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DECISION RECORD

AGENT	Raefat SORYAL
COMPLAINT NUMBER	CMP-49164
DECISION	Cancellation
DATE OF DECISION	21 August 2024
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 RMA 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 RMA 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 (RMA) 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 RMA's application for registration was known by the RMA to be false or misleading in a material particular (paragraph 303(1)(d); or
 - the RMA becomes bankrupt (paragraph 303(1)(e); or
 - the RMA 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 RMA is not a person of integrity (paragraph 303(1)(g)); or
 - the RMA 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 RMA 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 RMAs in force at the time of the conduct that is the subject of this decision was:
- The former Code of Conduct for registered migration agents (the former Code) being Schedule 2 to the RMA Regulations as in force prior to 1 March 2022.

AGENT BACKGROUND

Agent Registration

7. The RMA was first registered as a migration agent on 17 October 2000 and was allocated the MARN: 0004719. The RMA's registration had been renewed annually to date, with the most recent registration approved on 12 October 2023.
8. The Register lists the RMA's current business name as Anchor Immigration with the ABN 75 078 600 067.

Prior disciplinary action

9. The RMA has not had any prior disciplinary action.

BACKGROUND

Allegations

10. On 2 January 2020, the Authority received one complaint from the RMA's former client Ms BA (Ms BA), about the RMA's conduct. Ms BA alleged that:
- On 23 May 2019, Ms BA engaged the RMA's services to prepare and lodge an Employer Nomination Scheme Direct Entry (subclass 186) visa application.
 - Ms BA signed a contract and paid \$3300 for the RMA's services.
 - On 26 August 2019, the RMA lodged a nomination application, via his ImmiAccount on behalf of the sponsoring business; SFH PTY LTD (the Sponsor) with Ms BA listed as the nominee.
 - On 29 August 2019, as the RMA's ImmiAccount was not working, he advised Ms BA over the phone to create an ImmiAccount. The RMA instructed her to lodge the visa application by transcribing the responses from the completed paper application forms he emailed to her.

- On 23 September 2019, the Department refused the nomination application and emailed the refusal decision to the RMA.
- On 30 October 2019, the Department refused the subclass 186 visa application as the nomination application had been refused. On the same day, the Department emailed the RMA the subclass 186 visa application refusal decision.
- The RMA did not advise Ms BA or the sponsoring business about the Department's correspondence pertaining to the refusal of her visa and associated nomination application.
- Ms BA had made plans to travel overseas to see her family. After confirming with the RMA that she could apply for a Bridging Visa B (BVB) by herself, she lodged the application with the Department on 18 December 2019.
- On 19 December 2019, she received correspondence from the Department advising her that she had been refused a BVB as she was the holder of a Bridging Visa C (BVC), which was granted to her in association with her Protection (subclass 866) visa application that was currently before the Department.
- The RMA lodged a subclass 866 visa application without her consent or knowledge.

Notice under section 308 of the Act (the section 308 notice)

11. On 8 November 2023, a section 308 notice was sent to the RMA in which a summary of the allegations and supporting documentation¹ was provided to him. The RMA's response to the allegations was to be provided by 6 December 2023.
12. On 4 December 2023, the RMA sought an extension in which to provide a response to the notice due to [removed for privacy]. On 5 December 2023, as the RMA provided evidence to support his request, an extension was granted until 5 February 2024 for the RMA to provide his response.
13. On 5 February 2024, the RMA made a second request for an extension in which to provide a response. On 12 February 2024, an extension was granted to the RMA until 16 February 2024.

The RMA's response to the Authority's section 308 notice

14. On 16 February 2024, the Authority received the RMA's response, which included a statutory declaration and supporting documentation. In summary, in the RMA's response he stated the following:
 - He referred Ms BA's matter to his insurance provider as he was issued with a letter of demand from Ms BA's lawyers in January 2023.
 - He represented both Ms BA and the Sponsor in the visa and nomination applications. All correspondence pertaining to the nomination application was emailed to the sponsoring business contact, Ms NW (Ms NW).

¹Copies of Ms BA's email correspondence with the RMA and also screen shots of text messages between the RMA and Ms BA

- *'During the telephone discussions with Ms. BA, I was told of the difficulties she and her husband were facing... I understood their situation in their home country. Claims made at Protection application were a summary of what was mentioned during telephone calls between Ms. BA and me' [sic].*
- He advised Ms BA to lodge the subclass 186 visa application herself because he had ImmiAccount issues. The RMA prepared the application and asked that she lodge it as her temporary residency application was going to expire.
- All communications relating to the subclass 186 visa application and nomination were sent to Ms NW. On the 14 January 2020, the RMA sent an email to Ms NW advising that the nomination had been refused. The RMA copied Ms BA in to this email. The RMA did not expect the nomination to be refused.
- He provided all documentation received from the Sponsor to the Department. On occasions, the Sponsor was delayed with submitting the information to him. On these occasions, the RMA followed up with the Sponsor given the short timeframe before the client's visa was to expire. The RMA was under pressure, as the Sponsor was not responding within the required timeframes.
- The RMA provided comment in relation to not answering Ms BA's message on 30 October 2019, stating *'Considering the case of Ms BA it was urgent to deal with her application due to the fact that her temporary residency was coming closer to its expiry, working online on the application and being the only person [sic] working in my practice, it is natural that I do not respond to messages or take phone calls immediately since I would be working online or focused on writing submissions'.*
- Ms BA paid the RMA \$3300 for professional fees.
- He has had problems with his laptop and trying to retrieve information that was saved on it.

Notice under section 309 of the Act (the section 309 notice)

15. On 14 May 2024, the Authority sent to the RMA a notice pursuant to section 309(2) of the Act, advising the RMA that it was considering cautioning him, or suspending or cancelling the RMA's registration under section 303(1) of the Act.
16. The RMA was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the RMA:
 - (a) had engaged in conduct that breached the RMA's obligations under clauses 2.1, 2.8, 2.9, 2.9A, 2.14A, 2.23, 5.2, 6.1, 6.2, 6.4 of the former code.
 - (b) was 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.
17. Pursuant to section 309(2) of the Act, the delegate invited the RMA to provide written submissions on the matter by 11 June 2024.

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

18. On 10 June 2024, the RMA wrote to the delegate and requested an extension of time in which to provide a response to the section 309 notice on account of [removed for privacy].
19. On 11 June 2024, the delegate advised the RMA that an extension had been granted and a response was due by 28 June 2024.
20. On 28 June 2024, the RMA advised the delegate that a response would be provided by 2 July 2024 due to [removed for privacy].
21. On 30 June 2024, the RMA advised the delegate that he required a further extension of time in which to provide a response however did not provide a timeframe for the request.
22. On 3 July 2024, the delegate wrote to the RMA and advised that an extension had been provided to him and a response to the section 309 notice was due by 17 July 2024.
23. On 17 July 2024, the RMA sent the delegate five emails containing the client file for Ms BA and requested a further week in which to provide a response to the section 309 notice.
24. On 22 July 2024, the delegate wrote to the RMA and advised that after a review of the emails and attachments, a submission was not attached despite the RMA stating one was provided. The RMA was informed that he had until 24 July 2024 in which to provide a submission to the section 309 notice, otherwise the delegate would be proceeding with the investigation based upon the evidence before them.
25. On 23 July 2024, the RMA provided a response by written submission.
26. In summary, the RMA's response included the following:
 - He refers to emails that were submitted to the delegate evidencing that he responded to Ms BA's emails during his annual leave over the Christmas period of December 2019 and January 2020.
 - Ms BA *'did not stop sending me threatening emails and did not take into account the fact I could not contact her employer. I was so pressured by her. She wanted to go ahead and lodge a complaint...Now, I understand that she lodged a complaint since 2020. She pushed me to the extreme. There were threats and abusive language in her own emails to me. Upon reading the emails, it is noticeable that I offered to help her without taking any charges from her...'* [sic]
 - In his email to Ms BA dated 14 January 2020, the RMA explained the situation with the nomination to her and mentioned that the Christmas period *'makes everyone busy and unavailable'*.
 - *'I forwarded the refusal letter and reasons of refusal to the sponsor when they returned from holidays'*.
 - *'Mrs. BA tends to exaggerate. In her email dated 14/01/2020, she write "Please try to understand that I have spend million dollars to get my degree here in Australia". A degree in Australia for international students does not require spending million of dollars. This is the same language she is using in her compliant. She is trying to win the sympathy of others.'* [sic]

- Ms BA's employer was on leave until 14 January 2020 and was uncontactable. He acted in good faith while facing *'so much abuse and pressure from Mrs. BA. Pressure from her was unbelievable and increasing day by day...'* [sic]
- *'My actions in this case were affected by pressure from Mrs. BA combined with timing of the nomination refusal which was received in second half of December 2019.'* [sic]
- *'If I was actually closing my office for annual holidays, unable to respond to emails due to celebrating Christmas like all other Australian immigration advice officers that time of the year, what would the situation be like? Are you going to give weight to the fact that I communicated with Mrs. BA although it was time for holidays.'* [sic]
- He acted under *'duress'*. Ms BA placed him under pressure, combined with the timing of the nomination refusal notification by the Department.
- *'I have done my best to observe and follow The Code (both current and former) and did not mean to cause any harm to anyone. I have tried so hard to face the threats of Mrs. BA and offer assistance and offer to work for No Fees so that I can help her. I tried to respond to all her emails so that I can explain the situation and show my good intentions to her noting that we communicated on 29th December and 30th December 2019.'* [sic]
- *'I did not breach my duty of care as a migration agent and tried to provide advice all the way in spite of the abusive language used. In spite of the annual holidays of the office and the employer's office, I continued my communication with Mrs. BA.'* [sic]

FINDINGS ON MATERIAL QUESTIONS OF FACT

27. 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 CMP-49164;
 - Information held by the Authority in relation to the RMA;
 - Records held by the Department; and
 - The RMA's responses and supporting documents provided to the Authority in response to the section 308 and 309 notices.
28. Having considered the information before me, I am satisfied the RMA:
- has engaged in conduct in breach of his obligations under **clauses 2.1, 2.8, 2.9, 2.9A, 2.14A, 2.23, 5.2, 6.1, 6.2 and 6.4** of the former Code.
 - Further, it is alleged that through his actions, he is not a person of integrity or fit and proper person to provide immigration assistance as per paragraph 303(1)(f) of the Act.
29. My findings and full reasons for the decision are set out below.

DECISION: THE AUTHORITY'S INVESTIGATION

Lodgement of an application without the consent or knowledge of his client and failure to notify his client of the application

30. Ms BA in her complaint stated that the RMA lodged a subclass 866 visa application without her consent or knowledge. Ms BA claims that in December 2019 she made plans to travel to [removed for privacy] to see her parents. She contacted the RMA via text message and sought advice as to whether she was able to apply for a BVB herself. The RMA replied and advised 'Yes sure'.
31. On 19 December 2019, Ms BA received correspondence from the Department that her BVB application had been refused on the basis that she did not meet the criteria because she was the holder of a BVC in association with her subclass 866 visa application. Ms BA advised that she then contacted the RMA via text message, seeking his advice on the matter, and forwarded the RMA the BVB refusal letter.
32. Departmental records reveal that on 29 November 2019, a subclass 866 visa application was lodged on behalf of Ms BA, and her husband, with the RMA as the appointed RMA.
33. On 19 December 2019, the Department emailed the RMA the acknowledgement letter for Ms BA's subclass 866 visa application.
34. On 8 November 2023, the delegate sent the RMA a section 308 notice and asked the RMA if he had obtained Ms BA's consent to lodge the subclass 866 visa application on her behalf. The RMA did not answer this question in his statutory declaration response. Instead, the RMA stated that during his telephone conversations with Ms BA, the RMA was told of the difficulties that she and her husband faced in [removed for privacy]. The RMA stated that the claims for her subclass 866 visa application were a summary of these conversations.
35. On 30 October 2019, the Department refused Ms BA's subclass 186 visa application and as a result, her associated BVA was due to cease on 4 December 2019. As she had no other applications before the Department, I suspect that the RMA decided to lodge the subclass 866 visa application without Ms BA's consent, in order to ensure that she was lawful and remained in Australia.
36. Ms BA provided the Authority with email correspondence between the RMA and herself as part of her complaint. On 20 December 2019, after Ms BA's subclass 186 visa application had been refused, the RMA advised her of other visa pathways available to her. The RMA stated '*Looking at options for you to reach your permanent residency. So, work visa is an option and the other option is Protection visa.... So, Protection gives you the option of becoming a resident sooner and if you cooperate with me, we can make this work in a shorter period of time.*' [sic]

37. In further email correspondence on the same day, the RMA stated that *'I suggest continuing the Protection visa as it can give a great outcome especially from [removed for privacy].'* Ms BA replied that whilst the 'Protection visa' is an option, she would prefer to lodge another subclass 186 visa application, as she is qualified with good work experience. When the RMA advised Ms BA to pursue a Protection visa, I note that he had already lodged a Protection visa application on her behalf without her knowledge or consent. Based on this correspondence, I find that the RMA was inferring to Ms BA that he was able to procure a particular decision for her, namely a Protection visa. Because of the above and given no evidence to the contrary from the RMA, I find the RMA acted in contravention of **clause 2.14A** of the former Code.
38. On 23 November 2023, Ms BA stated to the delegate that she engaged the RMA's services solely for the lodgement of the subclass 186 visa application. She further stated that she did not advise the RMA to lodge a subclass 866 visa application on her behalf.
39. As discussed elsewhere in this decision, upon receiving her BVB refusal decision from the Department, Ms BA contacted the RMA on 20 December 2019 and emailed him the refusal decision. She also found² that the Department refused her subclass 186 visa application on 30 October 2019 and sought assistance from the RMA. Further email correspondence provided to the Authority by Ms BA shows that on 26 December 2019, the RMA forwarded to Ms BA the acknowledgement letter for the lodgement of her subclass 866 visa application and a copy of the visa application.
40. In her email correspondence with the RMA, Ms BA states *'...In fact, you had already lodged protection visa from my account on 29.11.2019 without my knowledge and I see that you have paid the protection visa fee from your account. Until I received my BVB refusal notice from Department, I was in to the dark that you have lodged my protection visa'* [sic].
41. The RMA in response to the section 309 notice did not make any mention of the lodgement of the subclass 866 visa application. The client files provided by the RMA, do not contain the subclass 866 visa application files. The RMA, in his submission, does speak to the pressures that Ms BA put on him once advised of the refusal of the nomination. He stated that his *'actions in this case were affected by pressure from Mrs.BA...'* [sic]. The RMA however does not go onto elaborate what actions he is specifically referring to, RMAs are often under pressure from clients to provide timely advice and act on matters within limited timeframes. However, this does not excuse the lodgement of an application without the consent or knowledge of the applicant.
42. Based on the evidence before me, I find that the RMA only notified Ms BA of the subclass 866 visa application after she confronted him in relation to the BVB refusal. I also find that the RMA failed to notify Ms BA of her subclass 186 visa application refusal in a timely manner. As such, I find that the RMA failed to keep his client informed about their respective immigration matters contrary to **clause 2.8** of the former Code.

² After reviewing the applications held on her ImmiAccount

43. Based on the above information, and no evidence from the RMA to the contrary I find that the RMA lodged a subclass 866 visa application without Ms BA's consent. The RMA acted without the clients consent and contrary to Ms BA's wishes. As a result, the RMA failed to act in accordance with the law and the legitimate interests of his client, and further failed to deal with his client competently and diligently in breach of **clause 2.1** of the former Code.
44. Furthermore, the lodgement of an application without the knowledge and consent of the client, and the willingness to engage in such actions would cast doubt on the migration advice profession. As such, I further find that the RMA failed to maintain the reputation and integrity of the migration advice profession, in contravention of **clause 2.23** of the former Code.

Making false or misleading statements and failure to act in accordance with the law

45. In addition to the above, the RMA provided statements in support of an application, under the Act, which he knew to be inaccurate or misleading. Ms BA stated in her correspondence with the RMA and the Authority that she did not give the RMA consent to lodge a subclass 866 visa application and had no knowledge of the lodgement of this application by the RMA until after the fact.
46. Ms BA's subclass 866 visa application was lodged with the Department via a paper Form 866. The form reveals that the RMA provided assistance in completing the form in his capacity as a RMA. Furthermore, departmental systems show that the subclass 866 visa application charge was paid with the RMA's credit card. Ms BA would not have known the RMA's credit card details, therefore I am satisfied that the RMA lodged the application himself on Ms BA's behalf.
47. The 'signature of applicant' sections on the Form 866 displays the name [removed for privacy] and for her husband [removed for privacy]. A review of Ms BA's and her husband's signatures held on departmental systems appear different to the signatures on the Form 866. This suggests that the signatures on the Form 866 may have been forged. I note that the signatures on the Form 866 are different from Ms BA's signature on her passport.
48. A further review of forms, which Ms BA submitted to the Department without input from the RMA³, reveals that her signature characteristic is similar to that of her passport signature. In addition to this, Ms BA's husband's signatures on the Form 866 also shows different characteristics to that of the signature on his passport and other forms⁴ submitted to the Department.
49. On 8 November 2023, the Authority sent the RMA a section 308 notice and asked if Ms BA consented to the lodgement of the subclass 866 visa application and if she signed the application form. The RMA did not address these questions in his statutory declaration response nor were submissions provided in response to the section 309 notice to this allegation.
50. In email correspondence dated 20 December 2019, provided by Ms BA to the Authority, the RMA states that:

³ Form 956 ending appointment and Form 1005 seeking change in visa conditions

⁴ Form 1446

- ‘...Protection gives you the option of becoming a resident sooner and if you cooperate with me, we can make this work in a shorter period of time’.

and further that his office

- ‘...lodged the application and were supposed to communicate with you’.

51. This is contrary to what the RMA advised the delegate in his statutory declaration response to the section 308 notice wherein he stated that he is the only person who works in his practice. It is noted, that the RMA omitted this email when providing Ms BA's client file to the Authority, as part of his response to the section 308 and 309 notices.
52. Given no evidence from the RMA to the contrary, and in light of the email correspondence between the RMA and Ms BA outlined in paragraph 40, I find that the RMA falsified Ms BA and her husband's signatures on the Form 866 in order to submit the visa application to the Department.
53. It is a criminal offence under section 234 of the Act to knowingly make or cause to be made a statement that is false or misleading in a material particular in connection with a visa application. This offence carries a penalty of imprisonment for 10 years or 1000 penalty units, or both. Forgery is also an offence under section 253 of the *Crimes Act 1900* and section 145 of the *Criminal Code Act 1995*.
54. On the basis of the above discussed, and no evidence from the RMA to the contrary, I find that the RMA failed to act in accordance with the law and made a statement in support of an application under the Act that he knew was misleading or inaccurate, in contravention of **clause 2.1 and 2.9** of the former code.
55. Furthermore, the falsifying of documentation by a RMA demonstrates a lack of professionalism, honesty and integrity and such conduct, is reasonably likely to damage the reputation of migration advice profession in contravention of **clauses 2.23** of the former Code.
56. I further find that the RMA mislead the Authority by deliberately withholding relevant information by not responding to the questions asked in the section 308 notice, as outlined above in paragraph 49. On this basis, I find the RMA in contravention of **clause 2.9A** of the former Code.

Failure to advise his client of updates to their application

57. As discussed above, Ms BA advised that she engaged the RMAs services for the purposes of lodging a subclass 186 visa application.
58. Departmental systems reveal that:
 - On 26 August and 29 August 2019, respectively, a nomination application for SFH PTY LTD and a subclass 186 visa application for Ms BA were lodged with the Department. The Agent was the RMA for both of these applications.
 - On 23 September 2019, the Department refused the nomination application because no documentation was provided in support of the application.
 - On 11 October 2019, the RMA lodged an application for review of the refusal decision with the AAT on behalf of SFH PTY LTD.

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- On 30 October 2019, the subclass 186 visa application was refused because there was no approved nomination before the Department.
59. On the 19 December 2019, Ms BA claims that after receiving notification that her BVB had been refused she logged into her ImmiAccount, and found that her subclass 186 visa application had been refused.
60. In her email to the RMA dated 20 December 2019, Ms BA states *'Please see attached refusal letter which i have found in my immi account.i am so disappointed and surprised from you unprofessional behaviour. you knew all situation and even did not discuss with me....you should inform me at least...'* [sic].
61. The RMA in his submission in response to the section 309 notice states he was under pressure from Ms BA to take action on her matters and that the timing of the nomination refusal was in *'second half of December 2019'*. The RMA also stated that the period of time when Ms BA contacted him to take action he was on annual leave and that sponsor's office was closed because of the Christmas and New Year period.
62. The RMA in his section 309 submission attributes these pressures from Ms BA and the closure of the Sponsor's office as reasons why he did not notify her of the visa refusal decision. The RMA was notified of the refusal of the subclass 186 visa application in October 2019 therefore his arguments are invalid. Had the RMA complied with his obligations and notified Ms BA within a reasonable period of time, then the *'pressures'* that he makes reference to would not exist. I do note that the RMA states in his communication with Ms BA that he had notified the Sponsor of the refusal decision. It is not the obligation of a sponsor to notify their employee that the Department has refused their visa application, but rather that of the RMA as per the former Code.
63. Given all the above, and given no evidence to the contrary from the RMA, I find that the RMA failed to notify his client in writing within a reasonable time after a decision had been made on their application in breach of **clause 2.8** of the former Code.

Failure to maintain proper records

64. On 8 November 2023, the delegate issued the RMA with a notice pursuant to section 308 of the Act requiring him to provide a response to specific questions as well as the client file for Ms BA.
65. On 4 December 2023, the RMA emailed the delegate requesting an extension of time to respond to the section 308 notice. In the RMA's email, he advised that [removed for privacy] had forced him to travel overseas and *'Being away from my office does not help me access my files and does not help me do much work either.'* I therefore am of the view that the RMA has conceded that his record keeping practices are not at the standard expected if he cannot access his files when needed.
66. On 5 February 2024, the RMA emailed the delegate and stated *'While working on my Statutory Declaration that was needed today, my old laptop had some technical issues and stopped working and I lost the information that was saved on it.'*

67. The RMA advised that he had purchased a new laptop and included a copy of a tax receipt for this purchase. The RMA stated he was currently trying to contact someone to set up the laptop and to retrieve the information from his old laptop to be able to complete his submission. As such, the RMA was unable to provide the documentation and requested an extension of time in which to provide a response.
68. On 16 February 2024, the RMA provided his response to the section 308 notice and stated in his statutory declaration that *'I had some problems with my laptop and I am trying to retrieve information that was saved on the old laptop'*. The RMA response included email correspondence between him and Ms BA dated 13 to 14 January 2020.
69. Ms BA in her evidence to the Authority included some email and text message correspondence that did not form part of the RMA's client file in his submissions to the Authority. Clause 6.4 of the former Code outlines that electronic communications are part of the RMA's record and documents.
70. To date, the Authority has not received the complete client files for Ms BA from the RMA, specifically those pertaining to the subclass 866 visa application.
71. As outlined earlier in this decision, departmental records reveal that a subclass 866 visa application was lodged for Ms BA and her husband. The RMA has failed to produce any client files for this visa application. It may be reasonable to conclude that the RMA either omitted the visa application in an attempt to withhold information and/or conceal his conduct, to prevent and hamper further investigation by the Authority.
72. In addition to the above, the RMA has provided no evidence to the delegate in relation to:
- the advice the RMA gave to Ms BA and her husband in relation to their immigration matters and potential visa pathways;
 - written confirmation to the RMA of Ms BA and her husband's instructions;
 - written confirmation of the relevant migration outcomes; and
 - any other written communication between the RMA and the RMA's clients.
73. The obligation of an agent to keep records in accordance to the Code, and the power of the Authority under section 308 of the Act to access those records, is fundamental to the exercise of the Authority's regulatory and consumer functions. Having access to records held by migration agents is prevalent to the Authority's consideration of a complaint as it allows an assessment of whether an agent has complied with their obligations under the Code.
74. It follows that I find that the RMA has failed to maintain appropriate recording keeping and record management practices in line with his obligations and is in breach of **clauses 6.1, 6.2 and 6.4** of the former Code.
75. By failing to comply with a section 308 notice, a RMA not only acts contrary to the Code and Australian law, but also undermines the purpose and intent of the migration agents' regulatory scheme and demonstrates contempt for its consumer protection function. Such behaviour is incompatible with the honesty, integrity and moral character required of a RMA.

Financial Obligations

76. In the RMA's response to the section 308 notice, he did not dispute that he had provided immigration assistance to Ms BA. I am therefore satisfied that the RMA provided her immigration assistance and as such, a client agent relationship was established. Under the former Code, clients were owed certain obligations, from such a relationship.
77. The former Code at clause 5.2 stipulates that a RMA must before starting work; provide an Agreement for Services and Fees to their client. The service agreement outlines the services to be provided, the fees associated with the service and the obligations of the RMA to the client. By having a service agreement in place both the client and the RMA are aware of their obligations.
78. The documentation the RMA provided to the Authority in response to the section 308 notice did not contain an Agreement for Services and Fees for Ms BA's subclass 866 visa application. Given no evidence to the contrary, I find that the RMA failed to provide an agreement for services and fees to Ms BA, contrary to **clause 5.2** of the former Code.

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

Integrity

79. 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 RMA is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance.
80. 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.
81. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.⁵

Fitness and Propriety

82. 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.
83. 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.
84. At 380 their Honours stated:

⁵ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

'[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.'

85. 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.⁶
86. 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
 - 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 RMA acting diligently, ethically, honestly and with integrity, treating persons with appropriate respect, and properly managing and maintaining client records and maintaining client confidentiality.
87. 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 fulfill the position of a migration agent (*Mottaghi and Migration Agents Registration Authority* [2007] AATA 60).
88. The reference in section 303(1)(f) to a RMA 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).
89. Having regard to the body of case law cited above, a consideration of whether the RMA is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:
- that the RMA's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
 - the RMA's honesty and competency towards clients, the Department and the Authority;
 - a consideration of the context in which the RMA works, for example whether or not the RMA is an employee or owner of the business through which immigration assistance is provided;

⁶ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

- the RMA's knowledge and competency in immigration law and practice;
- the reputation of the RMA as a result of their conduct and the public perception of that conduct; and
- the perception of the conduct by the RMA's 'professional colleagues of good repute and competency.'

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

- Failed to act in accordance with the law and the legitimate interests of his client;
- Failed to keep his client informed about their respective immigration matters;
- Made misleading, deceptive or inaccurate statements and otherwise acted dishonestly;
- Represented to his client that he was able to procure a particular decision for them under the Act or Regulations;
- Failed to enter in to and issue an Agreement for Services and Fees and failed to maintain and keep proper records;
- Acted with a blatant disregard for, or a significant degree of indifference to, the migration law and the visa programs in general;
- Acted without regard for the adverse impact the conduct would have on the reputation of the migration advice industry; and
- Acted in a manner not consistent with the principles of integrity nor of a person who is fit and proper to provide immigration assistance.

91. In consideration of the discussion on the RMA's conduct in this decision and my findings above, I am satisfied that the RMA is not a person of integrity and is otherwise not a fit and proper person to give immigration assistance.

CONSIDERATION OF APPROPRIATE DISCIPLINARY ACTION

92. In deciding to discipline the RMA under section 303 of the Act, I have taken into account all of the circumstances of the case, including the following:

- Whether the RMA'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.

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- Any aggravating factors that increase the RMA's culpability including but not limited to previous conduct.
- Any mitigating factors that decrease the RMA's culpability including but not limited to evidence that the RMA's health has contributed to the RMA's culpability or where the RMA has undertaken steps to remedy the situation.

Seriousness of behaviour

93. In deciding to discipline the RMA under section 303 of the Act, I have taken into account all of the circumstances of the case, including the severity of the RMA'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 RMA's livelihood;
 - the circumstances of the clients, including any vulnerability; and
 - any wider issues pertaining to consumer protection or the national interest.
94. Having regard to the matters before me, I consider that the RMA's adverse behaviour is of a very serious nature because:
- The conduct involves a blatant disregard for, or a significant degree of indifference, to the law and the visa program in general;
 - There is evidence that the RMA has acted unlawfully by lodging a visa application on behalf of his client without their consent, and forging the clients signatures;
 - The RMA's actions demonstrate an intention to undermine, and therefore jeopardise, the integrity of the Protection visa program;
 - In 2015 and 2017 respectively, the Authority advised the RMA that there were deficiencies in his practice specifically pertaining to his record keeping practices and issuing agreements for service to his clients;
 - Continued registration of the RMA is not in the public interest;
 - The conduct demonstrates serious breaches of the Code of Conduct, and dishonest or reckless behavior; and
 - I have found that the RMA is not a person of integrity, or a fit and proper person to provide immigration assistance.

Aggravating factors

95. I consider the RMAs conduct falls short of the standard expected of a RMA and find that the conduct poses a serious risk to migration consumers and to the integrity of the migration advice profession.
96. The RMA has engaged in fraudulent conduct by forging client signatures on a visa application, which he then knowingly submitted to the Department, without the consent or knowledge of the applicants, and as result mislead the Department.

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97. The RMA's dishonesty has damaged the RMA's credibility and trustworthiness in his dealings with the Department, the Authority and his clients. As such, this conduct constitutes a significant aggravating factor and demonstrates that the RMA is not a fit and proper person to continue to practice as a migration agent.
98. I consider the RMA's failure to take reasonable steps to ensure that only applications with consent are lodged with the Department to be extremely serious. Such conduct has a direct and profound impact upon the integrity of Australia's visa and migration programs.
99. With his behaviour, the RMA has demonstrated a disregard for the law and his obligations as a member of the migration advice profession. The RMA has hampered the Authority's investigation into his conduct as a RMA by failing to provide proper responses to specific questions put forward and by his failure to provide the client file or other supporting documentation. I consider the RMA's conduct, in failing to comply fully with the requirements of the section 308 notice, demonstrates a disregard of Australian law, undermines the purpose and intent of the migration agent's regulatory scheme, and demonstrates contempt for its consumer protection function.
100. I acknowledge that the RMA has sought assistance for [removed for privacy]; I note that it was sought, and obtained, at a time when the section 309 notice was emailed to him advising the delegate was considering disciplinary action. Moreover, the [removed for privacy] put forward primarily relate to core considerations and factors, which form part of a RMA's duties, in terms of meeting client deadlines. I am of the view that deadlines will always form part of a RMA's work and therefore experiencing [removed for privacy] in relation to this aspect of their work is an inherent part of the role.
101. In any event, I am not satisfied that the RMA's [removed for privacy] are contributing factors for his conduct and they cannot excuse his failure to exercise care and diligence in his dealings with his clients and the Department. If the RMA was in a position, [removed for privacy], he should have made this known to his clients and ceased his representation.

Mitigating Factors

102. In his submission, the RMA stated that he has worked a number of years as RMA '*without having any problems*' and that the delegate should not focus on just this current complaint '*forgetting the good work that was previously done...*' I note that the RMA has not had any prior disciplinary decisions made against him, however, this does not mitigate the RMA's responsibility for the impact his conduct has had.
103. [removed for privacy]
104. I accept that any disciplinary decision will have an impact on the RMA'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 RMA'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 RMA's integrity and on the RMA's fitness to remain in the migration advice industry.

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105. The RMA further added that he has done his best to observe and follow the Code both the current one and that of the former and has not meant to cause any harm to anyone. He further submits he did not breach his duty of care as a RMA and tried to provide advice despite the language used by the client in her correspondence and the Department's timing of their notification namely, December 2019.
106. The RMA requests that the circumstances surrounding the case are taking into consideration such as the time and the *'fact that the employer was on holidays and the decision of Home Affairs was taken in such time when contacting people was very difficult'*. The RMA also added that *'Generally speaking, [he] follow[s] the Code of Ethics in the most strict way, this results in having integrity and good reputation. [He has] always observed the Code and never took [his] responsibilities for granted. [He] always act[s] in integrity and good faith.'* [sic]
107. I acknowledge that the RMA has shown some remorse for his actions, however he continues to apportion blame onto others specifically, that of Ms BA and the Department. Furthermore, the RMA has not accepted any ownership concerning the lodgement of an application without his client's consent and has made no mention of forging the clients' signatures.

Consumer Protection

108. Consumers of professional services of RMAs are often vulnerable and place a high degree of trust in their RMA. Consumers are therefore entitled to a high level of professional service from their RMA.
109. The behaviour demonstrated by the RMA falls short of the standards expected of RMAs. I consider that the RMA poses a serious risk not only to consumers but also to the integrity of the Department's visa programs that are made available to visa product consumers. I am satisfied that if the RMA were to continue to practice as a RMA, the RMA would not demonstrate the requisite skills expected of a RMA. I therefore consider that a disciplinary decision is warranted to address the serious conduct the subject of this decision, in the interests of consumer protection, and in maintaining confidence the integrity of the Australian migration program.
110. I expect that a decision to sanction the RMA would more likely than not deter other RMAs from engaging in a similar practice and ensure that public confidence in the migration agent industry is maintained.

DECISION

111. I have turned my mind to the appropriate sanction action to impose on the RMA, and whether a caution or suspension with conditions imposed on the RMA would maintain the interests of consumer protection and the migration program in general.
112. In making this decision, I have turned my mind to a suspension, where I would need to be satisfied that after a period of time, and remedial action, the RMA would be capable of meeting his professional obligations and deal with his clients and others with integrity. As the conduct involved fraudulent conduct through the forging of client signatures, on a visa application, which were then submitted to the Department without the clients' knowledge or permission, I am of the view that there is no remedial action, which could be undertaken to address the serious adverse conduct.

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113. Furthermore, the Department could not proceed on a footing that the documentation and information provided by the RMA is genuine and an accurate reflection of the circumstances of his clients. I am, therefore, of the view that a decision to suspend the RMA would not adequately address the seriousness of the misconduct in the subject of this decision.
114. In the interests of consumer protection and the integrity of the Department's visa programs, I consider that it is appropriate to cancel the RMA's registration.
115. Based on the facts and evidence before me, and my findings as discussed in the decision, I have decided to cancel the RMA's registration as a migration agent under subparagraph 303(1)(a) of the Act.
116. I am satisfied for the purposes of subparagraphs 303(1)(f) and (h) that:
- the RMA is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance; and
 - the RMA has not complied with clauses **2.1, 2.8, 2.9, 2.9A, 2.14A, 2.23, 5.2, 6.1, 6.2** and **6.4** of the former Code.
117. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be re-registered within five years of the cancellation.
118. Accordingly, this cancellation will be in effect for a period of five years from the date of this decision.

Ivana Buljubasic
Office of the Migration Agents Registration Authority
Department of Home Affairs

Date of Decision: 21 August 2024

APPENDIX A: TERMS USED FOR REFERENCE

The following abbreviations may have been used in this decision:

ABN	Australian Business Number
AAT	The Administrative Appeals Tribunal
BVA/B/C	Bridging Visa A, B or C
MARN	Migration Agent Registration Number
Section 308 Notice	Notice issued by the Authority under section 308 of the Act
Section 309 Notice	Notice issued by the Authority under section 309 of the Act
The Act	The <i>Migration Act 1958</i>
The Regulations	<i>Migration Agents Regulations 1998</i>
The RMA	Mr Raefat Soryal
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 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