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DECISION RECORD

AGENT	Hussam Suleiman Saed Abbassi
COMPLAINT NUMBER	CAS-17234-C4R0
DECISION	Cancellation
DATE OF DECISION	19 January 2024
TERMS USED FOR REFERENCE	Refer Appendix A

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 the *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 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. 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 that is the subject of this decision was the Code of Conduct current from 1 March 2022 (the Code).

AGENT BACKGROUND

Agent Registration

7. On 18 December 2022, the Agent lodged an initial application for registration as a migration agent with the Authority.
8. In support of the application, the Agent provided a Test of English as a Foreign Language internet-based Test (TOEFL iBT) – Home Edition¹ result dated 6 December 2022 which showed that he achieved the requisite scores specified by the current legislative instrument² for the purposes of subregulation 5(3) of the Agents Regulations. This document was accepted as evidence that he met the English language proficiency requirements for registration as a migration agent.
9. Based on the TOEFL test result and all the information and evidence provided by the Agent in his application for initial registration, the Authority approved his application on 18 January 2023 and he was allocated the MARN 2318022.
10. The Register of migration agents lists the Agent's business as Pan Australia Migration Solutions Pty Ltd with the ABN 39 664 540 541.

Prior disciplinary action

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

¹ A test taker who registers for TOEFL iBT Home Edition undertakes the test on a computer at home and monitored online by a human proctor: <<https://www.ets.org/toefl/test-takers/ibt/about/testing-options.html>>.

² IMMI 18/003, Federal Register of Legislative Instruments F2012L01932

ALLEGATIONS – THE AUTHORITY’S INVESTIGATION

12. On 22 March 2023, the Authority received notification from the Educational Testing Service (ETS) that the ETS Office of Testing Integrity³ had cancelled the Agent’s 6 December 2022 TOEFL test scores. ETS had identified that unauthorised recording devices/software were open during the test session in violation of ETS policy. This resulted in cancellation of the Agent’s score. ETS had informed the Agent by email of his score cancellation on 9 March 2023.
13. Section 289A of the Act states that an applicant for registration must not be registered if academic and vocational requirements are not met. Regulation 5 of the Agents Regulations provides for a legislative instrument that sets out the prescribed examinations.⁴ Paragraph 7(3) of *Migration (IMMI 18/003: Specified Courses and exams for registration as a migration agent) Instrument 2018* states the prescribed examinations for English language proficiency. One of the examinations is the TOEFL iBT test. Paragraph 8(1)(b) of the Instrument sets out the minimum scores.
14. Following an investigation into the Agent’s conduct, it was alleged that the Agent:
 - No longer met an academic requirement to be a registered migration agent as his TOEFL test score was cancelled;
 - Failed to notify the Authority of changes in his circumstances relevant to the Agent’s continued registration as a migration agent contrary to **section 29** of the Code;
 - Failed to act ethically, honestly and with integrity contrary to **section 13(1)** of the Code; and
 - Had engaged in academic misconduct when sitting for the Capstone examination in 2020 by committing plagiarism in assessable work and colluding in assessable work.
15. Further, it was alleged that the Agent’s actions demonstrated that he was not a person of integrity or was otherwise not a fit and proper person to provide immigration assistance as per paragraph 303(1)(f) of the Act.

Notice under section 309 of the Act

16. On 19 September 2023, the Authority sent to the Agent a Notice pursuant to section 309(2) of the Act, advising the Agent that it 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:

³ The ETS’s Office of Testing Integrity is comprised of investigators, experts and analysts who ensure the validity and integrity of [ETS] exams and whose work it is to defend those test takers who test honestly. In coordination with highly trained proctors, AI technologies and data analysis, the team works to analyze scores and testing sessions that are suspected of having been earned or conducted unfairly and, as a result, cancel test scores, should evidence warrant doing so: <<https://www.ets.org/news/press-releases/five-things-you-didnt-know-about-test-security.html>>.

⁴ IMMI 18/003, Federal Register of Legislative Instruments F2012L01932

- (a) had engaged in conduct that breached the Agent's obligations under sections 29 and 13(1) of the Code; and
 - (b) was not a person of integrity or was 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 by 17 October 2023.
19. On 5 October 2023, the Agent wrote to the Authority and requested an extension of one month to provide a response. The Authority replied to the Agent's email the following day and granted a 28-day extension, until 14 November 2023.

The Agent's response to the Authority's section 309 notice

20. On 13 November 2023, the Agent provided a response by written argument. The Agent's responses, as relevant are summarised below.

Notification by ETS of score cancellation

21. The Agent stated that he was unaware of the cancellation of his TOEFL scores until he received the Authority's section 309 notice. He stated that he had never received an email from ETS and had not logged into his ETS account since he received his scores.⁵
22. Upon receiving the Authority's notice, the Agent checked his personal email account. He found an email from ETS in his junk email folder that notified him of the score cancellation.⁶
23. The Agent stated that ETS was uncertain about the exact reason for the score cancellation because they did not provide a clear explanation for their decision. He expected a definitive response such as a bar from retaking the examination for a specified period.⁷ The Agent stated that he had concluded that ETS lacked a valid reason and strong evidence to support their decision. He described the decision as unfair, unrealistic and arbitrary, especially as the cancellation occurred three months after his test results.⁸
24. The Agent asserted that it was unreasonable to take such action after the scores have been used for various third-party responses. The Agent claimed that as he was unaware of his score cancellation for six months he had missed an opportunity to "*engage with ETS and challenge their unjust, unfair, unreasonable, and biased decision.*"⁹
25. The Agent was of the belief that ETS had made an unfair decision based on arbitrary and stringent terms and conditions. These conditions are mandatory for all TOEFL candidates, and acceptance of them is a prerequisite for registering for the test. Candidates are not provided with an option to discuss or inquire about these terms but must accept them to complete the test registration process. The Agent claimed that this situation underscored the need for a fair and unbiased review of the ETS decision.¹⁰

⁵ Paragraph 1 of response to section 309 notice

⁶ Paragraph 5 of response to section 309 notice

⁷ Paragraph 5 ibid

⁸ Paragraph 6 of response to section 309 notice

⁹ Paragraph 11 of response to section 309 notice

¹⁰ Paragraph 6 of response to section 309 notice

26. The Agent rejected ETS's findings that he used any recording device or software during the test. The Agent stated that he *"is not well-versed in IT matters"* nor has he ever *"used any such device or software"* in his life.¹¹ The Agent denied *"any motive to record the test session."*¹² The Agent underscored the fact that his laptop and the testing room were checked several times by the test proctor overseeing the test session who, according to him, reviewed all aspects of the test and approved his test submission and even commended him for being the *"most cooperative candidate"* on the day of the test.¹³
27. The Agent noted the Department of Home Affairs' announcement that from 26 July 2023 TOEFL iBT would no longer be offering English language tests for Australian visa purposes until further notice.¹⁴ The Agent claimed this "pause" was a result of ETS's unusual review processes of score reports occurring months after score release date. The Agent raised concerns as to why an established international English testing organisation such as TOEFL iBT which operated at the highest security level would fail to promptly detect attempts to cheat by test takers. On this basis, the Agent concluded that the cancellation of his scores by ETS *"may be driven more by financial motivations than a genuine breach of rules."*¹⁵

Notification by the Authority

28. The Agent rejected the allegation that he failed to be honest with the Authority about the cancellation of his scores in the TOEFL test because the ETS decision did not come to his attention until the Authority's section 309 notice.¹⁶
29. The Agent raised his concerns about the extended delays in communication. ETS had notified the Agent of its decision three months after his TOEFL scores were released. The Authority issued the Agent the section 309 notice six months after receiving the ETS decision.¹⁷ The Agent argued that the delays *"resulted in a missed opportunity"* for the Agent to challenge the ETS decision and to inform the Authority of the score cancellation as per the Code of Conduct.¹⁸
30. The Agent stated that the Authority's notice assumed that he was already aware of the ETS decision and that he chose to await an action from the Authority.¹⁹ The Agent further stated that he would not have risked his future and career as a Migration Agent and the financial costs he had incurred to become one had he known about the ETS decision.²⁰

¹¹ Paragraph 4 of response to section 309 notice

¹² Page 5 of response to section 309 notice

¹³ Paragraph 2 of response to section 309 notice

¹⁴ English language visa requirements: <<https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/english-language>>

¹⁵ Paragraph 12 of response to section 309 notice

¹⁶ Paragraph 1 of response to section 309 notice

¹⁷ Paragraph 9 of response to section 309 notice

¹⁸ Paragraph 11 of response to section 309 notice

¹⁹ Paragraph 10 of response to section 309 notice

²⁰ Pages 5 to 6 of response to section 309 notice

Academic misconduct in the Capstone Assessment

31. The Agent acknowledged that he was investigated by the College of Law (the College) in respect of plagiarism and collusion in assessable work as his answers in the Migration Agents Capstone Assessment (Capstone assessment) were substantially identical to those of another candidate. The Agent stated that he had telephone conversations with an officer of the College and the Acting Chief Academic Officer whom he stated demonstrated a thorough grasp of his situation and acknowledged that his actions during the exam were not premeditated, but rather a reaction to the significant mental and psychological stress he was facing.²¹
32. The Acting Chief Academic Officer decided to suspend him from sitting the Capstone assessment for a period of 18 months from 1 April 2020 which was the date of the finding of academic misconduct. The Agent stated that he did not sit the Capstone assessment again until October 2021: more than 18 months after the original decision by the College. The Agent thought that this extended period of time “*allowed for significant self-discipline and thorough preparation*” and he is therefore “*more qualified and knowledgeable, fully prepared to practice as a registered migration agent.*”²²
33. The Agent said that the officers of the College exhibited kindness and empathy towards him and showed willingness to consider the factors mitigating the seriousness of his behaviour. It was on this basis that he requested the College’s Appeals Committee not to report his academic misconduct to the Authority. The Agent claimed that his request to the College was made with no ill intent, contrary to the suggestion of the Authority in the section 309 notice. The Agent claimed that if the College had decided not to give notice of the ban to the Authority, he would still have disclosed this fact to Authority in his initial application for registration as a migration agent.²³
34. The Agent stressed that he never tried to get an unfair advantage over other candidates in his TOEFL exam and that he had never cheated in any way. He was adamant that his belief contradicts what the Authority “*concluded*” about his representations to the College of Law about his academic misconduct.²⁴ He reiterated that it has never been in his nature to cheat and that he regretted what he did as it was against his character and his principles. As he believes there were no actual cheating attempts in the TOEFL exam, the Agent concluded that it was “*illogical*” for the Authority to link the ETS findings to the College of Law misconduct.²⁵

FINDINGS ON MATERIAL QUESTIONS OF FACT

35. In reaching the findings of fact discussed in this decision record, the Authority considered the following evidence:
 - Documentation contained in the Authority’s complaint file for CAS-17234-C4R0;
 - Information held by the Authority in relation to the Agent;

²¹ Paragraph 18 of response to section 309 notice

²² Paragraph 17 of response to section 309 notice

²³ Paragraph 20 of response to section 309 notice

²⁴ Paragraph 21 of response to section 309 notice

²⁵ Page 5 of response to section 309 notice – point 9 under claimed facts

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- Written response by the Agent to the section 309 notice dated 13 November 2023; and
 - The Agent's IELTS test result dated 10 November 2023.²⁶
36. Having considered the information before me, I am satisfied the Agent:
- has engaged in conduct in breach of the Agents obligations under **sections 29 and 13(1) of the Code**; and
 - is not a person of integrity or is otherwise not a fit and proper person to provide immigration assistance as per **paragraph 303(1)(f) of the Act**.
37. My findings and full reasons for the decision are set out below.

Changes in circumstances relevant to the agent's continued registration

38. A registered migration agent is obligated under section 29 of the Code to give written notice to the Authority within 14 days of becoming aware of any change in the agent's personal circumstances that is reasonably likely to have a negative impact on the Authority's satisfaction that the agent is a person of integrity or otherwise a fit and proper person to give immigration assistance.
39. The information before the Authority is that on 9 March 2023 the ETS sent the Agent an email advising him of the cancellation of his TOEFL scores. The email notification stated:
- "As a result of ETS's rigorous score validation process, we have identified unauthorized recording devices/software that were open during the test session which is a violation of ETS policy and substantiates this score cancellation.*
- ETS reserves the right to cancel scores even after they are released if we find evidence to invalidate them. Please be advised that as indicated on the TOEFL iBT® Home Edition website, recording devices/software of any kind are strictly prohibited and that violating any ETS policy may result in score cancellation and/or your exclusion from future testing. If these scores were reported to any institutions, they will be notified of the cancellation"*
40. Subsection 290(2) of the Act sets out the matters the Authority must take into account in considering whether an agent is fit and proper or a person of integrity. Those matters include:
- "(e) any inquiry or investigation that the applicant is or has been the subject of and that the Authority considers relevant to the application."*
41. I have taken into account the ETS Score Cancellation Policy which is aimed at: *"1) giving test takers equivalent opportunities to demonstrate their abilities; and 2) preventing any test takers from gaining an unfair advantage over others."*²⁷ To promote these objectives, ETS reserves the right to cancel any score when, in its judgement, a testing irregularity occurred. Therefore, I consider the investigation undertaken by ETS of the Agent's TOEFL scores to be an inquiry or investigation which is relevant to the Agent's registration as per subsection 290(2) of the Act.

²⁶ In response to the section 309 notice, the Agent provided his IELTS test result undertaken on 7 November 2023.

²⁷ ETS website: <<https://www.ets.org/patl/test-takers/scores/scoring-policies.html>>

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42. Accordingly, I am satisfied that the cancellation of the Agent's scores as a result of his misconduct in the TOEFL test was a relevant change to his personal circumstances likely to have a negative impact on the Authority's satisfaction that the Agent is a fit and proper person to give immigration assistance. The cancellation of the Agent's score meant that he had not met the English language proficiency requirement for a registered migration agent.
43. The Authority's section 309 notice put to the Agent that he had not complied with his obligations under sections 29 and 13(1) of the Code.
44. The Agent's response to the section 309 notice began with a statement that he had no knowledge of the cancellation of the scores from his online English language proficiency test due to the fact that he had never received an email from ETS and that he had not logged into his ETS (or TOEFL) account since he received his results in December 2022. He said he was unaware of the cancellation of his TOEFL scores until he received the Authority's section 309 notice.
45. At paragraph 5 of his response the Agent stated that after receiving the section 309 notice he checked his personal email and found an email from ETS in his junk email folder.
46. I am not satisfied that the Agent was unaware of the notification from ETS that his scores in his TOEFL test had been cancelled. The Agent has not provided any evidence for his claim that after receiving the section 309 notice he located the email from ETS in his junk email folder.
47. The Agent provided the email address: hussam.abbassi@gmail.com to TOEFL when he registered as a candidate for the online English language proficiency test. The Agent stated he had not used his personal email address for professional purposes for some time. This assertion does not assist the Agent's claim to have not received the ETS email. The Agent did not state that he does not often use his personal email address.
48. At paragraph 3 of his response to the section 309 notice the Agent correctly stated that there were mandatory conditions applied to all TOEFL candidates and a candidate must accept those conditions in order to register for the test. Given the very significant number of candidates that TOEFL have on a worldwide basis it is not possible to discuss terms with individual candidates.
49. The Agent expressed the opinion that ETS was uncertain about the exact reason for his score cancellation because he had not been given information about their evidence for invalidating his scores. There was no evidence for the Agent to form such an opinion. ETS do not release their methodologies for detecting unauthorised devices or software.

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50. The Agent claimed that he had no prior knowledge that ETS might cancel TOEFL scores after they have been released and sent to the candidate. It was the responsibility of the Agent to inform himself of the conditions he agreed to by signing up for the TOEFL at home test. The onus was on the Agent to inform himself of TOEFL's procedures and conditions prior to accepting them.²⁸ I also cannot accept the Agent's ignorance and credulity of the ETS Score Cancellation Policies, which he, like all other test takers, would have been required to acknowledge before taking the test. Under this policy ETS reserves the right to cancel any test score as a result of the test taker behaviour or irregularities that affect testing integrity and regardless of whether or not the score has already been reported.²⁹
51. The Agent asserted that if ETS was certain about the breach of the examination terms and conditions, one would expect a more definitive response such as a ban from retaking the examination for a specified period. The Agent then inferred that ETS lacked a valid reason and strong evidence to support their decision. He further stated that the decision was unfair, unrealistic and arbitrary especially as the cancellation occurred three months after the score was released. The Agent argued that because he did not learn of the score cancellation for a further six months he had missed an opportunity to challenge the decision by ETS which he described as an unjust, unfair, unreasonable and biased decision.³⁰
52. The Agent made accusations that ETS had demonstrated bias, arbitrariness, lack of reasonableness, unfairness and ulterior motives. He also made an unfounded claim that he had missed an opportunity to challenge the decision: there was never such an opportunity afforded to the Agent. The email from ETS stated: *"ETS reserves the right to cancel scores even after they are released if we find evidence to invalidate them"*. There was no mention of any right of appeal, only that a candidate could resit the test in the future.
53. The Agent's accusations do not have any bearing on the fact that the Agent had been informed that he had no scores to demonstrate that he satisfied the English Language Proficiency requirement to be a registered migration agent.
54. The Agent did not provide evidence that the ETS email was located in his junk email folder. The Agent has argued, based on a belief that he did not cheat in his test and denigrated TOEFL and ETS for his perceived ill-treatment. The Agent did not provide written notice to the Authority that he had ceased to meet an academic requirement to be a registered migration agent. That failure was likely to have a negative impact on the Authority's satisfaction that the Agent is a person of integrity or is otherwise a fit and proper person to give immigration assistance. I am satisfied that the Agent breached his obligations under **section 29 of the Code**.

²⁸ The TOEFL iBT® Information Bulletin (Bulletin) contains complete information on registration, policies and procedures. Page 2 of the Bulletin states: *"Please read this Bulletin carefully and completely before you take the TOEFL iBT® test. The contents, terms and conditions of this Bulletin form a legally binding contract between you and ETS, and by registering for and/or taking the test, you agree to be bound by these terms and conditions."*

²⁹ Page 37 to 38 of the Bulletin

³⁰ Paragraph 11 of response to section 309 notice

Requirement to act professionally, ethically, honestly and with integrity

55. A registered migration agent is obligated under subsection 13(1) of the Code to act professionally, competently, diligently and ethically, honestly and with integrity.
56. I note that ETS notified the Agent of the cancellation of his TOEFL scores and in its notice it states: *“If these scores were reported to any institutions, they will be notified of the cancellation.”*
57. It was put to the Agent in the section 309 notice that it was open to consider that the Agent had not taken responsibility for his conduct in the TOEFL examination and had not demonstrated the honesty and integrity expected of a registered migration agent.
58. In response the Agent raised the period of time ETS took to review the Agent’s test scores and to notify him of his score cancellation, and the time taken by the Authority to invite the Agent to make a submission on this matter. The Agent described the length of time as *“extended delay in communication”* resulting in *“missed opportunity to engage with ETS and challenge their unjust, unfair, unreasonable, and biased decision”*. The Agent has claimed that he has been disadvantaged by ETS and the Authority because he has missed an opportunity to challenge the ETS decision. He sought to divert attention from his misconduct in the TOEFL examination and claimed that he has been denied a right of appeal. The lack of restraint in the Agent’s language and his apportioning of blame on ETS demonstrates an absence of the qualities of professionalism, courtesy and respect which would be ordinarily expected of a registered migration agent.
59. The Agent has on a previous occasion sought to avoid responsibility for his actions and poor judgment and the concomitant results when he was found to have cheated in the Capstone assessment. In his submission to the Appeals Committee of the College of Law, he stated that during the Capstone examination he felt an intense amount of pressure and stress mostly from the idea that he would fail and be further away from starting his business and that this was what compelled him to cheat in the assessment. This is significant because the Agent has admitted that when he is under pressure and aware that he might not achieve something that he really wants to achieve that he will behave dishonestly or unethically and engage in cheating.
60. It is concerning that the Agent continues to argue that he never cheated in the TOEFL test and attempts to downplay the findings by ETS as financially motivated when the security prevention measures that ETS have in place, particularly for at-home testing³¹, appear to be reliable and trustworthy.³²
61. The Agent asserted that had he known about his score cancellation earlier, he would have contacted ETS to challenge the decision and would have notified the Authority of this. The Agent did not provide any evidence in his response to the section 309 notice to demonstrate that he had indeed taken any steps to contact ETS about its decision or raise his perceived concerns about his situation.

³¹ Agent registered for the TOEFL iBT Home Edition

³² Using human monitoring and AI technology for at home testing: <<https://www.ets.org/toefl/score-users/ibt/about/test-security.html>>

62. The Agent has shown an unwillingness to take responsibility for his actions and thereby has demonstrated a lack of awareness that he has engaged in behaviour that is unacceptable in a registered migration agent. For the reasons outlined above, I am not persuaded that the Agent has demonstrated the professionalism, honesty and integrity expected of an ethical migration agent.
63. I therefore find that the Agent was in breach of his obligations under **subsection 13(1) of the Code**.

INTEGRITY, FITNESS AND PROPRIETY – SECTION 303(1)(F) OF THE ACT

Integrity

64. 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.
65. 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.
66. ‘Integrity’ means ‘soundness of moral principle and character, uprightness and honesty’.³³

Fitness and Propriety

67. 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.
68. 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 be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.*
69. 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.³⁴
70. 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; and

³³ See *Re Peng and Department of Immigration and Multicultural Affairs [1998] AATA 12* at paragraph [26].

³⁴ See *Cunliffe v Commonwealth (1994) 182 CLR 272*

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- 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.
- 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.

71. 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*).

72. 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*).

73. 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 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 immigration law and practice;
- 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".

74. 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;
- does not meet the English language proficiency requirements for registered migration agents; and
- has demonstrated that he does not accept responsibility for his conduct.

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75. In 2020 the Agent was investigated by the College of Law in respect of plagiarism and collusion in assessable work in the Capstone assessment. The College of Law found that the Agent's answers were substantially identical to those of another candidate. As a result of this investigation, the College found the Agent engaged in academic misconduct, in contravention of clauses 4.1.1.1 and 4.1.1.2 of the Migration Agents Capstone Assessment Manual (the Manual). As a consequence of the Agent's failure to adhere to appropriate ethical standards, he was awarded a "Fail" grade pursuant to clause 3.2 of the Manual.
76. Further, the acting Chief Academic Officer of the College made the following determinations:
- (a) The Agent was reprimanded for his conduct;
 - (b) The Agent was cautioned to take care in the future to comply with all course requirements, in particular the required ethical standards;
 - (c) The Agent's participation in the Capstone assessment was unsatisfactory and zero marks were awarded for the assessment;
 - (d) From 1 April 2020, the Agent was suspended from sitting the Capstone assessment for a period of 18 months.
77. The findings made by the College were about the Agent's dishonesty. Dishonest conduct is unacceptable in a registered migration agent. A registered migration agent is required to act ethically, honestly and with integrity.
78. The Agent made a submission to the College Appeals Committee seeking a reduction of the penalty of a ban from sitting for the Capstone assessment from 18 months to 6 months. While the finding of academic misconduct was upheld, the Appeals Committee found that the academic misconduct was not in the worst category of collusion. As a result of the 6 month ban, the Agent was eligible to undertake the Capstone assessment again from 4 October 2020.
79. In the Agent's appeal submission to the College, dated 5 April 2020, he stated that: *"It has never been (and will never again be) in my nature to cheat" and "I am fully aware of my mistake and I am sincerely remorseful of what I have done which is not a part of my nature and integrity."*
80. Also in the Agent's submission he stated that during the examination he felt under an intense amount of pressure and stress due to his fear that he would fail and be further away from starting his business. He stated that this was what compelled him to cheat. The Agent stated that he realised that cheating is never worth it and he was remorseful for what he had done.

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81. During his negotiations with the College about the period of time to be served before he could resit the Capstone Assessment he asked the representatives of the College to refrain from reporting his academic misconduct to the Authority. This was despite the fact that the College had advised him in their initial correspondence about his misconduct that the College was obliged to report all academic misconduct to the Authority. The Agent said that the officers of the College with whom he interacted had exhibited kindness and empathy towards him. Because of their kindness and the fact that they downgraded the seriousness of the misconduct findings and the length of the suspension the Agent asked them not to report the matter to the Authority.³⁵ The Agent asked the College to disregard their contractual obligation to report his academic misconduct to the Authority. That was not an appropriate request. The Agent claimed that he would have chosen to disclose the “*allegation*”³⁶ to the Authority in his initial application for registration. I am concerned by the Agent’s admission that he made the request as the College officials were kind and empathetic because it suggests that the Agent may have sought further benefits from their kindness. The fact that the College reported this request to the Authority suggests that the College was concerned by the Agent making such a request.
82. In 2023 ETS found when seeking to validate the Agent’s TOEFL scores, evidence from his test session that the Agent used unauthorised recording devices/software and therefore cancelled his scores.
83. The findings from ETS about the Agent’s conduct during the TOEFL test undermines the Agent’s statement in his appeal submission to the College that it is not in his nature to cheat.
84. I do not accept the Agent’s assertion that dishonest conduct such as cheating is not part of his nature. The Agent had engaged in cheating to pass this initial attempt at the Capstone assessment and in the TOEFL test. He has:
- cheated in his initial attempt at the Capstone assessment;
 - requested the College of Law not to report his academic misconduct;
 - cheated in an online test to achieve the required standard of English language proficiency; and
 - not advised the Authority about the ETS findings in relation to his TOEFL test despite being required to do so under the Code.
85. The recent example of the Agent’s misconduct in the TOEFL test indicates that he is still willing to cheat to obtain what he is seeking.
86. All first time applicants for registration as a migration agent must demonstrate that they meet the English language requirement as prescribed in legislation.³⁷

³⁵ Paragraph 20 of response to section 309 notice

³⁶ Agent’s wording: “*I would have personally chosen to disclose this allegation in my initial application for registration as a migration agent. Such a declaration on my part would have underscored my commitment to honesty and transparency in this matter*” *ibid* Paragraph 20

³⁷ Section 289A of the Act, Regulation 5 of the *Migration Agents Regulations 1998*, Legislative Instrument Migration (*IMMI 18/003: Specified courses and exams for registration as a migration agent*) Instrument 2018 (IMMI18/003)

87. Registered migration agents need a high level of English language proficiency to be able to understand complex Australian migration legislation. A registered migration agent must consider the legal requirements along with the client's individual circumstances to determine the client's eligibility for the type of visa they may be seeking. They must be able to understand the legislation in order to lodge applications with relevant and accurate documentation supporting their clients' claims against the visa criteria. They must also be able to advocate on behalf of their clients with the Department and review bodies.
88. The Authority's section 309 notice put to the Agent that shortly after his registration as a migration agent he no longer had evidence that he met the legislated requirement for English language proficiency. In response to the notice, the Agent provided an IELTS Online test result³⁸ dated 10 November 2023 which, like his TOEFL iBT - Home Edition, was taken online at home. In his written submission to the Authority, the Agent stated: *"To dispel any uncertainty, I have recently retaken the IELTS Exam and achieved a score that mirrors a proficiency level comparable to that of the TOEFL exam, which was cancelled by ETS-TOEFL. The results from my most recent IELTS test also satisfy the English proficiency criteria for the purpose of Migration Agent Registration."*³⁹ The Agent has not recognised the seriousness of his misconduct. He has failed to have regard for the high standard of competency in English and the high standard of integrity required of a person seeking to become a registered migration agent.
89. In his response to the section 309 notice, the Agent stated that he was confident that the IELTS test score adequately addressed the concerns of the Authority but instead he was trivialising the seriousness of his misconduct. It appeared that the Agent was trying to 'cure' the invalidation of his TOEFL test result and failure to meet the English language proficiency requirement for migration agents by proving he met the standard in the IELTS test.
90. The Agent through his actions has demonstrated his preparedness to act in a dishonest manner in order to achieve results which he may not otherwise have been able to attain. Actions, such as plagiarism, collusion and cheating in an examination or assessment, to meet the academic requirements for a registered migration agent are highly relevant considerations as to whether an applicant for registration is a fit and proper person to give immigration assistance.
91. Having regard to the Agent's history of academic misconduct and unwillingness to accept responsibility for his actions, I am satisfied that the Agent would act dishonestly again in the future in order to derive a benefit for himself or to avoid a negative outcome. There is no evidence presented by the Agent to suggest otherwise. Such conduct falls well below the expectations of registered migration agents to act with integrity.
92. 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.

³⁸ IELTS Online test Registration number: 2310007008ABBH1IHA

³⁹ Paragraph 13 of response to section 309 notice

CONSIDERATION OF APPROPRIATE DISCIPLINARY ACTION

93. 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 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

94. 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.

95. Having regard to the matters before me, I consider that the Agent's adverse behaviour is serious because:

- The Agent engaged in cheating in the TOEFL exam to ensure that he could meet an academic requirement of the migration agent registration process;
- The Agent has ignored his professional responsibilities by failing to meet his notification obligations under the Code of Conduct; and
- The Agent acted dishonestly in the TOEFL exam even after being called to account for his dishonesty in the College of Law Capstone assessment. The Agent had claimed that he sincerely regretted his conduct in the Capstone assessment and that it was not in his nature to cheat, yet an ETS investigation found he had acted dishonestly in his TOEFL examination.

Aggravating factors

96. I consider the Agent's conduct falls short of the standard expected of a registered migration agent and is aggravated by the following matters:
- The Agent did not comply with his responsibilities as a migration agent by failing to inform the Authority of the significant change to his circumstances under the Code of Conduct. Instead he has continued to practice as a migration agent in the knowledge that he had not attained the English language proficiency required of him by the legislation;
 - The Agent did not notify the Authority of the communication he had received from ETS. Instead, the Agent sought to apportion blame or liability to ETS and the Authority for this failure. If the Agent's cheating on his TOEFL exam had come to light prior to the approval of his registration application, his application would have been refused; and
 - The Agent engaged in dishonest conduct to become a registered migration agent. This conduct and the Agent's unwillingness to accept responsibility and show any genuine remorse suggests a real likelihood that the Agent may act dishonestly in the future to the detriment of his clients.

Mitigating Factors

97. The section 309 notice advised the Agent that he could present evidence of any mitigating circumstances that he thought should be taken into account by the decision maker.
98. In response to the notice, the Agent made reference to his "professional banking background [spanning] 26 years in Jordan and United Arab Emirates" and employment by three different banks as evidence of "unblemished record, with no allegations or integrity issues arising at any point." The Agent claimed that he served as the Area Manager for priority banking customers with a leading bank in the United Arab Emirates, which entailed overseeing a sizable team. The Agent provided a letter of reference from his last manager that was submitted with his initial application for registration as a migration agent.⁴⁰ The letter was not on any letterhead; did not name the business that they worked for; did not provide an address or contact details for the purported writer or the business and was unsigned. As a result I have not accorded any weight to the claims in the letter.
99. The Agent also made reference to the expenses he incurred in pursuing the Graduate Diploma in Australian Migration Law and the subsequent professional examinations and registration for which he claims to have incurred significant debts. The Agent stated the sharp increase in interest rates over the past year has made it even more challenging to settle his financial obligations.⁴¹

⁴⁰ Paragraph 22 of response to section 309 notice

⁴¹ Paragraph 23 of response to section 309 notice

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100. The Agent expressed concerns about the severe impact upon him and his family life if he is unable to continue his career as a migration agent. The Agent claimed that it would not be a viable option for him to start “fresh” on another career due to his age and various health issues.⁴² The Agent did not disclose that he has another business in a different industry which he operates from the same address as his migration advice business. This business is registered with another Australian Government Agency and the information about it is available from publicly accessible sources. Therefore I do not accept that the Agent is wholly reliant on income from his migration advice business.
101. I have considered the reasons advanced by the Agent with respect to hardship he might face and accept that a disciplinary decision will have an impact on his future livelihood and ability to settle his financial obligations. However, I am of the view that any loss in earnings from the provision of immigration assistance is significantly outweighed by the fact that the Agent has shown a propensity for dishonesty to obtain his qualifications to be registered migration agent.

Consumer Protection

102. 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.
103. A migration agent is required to take instructions from a client, to accurately determine the needs of the client, to understand and interpret legislation and case law, to understand and draft documents, and to make representations on behalf of, and to advise the client. These tasks require well-developed skills in speaking, listening, reading and writing in English.
104. As discussed above, the Agent has not met the requirement of English language proficiency. The fact that the Agent subsequently passed the IELTS test does not overcome the fact that he has continued to practice as a migration agent in the knowledge that he had not attained the English language proficiency required of him by the legislation. I am therefore not satisfied that the Agent can perform the functions and obligations of a registered migration agent. The Agent’s lack of honesty poses a serious risk to consumers who may seek his immigration assistance.
105. I therefore consider that a disciplinary decision is warranted in the interest of consumer protection and in maintaining confidence in the integrity of the Australian migration program.

DECISION

106. The evidence before me is that the Agent does not meet an essential academic requirement to be a registered migration agent. If the fact of the Agent’s cheating in his TOEFL exam had come to light prior to the approval of his registration application, his application would have been refused.
107. I consider that as the Agent does not meet a mandatory requirement to be a registered migration agent and was the subject of an adverse finding as a result of an ETS investigation relevant to his registration application, he cannot be regarded as a fit and proper person to provide immigration assistance as set out in section 290 of the Act.

⁴² Paragraph 24 of response to section 309 notice

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108. Based on the facts and evidence before me, I have decided to cancel the Agent's registration as a migration agent under subparagraph 303(1)(a) of the Act.
109. 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 the Code of Conduct prescribed under section 314 of the Act.
110. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be registered within 5 years of the cancellation.
111. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.



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

Date of Decision: 19 January 2024

APPENDIX A: TERMS USED FOR REFERENCE

The following abbreviations may have been used in this decision:

ABN	Australian Business Number
Capstone assessment	Migration Agents Capstone Assessment
IELTS test	International English Language Test System test
MARN	Migration Agent Registration Number
Section 309 Notice	Notice issued by the Authority under section 309 of the Act
The Act	The <i>Migration Act 1958</i>
The Agents Regulations	<i>Migration Agents Regulations 1998</i>
The Agent	<i>Hussam Suleiman Saed Abbassi</i>
The Authority	The Office of the Migration Agents Registration Authority
The Code	The <i>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 Department	The Department of Home Affairs
The Register	Register of migration agents kept under section 287 of the Act
TOEFL iBT test	Internet Based Test of English as a Foreign Language test