



DECISION RECORD

FORMER AGENT	Vijay Sharma (MARN 0959759)
COMPLAINT NUMBER/S	CMP-25438, CMP-25495
DECISION	Barring
DATE OF DECISION	15 May 2018

Terms used for reference

1. The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>MARN</i>	Migration Agent Registration Number
<i>Section 308 notice</i>	Notice issued by the Authority under section 308 of the Act
<i>Section 309 notice</i>	Notice issued by the Authority under section 309 of the Act
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Regulations</i>	The Migration Regulations 1994
<i>The MA Regulations</i>	The Migration Agent Regulations 1998
<i>The Former Agent</i>	Vijay Sharma
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the MA Regulations
<i>The Department</i>	The Department of Home Affairs (and former manifestations)
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>Mr EO</i>	Complainant 1 – CMP-25438
<i>Mr UG</i>	Complainant 2 – CMP-25495

Background

1. The Former Agent was first registered as a migration agent on 20 October 2009 and was allocated the MARN 0959759. The Agent's registration had been renewed annually until it ceased on 19 October 2017.

2. The Register listed the Agent's business name as Disha Migration & Business Consulting with the ABN 49 498 637 331.

Complaints

3. The Authority received two complaints about the Agent's conduct as a registered migration agent as detailed below.

CMP-25438

4. On 6 July 2016, the Authority received a complaint (CMP-25438) about the Former Agent's conduct as a migration agent from Mr EO's legal representative.
5. The complainant alleged that:
 - a) the Former Agent failed to give proper immigration assistance in respect to Mr EO's subclass 485 visa application;
 - b) the Former Agent lodged his subclass 485 application in the 'Post-Study Work' stream when he should have lodged it in the 'Graduate Work' stream for the application to be successful; and
 - c) the visa application the Former Agent lodged on Mr EO's behalf in the Post-Study stream had no prospects of success. This refusal denied him a meaningful opportunity to apply for a subclass 485 visa in the more appropriate 'Graduate Work' stream. As result he also lost his work rights which has caused significant financial loss.

CMP-25495

6. On 9 July 2016, the Authority received a complaint (CMP-25495) about the Former Agent's conduct as a migration agent from Mr UG on behalf of his wife.
7. The complainant alleged that:
 - a) the visa application the Former Agent lodged on behalf of Mr UG's wife did not have any prospect of success;
 - b) the Former Agent did not provide Mrs UG with a contract or receipts for payment;
 - c) based on the Former Agent's advice, Mrs UG incurred unnecessary expense when she enrolled in and paid for a course at the Baxter Institute;
 - d) as a consequence of the visa refusal, Mrs UG incurred the additional expense of lodging an Administrative Appeal Tribunal (AAT) application on the Former Agent's recommendation; and
 - e) in response to Mr UG's advice he was going to complain to the Authority the Former Agent *"made up another story that we never discussed with him"* [sic].

Information obtained from departmental records

8. The following information was obtained from departmental records:
 - A transcript of the AAT decision in respect of Mr EO's matter;
 - Statistical information in respect to the refusal/grant rate of visa/nomination applications lodged by the Former Agent; and

- Historical information in regard to applications lodged by the Former Agent

First notice under section 308 of the Act

9. On 18 October 2016, in a notice under section 308 of the Act¹ (section 308 notice), the Former Agent was advised by the Authority about the complaints subject of this decision and provided copies of the complainants' supporting documents. Pursuant to section 308 of the Act, the Former Agent was required to answer questions in a statutory declaration relevant to the complaints and to provide complete client files² for both complainants.
10. The Former Agent's response, received on 15 November 2016, was not in the form of a statutory declaration as required under section 308 of the Act.
11. The Former Agent submitted to the Authority that at the time he was engaged to work on the visa applications for Mrs UG and Mr EO respectively, his personal circumstances³ affected his capacity to work effectively and contributed to some errors on his part. The Former Agent submitted a number of documents in support of this claim including:
 - Insurance claim, photographs and report to police regarding damage to his rental property; and
 - Medical records for a person who did not appear to be the Former Agent's wife as referenced in his response to the section 308 notice.

Former Agent's response regarding CMP-25438

12. In summary, the Former Agent stated the following in his response to the section 308 notice:
 - (a) The immigration assistance he provided to Mr EO was based on the 'Graduate Stream' and not the 'Post Study Work' stream.
 - (b) The Former Agent had a discussion with Mr EO about changing from a subclass 457 visa application to a subclass 485 (Graduate Work stream) visa application and provided him with a copy of what was discussed.
 - (c) The Former Agent made an administrative error by selecting the wrong box on the application.
 - (d) Because of the administrative error, the Former Agent did not charge Mr EO for assisting him with his AAT appeal.
 - (e) The Former Agent's personal circumstances contributed to the mistakes he made and he acknowledged the impact on Mr EO.
 - (f) The Former Agent believes that Mr EO only made the complaint to the Authority because he was pressured to do so by his friend Mr Rajiv UG.⁴

Documents submitted with response

13. The Former Agent submitted the following documents in support of his claims:

¹ As a registered migration agent at the time

² Inclusive of Agreements for Services, Statements of Service and all correspondence and file notes

³ The Former Agent's wife had health issues and he had a VCAT matter in relation to his rental property

⁴ Mr UG is the second complainant pertinent to this notice.

- His email to the AAT dated 24 January 2016
- Email correspondence between Mr EO and the Former Agent's office from June to September 2015
- Copy of a handwritten enquiry form for Mr EO dated 6 August 2015
- Screenshots of text messages between him and Mr EO from November 2015 to February 2016

Former Agent's response regarding CMP-25495 - UG

14. In summary, the Former Agent stated the following in his response to the section 308 notice:
- a) He never recommended that the complainant's wife should apply for a student visa. He advised the complainant to apply for another subclass 457 visa with another employer or to apply for a student visa himself.
 - b) The complainant refused to sign the '*customer information sheet*' because he did not want his circumstances put in writing. The complainant had told the Former Agent he was not paid properly by his employer and that he was paid in cash. Because of this experience he was reluctant to apply for a visa himself and wanted to know if his wife could apply for a student visa.
 - c) He advised the complainant over the phone "*that the chances of his wife getting a visa are extremely slim given that she had not study in Australia before and getting onshore study visa is hard*" [sic]. The Former Agent also stated he had not advised the complainant to "*force his wife to study (she was not inclined to study as it appeared to me during my one-off meeting with her)*" [sic].
 - d) The complainant arranged for his wife to enrol in a course at the Baxter Institute without the Former Agent's assistance and then requested that he lodge a student visa application for his wife. The Former Agent further stated that the complainant "*pushed the case on to me*" [sic].
 - e) The complainant's claims are false and the complaint was only made in order to harass the Former Agent for refusing to attend the AAT hearing after his wife's visa application was refused.
 - f) The Former Agent admitted he had not provided the complainant with a contract or receipts for payment. The Former Agent stated he did not provide these documents because of the complainants last minute push to have him lodge a student visa application for his wife.
 - g) The Former Agent further stated that owing to his personal circumstances at the time, he had failed to provide other clients with the aforementioned documents but had done so when requested by them. The Former Agent did not provide the complainant with these documents because Mr UG did not remind him to do so.

Documents submitted with response

15. The Former Agent submitted the following documents in support of his claims:
- Email correspondence between the Former Agent and Mr UG in November 2015.
 - Screenshots of messages between the Former Agent and Mr UG from November 2015 to June 2016.

Second notice under section 308 of the Act

16. On 19 July 2017, the Authority sent the Former Agent a second notice under section 308 of the Act. The Former Agent stated in his response to the original section 308 notice that owing to his personal circumstances at the time he had failed to provide the complainants and other clients with documents such as client agreements and receipts for payment. The Former Agent was requested to provide complete client files⁵ for ten matters on which he was the registered migration agent before, during and after the time relevant to the complaints.
17. The Authority received electronic copies of the requested documents on 22 August 2017 which included:
 - Nine of the ten requested client files⁶
 - Clients' Account bank statements for the period 1 July 2014 to 30 June 2017
 - Copies of the relevant documents the Former Agent held for both complainants

Notice pursuant to section 309 of the Act

18. On 27 September 2017 the Authority wrote to the Former Agent pursuant to section 309 of the Act to advise it was considering cautioning, suspending or cancelling his registration and his response was due by 25 October 2017.
19. The Authority did not receive a response from the Former Agent before his registration lapsed on 19 October 2017.
20. The Former Agent wrote to the Authority on 26 October 2017 to advise that
 - he did not intend to renew his registration;
 - he had employed a migration agent to provide migration assistance so he could focus on "*expanding the business and managing administrative processes to ensure compliance*" [sic];
 - he had signed an agreement with Migration Management (for a file management system); and
 - he was hoping to restructure everything in his business and would be "*focused on ensuring full compliance with the "code of conduct" along with all the relevant legislation*" [sic].

Notice pursuant to section 311D of the Act

21. On 13 November 2017, the Authority sent to the Former Agent a notice pursuant to subsection 311D(1) of the Act advising him that it was considering whether or not to bar him from registration for a period of up to five years.
22. The section 311D notice informed the Former Agent:
 - of the complaints lodged by Mr Kaviraj EO and Mr Rajiv UG
 - that the Authority had investigated the complaint(s);

⁵ Inclusive of agreements, receipts, invoices, statements of service, all related correspondence and file notes

⁶ The Former Agent had difficulty obtaining the 10th file from the back-up (per his email dated 27 August 2017)

- that the Authority was considering whether or not to bar the Former Agent under subsection 311A(1) of the Act from being a registered migration agent for a period;
 - that period could be up to five years; and
 - the reasons for the proposed decision.
23. The section 311D notice invited the Former Agent to make a written submission to the Authority on the matter within 28 days, and also informed the Former Agent that subject to any written submission received within that period, it was open for the Authority to be satisfied that the complaints were made out.
24. To date, the Authority has not received a submission from the Former Agent.

Evidence and other material

25. In reaching the findings of fact the Authority has considered the following evidence:
- Documents contained in the Authority's complaint files CMP-25438 and CMP-25495;
 - Information held by the Authority in relation to the Former Agent; and
 - Information held on other Departmental databases in relation to the matters raised in the complaints the subject of this decision.

Relevant legislation

Migration Act 1958

Section 276 Immigration assistance

- (1) *For the purposes of this Part, a person gives immigration assistance if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist a visa applicant or cancellation review applicant by:*
- (a) *preparing, or helping to prepare, the visa application or cancellation review application; or*
 - (b) *advising the visa applicant or cancellation review applicant about the visa application or cancellation review application; or*
 - (c) *preparing for proceedings before a court or review authority in relation to the visa application or cancellation review application; or*
 - (d) *representing the visa applicant or cancellation review applicant in proceedings before a court or review authority in relation to the visa application or cancellation review application.*
- (2) *For the purposes of this Part, a person also gives immigration assistance if the person uses, or purports to use, knowledge of, or experience in, migration procedure to assist another person by:*
- (a) *preparing, or helping to prepare, a document indicating that the other person nominates or sponsors a visa applicant for the purposes of the regulations; or*
 - (b) *advising the other person about nominating or sponsoring a visa applicant for the purposes of the regulations; or*
 - (c) *representing the other person in proceedings before a court or review authority that relate to the visa for which the other person was nominating or sponsoring a visa applicant (or seeking to nominate or sponsor a visa applicant) for the purposes of the regulations.*

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

Section 311A - barring former registered migration agents from being registered for up to 5 years

- (1) *The Migration Agents Registration Authority may decide to bar a former registered migration agent from being a registered migration agent for a period if, after investigating a complaint about him or her in relation to his or her provision of immigration assistance while he or she was a registered migration agent, it is satisfied that the subject matter of the complaint is made out.*

Note: Before making such a decision, the Authority must invite the former registered migration agent to make a submission: see section 311D

Subsection 316 (1B)

However, the Authority can investigate a complaint about a former registered migration agent only if the complaint is received within 12 months after he or she ceased to be a registered migration agent.

Jurisdiction

26. The Authority performs the functions prescribed under section 316 of the Act.
27. The functions and powers of the Authority under Part 3 of the Act and the MA Regulations are the Minister for Home Affairs' functions and powers. The Minister has delegated his powers under Part 3 of the Act and the MA Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.
28. The complaints which are the subject of this decision were received on 6 July 2016 (Mr EO) and 9 July 2016 (Mr UG) whilst the Former Agent was registered as a migration agent.

Reasons for Decision

Provision of Immigration Assistance

29. I find that the complaints that are the subject of this decision relate to the Former Agent's provision of immigration assistance, as defined in section 276 of the Act. I am further satisfied that the complainants were clients of the Former Agent, as defined in regulation 3(1) of the Migration Agents Regulations for the purpose of providing immigration assistance at the relevant times.

Subject matter of the complaint

30. Having regard to the relevant evidence before the Authority and as a result of my findings, I am satisfied that:

- (a) the subject matter of the complaints before the Authority are made out; and
- (b) while registered, the Former Agent failed to comply with his obligations under the Code.

31. The respective findings, and the reasons for those findings, are set out below in more detail.

Findings on material questions of fact

Former Agent provided incorrect advice and lodged applications with little or no prospect of success

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32. Through his legal representative, Mr EO alleged that the sole reason his subclass 485 visa was refused was because the Former Agent lodged the application in the post-study work stream instead of the graduate work stream. He further alleged that as a consequence he was denied a meaningful opportunity to apply for a subclass 485 visa in the more appropriate stream for which, if properly advised, he would have been able to satisfy the relevant requirements.

33. In his response to the Authority, the Former Agent stated that his assistance was always in relation to a subclass 485 visa application in the Graduate Work stream and that he had provided evidence of having given Mr EO correct advice in this regard. The Former Agent submitted a handwritten discussion note dated 6 August 2015 regarding Mr EO's 485 visa enquiry as evidence of the advice he provided to his client. The note appears to be in relation to a subclass 489/189 visa and therefore cannot be considered in respect to Mr EO's subclass 485 visa application. There is no other evidence before the Authority in respect to the advice the Former Agent provided to Mr EO.

34. It is not in dispute that the application lodged for Mr EO should have been in the Graduate Work stream. I have considered the Former Agent's statement that it was an administrative oversight on his part that resulted in the Post Study stream being selected instead of the Graduate Work stream on the application form. However, based on the information before me and for the reasons set out below, I do not accept the Former Agent's explanation. If I were to accept the Former Agent's claim that it was an administrative oversight on his part that resulted in the wrong visa stream being selected:

- it follows that given his intention was to apply in the Graduate Work stream he would have submitted Mr EO's skills assessment evidence at the time of lodgement which

departmental records confirm he failed to do.⁷ Mr EO applied for a skills assessment on 5 August 2015. However, from the evidence before the Authority, the Former Agent did not request the skills assessment from him until 16 September 2015, a week after lodging Mr EO's visa application.

- It is reasonable to expect that a diligent migration agent would, at a minimum, have provided to the Department with proof that Mr EO had applied for a skills assessment before his visa application had been lodged. There is no evidence before the Authority that did so or that he took any further action on behalf of his client prior to the visa application being refused. Given there was a period of three months from when the Former Agent lodged Mr EO's visa application until the Department made a decision, I am satisfied the Former Agent had sufficient time to take steps to resolve the matter for his client.
35. I therefore reject the Former Agent's claim that the lodgement of the visa application in the incorrect stream was an administrative oversight. Furthermore, my consideration of the evidence before the Authority has led me to form the view that the Former Agent did not have a sound working knowledge of the 485 visa subclass. In addition to that discussed above, the Former Agent's lack of knowledge of this visa subclass is apparent in the AAT appeal he lodged on behalf of Mr EO.
36. The highest qualification held by Mr EO was at the Diploma level. Even though Mr EO's qualifications were not at the Bachelor level or higher,⁸ the Former Agent stated to the AAT that his client "*meets all the requirements for the grant of the Temporary Graduate (class VC) Temporary Graduate (Post-Study Work) (subclass 485) visa*" [sic]. The Former Agent provided the AAT with copies of Mr EO's qualifications but did not provide any argument as to how Mr EO could satisfy the Post Study stream provisions. I am satisfied the Former Agent's failure to provide any argument to the AAT on behalf of his client demonstrates a lack of knowledge of the 485 subclass.
37. Based on the evidence before me and that discussed above, I am satisfied that Mr EO's visa application and subsequent AAT appeal had no prospects for success. However, the Former Agent's above stated opinion has not changed since the complaint was put to him. Despite evidence to the contrary, the Former Agent stated to the Authority that he did not accept that the application in the Post Study stream had no prospects of success or that it denied Mr EO an opportunity to apply in the Graduate Work stream. He did not provide any substantive argument to the AAT or to the Authority to justify his claims.
38. In the absence of any attempt to provide considered arguments to the relevant bodies, I find the Former Agent's conduct to be careless and to evidence a lack of regard for his client and his obligations under the Code. Moreover, I find the Former Agent's conduct falls well short of the diligence and professionalism expected of a registered migration agent.
39. A competent and diligent migration agent would have ensured both the advice provided to Mr EO and the representations made on his behalf were based on a researched understanding of the relevant migration legislation and policy. There is no evidence before me that the Former Agent undertook any such research on behalf of his client. As a result, the Former Agent:
- lodged a visa application in the wrong stream and without the appropriate documentation which resulted in it being refused by the Department;

⁷ Item 1229(3)(k) of Schedule 1 of the Migration Regulations 1994 stipulates this is required at time of lodgement

⁸ To satisfy the combined effect of cl.485.231(1) and IMMI 13/031 applicants in the Post Study Stream must hold an Australian Bachelor degree or higher

- made unsubstantiated claims in the subsequent AAT appeal that Mr EO could satisfy the provisions for a subclass 485 visa in the Post Study stream which the Tribunal found to be incorrect and affirmed the Department's decision; and
 - maintained that the relevant applications did have prospects for success.
40. In the absence of any evidence to the contrary, I am satisfied that the Former Agent provided incorrect advice to the complainant and lodged two applications with no prospects of success which resulted in the refusal of Mr EO's visa application and the affirmation of that decision by the AAT. As a result of these negative outcomes, Mr EO was required to depart Australia, for which the Former Agent is accountable.
41. Moreover, based on the evidence before me and having regard for the AAT member's comments below, I am satisfied that the Former Agent's conduct denied Mr EO a meaningful opportunity to apply for a subclass 485 visa in the more appropriate stream for which, if properly advised, he would have been able to satisfy the relevant requirements, as alleged.

"It also appears that he would have met the common criteria in cl.475.211 to cl.485.218, including having the required level of English proficiency, had he been correctly advised by his former agent".

42. Having regard to the above, I am satisfied that the subject matter of the complaint has been made out. As he was registered at the time, I also find that the Former Agent's conduct fell short of the professionalism expected of a registered migration agent and was in breach of clauses 2.1, 2.3, 2.4, 2.6, 2.17, 2.21 and 2.23 of the Code.

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43. Mr UG alleged that the Former Agent lodged a visa application and AAT appeal on behalf of his wife that did not have any prospects of success. He further alleged that based on the Former Agent's advice she incurred an unnecessary expense when she enrolled in and paid for a course at the Baxter Institute.
44. In his response to the Authority, the Former Agent indicated that the complainant's decision to proceed with a student visa application was contrary to his advice. The evidence before the Authority, however, does not support this claim. In his email to the Former Agent dated 17 November 2015, Mr UG confirmed his meeting with him in the previous month regarding a student visa for his wife noting that at the time the Former Agent had made copies of the required documents. Attached to this email was a copy of his wife's enrolment confirmation for the Baxter Institute. The Former Agent responded on 20 November 2015 asking him to attend his office on the same day to arrange lodgement of his wife's visa application. Text messages between the Former Agent and the complainant confirmed the above arrangements. Departmental records show the Former Agent lodged an invalid application on 23 November 2015 having paid the incorrect fee and resubmitted a valid application on 4 December 2015.
45. There is no other evidence before the Authority that, prior to its refusal, the Former Agent considered the lodgement of a student visa application by Mrs UG to be contrary to his advice or that it held any inherent risk. Moreover, the above communication exchange indicates the Former Agent had begun to prepare a student visa application for Mrs UG before she enrolled with the Baxter Institute. On this basis, I have given little weight to the Former Agent's claim that the complainant acted independently of his advice.
46. Mrs UG's visa application was refused by the Department on 3 February 2016 because she did not satisfy the provisions of clause 572.227 of the Regulations and there were no exceptional circumstances that the delegate could consider.

47. After Mrs UG's student visa was refused, Mr UG wrote to the Former Agent about his intention to complain to the Authority about his conduct. In his response to him on 30 June 2016, the Former Agent stated he had given Mr UG four options one of which was that his wife could apply for a student visa as a means to afford him additional time to organise his own visa application. The Former Agent later stated in the same email that he never recommended this option. The Former Agent did not, however, submit any evidence that he had provided the aforementioned advice to the complainant and his wife prior to lodging her student visa application. I am therefore satisfied that the Former Agent lodged a visa application on behalf of his client for which she was not eligible and therefore had little prospect of a successful outcome.
48. In the Authority's first section 308 notice the Former Agent was asked what advice he had provided to his client about her prospects of success at the AAT. While he did not address this question, the Former Agent stated in his response to the allegations that Mrs UG "*proceeded to lodge her AAT appeal through me and only complained to me when I refused to go with them for AAT...*" [sic].
49. On this basis, I am satisfied that the Former Agent had agreed to represent Mrs UG in relation to her AAT appeal. I am satisfied the Former Agent had entered into a client/agent relationship with Mrs UG in regard to her AAT appeal.⁹ However, there is no evidence before the Authority that the Former Agent made any submission on her behalf and by his own admission he refused to attend the AAT hearing with Mr and Mrs UG. Furthermore, there is no evidence that the Former Agent advised his client there were any risks associated with the lodgement of an AAT application. On this basis, I am satisfied the Former Agent encouraged the lodgement of an AAT appeal that had little or no prospects of success and unnecessarily increased the cost to the client, as alleged.¹⁰
50. Having regard for the above, I am satisfied the Former Agent provided incorrect advice to the complainant which resulted in the refusal of both Mrs UG's visa application and affirmation by the AAT of that decision. As a consequence Mrs UG was required to depart Australia. On this basis, I find the subject matter of the complaint is made out.
51. I am also satisfied that as the Former Agent did not properly advise his client and lodged visa and AAT applications with little or no prospect for success, his conduct fell short of the professionalism expected of a registered migration agent and was in breach of clauses 2.1, 2.3, 2.4, 2.6, 2.7, 2.17 and 2.23 of the Code.

Former Agent did not provide complainant with a contract or receipts for payment;

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52. Based on the Former Agent's own admissions, it is not in dispute that he failed to provide Mrs UG with a contract or receipts for payment, as alleged by Mr UG.
53. As he was a registered migration agent at the time, the provisions under the Code clearly established the Former Agent's obligation to provide his clients with relevant documentation such as written confirmation of his advice and confirmation of client instructions, an agreement for services, receipts for payment and statements of services.
54. Despite these obligations, there is evidence before the Authority that is indicative of a failure on the Former Agent's part to either understand or take seriously his obligations

⁹ The meaning of "client" is set out in the Agent Regulations as follows (as relevant): "3(1) "client", of a registered migration agent, means a person to whom the agent agrees (whether or not in writing) to provide immigration assistance."

¹⁰ From the original complaint document: "because of his wrong and misleading advises, we made unnecessary expenses" [sic]

under the Code. The Former Agent apportioned blame onto his clients for his conduct as exemplified by his comments to the Authority that the reason for not providing Mr UG with a contract or receipts for payment was because he had not reminded the Former Agent to do so:

“However, this happened to a few of my clients at the time, however, all of them were provided the receipts/contracts upon request. Mr [removed for privacy reasons] never reminded me that I have forgotten the same...” [sic]

55. Taking into account the Former Agent’s own admissions I am satisfied that there were systemic issues with his general office practices. On this basis, I find the Former Agent did not act competently, diligently or fairly on behalf of his clients as demonstrated by his failure to provide them with written agreements, confirm their instructions in writing, maintain file notes and issue receipts or statements of service, as alleged.
56. Accordingly, I find that the subject matter of the complaint is made out and, as he was registered at the time, the Former Agent’s conduct was in breach of clauses 2.1, 2.4, 2.8, 2.23, 5.2, 5.5, and 6.1 of the Code.

Consideration of Whether or Not to Bar the Former Agent

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

Seriousness of behaviour

59. As a registered migration agent the Former Agent was obliged under the Code to possess and maintain a high standard of conduct to maintain the reputation and integrity of the migration advice profession.
60. As discussed previously in this decision, I find that the subject matter of the complaints is made out as it pertains to the Former Agent’s conduct while a registered agent. The behaviour stemming from the substance of the complaints includes that the Former Agent:
 - failed to have due regard to his clients’ dependence and reliance on his knowledge and experience as a registered migration agent which resulted in adverse consequences for them when they acted on his advice;
 - failed to accept responsibility for his actions which are the subject of this decision and diverted blame for his conduct onto his staff¹¹ and to his clients;
 - failed to understand or recognise his professional obligations as a registered migration agent, particularly with regard to his contractual obligations under the Code;
 - failed to comply with fundamental recordkeeping practises including maintaining adequate client files and retaining records on instructions received and immigration advice provided; and
 - acted without concern for whether his conduct would adversely impact upon or undermine the reputation of the migration advice profession.

¹¹ Former Agent’s email to AAT dated 24 January 2016 in which he claimed “Let me begin with accepting that my staff did make a mistake by not adding the latest qualification...” [sic]

Public confidence and reputation of the profession

61. The Agent's past conduct, which can be an indicator of likely future conduct, demonstrates a willingness to act contrary to the Code and the professional standards expected of a registered migration agent. The Former Agent's submission to the Authority did not provide any indication that he was remorseful for his actions or that he appreciated the seriousness of his misconduct. Moreover, the shortcomings identified in relation to his conduct were not isolated to the complaints that are the subject of this decision but extended more broadly to his clients generally. Such conduct is indicative of a pattern of behaviour that is unacceptable for a registered migration agent and represents a risk for existing or potential clients. Accordingly, if the Former Agent were to be registered again as a migration agent, it could be expected that his non-compliance with the migration agents' regulatory scheme would continue and that vulnerable consumers would be subject to his unprofessional conduct.
62. I am further satisfied that the Former Agent's conduct has the potential to tarnish the reputation of the migration advice profession and that such conduct is not acceptable or to be tolerated within the migration advice profession.

Aggravating Factors

63. I consider the Former Agents conduct falls short of the standard expected of a registered migration agent, particularly his indifference towards his obligations to his clients. I find that the following are aggravating factors that increase the severity of the sanction:
64. I am satisfied the Former Agent endeavoured to distance himself from his personal responsibility as a registered migration agent and his obligations under the Code by diverting and apportioning blame onto others. As evidenced below, the Former Agent:
- blamed his staff¹² for his failure to submit relevant documents to the AAT for Mr EO's matter disregarding his obligation to his client to properly supervise the work of his staff;
 - blamed Mr UG for inciting Mr EO to make a complaint without having any regard for his own conduct. I also note that Mr EO's complaint was made through a legal representative before Mr UG made a complaint.
 - stated to the Authority that he did not provide Mr UG with a contract or receipts for payment because he did not remind him to do so. In the context of his response I believe the Former Agent considered this to be a valid reason for not having met his obligations under the Code.
 - stated to the Authority that Mr UG had refused to sign his '*customer information sheet*' and that he '*pushed*' the Former Agent to take on his wife's visa application. While the Former Agent has inferred he did not have a choice in the matter, I am satisfied that until such time as there was an agreement to provide assistance, the Former Agent did not have an obligation to act on behalf of Mrs UG. Given the circumstances, the Former Agent could have either refused to represent Mrs UG or obtained written instructions from her to proceed. The Former Agent has not provided the Authority with any reason as to why he could not have refused to represent Mrs UG.
 - Despite evidence to the contrary, the Former Agent stated to the Authority that Mr UG had forced him to lodge a student visa application on behalf of his wife and that he

¹² Former Agent's email to AAT dated 24 January 2016 in which he claimed "Let me begin with accepting that my staff did make a mistake by not adding the latest qualification..."[sic]

had no knowledge of Mrs UG's enrolment in a course at Baxter College. Such statements indicate a preparedness on the part of the Former Agent to be dishonest in order to divert blame for his conduct onto others.

65. Taking into account the aforementioned conduct and the Former Agent's own admission as replicated below, I am satisfied the Former Agent did not have an appropriate regard for his clients, his obligations under the Code or for the seriousness of the breaches that have been identified.

"After going through this whole process, I have realised that I am not much good in the admin work. It is very disappointing that after working on a good number of files over last eight years (almost) and a good track record in most type of immigration matters, the basic paperwork can bring your whole life down. The last two days have been particularly stressful as I tried my best to find that one file that just could not be found. Never mind." [sic]

66. I find the Former Agent's comment '*Never mind*' suggests a lack of concern for the abovementioned shortcomings and demonstrates a disregard for his obligations under the Code.
67. Furthermore, despite the Former Agent's claim that he has a "*good track record in most types of immigration matters*"; and his invitation for the Authority to "*check my record in terms of services provided to my clients till date which is also evident from the fact that our business has been growing steadily because of references from our previous clients only*" [sic], departmental records reveal a notably higher than average refusal rate for visa and nomination applications lodged by him.
68. Of particular concern are systemic issues that were identified as part of the Authority's investigation of the complaints in respect to the Former Agent's practice as a migration agent. This led the Authority to send the Former Agent, while registered, a second 308 notice under which he was requested to provide ten client files that covered a broader period of time. In his response, the Former Agent submitted nine of the ten requested files. He stated that he was unable to locate the tenth file. An examination of the client files revealed the Former Agent's failure to maintain proper records to be a widespread issue in respect to his practice rather than an isolated matter related to Mr UG's complaint.
69. Examination of these files also revealed the absence of an agreement for services and fees in the majority of cases and the absence of a Statement of Services in all of the client files. The Code imposes specific accountability requirements on registered migration agents in relation to their financial and recordkeeping obligations. The obligations include, but are not limited to, confirming their instructions in writing, obtaining written acceptance from their clients and issuing service agreements and invoices. There is no evidence before the Authority that the Former Agent had done so for the complainants or for his clients more generally.
70. I am also of the view that the Former Agent has demonstrated a disregard for his obligations under the Code as they pertain to his responses to the Authority's requests for information. In its section 308 notice, the Authority asked the Former Agent to answer a number of questions in a statutory declaration in respect to the complaints that are the subject of this decision. The Former Agent addressed the allegations made by the complainants but did not answer the questions, nor was his response in the form of a statutory declaration as required. The Former Agent did not provide a submission in response to the section 309 notice before his registration lapsed on 19 October 2017. The Former Agent did not provide a response to the Authority's notice under section 311D.
71. Based on the evidence before me, I find that the Former Agent does not possess the requisite competence, diligence and judgement to continue to meet the obligations and

properly perform the duties of a registered migration agent. Furthermore, I am satisfied that the conduct described above falls short of the professionalism and service that would normally be expected by a client who has sought and paid for the expertise and experience of a registered migration agent.

Mitigating Factors

72. The Former Agent stated in his response to the Authority's section 308 notice that his personal circumstances had impacted on the work he undertook for the complainants as well as other clients at that time. While I accept his personal circumstances may have been difficult, the Former Agent nevertheless had a fundamental obligation, as a registered migration agent, to act in the best interests of his clients and this cannot be nullified when circumstances prevented him from working effectively. In keeping with their obligations under the Code, registered migration agents are expected to understand their clients' reliance on them and should have in place procedures or arrangements that take into account such circumstances to ensure their clients are not disadvantaged. There is no evidence before the Authority that the Former Agent had such arrangements in place.
73. Furthermore, despite his personal circumstances, departmental records revealed the Former Agent continued to work on and lodge new visa applications during this period. By his own admission his capacity to work effectively in late 2015 was negatively impacted by his personal circumstances. There is no evidence before the Authority that the Former Agent did anything to address the effect his circumstances may have had on his clients. Accordingly, I am not satisfied that his personal circumstances can be considered mitigating factors in relation to the complaints that are the subject of this decision. In the absence of any other evidence to the contrary, I find there are no factors that were beyond the Former Agent's control which could have reasonably contributed to conduct and the breaches of the Code which are subject of this decision.
74. Following receipt of the Authority's section 309 notice, the Former Agent advised his intention to allow his registration to lapse and noted that he had employed a migration agent to provide immigration assistance so that he could focus on "*expanding the business and managing administrative processes to ensure compliance*" [sic]. Given the nature of the findings in this decision record and the Former Agent's own admission that "*I have always maintained that I haven't been best at managing the paperwork*" [sic], I am not satisfied that his proposed role in his restructured business model would ensure compliance with his legislative obligations.
75. I have taken into account the Former Agent's personal circumstances, including the punitive effect of a disciplinary decision imposed in relation to the impugned conduct, hardship arising or apprehended to arise from a disciplinary decision. While the Former Agent has not advanced any evidence with respect to hardship, I have nevertheless considered the potential impact that a disciplinary decision may have on the Former Agent's livelihood, and how such a decision would affect the his financial earning capacity.
76. The Former Agent has not advanced any evidence with respect to hardship and I am not satisfied that hardship would necessarily follow from a decision taken by the Authority to bar the Former Agent from registration as a migration agent, particularly given that the Former Agent has not been registered as a migration agent since 19 October 2017 and has not been able to lawfully provide immigration assistance since that date. In addition, the Former Agent is the Director of Disha Migration & Business Consulting and has employed a migration agent to take responsibility for immigration assistance provided through this business.
77. I have considered the fact that no complaints have been received about the Former Agent since his registration ceased in October 2017, and have also noted that the Former Agent does not have any history of prior disciplinary decisions before the Authority. However, I

am of the view that this does not mitigate the Former Agent's responsibility for the significant negative impact his conduct has had on the complainants.

78. I consider that any impact resulting from the decision to bar the Former Agent from registration as a migration agent is substantially outweighed by the public interest and in ensuring that consumers are protected.

Consumer Protection

79. It is clear that the statutory scheme for the registration of migration agents and the supervision of their conduct is intended to protect persons seeking immigration assistance.¹³ A registered migration agent therefore fulfils an extremely important role in the implementation of the Act, especially as the Code expressly recognises that migration agents owe duties to the Commonwealth and its agencies, and provides for a number of those duties.
80. In considering this matter from a consumer protection perspective, I am satisfied that the Former Agent has failed to appreciate the seriousness of his conduct or his professional obligations as set out in the Code. I have taken this consideration into account in making this decision, and am satisfied that to bar the Former Agent from being registered for a period is not unnecessarily punitive.
81. Consumers, particularly those of migration advice services, are often in a vulnerable position and have a right to trust their migration agent will act in their best interests. I am not satisfied that the Former Agent is capable of meeting these expectations. The Former Agent has demonstrated a pattern of behaviour that falls well short of the reasonably expected standards of a registered migration agent.
82. Given the Former Agent's lack of contrition for his conduct and in the absence of any evidence to the contrary, I am not satisfied that if the Former Agent were to practice as a registered migration agent in the future, he would be able to avoid engaging in a similar pattern of behaviour.
83. I am of the opinion that any concern as to the impact of a barring decision on the Former Agent's livelihood is not warranted in consideration of the Authority's consumer protection function and I am satisfied that a barring decision is appropriate in the circumstances.
84. I expect that a decision to sanction the Agent would more likely than not deter other registered migration agents from engaging in a similar practice and ensure that public confidence in the migration agent profession is maintained.

Period of barring

85. In the Narayanan case the AAT stated:¹⁴

In fixing the appropriate period in which to ban the applicant, one needs to take account of the fact that Parliament has indicated that the maximum period is five years. That is obviously reserved for the most severe cases. The most severe cases would inevitably involve an element of fraud, dishonesty or incompetence.

¹³ See *Seymour v Migration Agents Registration Authority* [2007] FCAFC 5

¹⁴ Paragraph 141, [2006] AATA 353

86. The AAT further indicated that a barring period of two to three years was appropriate for conduct falling within the middle range of severity.¹⁵ Having regard to all the circumstances, I consider that the Former Agent's conduct falls within this range.
87. Having regard for the Former Agent's lack of accountability for his own actions and associated disregard for the reliance of his clients on his expertise, I consider the Former Agent should be barred for a period of two years. I am of the opinion such amount of time will afford the Former Agent an opportunity to reflect upon the failures in his conduct; the circumstances which led to this decision; and the manner in which he has dealt with his clients. This period of time will also enable him to take ownership and responsibility for his conduct subject of this decision and to develop appropriate skills and business practices to discharge his responsibilities should he decide to work as a migration agent again in the future.

Decision

88. I have decided to bar the Former Agent from being registered as a migration agent for a period of two years starting on the day of my decision.

Helen Fisher
Professional Standards Officer
OMARA | Immigration and Visa Services
Immigration and Citizenship Services Group
Department of Home Affairs

15 May 2018

¹⁵ Paragraphs 142 and 143, [2006] AATA 353