic] The Agent contended that in the remaining refused applications the clients nearly all had genuine characters and true intentions for a shared life when the applications were lodged. However, during lengthy processing times the parties failed to prove a genuine and continuing relationship for various reasons which were out of the control of the Agent.
43. The Agent stated that it would be unfair and unreasonable to believe that the refused partner visa applications would be his fault when he has followed the law for all of his working life in his professional career.

Integrity, Fitness and Propriety

44. The Agent stated that he could not accept the allegation that he is not a person of integrity nor a fit and proper person to give immigration assistance. He referred to section 311 of the Act and contends that the substantial justice and the merits of the case *"may not be able to give the Authority sufficient reason to"* exercise its disciplinary powers conferred by section 303 of the Act.

⁶ Paragraph 29 of response to section 309 notice

45. The Agent denied the allegations made in the section 309 notice in paragraphs 33 to 41 about findings of departmental delegates and stated that there is no evidence to support it. He said that Appendix 1 shows that he has “served” more than a case every two days over the past seven years and has a good reputation established over the 24 years of his registration. The Agent submitted that the potential findings about his integrity, fitness and propriety could not be justified.⁷
46. Many of the Agent’s clients seeking to apply for protection or partner visas were facing difficulties. When they approached him for services he “*would always respect them with ethics, due care and never forget to tell them the truth without causing them fear of vulnerabilities*”⁸.
47. The Agent stated that he has never intentionally provided false information or charged excessive fees that may harm consumers or undermine the integrity of the migration system.⁹

Agent’s response to section 305C notice

48. On 19 June 2023, the Agent responded to the section 305C notice and provided copies of documents from the Agent’s client files for five clients with partner visa applications. The Agent provided copies and translations of signed service agreements with the clients. He provided a statement of services outlining the services he provided to the clients. The Agent stated that as none of the clients had requested a statement of services, no statements of services had been prepared prior to the receipt of the section 305C notice. The Agent further stated that statements of services are not provided separately as they are “*in the format of being part of the service agreements signed with each of the clients*”¹⁰ and implied that his usual practice is not to provide them to clients.
49. The Agent advised that he did not provide copies of communications with the clients about the probability of a successful outcome of their visa applications as none of the clients requested such written communication. The Agent explained that service agreements are entered into after discussions with clients about the probability of a successful outcome. Therefore the signed service agreement is treated as written confirmation of the probability of a successful outcome.

FINDINGS ON MATERIAL QUESTIONS OF FACT

50. In reaching the findings of fact discussed in this decision record, the Authority considered the following evidence:
 - Documentation contained in the Authority’s file for complaint CAS-13655-K6Q0;
 - Information held by the Authority in relation to the Agent; and
 - The supporting documentation provided by the Agent in response to the section 309 and 305C notices dated 14 February 2023 and 29 May 2023 respectively.

⁷ Paragraph 34 of response to section 309 notice

⁸ Page 8 of response to section 309 notice

⁹ *ibid*

¹⁰ Paragraph 2 of Agent’s response to section 305C notice

51. Having considered the information before me, I am satisfied the Agent:
- gave immigration assistance to clients and was actively involved in a significant number of visa applications for which he did not declare his representation to the Department, in breach of section 312A of the Act;
 - lodged vexatious partner visa applications to the Department;
 - lodged protection visa applications to the Department knowing they would likely to be refused;
 - failed to provide his clients with statements of services;
 - failed to ensure service agreements provided to clients contained all required information;
 - has engaged in conduct in breach of his obligations under clauses 2.1, 2.6, 2.17 and 2.23 of the former Code;
 - does not have a sound knowledge of migration law and procedure and in particular does not have a sound knowledge of Part 3 of the Act or his obligations under the Code of Conduct;
 - is not a person of integrity or otherwise a fit and proper person to provide immigration assistance as per paragraph 303(1)(f) of the Act.
52. My findings and reasons for the decision are discussed below.

Failure to notify the Department about giving of immigration assistance

53. The Authority received information from the Department about 11 Protection visa applications submitted to the Department where no registered migration agent had declared they provided immigration assistance to the visa applicants. The Department had established that the applications were linked to the Agent and the Agent's migration business Huatai Immigration Finance and Tax Advisory Services. These links included that the applications were lodged from Internet Protocol (IP) addresses which were associated with the Agent's ImmiAccount; and that the visa application charges had been paid for by credit cards in the Agent's name. Visa Entitlement Verification Online (VEVO) checks had been made by the Agent's business, Huatai Immigration Financial and Tax Advisory Services prior to the lodgement of the protection visa applications. To undertake a VEVO check on a client or potential client a registered migration agent must have permission from the person, whose immigration records they wish to verify, that they agree to the registered migration agent accessing their personal information.
54. A registered migration agent has certain obligations to the Authority and the Department. They are set out in "Division 5 – Obligations of registered migration agents" of Part 3 of the Act. Under Division 5 registered migration agents are required to notify the Department that they are providing immigration assistance to visa applicants in relation to visa applications (section 312A of the Act). Registered migration agents must give that notification in accordance with Regulation 7G of the Agents Regulations. A breach of section 312A of the Act is a strict liability summary offence.
55. In his response to the section 309 notice, the Agent admitted to lodging all 11 Protection visa applications referred to in the notice. The Agent stated that he did not disclose his assistance with the applications as he did not want visa refusals to damage his reputation. However, the

Agent also stated that he had not known about section 312A of the Act until he received the Authority's section 309 notice.

56. With his response to the section 309 notice, the Agent included a document titled Appendix 1 which stated the number (1493) of visa applications the Agent said he had lodged in a seven year period from 1 January 2016 until 31 December 2022. I have assumed that the purpose of the document was to set out the basis of the Agent's calculations of a visa refusal rate of the visa applications he had lodged in that seven year period to demonstrate that he did not have a high visa refusal rate and that the Minister could not refer him for disciplinary action. As already noted, this is not a relevant argument ¹¹and did not address the conduct of concern raised with the Agent in the section 309 notice.
57. The Agent declared his representation to the Department for 1493 visa applications over a seven year period. Given he chose to declare his assistance in so many applications, suggests the Agent knew this was required under migration law, regardless of whether or not he knew which part of the Act applied. At a minimum, his actions show he knew something was wrong with the applications and by endeavouring to hide his involvement shows a lack of honesty on his part.
58. Departmental records show the Agent has lodged 38 Protection visa applications in the period from 1 July 2016 until 30 June 2022. Of these, the Agent declared his involvement in 27 applications. Since receiving the section 309 notice, the Agent has subsequently declared his immigration assistance to the Department for 10 of the Protection visa applications for which he had admitted he had not declared his assistance. Forms 956 and other notifications were electronically uploaded by the Agent through his ImmiAccount between 20 and 23 March 2023. There is still one application for which the Agent has not declared his assistance, however he made VEVO checks prior to its lodgement and post its refusal.
59. The Agent has been working as a registered migration agent for over 20 years. He has lodged many Protection visa applications in that period of time. He lodged Protection visa applications for which he is recorded as the registered migration agent representing the applications prior to section 312A coming into effect on 1 July 2004¹². He has undertaken continuing professional development courses annually. I do not therefore accept as plausible the Agent's claim that he was unaware of his obligations to declare his representation of applications to the Department set out in section 312A of the Act. It is not acceptable after more than 20 years of being a registered migration agent to rely on a claim of a "lack of knowledge and laziness" as an excuse for being in breach of a section of the Act.
60. I am satisfied that the Agent acted in contravention of **section 312A** of the Act.
61. As the Agent provided immigration assistance without having notified the Department in accordance with the Agent Regulations, I am satisfied that the Agent did not act in accordance with the law and therefore find he breached **clause 2.1** of the former Code.

¹¹ Sections 306AC and 306AE of the Act were repealed by the *Migration Amendment (Regulation of Migration Agents) Act 2020* from 11 August 2020.

¹² *Migration Legislation Amendment (Migration Agents Integrity Measures) Act 2004* in effect from 01 July 2004.

Submitting vexatious applications to the Department

62. In the section 309 notice¹³, the Authority discussed 42 partner visa applications it had examined for which the Agent was the declared representative. The applications were listed in an appendix to the notice.
63. In each of these cases, delegates from the Department had expressed concerns about the paucity of evidence to support the applications. A discussion of the shortcomings of the applications was provided in the section 309 notice and is summarised in Table 1 below.

Table 1

Issue discussed in section 309 notice	Case number/s
Little or no evidence provided in respect of the financial aspects of the relationships	Cases 2, 7, 10, 12, 15, 16, 17, 22, 23, 25, 29, 30, 31, 32, 33, 34, 36, 37, 38
Little or no evidence provided in respect of the nature of the household and living arrangements between the sponsor and the applicants	Cases 2, 5, 7, 10, 12, 16, 17, 22, 23, 25, 29, 30, 32, 33, 34, 36, 38
Minimal evidence provided to substantiate the social aspects of the relationships	Cases 2, 6, 10, 12, 14, 16, 22, 23, 25, 27, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39
Limited evidence to demonstrate the sponsors and applicants maintained meaningful and regular continuing contact	Cases 10, 11, 14, 6, 22, 23, 25, 32, 35, 36, 38
Sponsor and applicant had a poor understanding of each other's employment status, family relationships and lifestyle	Cases 2, 3, 6, 7, 10, 11, 12, 13, 14, 15, 16, 22, 29, 37
Complex immigration history including periods of unlawfulness	Cases 2, 4, 8, 14, 20, 25, 35, 40, 41, 42
Applicants did not satisfy Schedule 3 criteria	Cases 9, 20, 40, 41 and 42
Sponsor's previous relationship identified as an issue of concern to the application	Cases 4, 6, 7, 9, 10, 12, 13, 34, 37

64. In considering these concerns, I have turned my mind to whether or not the Agent should be held accountable for any of the shortcomings in the subject applications. Under the former Code, registered migration agents were obliged to act with competence and diligence and in the legitimate interests of the client. In order to fulfil that obligation, it is reasonable to expect that the Agent should have taken steps to ensure he knew about his clients, their circumstances and eligibility to apply for a particular visa.

¹³ Paragraphs 19 to 41 of the section 309 notice

65. The Agent argued that in partner visa applications it is difficult for an agent to “*fully get hold of the true that from deep in the heart of the visa applicant and sponsor as things can be changed by minutes, one confrontation, one single quarrel or any issues of unpredictable nature.*”¹⁴[sic] The Agent also argued that during the lengthy processing times the applicants failed to prove a genuine and continuing relationship for reasons outside of his control.
66. While I accept the Agent’s argument that he could not be held accountable for break downs in relationships over time, he is accountable for the information he provided to the Department on behalf of his clients when the application was lodged and ensuring that it was sufficient to meet the visa criteria. However, the Agent did not provide the Authority with any evidence as to how he ascertained his clients were in a genuine relationship at the commencement of the application. For example, as set out in the above table, the section 309 notice discussed¹⁵ the reasons why the delegates had expressed concerns about the genuineness of the 42 applications including that:
- 19 of the applicants had not provided any financial documents to support to their applications;
 - 17 of the applicants did not provide any documents in relation to the nature of their household;
 - 21 of the applicants provided insufficient evidence regarding the social aspects of their relationship;
 - 14 of the applicants had a poor understanding of each other’s employment status, family relationships and lifestyle;
 - 10 of the applicants had complex immigration histories including periods where they were unlawful noncitizens.
67. All of the elements described in the list above are factors a diligent migration agent would have taken into account to satisfy himself that his clients were in a genuine relationship and eligible to meet the requirements of the visa for which they applied. In his submission to the Authority, the Agent has provided no explanation as to why he lodged applications without the required supporting documentation. Nor did the Agent provide any evidence he had advised his clients their claims were futile or that his clients had given him written instructions to proceed anyway.
68. As noted above, the Agent argued about the difficulty for registered migration agents to truly know if a relationship was genuine given the changeability of relationships. However, he further claimed that his clients nearly all had genuine characters and true intentions for a shared life when the applications were lodged. And while I accept this could be true, I find it hard to understand how the Agent could have had any confidence that the claims of his clients were genuine given the lack of evidence to support their claims. The absence of these documents should have been sufficient for the Agent to consider the possibility his clients were not in a genuine relationship. For that reason, I am satisfied the Agent would or should have known whether or not his clients would be able to meet the criteria for their visa applications at the time he lodged their applications.

¹⁴ Paragraph 29 of response to section 309 notice

¹⁵ Paragraphs 19 to 40 of the section 309 notice

69. Despite being invited to do so, the Agent did not make any submissions in regard to the allegations made about the 42 applications that were subject of the section 309 notice. Rather, he provided arguments that the Authority had not followed proper procedure and relevant law. He argued that the Authority had acted contrary to sections 306AC and 306AE as Division 3AA of Part 3 of the Act which prescribed that the Minister could refer a registered migration agent to the Authority if the agent had a high refusal rate in relation to a visa of a particular class. As already noted Division 3AA of the Act was repealed on 11 August 2020.
70. Aside from the futility of the argument, the Authority did not make any allegations in regard to a high refusal rate in the Agent's caseload. I cannot think of a valid reason for the Agent to put forward such an argument other than to distract the Authority's attention from the conduct of concern in respect to the Agent's handling of the 42 discussed applications. Alternatively, the Agent has demonstrated a significant lack of understanding not only of migration legislation but of the obligations he has within the legislative framework.
71. In its section 309 notice, the Authority also alleged that the Agent had failed to have regard for his clients' dependence on his knowledge and experience and that he was not frank and candid about the prospects of success for their applications. The Agent responded to these allegations in his response to the section 305C notice.
72. In his response to the section 305C notice, the Agent stated in relation to the five client files provided that "there was no such written communication requested by clients and none was provided". "In practice, it was normally after the interview with clients with questions about the probability of successful outcome for the application discussed, and the service agreement was reached. Within the service agreements, listed the terms and conditions for the amount of refund of fees if there was an unsuccessful outcome happened. Hence *"the service agreement signed be treated as written communication with the client about the probability of a successful outcome for the application and was counter confirmed by clients."*¹⁶
73. However, the Agent provided copies of two documents purportedly signed by clients headed 'Clause 2.17(b) & (c) NOTICE' in which was a copy of section 2.17 of the former Code and the following statement:
- "We confirm that we have read the notice at the top of this page and that we have received advice either orally and/or in writing from Huatai Immigration, Fiance [sic] and Tax Advisory Services to the effect that in their opinion our visa application has no prospects of success before the Department of Immigration and Border Protection or the Administrative Appeals Tribunal.*
- Despite this advice, we direct Huatai Immigration, Finance and tax Advisory Services to proceed to file an application for a 820 Visa in accordance with our instructions."*
74. These documents were for clients that the Agent chose from the 42 applications. Their partner visa applications were refused and the decisions affirmed on review by the Tribunal. The Agent has since represented one of those clients for a Protection visa application which was refused by the Department and an application for review of the refusal is currently before the Tribunal.
75. The clients whose files were requested in the section 305C notice have all had their applications refused and the review of the decisions affirmed by the Tribunal. There were no "clause 2.17" documents provided for those clients.

¹⁶ Paragraph 3 of response to section 305C notice

76. A signed service agreement is not evidence that the Agent advised his clients about the prospects of success for their application or that they instructed him to proceed regardless of the possible outcome. As a registered migration agent with more than 20 years of experience, it is reasonable to expect that the Agent should know this. The two 'clause 2.17' documents provided in response to the section 305C notice indicate that he does in some circumstances obtain written instructions from clients to proceed with an application likely to be refused. I am satisfied therefore that the Agent understood his obligations under clauses 2.6 and 2.17 of the former Code.
77. Accordingly, I find the Agent's statement that the "service agreement signed be treated as written communication with the client about the probability of a successful outcome for the application and was counter confirmed by clients" is contradicted by the documents he provided to the Authority to show written instructions from two of his clients in respect to clause 2.17 of the former Code. Such statements by the Agent have raised doubts in my mind in relation to his credibility and consequently have impacted on the weight I have given to statements he has made unless they have been substantiated by evidence.
78. While the 42 applications discussed in this decision are a small proportion of the Agent's total caseload, I am satisfied that they are of a sufficient sample size to indicate a pattern of behaviour by the Agent. Therefore, based on the available information and in the absence of any evidence to the contrary, I am satisfied the Agent submitted applications to the Department that he knew or ought to have known were not genuine and that such conduct was not an isolated incident. In doing so, I find the Agent:
- failed to act competently, diligently or in the legitimate interests of his clients in breach of **clause 2.1** of the former Code;
 - failed to be frank and candid about the prospects of success when assessing his clients' requests for assistance with partner visa applications in breach of **clause 2.6** of the former Code;
 - encouraged the lodgement of vexatious or grossly unfounded applications to the Department in breach of **clause 2.17** of the former Code; and
 - has demonstrated a lack of regard for the reputation and integrity of the migration advice profession in breach of **clause 2.23** of the former Code.

Lodgement of applications that were likely to be refused

79. The Agent's admission that he did not declare his immigration assistance for the Protection visa applications because he did not want visa refusals to damage his reputation reveals the Agent's knowledge that the applications would likely be refused. That is, given the Agent's many years of experience as a registered migration agent, he had reasons to believe that the claims for protection made by each of the visa applicants did not suggest that the clients had a well-founded fear of persecution in their home country. The Agent declared his assistance with these applications after receiving the section 309 notice.
80. Seven of the 11 Protection visa applicants were sent requests under section 56 of the Act by the Department to provide further information and documentation about their claims to fear persecution if they returned to their country of nationality. There were issues with a lack of supporting documentation and information leading to concerns with the applicant's credibility, and/or that the applications claiming religious persecution included only general information rather than details of each individuals' actual reasons to fear persecution.

81. Six applicants did not reply to the Department's request. Four of these visa applications have been refused.¹⁷ All four visa applicants have lodged applications for review of their decisions with the Tribunal.
82. There is only one client¹⁸ for whom the Agent has not subsequently notified the Department that he provided immigration assistance. However I am satisfied this client is more likely than not the Agent's client because he conducted a VEVO check on the client in June 2022. The client's review application in the Tribunal remains undecided. Section 312B of the Act requires a registered migration agent to notify the review authority of their representation of a review applicant. It is not known whether the Agent has informed the Tribunal of his representation for this client.
83. Two other clients¹⁹ withdrew their protection visa applications after receiving the section 56 notices and lodged partner visa applications. The Agent declared his representation for those Partner visa applications when he lodged them. Neither of these applicants responded to the section 56 notice. They did not provide information about their respective circumstances and why they needed to seek Australia's protection. This suggests that the purpose in lodging the Protection visa applications was to enable the applicants to be granted Bridging visas and have time to find a person who could sponsor them for a Partner visa application.
84. One applicant²⁰ was asked to provide more information about the reasons the applicant feared persecution in their country of nationality and why the applicant had been in Australia for more than ten years before making an application for protection. The Agent's postal address was on the letter responding to the Department but there were no other details about the Agent. The Agent did not at the time the section 56 notice was responded to, provide a Form 956 or any other evidence to the Department that he was representing the visa applicant.
85. The Agent had provided immigration assistance to one client²¹ for two previous visitor visa applications and a Class CA subclass 143 Contributory parent visa application. These applications were made in 2020 and 2021. The Agent also made VEVO checks on the client including a check one month before lodging the client's Protection visa application. The Agent's admission that he did not declare his immigration assistance because he did not want visa refusals to damage his reputation shows that the Agent knew the applications were problematic and likely to be refused. That is, as the subject applications were for protection visas, I am of the view the Agent knew that the claims for protection made by the visa applicants were not a reflection of their true circumstances.

¹⁷ Cases 1, 2, 7 and 8 referenced in the section 309 notice

¹⁸ Case 1 referenced in the section 309 notice

¹⁹ Cases 3 and 4 referenced in the section 309 notice

²⁰ Case 9 referenced in the section 309 notice

²¹ Case 10 referenced in the section 309 notice

86. The Agent did not make any responses to section 56 notices for six applicants.²² This suggests that the Agent knew the clients did not have reasons to fear persecution in their home country. This is consistent with the Agent's admission that he knew the applications would be refused. It also reveals that these applications amount to an abuse of the Permanent Protection visa program. There were no detailed claims of the individual applicants' claims to fear persecution presented in support of the visa application.
87. For the Agent to then lodge an application for review of the refusal decision with the Tribunal is an abuse of the Tribunal's merits review process. If the Agent had declared his representation of these applications they would indeed reflect badly on his reputation. The correct action would have been to decline to lodge the applications. That the Agent went ahead and lodged the applications shows a lack of judgment and principle.
88. In light of the Agent's admission that he did want visa refusals to harm his reputation, I am satisfied that the Agent, by not notifying the Department of his representation of the clients' applications, was aware that he was lodging an application for a protection visa that was likely to be refused by the Department.
89. I am satisfied that the Agent has breached **clause 2.6** of the former Code.

INTEGRITY, FITNESS AND PROPRIETY

Integrity

90. Pursuant to paragraph 303(1)(f) of the Act, the Authority may caution a registered migration agent, or suspend or cancel their registration, if it becomes satisfied that the agent is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance.
91. There is a degree of overlap between "fit and proper" and "integrity" to the extent that fitness and propriety includes consideration of the honesty of the actions of an individual.
92. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.²³

Fitness and Propriety

93. Whether a person is a 'fit and proper person to give immigration assistance' is an enquiry which looks broadly at three factors – honesty, knowledge and competency.
94. In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Toohey and Gaudron JJ indicated several factors that could be taken into account in determining whether a person was 'fit and proper.' These included, but were not limited to conduct, character and reputation. At 380 their Honours stated:

[D]epending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may

²² Cases 1, 2, 4, 5, 7 & 8

²³ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26]

be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

95. The formula 'fit and proper' (and 'person of integrity') must be construed in light of the particular legislative context at the registration scheme underpinning the migration advice profession.²⁴
96. The context in which the reference to 'fit and proper' person occurs in section 303(1)(f) is the person's giving of immigration assistance. The context also includes:
- the Act, which creates offences for misleading statements and advertising, practicing when unregistered and misrepresenting a matter;
 - section 290(2) of the Act, which provides that in considering whether it is satisfied that an applicant is not fit and proper or not a person of integrity, the Authority must take into account specified matters, including the person's knowledge of migration procedure; and any other matter relevant to the person's fitness to give immigration assistance; and
 - the Code which refers to (among other matters) a registered migration agent acting diligently, ethically, honestly and with integrity, treating persons with appropriate respect, and properly managing and maintaining client records and maintaining client confidentiality.
97. Key elements of the fitness test are:
- the honesty of the person (Peng and Department of Immigration and Multicultural Affairs [1998] AATA 12); and
 - the person's knowledge of the migration scheme and ability to fulfil the position of a migration agent (*Mottaghi and Migration Agents Registration Authority* [2007] AATA 60).
98. The reference in section 303(1)(f) to a registered migration agent not being a 'person of integrity' is not concerned with the person's knowledge of the migration scheme or ability as a migration agent, but is primarily concerned with a person's reputation, moral principle and character, including their honesty (*Tejani and Migration Agents Registration Authority* [2009] AATA 240).
99. Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:
- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
 - the Agent's diligence, honesty and competency towards clients, the Department and the Authority;
 - a consideration of the context in which the agent works, for example whether or not the Agent is an employee or owner of the business through which immigration assistance is provided;
 - the Agent's knowledge and competency in migration law and practice;

²⁴ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

- the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
- the perception of the conduct by the Agent's "professional colleagues of good repute and competency".

100. Having regard for the totality of the matters discussed within this decision, I am satisfied that the Agent has:

- acted without due regard for the obligations placed upon him under the migration law as a migration agent;
- contrary to section 312A of the Act, deliberately chosen not to declare his representation of 11 Protection visa applications to avoid reputational damage for lodging applications that were highly likely to be refused by the Department;
- facilitated the lodgement of Protection visa applications from clients who did not have legitimate protection claims where the dominant purpose was solely to prolong the applicant's stay in Australia;
- demonstrated a lack of competency and honesty towards the Department by lodging applications that he knew or ought to have known were not genuine;
- failed to exercise sound judgment and act with integrity; and
- acted in a way that the Agent's 'professional colleagues of good repute and competency' would perceive to lack honesty and integrity.

Working knowledge of Part 3 of the Migration Act

101. The purpose of the Code of Conduct for registered migration agents is to protect clients of registered migration agents and to strengthen the integrity of the immigration advice industry and the Australian migration program.
102. A registered migration agent must demonstrate knowledge and competency in migration law and act with honesty and integrity toward their clients, the Department and the Authority. However, the Agent in his responses to the section 309 and 305C notices has demonstrated that he does not possess a sound working knowledge of Part 3 of the Act and therefore lacks competence when dealing with his clients.
103. The Agent's claim that he was unaware that section 312A of the Act requires registered migration agents to notify the Department of their representation of visa applicants is not supported by the evidence before me. The Agent has declared his representation of clients with applications before the Department for more than 3,500 visa applications over more than 20 years of practice as a registered migration agent. Overriding this, the Agent admitted that he does not disclose his representation in all matters because he does not want visa refusals to damage his reputation. I cannot therefore accept a lack of knowledge as a reasonable excuse for this conduct.
104. In his response to the section 309 notice the Agent raised section 311 of the Act and alleged that the Authority had acted unfairly by not providing him with an opportunity to make a submission under section 306AE of the Act. The Agent stated "*it is not fair and unreasonable for me to accept the allegation at item 9 by referring to Section 311 of the Act. The substantial justice and the merits of the case may not be able to give the Authority sufficient reason to use*

the power."²⁵ The Agent also accused the Department of acting improperly by failing to check the Procedural Instructions²⁶ and sections 306AC and 306AE of the Act before referring him to the Authority. He reasoned that this was a failure to act fairly towards him and thereby any proposed disciplinary action could not be pursued by the Authority.

105. If the Agent had checked the current version of the Act available to him he would not have found sections 306AC and 306AE as Division 3AA of Part 3 of the Act had been repealed on 11 August 2020. Moreover, section 306AC of the Act was in relation to a referral to the Authority by the Minister in relation to a high visa refusal rate by an agent and no such allegations were raised by the Authority with the Agent.
106. The section 305C notice suggested to the Agent that he may wish to reconsider his response to the section 309 notice given that sections 306AC and section 306AE were no longer in effect. The Agent responded that as he had been informed that clause 2.17 of the former Code was relevant to his conduct discussed in the notice and section 306AC of the Act was noted as part of the former Code, the Agent believed that he was obliged to respect and comply with the section 309 notice as a legal document.²⁷
107. The Agent's response reveals his poor grasp of the legislation and lack of understanding of the hierarchy of legislation. It is the Act at section 314 that provides for the Code of Conduct for registered migration agents. Section 314 also provides that a registered migration agent must conduct himself or herself in accordance with the prescribed Code of Conduct. The note to clause 2.17 was not actually a part of the clause but was intended as a guide as to a possible situation where the clause could have applied. Whilst the note had not been removed it had no usefulness as a guide due to the removal of sections 306AC and 306AE from the Act.
108. The Agent's lack of knowledge of migration law has had an adverse effect on his competence as a registered migration agent and has also raised issues with his integrity.

Honesty, knowledge and competency

109. In his responses to the section 309 and 305C notices the Agent has shown a lack of knowledge of the migration scheme and a lack of honesty in his dealings with the Department. He claimed that he had no knowledge of the existence of section 312A and its requirement that he notify the Department of his representation of clients after he has agreed to provide them immigration assistance.
110. Section 312A is an offence of strict liability. Proof as to the intention or knowledge of the Agent is not required. The Agent has admitted to "*laziness*" on his part for his lack of knowledge. Given that the Agent has been a registered migration agent for more than 20 years, and he has lodged applications with the Department for all those years where he has informed the Department that he was representing visa applicants, I am not satisfied that it is a reasonable or plausible explanation. If the Agent actually had a tendency to "*laziness*" he would not have built up his migration business, and his accountancy and taxation businesses as he has stated to have done in his response to the section 309 notice. The size and success of his migration business is evidenced by the very significant number of visa applications he has lodged.

²⁵ Paragraph 10 of the Agent's response to the section 309 notice

²⁶ Procedural Instructions are policy guidelines for visa processing officers.

²⁷ Page 2 of the Agent's response to the section 305C notice

111. The Agent's admission that he did not want visa refusals to damage his reputation reveals that due to his years of experience as a registered migration agent, he can gauge which applications are likely to be successful and which ones are likely to be refused. It is not known how many visa applications the Agent has lodged without declaring his representation of those visa applicants but there are likely to be more than 11 visa applications given that the Agent has been providing immigration assistance for more than 20 years. However the 11 visa applications considered in this decision suggest that it is a pattern of conduct.
112. The Agent has provided limited arguments and little evidence to address the serious concerns raised with him in respect of the protection and partner visa applications discussed in this decision. For this reason I do not believe he has demonstrated an understanding of the seriousness of his actions and the impact they might have on the reputation of the migration advice industry. Given his years of experience, it is reasonable to expect the Agent would have all the necessary knowledge and skills to understand his obligations under the Act and the Code. However, he has failed to demonstrate to my satisfaction that he has developed and maintained those skills. Accordingly, I find the Agent has not demonstrated the knowledge and competency expected of a registered migration agent.
113. As discussed elsewhere in this decision, I am also satisfied the Agent submitted partner visa applications to the Department that he knew or ought to have known were not supported by evidence and were likely not genuine relationships. Such conduct undermines the migration program and reflects poorly on the honesty and integrity of the Agent. The Agent argued that he should not be held accountable and that it would be *"unfair and unreasonable to believe that the refused partner visa applications would be the fault of me"* despite the fact that he had either submitted little or no evidence to address key criteria for the applications.
114. Additionally, I have found statements made by the Agent in his submissions to the Authority are contradicted by the evidence available to me. The making of such statements can only be to minimise his culpability and as a migration agent and to direct attention away from the culpability of his actions. Such conduct reflects poorly on the honesty and integrity of the Agent.
115. In consideration of the discussion of the Agent's conduct in this decision and my findings above, I am satisfied that the Agent is not a person of integrity and is otherwise not a fit and proper person to give immigration assistance.

CONSIDERATION OF APPROPRIATE DISCIPLINARY ACTION

116. 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:
- Whether the Agent's behaviour is of a minor or serious nature. Conduct that the Authority considers to be adverse, extremely serious and therefore likely to result in discipline at the higher end of the scale includes but is not limited to:
 - criminal behaviour;
 - fraudulent behaviour;
 - behaviour that demonstrates fundamental lack of understanding or knowledge of the law; or
 - involves a blatant disregard for or a significant degree of indifference to the law;
 - repeated occurrences of the conduct described in subsection 303(1) (d)-(h) and/or;

- agent behaviour that has resulted in significant harm or substantial loss to clients.
- Any aggravating factors that increase the Agent's culpability including but not limited to previous conduct.
- 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

117. 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. I have also considered:
- whether the behaviour in question could be the subject of rehabilitation;
 - the level of impact, if any, that a sanction would have on the Agent's livelihood;
 - the circumstances of the clients, including any vulnerability; and
 - any wider issues pertaining to consumer protection or the national interest.
118. The Agent responded to questions of whether his behaviour could be regarded as of a minor or serious nature. He stated that his failure to declare 11 Protection visa applications occurred because of his failure to check the Act. He does not believe that his behaviour caused an adverse impact on his clients rather that it is he who bears the consequences and is responsible²⁸. Whilst a breach of the Act can be serious, taking the situation, impact and consequences into consideration the Agent stated that he regards the matter to be minor.
119. The Agent stated that when compared with the total number of applications lodged and his low refusal rate over the past seven years, there have only been a small number of refused applications. The small number of cases caused less adverse impact on the clients and the refusals were largely the consequence of behaviour of the clients. The Agent says he should not receive all the blame because of the complicated nature and characteristics of partner visa applications.²⁹
120. In relation to the rate of refusal, the total number of partner visa cases lodged, the impact, and consideration of complexities of partner visa applications, the Agent stated that it is reasonable to regard the Agent's behaviour and suspected breaches as minor.
121. The Agent stated that he is willing to take responsibility to make amends and avoid any potential occurrence in the future.
122. Having regard to the matters before me, I consider that the Agent's adverse behaviour is of a serious nature because:
- The conduct has been a result of the Agent's lack of knowledge of migration law and the Agent's disregard for his obligations under the Code;

²⁸ Paragraph 35 of response to section 309 notice, second point under dot point "*whether your behaviour is of a minor or serious nature*" on page 4

²⁹ Also on page 4 of response to section 309 notice

- There is evidence that the Agent has attempted to conceal his involvement when giving immigration assistance on a not insignificant amount of occasions;
- The Agent's actions demonstrate an intention to undermine the integrity of the Permanent Protection and Partner visa programs;
- The conduct demonstrates serious breaches of the Code of Conduct: and
- I have found that the Agent is not a person of integrity, or a fit and proper person to provide immigration assistance.

Aggravating factors

123. The Agent's conduct involved deliberate actions to undermine the integrity of visa programs in an attempt to extend the stay in Australia for clients who objectively had exhausted their visa options. I therefore consider the Agent's conduct falls well short of the standard expected of a registered migration agent.
124. The Agent has been registered and practising as a migration agent since September 1999. The standard of his immigration assistance to clients in preparing those Protection visa applications where he did not declare his representation was poor as they contained minimal information; did not describe each individual applicant's personal circumstances; and, lacked supporting documentation leading to doubts as to the applicants' credibility.
125. A Protection visa application should closely reflect the personal circumstances of each visa applicant, and their own individual claims. A failure to do that will reduce the chances of the visa being granted. The seriousness of this finding is greater because of the length of the Agent's experience in the migration agent profession.
126. The covert nature of the Agent's actions demonstrated his knowledge that his actions were not appropriate in a registered migration agent. He has displayed a disrespect for migration law.
127. The Agent's refusal to accept responsibility for the genuineness and completeness of the Partner visa applications he submitted to the Department shows a disregard for the migration law and his obligations under the Code.
128. I consider the Agent's failure to take reasonable steps to ensure that only applications with merit are lodged with the Department to be a serious shortcoming. Such conduct has a direct impact upon the integrity of Australia's visa and migration programs.

Mitigating Factors

129. The Agent has claimed that his failure to declare his immigration assistance for the 11 Protection visa applications was caused by his lack of knowledge and laziness to make checks and does not reflect his true character. He acknowledges that the applications were made over a number of years and feels deep regret and remorse.
130. With respect to the partner visa applications he declines to accept that he made those breaches of the Code of Conduct. Some applicants treated him as a foolish man and wrongfully used his services. The Agent states that he was not vigilant enough and as a result has been drawn into this process with the Authority.
131. The Agent considers that his conduct could be the subject of rehabilitation. He is willing to learn from the behaviour in question and seek corrective materials.

132. The Agent expressed concerns as to what would happen to the staff of his business as it encompasses accountancy and taxation advisory services.
133. The Agent also expressed concerns about his vulnerable clients. He stated that most of them have not much English language ability, limited life experience in this country and are in a position of disadvantage. The Agent and his staff are the first point of contact for clients for problems, difficulties or to share their happiness, matters beyond the limited immigration assistance and related fees. The Agent highlighted that a sanction on him would have an adverse impact on his clients and no doubt cause them further vulnerabilities. The Agent has approximately two hundred applications pending assessment by the Department and tens of review applications with the Tribunal.³⁰
134. The Agent further submitted that an unfair sanctioning of an agent would cause confusion for clients choosing a registered migration agent, disbelief by members of the migration industry and doubt as to the objectivity of the Authority in upholding the rules.
135. I accept that any disciplinary decision will have an impact on the Agent's future livelihood. However, I am of the view that any loss in earnings from the provision of immigration assistance is significantly outweighed by the public interest given the seriousness of the Agent's conduct in relation to the applications and the information submitted to the Department. I consider that the serious nature of the conduct reflects adversely on the Agent's integrity and on the Agent's fitness to remain in the migration advice industry.

Consumer Protection

136. 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.
137. The behaviour demonstrated by the Agent falls short of the standards expected of registered migration agents. I consider that the Agent poses a serious risk not only to consumers but to the integrity of the Department's visa programs. I am satisfied that if the Agent were to continue to practice as a registered migration agent, the Agent would not demonstrate the requisite skills expected of a registered migration agent. I therefore consider that a disciplinary decision is warranted to address the Agent's conduct; is in the interests of consumer protection; and necessary to maintain confidence the integrity of the migration advice industry.
138. I expect that a decision to sanction the Agent would more likely than not deter other registered migration agents from engaging in similar practices and ensure that public confidence in the migration advice industry is maintained.

DECISION

139. For the reasons stated above, I am satisfied for the purposes of paragraphs 303(1)(f) and (h) of the Act that:
- the Agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance;
 - the Agent has not complied with clauses of the former Code; and

³⁰ Page 7 of response to section 309 notice

- the Agent has breached section 312A which is a strict liability provision.
140. I have turned my mind to the appropriate sanction action to impose on the Agent, and whether a caution or suspension with conditions imposed on the Agent would maintain the interests of consumer protection and the migration program in general.
141. Findings have been made relating to: the Agent's poor knowledge of migration law; breaches of the former Code of Conduct; the Agent's integrity; and, his fitness to provide immigration assistance. In light of the seriousness of the Agent's conduct and that the standard of his immigration assistance has fallen below that reasonably expected of a registered migration agent, I am of the view that the Agent requires a significant period of separation from the migration advice industry. I therefore consider that a decision to caution or suspend the Agent would not adequately address the seriousness of the Agent's conduct discussed in this decision.
142. I am satisfied there is no remedial action that is appropriate that would enable the Agent to continue practising as a registered migration agent at this time. In particular, the Agent's poor knowledge of migration law and his lack of honesty and integrity leads me to doubt that it is appropriate for him to work in the migration advice industry.
143. In the interests of consumer protection and the integrity of the Department's visa programs, I consider that it is appropriate to cancel the Agent's registration.
144. Based on the facts and evidence before me, and my findings as discussed in the decision, I have decided to cancel the Agent's registration as a migration agent under subparagraph 303(1)(a) of the Act.
145. I am satisfied for the purposes of subparagraphs 303(1)(f) and (h) that:
- the Agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance; and
 - the Agent has not complied with clauses 2.1, 2.6, 2.17 and 2.23 of the former Code.
146. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be re-registered within 5 years of the cancellation.
147. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.

Elizabeth Pettit

Professional Standards Officer
Office of the Migration Agents Registration Authority
Department of Home Affairs

Date of Decision: 30 August 2023

APPENDIX A: TERMS USED FOR REFERENCE

The following abbreviations may have been used in this decision:

ABN	Australian Business Number
The Tribunal	The Administrative Appeals Tribunal
BVA/B/E	Bridging Visa A, B or E
MARN	Migration Agent Registration Number
Section 56 notice	Request for further information under section 56 of the Act
Section 305C notice	Notice issued by the Authority under section 305C of the Act
Section 309 notice	Notice issued by the Authority under section 309 of the Act
The Act	<i>The Migration Act 1958</i>
The Regulations	<i>Migration Regulations 1994</i>
The Agents Regulations	<i>Migration Agents Regulations 1998</i>
The Agent	<i>Jing Xin Wu</i>
Agent's MARN	9904341
The Authority	The Office of the Migration Agents Registration Authority
The Code	<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>
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 – repealed on 1 March 2022</i>
The Department	The Department of Home Affairs
The Register	Register of migration agents kept under section 287 of the Act
TRN	Transaction Reference Number
VEVO	Visa Entitlement Verification Online
ImmiAccount	Service for online lodgement of applications and supporting documents