



### **DECISION RECORD**

<b>AGENT</b>	<b>CHAO XIE</b>
<b>COMPLAINT NUMBER/S</b>	CMP-31042; CMP-40441 and CMP-45331
<b>DECISION</b>	<b>SUSPENSION – 2 YEARS</b>
<b>DATE OF DECISION</b>	<b>10 May 2022</b>

### **Terms used for reference**

The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>BVA/B/E</i>	Bridging Visa A, B or E
<i>FOI requests</i>	Requests under the <i>Freedom of Information Act 1982</i>
<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>Section 305C notice</i>	Notice issued by the Authority under section 305C of the Act
<i>The Act</i>	The <i>Migration Act 1958</i>
<i>The Regulations</i>	The <i>Migration Regulations 1994</i>
<i>The Agent</i>	Mr Chao XIE
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	The Code of Conduct prescribed for the purposes of subsection 314(1) of the Migration Act 1958 by the Migration (Migration Agents Code of Conduct) Regulations 2021
<i>The former Code</i>	Code of Conduct prescribed for the purposes of subsection 314(1) of the Migration Act 1958 prior to 1 March 2022 by Regulation 8 and Schedule 2 of the Migration Agents Regulations 1998
<i>The Department</i>	The Department of Home Affairs <sup>1</sup>
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>The Agents Regulations</i>	<i>Migration Agents Regulations 1998</i>

<sup>1</sup> And its former manifestations

## **STATEMENT OF REASONS**

### ***Background***

1. The Agent was first registered as a migration agent on 08 December 2009 and was allocated the MARN 0961866. The Agent's registration had been renewed annually to date, with the most recent application pending the outcome of this decision.
2. The Register lists the Agent's business name as Giant Partners Melbourne Pty Ltd (**Giant Partners**) with the ABN 72 609 206 322. Prior to this time the Agent was declared as a Director for Awesome International Group Pty Ltd, with ACN<sup>2</sup> 121 840 551 (**Awesome International**) for the period 26 November 2013 to 16 November 2015.

### ***Prior Disciplinary action***

3. The Authority issued a Formal Warning to the Agent on 08 February 2016.

## **COMPLAINTS**

4. The Authority has considered three complaints about the Agent's conduct as a registered migration agent as detailed below.

### ***CMP-31042 – Ms [DMW]***

5. On 17 May 2017, the Authority received a complaint about the Agent's conduct as a registered migration agent from Ms [DMW] (**[DMW]**) through her legal representative.
6. Ms [DMW] alleged the following:
  - An agreement was made between the complainant and [AO Ltd] (**AO/Chinese Entity**)<sup>3</sup> on 29 September 2011 to prepare and lodge a subclass 121 visa.
  - A total of RMB 780,000 was paid over three instalments and within a year of the agreement.
  - The complainants provided all the documentation required including that of IELTS<sup>4</sup> tests.
  - From the time she provided the documents no progress was made on the visa application. Despite numerous enquiries made by the complainants (Ms [DMW] and her family) they were not provided advice regarding their case.
  - On 09 March 2016, some five (5) years after appointment, the complainants wrote to Mr [SAH]<sup>5</sup> (**Mr [SAH]**) and requested a cessation of the appointment and a refund of their money.
  - They were advised that their visa application was still under consideration by the Department.
  - On 15 March 2016, the complainants received a call from AO. The complainants were advised that their 'Employer Nomination Application' had been approved by the Department and they were invited to view the paperwork at the office of AO.

---

<sup>2</sup> Australian Company Number (ACN)

<sup>3</sup> Related entities include [AO] Ltd; [FAEES] Ltd and [FFPEES] Ltd

<sup>4</sup> International English Language Testing System

<sup>5</sup> Director of [AO Ltd] and Awesome International Pty Ltd also goes by the name Mr [SAH]

- The complainants requested a copy of the approval letter for their records and were advised that it was not possible to obtain a copy. However, they were permitted to take a photograph of the document.
- Given what had transpired at the AO office, the complainants raised concerns to AO that the document was not issued by the Department.

### *Departmental Records*

#### 7. Records held by the Departmental reveal the following:

- The Agent lodged two (2) 186 Direct Entry visa applications and two associated nominations for the complainant and her family.
- On 30 June 2013, a nomination with [BOA Pty Ltd] (BOA Pty Ltd) was lodged for Ms [DMW] with the Agent appointed for the application. The nomination was refused on 17 January 2014 as the terms and conditions of employment had not satisfied the criteria for nomination approval. The refusal notification was emailed to the Agent the same day.
- On 01 July 2013, a visa application associated with the [BOA Pty Ltd] nomination was lodged, with the Agent listed as the appointed registered migration agent. The visa application was refused on 25 March 2014 as the nomination had been refused.
- Prior to refusing the visa application, the Department provided the client with an opportunity to comment on the nomination refusal or seek to withdraw the visa application which was sent to the Agent, via email, as the authorised representative. No response to this natural justice letter was received by the Department from the Agent.
- On 09 May 2014, a second nomination application was submitted in respect of Ms [DMW] in association with [ALE Pty Ltd] ([ALE Pty Ltd]) where the Agent was again listed as the appointed registered migration agent. On 18 August 2014, the nomination was refused for failing to meet Regulation 5.19<sup>6</sup> as the delegate was not satisfied that the sponsor was able to financially maintain the position for two years. Notification on the refusal of the nomination was sent to the Agent on the same day by email.
- On 10 May 2014, a second visa application, in association with the [ALE Pty Ltd] nomination, was lodged on behalf of the complainant.
- On 18 August 2014 an invitation to comment on the nomination refusal was sent to the Agent as the authorised representative with an option to request a withdrawal of the visa application. A response was received by the Department from the Agent requesting that the visa application be withdrawn.
- On 12 September 2014 the visa application was withdrawn by the Department and the Agent was notified of the withdrawal by email correspondence.

### ***Notice under section 308 of the Act (“the section 308 notice”)***

- 8. On 30 November 2017, the Authority published the complaint to the Agent, advising the Agent that it raised concerns regarding the Agent’s compliance with clauses **2.1, 2.4, 2.8, 2.9, 2.9A, 2.23, 5.2, 5.5, 6.1, 6.4, 7.1, 7.2** and **7.4** of the former Code.
- 9. Pursuant to section 308 of the Act, the Authority requested the Agent to provide the following information:

---

<sup>6</sup>Approval of nominated positions – Subclass 186 (Employer Nomination Scheme) visa and Subclass 187 (Regional Sponsored Scheme) visa

- Complete client files for Ms [DMW]
- Complete client account information for Ms [DMW]
- Complete list of employees and associated email addresses

***The Agent's response to the Authority's section 308 notice***

10. On 04 January 2018, the Authority received the Agent's response to the complaint, through his legal representative, by way of a statutory declaration. The Agent made the following submissions:

- a) He provided immigration assistance to the complainant by *"reviewing and preparing her applications and lodging the applications"*.
- b) He was employed by Mr [SAH] through Awesome International to provide migration advice.<sup>7</sup> As part of his employment agreement he was not permitted to have direct contact with clients. Therefore, he has not communicated directly nor met with the complainant during his engagement as the appointed registered migration agent. The terms of the service agreement specified that the Chinese Entity would correspond with clients and collect the necessary documents which would then be forwarded to him for action.
- c) He has previously found to have engaged in conduct in breach of the former Code with regards to Part 8.<sup>8</sup> He resigned from the role with Awesome International in December 2015, and has put measures in place to prevent further breaches, including engaging another registered migration agent to be his mentor. This current complaint is similar in nature to the prior complaint where he was found to be in breach of his obligations pursuant to the former Code.
- d) His services were engaged through AO and the complainant's documents were sent to him for review. When he was satisfied he lodged the application. With regards to the documents that were provided to him, he *"had no reason in [his] professional opinion to believe that these were not legitimate and valid applications"*. The documents he was provided *"had legitimate prospects of success and that no documents provided to [him] were false or misleading"*. The applications and nominations were refused, not as a result of an *"oversight of a clear legal criterion"* by him, but rather the departmental delegate's discretion to refuse the applications and/or nominations.
- e) He no longer has access to the documents regarding the complainant's case, as he does not have access to the email address used to correspond with AO. The documents he does have were included with his supporting evidence as he had made copies of them. He has confirmed with a colleague (and friend) [G], still employed by AO, that the notification letters issued by the Department in regards to Ms [DMW]'s visa applications, were received by AO to be forwarded to the clients.

---

<sup>7</sup> Refer to footnote 5

<sup>8</sup> Duties of Registered Migration Agents to Employees

- f) The Agent stated: *“The scope of [his] services provided [sic] was that [he] received the matter from the associated Chinese office with the instruction that the nominator and complainant would like the respective applications lodged. [He] review[ed] the documents to [his] professional satisfaction and lodged the applications. [He] sent through any requests, either from [him] or the Department, through to the associated Chinese office with the expectation that they would relay the correspondence to the client and then revert any response to [him] should any instruction be given”.*
- g) Since the Agent’s departure from Awesome International he acknowledges the short comings of such an agreement and where *“the scope of [his] employment put [him] in a position where [he] could not maintain effective control over a client’s matter.”* He was unable to ensure that the client’s case was managed by persons who were of good character and who were able to provide immigration assistance.
- h) With regards to the drafting and provision of a service agreement *“this fell within the scope or operations of the associated Chinese entity”*. As far as the Agent was aware an agreement may have been provided to the complainant, however, he was neither *“entitled nor expected to know its contents”*. The Agent has since been made aware that there was an agreement, between AO and the complainant, as it was provided to him by the Authority, as part of this complaint matter.<sup>9</sup>
- i) In regards to the complainant not being informed on the progress of her case he was of the view that she was aware of any or all progress. The Agent’s reasons for this are *“that the complainant’s documents provided to [him] show that she has witnessed and acknowledged what was happening with her matter.”* According to the Agent, he would cross check the signature on the documents provided to him by AO, with that of the Form 956,<sup>10</sup> Form 80<sup>11</sup> and the complainant’s passport. The Agent notes however that he should have taken a more active approach and communicated with the complainant. Since his departure from Awesome International he has done this with his clients in his current business.
- j) The Agent disputes that the complainant considers that no progress had been made noting that the complainant provided the documentation requested, which also contained her signature. Therefore, she would be have been aware of the progress of the cases given she was providing documents when requested to do so. The Agent provided all the correspondence that he received from the Department to the Chinese Entity with the expectation that this would be forwarded to the client. In line with his agreement with Awesome International he did not receive any communication from the client in respect to requests for an update.
- k) The Agent stated: *“[He] was also instructed by [his] employer within the associated Chinese business that [he] was not in a position to communicate with any clients as any such communications were strictly the responsibility of the Chinese office. Therefore believing that [he] needed to comply with the terms of [his] appointment, [he] did not communicate with the complainant at any point.”* The Agent has since amended his practices.

---

<sup>9</sup> In the interest of natural justice and procedural fairness, the Authority provides all supporting documentation provided by a complainant to the Agent to ensure a fulsome response.

<sup>10</sup> Advice by a migration agent/exempt person of providing immigration assistance

<sup>11</sup> Personal particulars for assessment including character assessment

- l) The Agent is unaware of any financial loss that the complainant may have suffered. Based upon the information that had been provided to him by the Chinese Entity he lodged the visa applications and nominations because, in his professional opinion, they had prospects of success. As a registered agent he cannot guarantee that an application will be successful and a visa and/or nomination refusal does not reflect an agent's sound working knowledge of the Act.
  - m) The Agent did not have any information before him, from the Chinese Entity, suggesting that the complainant provided instructions not to lodge an application. Additionally, if the financial loss is due to the complainant stating there were delays in processing of her application and/or nomination the Agent disputes this, as he communicated everything that was required from the Department to the Chinese Entity.
  - n) With regards to the 'Employer Nomination Approval Letter' provided to the complainants, the Agent has no knowledge of the letter and *"if such a document does exists, it was fabricated and presented without [his] knowledge ... [he had] nothing to do with the production or advice of such a document"*. [sic]
  - o) The Agent was not included in the legal proceedings occurring in China. Although his name is mentioned in the findings, the court found he was not involved in the matter.
  - p) The Agent's relationship with Mr [SAH] was purely that of an employee/employer during his appointment with Awesome International. In terms of the Agent's associations with AO he was the appointed migration agent (via Awesome International) and he was in *"a token position of director"*. The Agent joined Awesome International in 2010 and in 2012, he was appointed the director of the company as the previous director left.
  - q) The Agent provided immigration assistance pursuant to his agreement with Awesome International. The only other entity he is aware of is [AO Ltd]. The Agent assumes the other entities,<sup>12</sup> are Chinese entities connected to Awesome International, although he has no knowledge of them nor was he employed by them.
11. The Authority made a subsequent request for information from the Agent on 14 February 2018. A response to the request was received on 23 February 2018 by way of email. In summary, in his response the Agent stated:
- r) While he was employed by Awesome International, he recalls that he discussed Ms [DMW]'s case with a staff member named "[E]". He communicated with [E] through social media software in China known as "QQ". The QQ software is no longer used and [E] has since resigned from Awesome International. The Agent has another colleague, [G], with whom he has been in contact. He contacted [G] to verify that the documents sent to him by the Department were on Ms [DMW]'s file. [G] confirmed that the documents were on file and has provided him with screenshots.

---

<sup>12</sup> Refer to footnote 3

- s) During his employment with Awesome International, Mr [SAH] requested to have oversight of all his correspondence. He was asked to create another email address – [xiechaogo@gmail.com](mailto:xiechaogo@gmail.com) to which Mr [SAH] also had access. The email address was then used as the official email address for migration matters by the company.
  - t) Upon his resignation from Awesome International, Mr [SAH] has accessed the email address and had deleted emails relating to Ms [DMW]. [G] has confirmed that there was correspondence relating to Ms [DMW]. As the Agent has not been involved in the company for a number of years and accessing the “QQ” software is difficult, he *“no longer ha[s] access to the bulk of day to day communications [he] had with [his] previous employer or staff working there.”*
  - u) The Agent concedes that his work practices had not been standardised properly while he was employed with Awesome International. The Agent *“should not have compromised with all the requirements made by the company.”* The Agent has since made changes, reflected in his current business practices, where he backs up all his communication (emails and phone calls). He has made himself more acquainted with the Code of Conduct and participates regularly in CPD<sup>13</sup> training sessions. The Agent is committed to learning from his mistakes and experiences to become a more professional and reliable migration agent.
  - v) The Agent apologises for his past mistakes and promises *“to never make the same mistakes in the future”*. As he has been a migration agent for many years he is passionate about the profession.
12. In addition to the Agent’s response to the section 308 notice, and subsequent request, the Agent’s legal representative provided her own submissions. The submissions from the legal representative are at Attachment 1

*Documentation submitted by the Agent in support of his response*

- Submission from the Agent’s Legal Representative, dated 02 January 2018
- Statutory Declaration dated 22 December 2017
- Agreement between [AO Ltd] and Awesome International Group Pty Ltd
- ASIC<sup>14</sup> Extract for Awesome International Group Pty Ltd
- Notice of Decision by the Authority dated 08 February 2016
- Letter of support from [XL]
- Questions sent by the delegate of the Authority to the complainant [translated from English to Chinese]
- Civil judgement from court in China
- Extract of wages from Awesome International Group Pty Ltd
- ASIC extract for Giant Partners Melbourne Pty Ltd
- Messages from clients via ‘WeChat’ Application
- Policy Advice Manual excerpt regarding sanctions
- Client file for [BOA Pty Ltd]
- Client file for [ALE] Pty Ltd
- Staff lists and email addresses for Awesome International Group Pty Ltd

---

<sup>13</sup> Continuing Professional Development

<sup>14</sup> Australian Securities and Investments Commission

**Notice under section 309 of the Act (“the first section 309 notice”)**

13. On 21 June 2018, the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning him, or suspending or cancelling the Agent’s registration under section 303(1) of the Act.
14. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent had engaged in conduct that breached the Agent’s obligations under clauses **2.1, 2.4, 2.8, 2.9, 2.9A, 2.23, 5.2, 5.5, 6.1, 6.4, 7.1, 7.2** and **7.4** of the former Code.
15. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 19 July 2018.

**The Agent’s response to the Authority’s first section 309 notice**

16. On 04 July 2018, the Agent’s legal representative requested an extension, of seven days, in which to provide a response to the first section 309 notice. An extension, until 26 July 2018, was provided on the same day.
17. On 26 July 2018, the Authority received the Agent’s response by way of written submissions, the Agent wanted to provide clarification and his assurance that he has *“not tried to mislead the Authority”*. According to the Agent:
  - a) He wanted to apologise for not addressing the request of the Authority in regards to the information that was sought. He misinterpreted what the Authority had requested.
  - b) Email address [Immi.Awesomergroup@gmail.com](mailto:Immi.Awesomergroup@gmail.com) was not as yet registered, when he submitted Ms [DMW]’s visa application. That email address was registered in September 2014. At the relevant time, he only used email addresses: [grants\\_love@hotmail.com](mailto:grants_love@hotmail.com) and [xiechaogo@gmail.com](mailto:xiechaogo@gmail.com) for lodging Ms [DMW]’s *“first application on 30 June 2016”*<sup>15</sup> and *second application in 09 May 2014”*.
  - c) He thought the Authority was seeking information on his involvement in relation to the fraudulent actions of Mr [SAH]. He reached out to contacts in China to obtain further information about the case to clear his name. Regrettably, he did not realise that the Authority was also enquiring on his overall activity. He apologises if his response was mistakenly perceived as attempting to provide misleading information.
  - d) He has checked all his records and identified ten email accounts that were used during his employment with Awesome International and Giant Partners:

---

<sup>15</sup> The delegate accepts the Agent likely cited an incorrect year – 2016 as opposed to 2013



<a href="mailto:xiechaogo@gmail.com">xiechaogo@gmail.com</a>	<a href="mailto:Immi.awesomegroup@gmail.com">Immi.awesomegroup@gmail.com</a>
<a href="mailto:Grants_love@hotmail.com">Grants_love@hotmail.com</a>	<a href="mailto:giantpartnersmelbourne@gmail.com">giantpartnersmelbourne@gmail.com</a>
<a href="mailto:giantpartnersmelbourne3008@gmail.com">giantpartnersmelbourne3008@gmail.com</a>	<a href="mailto:admin@iasgj.com">admin@iasgj.com</a>
<a href="mailto:grant_immigration@awesomegroup.net">grant_immigration@awesomegroup.net</a>	<a href="mailto:grant.xie@qiangsheng.com.au">grant.xie@qiangsheng.com.au</a>
<a href="mailto:grantx.immi@gmail.com">grantx.immi@gmail.com</a>	<a href="mailto:grant.xie@giantpartners.com.au">grant.xie@giantpartners.com.au</a>

- e) Not all email addresses were used at the same time. Some were used for a period of time before they were replaced with another email address. The email addresses he has provided comprise all the email addresses *“that he used at some point in [his] practice, but if [he should] find any more [he] will inform [the Authority] immediately”*.
- f) Awesome Group (Melbourne) Pty Ltd (**Awesome Melbourne**) was registered in 2012. Mr [SAH] discussed establishing an office in Melbourne where the Agent would have a greater role. However, they were unable to agree on how to manage the business so this idea was abandoned. The business never traded and as such no ABN was registered for the company. It was not until the Authority mentioned this business in the notice that prompted his memory.
- g) The Agent concedes that he continued to use ImmiAccount ‘Awesome88’ and the ‘[immi.awesomegroup@gmail.com](mailto:immi.awesomegroup@gmail.com)’ email address. However, this did not mean *‘...that [he has] a business or ongoing association with Mr [SAH] or Awesome International Group any more after [he] left the business at the end of 2015. The reason [he] still continue[s] to use these accounts is because when [he] set up these accounts, [he] was managing them by [him]self anyway.’* Neither Mr [SAH] nor his staff accessed the accounts.
- h) When the Agent ceased working for Mr [SAH] he set up a WeChat Group with clients for whom he had performed work and advised them that he was the agent who had undertaken the work and that he had left Awesome International and was starting his own business Giant Partners. Some clients continued with him and he decided to use the same accounts as their information was held in those accounts.
- i) The email address<sup>16</sup> was set up to receive communication from the Department. The email address was not used to contact clients directly. Mr [SAH] was more interested in being advised when the work was completed so that he could charge the clients rather than the actual accounts or applications. Mr [SAH] knew of this email address however *“did not ask to access it”*. By the time the Agent left Awesome International *“Mr [SAH] did not ever access this account either. Therefore [the Agent] also decided to keep using this email when [he] started working at Giant Partners”*.
- j) With regards to the email address [xiechaogo@gmail.com](mailto:xiechaogo@gmail.com) the Agent continued to monitor the address after he left Awesome International and changed the password. Mr [SAH] never questioned him on this. *“It seems like he just abandoned these addresses and [the Agent] won’t actually know the complete truth about why he didn’t care about these previous emails addresses any more. [The Agent] suspect[s] that he had already got his staff to set up another account and email to lodge immigration files for new clients and didn’t care about the emails that [the Agent] was using. Occasionally this email is still in use just for the sake of convenience and for allocating and categorising applications.”*

---

<sup>16</sup> [Immi.awesomegroup@gmail.com](mailto:Immi.awesomegroup@gmail.com)

- k) As the passwords for both emails have been changed the Agent is not concerned about them being compromised by Mr [SAH].
- l) The Agent is aware that his decision to maintain the use of these emails and ImmiAccounts is unorthodox, as it gives the appearance he still has an association with his previous employer and previous business, however this is not the case.
- m) *“[The Agent] stopped associating with Mr [SAH] as soon as [he] resigned [his] director status with the company in 2015. [He] did not have confidence in Mr [SAH] anymore and realised how wrong [he] was to have let [himself] agree to the arrangement which prevented [him] from contacting clients directly. [The Agent] had a previous complaint and the [Authority] recommendation asked that [he] leave the company as it was a bad influence for [him]. [The Agent has] a lot of respect for OMARA and would not intentionally deceive or mislead the OMARA.”*
- n) He contacted the clients, via WeChat, for whom he had provided services, as he realised that he was responsible for their files as their migration agent and that it was his obligation to contact them and let them know he would take responsibility if they wanted him to.
- o) He has since created a new email and ImmiAccount and should he be requested by the Authority he will export all his clients’ applications to the new ImmiAccount and update the email address with the Department.
- p) There are seven clients for whom he has listed his organisation as Awesome International Group as these clients signed agreements with Awesome International and not his migration agency. The Agent felt “obligated” to complete their applications for them and did not charge them a fee. According to the Agent he *“wrote in Awesome International Group as the organisation in their applications to differentiate them from the other Giant Partners clients. It was still [his] own MARN which made [him] personally responsible for their files and contained a contact email and details that [he] could be reached on, so [he] did not think it was misleading for the organisation name.”*
- q) It took time to transition away from Awesome International when he began his own business. *“Because of this, the departure could not be completely clean and everything new immediately, but it is true that [he has] kept to [his] commitment to be independent of Mr [SAH] and his companies and influence. The process took a bit of time but by now all of [his] applications have been lodged under the Giant Partners brand.”*
- r) With regards to the certification of documents they would either be posted to him to certify prior to lodgement or would they be handed to him by an Awesome International employee who had travelled to Australia with the documents. Otherwise, when he was in China he would visit the head office and certify the documents. He has the same approach with his own business, where he will either travel to China or request they be sent to him which he would then send back.

- s) *“After the introduction of the online system,<sup>17</sup> [he has] sometimes received colour scan copies. [He] presume[s] them to be authentic if [he has] not certified them personally and lodge them as is. [He] thought that this is an acceptable means for lodging documents, but if [the Authority] still requires that [he] submit all original documents that [he has] personally seen, then [he will] do so.”*
- t) According to the Agent, the applications for Mr [WX] and Ms [DMW] have haunted him for some time. The Agent understands that the Authority *“feels some of the applications [he has] lodged have been vexatious. Especially... the applications lodged for Mr [WX] and for Ms [DMW]... At the time when [he] lodged the application, [the Agent] genuinely thought that it could succeed, because in the past [he] had lodged other applications with other business sponsors where two similar occupations were lodged with the same sponsor around the same time and both were approved.”*
- u) The Agent misjudged the case<sup>18</sup> and should have placed a stronger submission. He heard from his co-worker that Mr [WX] was very upset, upon being advised that his application was unsuccessful. Despite his company policy at the time the Agent *“took an extra step to contact him in [his] own personal time and to try to resolve his issue”*. He was subsequently able to work with Mr [WX] and obtained a successful sponsorship for him.
- v) The Agent has taken care to ensure clients meet the criteria for their visa applications. He would not lodge an application if he did not believe that there was a chance for its success. He has never lodged an application which he expects will fail as he would feel *“guilty and upset for clients every time [his] applications don’t succeed”*. The Agent travelled to China to personally apologise to Ms [DMW] and her father.
- w) Following the applications in respect of Mr [WX] and Ms [DMW] the Agent is more careful *“with positions where two similar positions with the same sponsor have been presented.”* He has realised that over the last two years,<sup>19</sup> very few clients are able to meet the subclass 186 criteria as the rules have become stricter. As such, he now directs more focus to subclasses 188, 888 and 132 visa applications.
- x) With regards to AAT reviews, the Agent indicated that he identifies other options for his clients or re-lodges the application, rather than appealing the decision on account of the delays this causes to his clients.
- y) The Agent has worked as a migration agent for many years, he loves the profession and has a lot of respect for the migration industry. He is remorseful for his past conduct, however has taken action to reform his conduct since he began his own business. If the Authority were to cancel his registration it would affect him and his employees who rely on his business to survive. Additionally, his clients would be affected as they would not understand why he cannot act for them as it would be difficult to explain that it was a result of something he did much earlier in his career.

---

<sup>17</sup> The delegate has taken this to mean the Department’s online visa lodgement system

<sup>18</sup> With regards to Mr [JXJ]’s application

<sup>19</sup> The Agent’s submission is dated 23 July 2018 therefore the past two years is taken to be from 2016 to the time of the statement.

18. In addition to the Agent's response to the first section 309 notice, his legal representative provided her own submissions (see Attachment 2).

*Documentation submitted by the Agent in support of his response to the first Section 309 Notice*

- His statement dated 23 July 2018
- Submissions from his legal representative dated 24 July 2018
- Nominations and Visa approvals for
  - [BW]
  - [YL]
  - [WX]
- Record of responses for [RW]
- Genuine Position statements attached to the nomination applications for:
  - [BW],
  - [YL],
  - [WX] and
  - [XH]
- Extract of *Shi v Migration Agents Authority* - AAT decision
- Extract from PAM<sup>20</sup> – sponsorship accreditation criteria
- ASIC extract for Awesome Group (Melbourne) Pty Ltd
- Evidence of no ABN lodgement
- Insurance Provider Correspondence
- Email resignation date for Awesome International
- Email registration of new ImmiAccount
- Evidence of WeChat group
- Letter from Accountant
- Website extract of Giant Partners
- WeChat promotion of Giant Partners and archival promotions
- Examples of Statements of Services and Fees and Invoices issued to clients and other correspondence with clients
- Reference Letters from current and former clients as well as associates

**CMP- 40441- The Authority**

19. On 08 November 2018, the Authority instigated a concurrent investigation into the Agent's conduct in respect of the Agent's former client Ms [XZ] (**Ms [XZ]**).<sup>21</sup>

20. The Authority considered whether:

- the Agent, while appointed to represent Ms [XZ], provided false and misleading documentation to the Department in relation to the skilled sponsored visa; and
- whether the visa application was refused on the basis of the bogus documentation submitted to the Department.

---

<sup>20</sup> The Department's Procedural Advice Manual

<sup>21</sup> CID: [\*\*\*\*\*]

### *Departmental Records*

21. A review of Departmental records reveal the following:

- a) On 28 February 2014, a subclass 892<sup>22</sup> visa application was lodged with the Department by the Agent, on behalf of Ms [XZ] and her two dependants. The Agent was listed as the appointed registered migration agent for the application.
- b) On 19 June 2014, a request for more information was emailed to the Agent, on behalf of the clients, by the delegate of the Department. A request pertaining to information about the business was made and a response required within 28 days.
- c) On 16 July 2014, the Agent emailed the delegate and advised that the further information had been posted to the Department one day earlier. Forming part of the information provided was a letter from Mr [AL] of [KC] Council, dated 06 December 2013, regarding the inspection of food premises undertaken on 03 December 2013.
- d) On 22 July 2014, due to concerns regarding the receipt of two copies of the same letter, from [KC] Council signed by Mr [AL], while containing variations in the content, the departmental delegate contacted Mr [AL] and sought confirmation as to whether both letters were issued by him.
- e) On 22 August 2014, the departmental delegate wrote to the Agent,<sup>23</sup> as the appointed migration agent, and advised that the Department had received unfavourable information in association with the visa application, in that a ‘bogus document’, within the meaning of Schedule 4 PIC 4020<sup>24</sup> of the Migration Regulations had been provided to the Department.
- f) On 26 November 2014, the departmental delegate refused the visa application on the basis that the client did not meet PIC 4020 and that a ‘bogus document’ had been provided to the Department in support of the visa application.

### ***Notices under section 309 (“the second section 309 notice”) and section 305C (“the section 305C notice”) of the Act***

22. In light of the information before the Authority, in relation to a further visa applicant, the Agent was issued a second notice, pursuant to section 309(2) of the Act, on 14 February 2019. The Authority invited the Agent to provide written submissions on the matter by 15 March 2019. The Agent was also requested to provide associated documentation. Specifically, pursuant to section 305C of the Act, the Agent was to submit:

- The complete client file for Ms [XZ] for visa applications submitted on 28 February 2014 and 23 November 2012.

---

<sup>22</sup> *Business Skills – State/ Territory Sponsored Business Owner*

<sup>23</sup> Via natural justice

<sup>24</sup> *This meaning is the same as that of a Section 5 of the Act “**bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that: (a) purports to have been, but was not, issued in respect of the person; or (b) is counterfeit or has been altered by a person who does not have authority to do so; or (c) was obtained because of a false or misleading statement, whether or not made knowingly.”*

***The Agent's response to the Authority's second section 309 and section 305C notices***

23. On 07 March 2019, the Agent's legal representative, requested an extension of fourteen days, in which to provide a response to the notice and the request issued pursuant to section 305C of the Act. An extension until 29 March 2019 was granted on the same day.
24. On 29 March 2019, the Agent's legal representative, requested a further extension in which to provide a response. On the same day the Authority advised the Agent's legal representative that it would proceed with its investigation, however should further information be submitted, prior to a decision being made, it would be considered.
25. On 01 April 2019, the Authority received the Agent's response by statutory declaration. Further emails in response to the section 305C notice were received on 08 May 2019. In response to the second section 309 notice, the Agent put forward the below points in relation to the two matters put to him.

*In regards to Ms [DMW]*

- a) He *"fully admit[s] that [he] engaged in poor practice while [he was] working with Mr [SAH] in the scope of [his] employment with Awesome International."*
- b) While the Agent never engaged in *"actions that related to the production or fabrication of false documents, [he] understand that [his] association with Mr [SAH] and his associated business is what allowed the previous hardships to have occurred to clients and what enabled [his] previous employer to send fabricated documents to Ms [DMW]"*.
- c) The Agent has since changed his practices and is very apologetic about what occurred to Ms [DMW]. Since starting his own business he has not had any complaints.
- d) His use of the IMMI Account and emails associated with Awesome International is *"an unusual circumstance but [he] can guarantee to [the Authority] that [he] did separate all association from Mr [SAH] and performing any work for Awesome International or for any [other entities]"*.
- e) The Agent goes onto state that *"it is true that [he] was a bit foolish and negligent to keep using the same ImmiAccount and email addresses that [he had] previously used"* on account of convenience as some clients continued to engage his services had their files attached to the ImmiAccount. Despite using the same accounts *"Mr [SAH] did not bother to access them or care much about their usage once [the Agent] resigned"*.
- f) At the time, the Agent was not an experienced agent and he was of the view that his contractual employment obligations outweighed his agent obligations.
- g) In regards to Ms [DMW]'s client file, he *"[is] of the belief that Mr [SAH] might have deleted correspondences in respect of Ms [DMW] that were located in the the [xiechaogo@gmail.com](mailto:xiechaogo@gmail.com) mailing address [sic]."*

- h) *"In relation to documents for Awesome International clients, [he has] maintained some previous documents of [his] own accord but [he] admit[s] [he has] not kept all records of [his] previous clients as [he was] careless and also because [he did] not have access to the Awesome International office any more. [His] access to documents is limited both by [his] admitted poor record-keeping in the past and through conduct engaged in by [his] prior employer".*
- i) He established new company – Awesome Australia – which was separate from Mr [SAH]'s business as Awesome Australia would also provide education consulting overseas along with immigration assistance. He thought that Awesome was a good name therefore he named his own company with Awesome in the title. He also thought it would be easier to attract clients given his association with Awesome International.
- j) Upon his resignation Awesome Australia also ceased to operate. He did not feel he needed to remove himself as the Director nor change the name as he did not think it was necessary to do so. Mr [SAH] was not a part of Awesome Australia therefore in turn he would have no association with him.
- k) He asserts he has had no association with Mr [SAH] since his resignation despite remaining as Director and having access to the Awesome accounts and email addresses.
- l) In terms of a potential finding that he is distancing himself from his obligations and apportioning blame onto a third party the Agent stated that he *"accepts responsibility for the wrong actions that [he] did take, but that [he is] trying to be honest about the true situation, As [he] explained, some of the circumstances appear unusual, but it does not mean it did not happen."*
- m) He was *"wrong in not directly contacting the client Ms [DMW] directly. That is a breach of [his] RMA obligation as [he] believed [his] obligations there were equal to [his] obligations to your employer, which [he] now and since [his] departure from Awesome International, know[s] to be wrong [sic]"*.
- n) As Mr [SAH] had access to his email account, he suspects that Mr [SAH] logged into the account and deleted all or many emails related to Ms [DMW]. The Agent claims this may have been done as a result of him *"delet[ing] traces of evidence relating to Ms [DMW]." According to the Agent, "[i]t only occurred to [him] that the emails were missing when the present complaint was first brought to [his] attention on 30 November 2017 and [he] accessed the emails to look for Ms [DMW]'s correspondences."* Mr [SAH] was the only other person who had access to the account after his departure.
- o) He *"did change [his] password after [his] departure but did not realise emails were deleted until [he] accessed the emails after [he] received the notice of Ms [DMW]'s complaint."*
- p) *"In [his] previous statement it seems the phrasing may have been confusing as it may appear as though what [he was] saying was that Mr [SAH] deleted the emails after [he] departed. However what [he] had meant to say was that [he] found out after resigning that Mr [SAH] had deleted the emails. [He] found this out when [he] tried to access them."*

- q) He retained some copies of Ms [DMW]'s documents and kept them where they could be privately accessed by the Agent while he was at Awesome International. He did not do this for all files. *"In particular, [his] issue was that [he] did not make enough effort to keep record of correspondences".*
- r) According to the Agent, he has disassociated himself from Mr [SAH] and has provided documentation to support his claims as well as conceding to his wrong doings. *"[He has] admitted to poor business practice and not maintaining proper records. [He has] admitted to being lax with [his] registrations and making a clean cut from [his] previous employment in terms of email contact addresses and usage of IMMI Account."*

*In regards to Ms [XZ]*

- s) Ms [XZ] attended his offices to provide her documents as she did not know how to use computers and text messages were likewise rare. Everything was delivered by hand or the Agent would collect them from the restaurant.
- t) He was also provided with documents by Ms [XZ]'s business partner Mr [JX] and his wife MRs [TX].
- u) The initial 892 visa application for Ms [XZ] was lodged in November 2012. However, it was later identified that the company taxes had not been adequately paid and as a result the visa application was withdrawn. A second application was lodged in 2014, during the processing of the application the Agent spoke with Ms [XZ] as well as Mr and Mrs [TX] to assist in the collection of documents as required by the Department for the application. The documents were prepared by her business partners and other Chinese speaking employees. The Agent was asked by the client to contact Mr and Mrs [TX] directly when he had information.
- v) *"When the natural justice letter was received by [the Agent], [he] informed and Mr [JX] right away."* The Agent agrees that a response was provided to the Department within an hour of the request being made by the delegate. He was able to provide a quick response as he had obtained details from Ms [XZ] as to the course of action to take in regards to the request from the Department.
- w) According to the Agent, he *"...can state for a fact that [he] did not fabricate the document from Mr [AL]...All documents [that he] lodged would have been received from Ms [XZ] or her business partner Mr [JX]"*. Further, the Agent notes *"that the second Council document was submitted earlier than that – it was posted before 16 July 2014 in response to the request for information dated 19 June 2014"*. He states that Ms [XZ] would have obtained the second letter prior to her Departure and in turn provided it to him.



- x) He is unable to verify whether or not Ms [XZ] attended the council's office and obtained the letter from Mr [AL]. The decision record indicates that the letter is false. *"As to the allegation that the inference must be drawn that it had to have been [the Agent] who could fabricate such a false document, [he] believes that is an unfair accusation...The clients themselves would have contacted other external professionals and other business associates in the course of running their business. [He] would receive documents given to [him] by [his] clients, either Ms [XZ] and Mr [JX], and if the documents appeared to be legitimate, then [he] presumed that they were"*.
- y) He had no reason to believe that the document received from Mr [AL] was false or misleading or a bogus document. The clients assured him that the document was legitimate and he submitted the document, on this basis, to the Department.
- z) *"Even if the document itself was actually a false document that was provided to [him] by [his] clients, [he] must advise that [his] reliance on it does not necessarily indicate that [he was] complicit in providing false or misleading information. [He has] taken [his] client on their word that the document was real. [He does not] want to make accusations that a false document might be fabricated by [his] client or someone else, but [he] can assure OMARA that [he] never fabricated a document."*
- aa) The Agent contends that he was not the only person who knew about Ms [XZ]'s matters with her business and immigration. He considers that Mr [AL] may have agreed to issue an updated document, this has previously occurred in other cases. *"Such a document could still be considered a genuine document and because it has the council logo and the health inspector's signature."* As there was not much difference between the first and second letter there was more reason to believe that the letter was genuine.
- bb) According to the Agent, Ms [XZ] advised him that she asked Mr [AL] to verify the letter. She was not however able to provide evidence to substantiate her claims. She instead provided a statutory declaration outlining what had occurred.
- cc) The Agent's appeal to the natural justice letter was informal and he agreed that a more formal response to the matter should have been provided. However, he was emotionally invested in the client's matter and therefore a more personal response was provided.
- dd) He assisted Ms [XZ] as best as he could considering the matters. He advised Ms [XZ] to withdraw the matter however she decided to proceed with the application. When it was decided by the Department, he assisted her in finding a lawyer to assist with the AAT matter. The AAT matter was also unsuccessful and Ms [XZ] approached him after it was all finalised and apologised. He continues to keep in contact with her.
- ee) He does not hold any documents for Ms [XZ] apart from those which he provided to support his submission.
- ff) He has made significant improvements to his practices since his departure from Awesome International.

*Documentation submitted by the Agent in support of his response to the second section 309 notice*

- The Agent's Statutory Declaration dated 01 April 2019
- Submissions from the Agent's legal representative dated 01 April 2019 (Attachment 3)
- Documentation obtained through FOI in relation to Ms [XZ] to supplement his client file.

**CMP- 45331 – Ms [OLL]**

26. On 27 June 2019, a further complaint was received about the Agent's conduct from Mr [RW2] (**Mr [RW2]**) submitted on behalf of Ms [OLL] (**Ms [OLL]**).

27. Ms [OLL] alleged the following:

- She entered into an agreement with the Agent and a person she referred to as the "delegate" by the name of Mr [JT] (**Mr [JT]**).
- Neither the Agent nor Mr [JT] provided Ms [OLL] with any of the following documentation:
  - Consumer Guide
  - Copy of the State nomination application
  - Copy of the State nomination business proposal
  - Statement of Service
  - Receipts for payment.
- Neither the Agent nor Mr [JT] advised Ms [OLL] on any of the details contained within the above documents. The Agent sought information from her (verbally) which the Agent appears to have used to prepare and submit the information on her behalf with the Queensland State Government.
- She decided that she did not want to continue with the application after she received a blank Form 956 which she was expected to sign. She refused to sign a blank form.
- Ms [OLL] claimed that when she advised Mr [JT] that she was terminating the services, both the Agent and Mr [JT] refused to provide any information to her about her applications, including the log in details for the Expression of Interest (**EOI**) application.
- She had paid the Agent in advance for lodging a visa application however she withdrew the Agent's services before the Agent provided this service.
- She had not been issued with any receipts for the payments she made, nor a statement of service outlining the work that was completed.
- Despite her requests she has not received a refund for the services which the Agent did not perform.

*Departmental Records*

28. Departmental records confirm that no applications were lodged by the Agent on behalf of Ms [OLL].

### **Request for Information**

29. On 15 December 2021,<sup>25</sup> the Authority wrote to the Agent and sought confirmation that his legal representative was still appointed in regards to the matters before the Authority.
30. On 20 December 2021, the Agent's legal representative wrote to the Authority and confirmed she was still acting on the Agent's behalf in relation to the complaint matters. A statement made by the Agent dated 16 December 2021 was attached to the email. In summary, the Agent stated:
- a) Given the passage of time he has provided a statement to update the Authority on the changes and improvements that have been made in his migration career.
  - b) Mr Mr [JC] (**Mr [JC]**) has been appointed as a legal practitioner to work with the Agent's migration agency. The Agent has worked closely with Mr [JC] particularly in areas of compliance relating to ethical obligations, practice management and business operations. Mr [JC] will guide the Agent in ensuring that he is complying with the Code of Conduct.<sup>26</sup> The following changes have been made:
    - i. A separate file for each client's case has been created that houses service contracts, communication records, forms and materials as well as emails with the Department. The record holdings are held on a USB<sup>27</sup> and also Dropbox.<sup>28</sup>
    - ii. The Agent tries his "*best*" to have all the communication in written form which can be retained and he reviews the "*authenticity*" of each client's documents and emphasises the consequences of providing false information. All clients are asked to provide a statement advising documents are true and correct. The client has access to the Dropbox in which to upload and review documents pertaining to their application.
    - iii. The Agent has ensured that employees who are not registered migration agents are not providing visa consultation and assistance and are only responsible for administrative tasks.
    - iv. The Agent has "*repeatedly taken steps to ensure that all connections with third parties including Awesome Group have been severed.*" Giant Partners continues to review and check business practices ensuring prior Awesome Group connections have been severed, including the use of the email address, ImmiAccounts and companies that were not established by Giant Partners or the Agent.
    - v. The Agent has taken "*all efforts to ensure that all clients are aware that they are dealing with [him and his] business Giant Partners Melbourne Pty Ltd, as an entirely separate business with no association with any other group such as Awesome Group.*"

---

<sup>25</sup>Due to the significant period of time that had passed between the last communication between the Authority and the Agent

<sup>26</sup> Given the date the statement was made by the Agent this is referring to the former Code.

<sup>27</sup> Universal Serial Bus a portable storage device

<sup>28</sup> A file hosting service

- vi. The Agent admits he was careless in using the accounts that were set up for Awesome Group despite no longer working for the business. He has rectified his practice and believes he has severed all connection to Awesome Group. He *“did not intentionally mislead OMARA and [he] genuinely did disassociate from Mr [SAH] and Awesome Group when [he] left the company in December 2015.”* From that point he had no further dealings with the company or Mr [SAH].
  - vii. The Agent accepts that his practices were not appropriate and that he should have known better and not retained the same contact details as those utilised during his employment with Awesome Group.
  - viii. He has continued to educate himself as a registered migration agent and has attended regular CPD sessions. He has also reviewed sanction decisions made by the Authority and has summarised the content of the violations and reasons for the decisions so as to avoid making the same mistakes as those agents.
- c) The Agent has continuously tried to improve his practice and address any short comings – specifically his communication, record keeping and taking accountability for his office. He has narrowed his practice to enable him to provide proficient assistance in specific visa subclasses, which are directed at the Business Innovation and Investment scheme.
- d) During the last two years he has delivered on a number of applications where most were approved and he is confident on a positive outcome for those currently before the Department. A majority of the clientele are from Hong Kong who are generally highly skilled and provide credible documents.
- e) Most clients have been pleased with the Agent’s services which in turn give him motivation and confidence. He believes he can conduct his practice professionally within the migration advice industry and has the ability to satisfy his obligations to clients.
- f) With regards to his character, he has lived and worked in Australia for many years and to the best of his knowledge there is no illegal, dishonest or professional misconduct that he has engaged in or been accused of or is currently under investigation. He has submitted letters of recommendation to the Authority previously.
- g) Despite the COVID-19 pandemic affecting his income, the Agent has been fortunate to have had former clients recommend him to other clients allowing him to remain in business.
- h) There have also been personal changes in his life and he is currently an important source of income for his family which is creating unprecedented pressure.
- i) The Agent would like the Authority to consider the impact a decision would have on him as this is the only profession he can engage in. He now runs a respectable business and manages a number of employees with a large cohort of clients all of whom would be impacted if he is unable to practice.

- j) The Agent hopes that the Authority has seen from his responses that *“even though there are certain allegations that [he] needed to try to clarify because [he] did not believe them to be correct, [he has] also acknowledged as much as possible the areas where [he] was deficient and [took] significant efforts to improve [his] practice in recent years.”* He is open to accepting any directions from the Authority.
- k) Since establishing his own company he has not received any complaints from any client. He believes he does not pose any risk to client’s that would require his registration to be suspended or cancelled. The Agent would like the Authority to consider his case carefully and would be truly grateful if he were able to continue with his practice.

*Documentation submitted in support of his response*

- Statement made by the Agent dated 16 December 2021
- Screenshot of Mr [JC] credentials
- Birth certificates for the Agent’s children
- Extract of a Tax Return for the Agent’s spouse
- Sample of Dropbox client record keeping system
- Record of visa applications submitted and outcomes for 2019-2021
- Profit and Loss statement for Giant Partners

***Notices under section 309 (“the third section 309 notice”) and section 305C (“the second section 305C notice”) of the Act***

31. In light of the additional complaint, received after the second section 309 notice was issued, a supplementary third notice was issued to the Agent pursuant to section 309 of the Act on 21 December 2021. The Authority invited the Agent to provide written submissions on the matter by 01 February 2022. The Agent was also requested to provide client files related to Ms [OLL] pursuant to section 305C of the Act.

***The Agent’s response to the Authority’s third section 309 notice and second 305C notice***

32. On 26 January 2022, the Agent’s legal representative requested an extension of fourteen days in which to provide a response. On 01 February 2022, the Authority advised that an extension until 16 February 2022 was granted.
33. On 07 February 2022, the Agent’s legal representative contacted the Authority and advised that she was no longer acting for the Agent and that all correspondence be sent to him directly.
34. On 07 February 2022, the Authority received the Agent’s submissions by written argument (dated 05 February 2022). A further email and one attachment was received on 09 February 2022. The Agent advised the below outlined:

- a) Mr [JT] was introduced to the Agent through a friend from Hong Kong. He had studied in Australia and was a Certified Public Accountant (CPA) and has engaged in accounting and financial services in Hong Kong. Many of Mr [JT]'s clients were seeking to leave Hong Kong and immigrate to other countries, Australia being one. Mr [JT] reached out to registered migration agents to assist with his client enquiries. Mr [JT] travelled to Australia in 2018 and a “*cooperation agreement*” was signed with the Agent.
- b) The Agent stated: *“In view of my previous lessons learnt, our cooperation agreement [was] made very specific. The service of my company and I starts from helping clients submit visas to getting the application results. Also, each client needs to sign a service a contract individually with me, the representative of Giant partners Melbourne Pty Ltd. At the same time, we will provide necessary free assistance to Mr [JT], including training on new policies and code of conduct. Before the visa application process starts, I do not charge any fees to the client, and the settlement will be made only after the visa is approved. If the visa was refused or the case was withdrawn, I will not charge any fees.”*
- c) Ms [OLL] was one of their earlier clients. She was in Hong Kong and was used to communicating in Cantonese and sought more contact with Mr [JT]. However, according to the cooperation agreement with Mr [JT], all communications had to be shared with the Agent. The Agent gave clear instructions to Mr [JT] that no matter what he sent to the client the Agent was to be informed. The Agent conceded that they did apply for the EOI and Queensland State Government Nomination for the client. The account used to apply for the EOI could be directly transferred to the client, after they were invited, and the client was aware of this.
- d) After the Agent completed the application form for the Queensland nomination it was sent to Mr [JT] to provide to the client and obtain her signature. According to the Agent, *“she also stated that she knew the information on the application form that I was the migration agent to lodge the application. In other words, she knew that I submitted the application for nomination, and she was aware of all the contents of the form, including the agent’s contact information.”*
- e) The state government also copied the notice to the client therefore she was “*fully informed*” of the entire application. “*Debit notices*” were also posted to the client by Mr [JT] for his charges *“as well as the receipt of the nomination application fee to the clients’ company address.”*
- f) When the client decided not to go ahead with the application Mr [JT] negotiated with the client and provided the client a partial refund of the fee. *“The client signed a disclaimer agreement, which confirmed that neither Mr [JT] nor [the Agent] will have any disputes over costs with her.”* The EOI login and password were provided to the client as requested.
- g) If the client had any questions or needed further information, she had the Agent’s and Mr [JT]’s contact details and could have contacted them directly at any point. However, when the client was advised that the partial refund had been paid no further contact was made by the client.

- h) With regards to the blank Form 956 *“it is true that we did not pay enough attention at that time”* however no information was purposely held back *“the list that was sent was based upon the officer version of the material checklist”*. Mr [JT] provided the client with the Dropbox account and requested that the client upload information to it and confirm that the information that was required to be submitted and that had been uploaded by her was correct.
- i) When the client decided not to continue with the application she deleted the folder herself. The Agent has communication with the client in the form of WhatsApp, WeChat and emails that show that he confirmed at every step in the application process with the client. Mr [JT] conveyed the messages to the client and provided the clients responses.
- j) His contact information was provided to the client, however he thought the client did not wish to contact him directly. There is no reason to believe that Mr [JT] prevented the client from contacting the Agent as he sent the Agent’s contact details onto the client.
- k) *“According to the content of the agreement between [Mr [JT]] and [the Agent], each visa application client needs to sign a separate service agreement with [the Agent], the representative of Giant Partners Melbourne Pty Ltd ...The fees and payment process are stated in the fully compliant contracts.”* The agreement between Mr [JT] and the client states that *“the overall cost includes the cost of the migration agent”*.
- l) The client did not sign a service agreement with the Agent as she did not confirm the *“entrustment relationship”* for the visa application.
- m) The complainant’s current registered migration agent Mr [RW2] contacted Mr [JT] twice to form a relationship as they were both working from Hong Kong. Mr [JT] refused to participate in such a relationship. Mr [JT] then discovered that Mr [RW2] was defaming him in some Hong Kong social groups. *“These attacks include indirectly attacking him by making complaints about [the Agent], by making statements that are not true and ignoring some of the facts. Otherwise, [he has] no idea why the client would complaint about [him] several months later, given that she had signed the disclaimer agreement and had many avenues to communicate with us previously. ”*
- n) He admits that in Ms [OLL]’s case he *“did not contact the client directly and proactively, and [he] did not insist on having to contact the client directly. [He] did not give the client a consumer guide and explain [his] company’s billing process in detail at the same time when Mr [JT] signed the contract with the client. A completed Form 956 was not provided to the client as soon as the contract was confirmed. [He] sincerely apologize[s] to the authority for the above facts”* he is willing to also apologise to the complainant in person.

- o) As with his previous response, the Agent stated he would undertake case studies of the OMARA disciplinary decisions. He identified a case<sup>29</sup> that may potentially be a connection to his complaint. There are numerous similarities between that case and his own which support his earlier statements that he disengaged from Mr [SAH] in December 2015 as this decision states that Mr [SAH] was looking for an agent to work for him around December 2015.
- p) In relation to why so many applications were lodged where the position was found to be non-genuine, the Agent stated that this was on account of the Department changing its policy and cutting *“200 positions on the original occupation list by more than half...Most of the rejected applications [he] submitted were basically positions that were cut after the policy change”* that occurred in May 2018. At the time, there were mass refusals not just in relation to his caseload but other agents experienced the same as case officers were of the view the positions were not genuine.
- q) There were other policy changes that were implemented and the Agent noted that given the Authority is part of the Department, it should be in a position to confirm the data and statistics. He does not *“deny that [he has] not done enough detail in some applications, but [he] feels it is unfair to judge [him] personally based on some data. If the Authority wants to investigate this, it should be based on the overall situation of a time period, and should not be directed at [him] personally.”* [sic]
- r) In relation to Ms [XZ]’s matter. Ms [XZ] has identified the source of the fraudulent document as a person who used to *‘live in her house and help her with her accounting matters’*.
- s) The Agent outlined that he now has legal counsel - a lawyer by the name of Mr [JC] for his business. Mr [JC] is to provide the Agent with ways to improve his business.
- t) His cooperation agreement with Mr [JT] has also changed in that Mr [JT] now acts as an *“introducer”* and *“the immigration service contract is signed in the name of Giant Partner company”* where Mr [JT] is paid a referral fee.
- u) The Agent stated: *“To be honest, it is very difficult for most migration agents to immediately meet the professional ethics of qualified lawyer after only passing a one-year course and tests and taking CPD course every year. In this regards, [he thinks] it is necessary to allow [them] to learn from [their] work experience and mistakes and to appoint a special legal counsel to supervise [an agent’s] work.”* He is determined to do better and *“become more perfect and more worthy of the trust of all clients.”*

---

<sup>29</sup> Ms Kathy Liu



- v) Since receiving the notices from the Authority his stress has accumulated along with the long term lockdown he has trouble sleeping at night. He is not trying to be pitiful as he *“indeed”* is at fault in all events. However, he is determined to make changes. He has told himself that should other complaints come to his attention it will show that he is not suitable to remain in the migration advice professional and he will leave it. If he is provided with another opportunity by the Authority *“[he] will definitely cherish it, and as [he] said, [he] will never make such mistakes again”*.
- w) He is willing to accept the “punishment” issued to him by the Authority however regardless of the outcome, he has *“learned the biggest lesson in [his] career from the past four years.”*

*Documentation submitted by the Agent in support of his response to the third section 309 notice and the section 305C notice*

- His statement dated 05 February 2022
- A statement from Mr [JT] dated 07 February 2022
- An anonymised disciplinary decision in respect of Ms Kathy Liu
- A zip folder titled ‘Evidence of Improvement’ containing numerous documents
- Email correspondence between Mr [JT] and the complainant.

## **JURISDICTION**

35. The Authority performs the functions prescribed under section 316 of the Act.
36. The functions and powers of the Authority under Part 3 of the Act and Agents Regulations are the functions and powers of the Minister. The Minister has delegated the powers under Part 3 of the Act and the Agents Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.

### ***Relevant Legislation***

37. 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)).
38. The Authority may decide to cancel the registration of a registered migration agent by removing his or her name from the register, or suspend his or her registration, or caution him or her under subsection 303(1), if it is satisfied that:
- the agent's application for registration was known by the agent to be false or misleading in a material particular (paragraph 303(1)(d); or
  - the agent becomes bankrupt (paragraph 303(1)(e); or
  - the agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance (paragraph 303(1)(f); or
  - an individual [related by employment](#) to the agent is not a person of integrity (paragraph 303(1)(g); or
  - the agent has not complied with the former Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
39. Subsection 314(2) of the Act provides that a registered migration agent must conduct himself or herself in accordance with the Code. The *Migration (Migration Agents Code of Conduct) Regulations 2021* is the Code prescribed for the purposes of subsection 314(1) of the Act.
40. The Code of Conduct for registered migration agents in force at the time of these three complaints was the Code of Conduct current from 18 April 2017. On 1 March 2022 the current Code of Conduct replaced the April 2017 Code. It is an instrument made under the Migration Act 1958: the Migration (Agents Code of Conduct) Regulations 2021.
41. Before making a decision under subsection 303(1) of the Act, the Authority must give the agent written notice under subsection 309(2) informing the agent of that fact and the reasons for it, and inviting the agent to make a submission on the matter.

## *Migration Act 1958 (Cth)*

### *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 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, 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.*

***The Code of Conduct, under section 314 of the Act***

***Division 2 of Part 1 of the Code provides that the purpose of the Code is to:***

- protect clients of migration agents; and
- strengthen the integrity of the immigration advice industry and Australia's immigration system.

Division 2 further provides that the Code is not an exhaustive statement of the duties of migration agents under Commonwealth law.

***Migration Agents Regulations 1998, regulation 9***

***Complaints***

*For paragraphs 316 (c) and (e) of the Act, any person or body may make a complaint, including:*

- (a) *a client of the registered migration agent or lawyer;*
- (b) *an official;*
- (c) *an employee or member of the Institute;*
- (d) *an employee of the Authority;*
- (e) *a parliamentarian;*
- (f) *a tribunal or court;*
- (g) *a community organisation;*
- (h) *the Department.*

**EVIDENCE AND OTHER MATERIAL**

42. In reaching the following findings of fact the Authority considered the following evidence:

- Documentation contained in the Authority's complaint files for CMP-31042; CMP-40441 and CMP-45331;
- Information held on departmental records in relation to the matters raised in the complaints;
- Information held by the Authority in relation to the Agent; and
- The supporting documentation provided by the Agent in response to the Section 308, Section 309 and Section 305C notices.

## **DECISION AND REASONS**

### ***Finding on material questions of fact***

43. The meaning of ‘client’ is set out in the *Migration Agents Regulations 1998* (Cth) 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.*

44. Section 276(1) of the Act defines the term “immigration assistance” as follows:

*[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;*
- (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.*

45. Sections 276(2), 276(2A), 276(3) and 276(4) of the Act also contribute to the meaning of “immigration assistance”.

46. A Registered Migration Agent (RMA) is expected to act in accordance with the law and the legitimate interests of their client/s and to deal with their client/s competently, diligently and fairly. Ms [DMW] and her family engaged the services of Awesome International, through AO, to prepare and lodge a subclass 121 visa application. The Agent was the appointed migration agent for Awesome International working from Australia. The Agent confirmed that he provided immigration assistance to the complainant. In his response to the section 308 notice, the Agent stated that his role was to review and, when satisfied, lodge a visa application and nomination on behalf of the complainant and the nominators. Where further information was required he would contact the Chinese entity and request that the necessary information be provided.

47. According to departmental records, and outlined earlier in this decision, the Agent was the appointed migration agent for Ms [XZ] in relation to the application that was before the Department. Furthermore, during the time that he had provided Ms [XZ] with immigration assistance he was employed by Awesome International.

48. According to Ms [OLL]'s account, she engaged the services of [WC] Ltd (**WC Ltd**) to prepare and lodge a nomination and visa application. [WC] Ltd advised Ms [OLL] that they work with a number of registered migration agents based in Australia. She was advised that the appointed migration agent would lodge the relevant applications with the Queensland State Government and subsequently the Department. To support her claims and her service engagement through [WC] Ltd, Ms [OLL] provided a service agreement issued to her by the [WC] Ltd. The agreement outlines that Giant Partners and [WA] Pty Ltd (**WA Pty Ltd**) were included as parties to the agreement along with [WC] Ltd in China. Ms [OLL] has also provided a completed Queensland State Nomination EOI Application form to the Authority. The EOI application form included a section titled 'Migration Agent Information' where the Agent's details were populated including his name, business name and address, and the Agent's MARN. The Agent, in his response to the third section 309, confirmed that he had lodged the EOI application form with the Queensland State Government. The Agent has not contested that a client-agent relationship was entered into with Ms [OLL].
49. On the basis of the above discussed, the responses provided to specific questions put forward by the Authority, as well as the client files provided in response to the section 308 and 309 notices, I am satisfied that clients sought immigration assistance from the Agent, with regards to their respective visa applications. Furthermore, the Agent was declared as the representative migration agent in association with a number of such applications and departmental records indicate that he had communicated with the Department on the clients behalf. With regards to Ms [OLL], I am satisfied that the Agent entered into a client agent relationship with Ms [OLL] on the basis of the EOI form.
50. I am therefore satisfied that the Agent was engaged to provide immigration assistance to all three applicants and that he had established a client agent relationship with them and therefore owed them obligations specified under the Code.

***Arrangements entered into served as enabler of fraud***

*Creation and dissemination of fraudulent documents*

*In respect of Ms [DMW]*

51. Ms [DMW] alleged that she had not been provided with any updates for five (5) years in respect to her immigration matters. She added that upon requesting an update from Mr [SAH], the Agent's then employer, she was advised that the Department had approved her sponsorship and that she could attend the office to discuss the matter. According to Ms [DMW], as she was unable to attend herself she sent a family member to attend the Awesome International office on her behalf.<sup>30</sup> On 13 May 2016, Mr [SAH] allegedly presented the family member an approval letter purportedly issued by the Department on 15 March 2016. Ms [DMW] stated that her family member requested a copy of the letter, albeit was advised that one would not be provided. However, the family member was permitted to take a photograph of the document.

---

<sup>30</sup> Awesome International's China Office

52. Mr [SAH]'s reluctance to provide her with a copy of the aforementioned letter raised concerns for Ms [DMW] on the authenticity of the document. On account of these concerns, she authorised Ms [GC] (Ms GC) to discuss aspects of the letter with the Department. A departmental officer determined that no correspondence had been sent to Ms [DMW] by the Department on the 15 March 2016.
53. This matter was put to the Agent for comment in the section 308 notice. In response, the Agent stated that he had already resigned as Director from Awesome International, at the time the document was purported to have been created, and had ceased all communication with Mr [SAH]. Moreover, that he was in no way involved in the creation of this document. Australian Securities and Investments Commission (**ASIC**) documentation supports the contention that the Agent resigned as Director from Awesome International on 1 December 2015, but this is not to say that he had ceased his association, employment or otherwise, with either Mr [SAH] or Awesome International.
54. The Agent's legal representative provided a submission in which she stated that any "*documents that may have been fabricated or falsified were done so without [the Agent's] knowledge or involvement.*" Furthermore, that the Agent did not provide such a document to the complainant or a member of the family. To support the claims, a decision handed down by the People's Court in Fuzhou China on 22 September 2017 was provided in relation to the matter. The Agent's legal representative stated that the Agent was only included in the court matter as he was the appointed migration agent in Australia. While the Agent argued that the court accepted he was not involved in the fabrication or falsification of any document, and was only mentioned as the offshore (Australian) migration agent, this did not appear to be a finding of the court. In respect of the document, as relevant, the judgement merely mentioned that the Department did not issue any letter to '*[DMW] or her immigration agent, Xie Chao, on 15 March 2016*'. The judgement also reflected Mr [SAH]'s argument that the nomination approval was sent to '[C]'. For completeness, there is no information before the Authority to positively identify '[C]'. However, it is not evident to the Authority where in the judgement the court had accepted that the Agent was not involved in the fraud.
55. Significantly, the court decision<sup>31</sup> revealed that an 'Additional Agreement' and 'Payment Procedures of Visa Application' was entered into by the visa applicants on the same day the primary agreement was signed<sup>32</sup> which altered the primary agreement in respect of payments and refunds. More specifically, where the visa applicants were instructed to transfer the fees into Mr [SAH]'s personal account. Two transfers<sup>33</sup> were made into the personal account which amounted to 747,200 RMB.<sup>34</sup>

---

<sup>31</sup> Translated by a NAATI accredited translator

<sup>32</sup> 29 September 2011

<sup>33</sup> 29 September 2011 and 12 October 2012

<sup>34</sup> An average exchange rate of 0.15 in 2011 would equate to 112,000 AUD

56. The 'Payment Procedures' outlined that the parties agreed that a total of AUD 130,000 plus 50,000 RMB was to be paid – which included:
- AUD 110,000 plus 60,000 RMB (Australian employer fee)
  - 30,000 RMB advertising fee of Australian employer
  - AUD 20,000 plus 50,000 RMB (overseas lawyer fee)
  - 60,000 RMB agency fee
  - 3,000 RMB application fee
57. Notably, in the event that the nomination was not approved, aside from the 3,000 RMB application fee, all the remaining fees were to be refunded. The Agent's legal representative did not dispute that the Agent provided immigration assistance to Ms [DMW]. Consequently, it appears reasonable to assume that the 'overseas lawyer fee' can be attributed to the Agent, who was mentioned within the court judgement. In her submission, the Agent's legal representative argued that there was no reason for the Agent to create such a document as nothing would be gained from doing so. Further, that the document was created at a time when the Agent *"had ceased all associations with that company"*. However, the refund provisions would indicate that the Agent did stand to gain if Ms [DMW] was misled to believe that the nomination was approved, as she would not be entitled to a refund. Whether or not the Agent had in fact ceased *'all associations'* at the relevant time is discussed further in this decision.
58. In consideration of the evidence before me, I am unable to make a finding on the level of the Agent's involvement in the fabrication of the fraudulent grant letter, purportedly issued by the Department, which was presented to Ms [DMW]'s family member by staff of Awesome International in China. However, I am satisfied that if not for the Agent's willingness to enter into such an arrangement with Mr [SAH], the opportunity to engage in the fraud may have been averted or at least mitigated to a significant degree. Moreover, I am of the opinion that the Agent not only contributed to a circumstance which enabled fraud to occur but that it facilitated a situation which gave rise to an opportunity where payments were sought for a visa outcome, indicative from the detail reflected in the 'Payment Procedures' document. Further, according to the decision of the court, on 22 December 2016, Fuzhou City listed the Chinese Entity in a catalogue of enterprises with irregular operations as it was *'not approachable with the address or operation location registered'*. This transpired six days after the lawsuit was filed.

*In respect of Ms [XZ]*

59. Following the investigation into Ms [DMW]'s case, the Authority identified a further visa application where the Agent was appointed and where concerns were raised about the submission of fraudulent information to the Department on behalf of Ms [XZ].



60. The Department requested further information from Ms [XZ] in association with her visa application on 19 June 2014. One of the documents the Agent provided to the Department, in response to the request, was a letter from [KC] Council (the Council) dated 06 December 2013. However, the departmental delegate identified that such a document had already been provided with the visa application. The first letter provided to the Department was addressed to 'Dear Sir/Madam' and signed by Mr [AL]. The second letter, also dated 06 December 2013, provided by the Agent in response to the request for further information of June 2014, was addressed 'Dear Ms [XZ]' and was also signed by Mr [AL] - however the signature appeared to be different to that of the first.
61. Consistent with the provisions of natural justice, the Department sent a letter to the Agent (on behalf of the applicant) on 22 August 2014 advising of the discrepancy and inviting the applicant to comment on the adverse information within 28 days. The letter highlighted that there was evidence to suggest that a bogus<sup>35</sup> document was provided in support of the application. Within an hour of the email being sent a response was received from the Agent. The Agent stated that Ms [XZ] had attended the Council's offices in person and requested that the letter be re-issued so that it was addressed specifically to her. Ms [XZ] was offshore at the time the request for further information was emailed by the Department and had been so since 24 July 2014.<sup>36</sup>
62. Given Ms [XZ] engaged the Agent to assist with her application, I am satisfied that she did not have a working knowledge of migration law and procedure. Moreover, according to the Agent, in his response to the second 309 notice,<sup>37</sup> Ms [XZ] did not know how to use computers and rarely communicated through text message. Consequently, all the documentation was either delivered to him by hand or the Agent would collect it from the restaurant. It therefore appears unlikely that the applicant would visit the Council premises, of her own accord, requesting changes be made to the first document, which resulted in the second, in order to provide the document to the Agent so that he could submit it to the Department in response to the June 2014 request. Nor does she appear to have the characteristics of a person who would have the capacity, or know how, to identify what was required from the Council in order to make the alterations.
63. The Department contacted Mr [AL]<sup>38</sup> to discuss the two letters.<sup>39</sup> Mr [AL] confirmed that the Council had no evidence before it to indicate that the second letter addressed to Ms [XZ] was issued by him or the Council. Mr [AL] also made remarks that the signature on the second letter did not appear to be his (discussed in the visa delegate's decision record). On 26 November 2014, the Department refused to grant Ms [XZ] a visa on the basis that a bogus document had been submitted to, and received by, the Department.

---

<sup>35</sup> Refer to footnote 23

<sup>36</sup> Ms [XZ] did not return to Australia until 24 September 2014

<sup>37</sup> Agent's statutory declaration dated 1 April 2019

<sup>38</sup> Representative of [KC] Council

<sup>39</sup> CLD20XX/XXXXX

64. The decision record noted:

*Mr [AL], the signatory of the letters, confirmed that the Inspection Food premises report addressing you as 'Dear Sir/Madam' had been issued by him on 06/12/2013 and also confirmed that the council had a copy of this letter on file. However, Mr [AL] had confirmed that there is no evidence with the council on file that the Inspection Food premises report addressing you as 'Dear [XZ]' also dated 06/12/2013 has been issued by him. Mr [AL] had further concerns that the signature on this document might not be his.*

65. The Agent's correspondence to the Department on 22 August 2014 maintained that Ms [XZ] visited the Council requesting the change to the document. This would necessarily need to have transpired from the time the first letter was issued by the Council in December 2013 and before the Agent submitted the second document in July 2014. However, Ms [XZ], in her testimony at the AAT in April 2016, stated that she was of the view that the Agent created the second council letter. Furthermore, that it was only when concerns were raised by the Department that the Agent asked her to go to the Council (with both letters) upon her return from China, which she did. Ms [XZ] returned from China on 24 September 2014 so any visit to the Council does not appear to have transpired before the second letter was submitted to the Department.
66. According to Ms [XZ]'s statement she went to the Council, accompanied by her business partner's wife, and they spoke to Mr [AL] who indicated that the signature on the second letter was not his and the letter was not issued by the Council. Following the visit, she went back to see the Agent where he composed a document which she signed.<sup>40</sup> According to Ms [XZ], while she did sign the document, referred to as the 'Letter of Explanation', dated 3 October 2014, it was done on the advice of the Agent and she conceded that the content in the letter was not accurate.
67. The council letter provided to the Department was only available to a finite number of people and it does not appear that Ms [XZ] had the opportunity or capacity to tamper with a council letter and then provide the fraudulent document to the Department. In his response to the third section 309 notice, the Agent now claimed that Ms [XZ] had identified a former tenant as the person responsible for the creation of the fraudulent council letter. The Agent invited the Authority to verify the claims by contacting Ms [XZ] directly. However, this assertion is in stark contrast to the statements made by Ms [XZ] at the AAT during the review of her matter in July 2016. At the time, Ms [XZ] believed that the registered migration agent, namely the Agent, created the fraudulent document so as to evidence her involvement in the business. The alteration to the council document involved a personalisation of the letter, by changing the recipient details from 'Sir/Madam' to 'Ms [XZ]', and would therefore support a proposition that the changes were made to evidence a greater involvement in the business on the part of Ms [XZ], consistent with her statements in April 2016. It remains unclear why Ms [XZ] would fail to make that disclosure when her application was before the AAT for their consideration, when she indicated that it was the Agent, rather than someone else as put forward some years later.

---

<sup>40</sup> The Chinese version of the 'Letter of Explanation' which was sent to the Department - ADD20XX/XXXXXX

68. In his response to the third section 309 notice, in respect of the council letter, the Agent conceded that he *“cannot deny the fact that it was finally submitted to the Department of Home affairs because of [his] negligence”* although he continued to deflect the changes to the document onto others. However, the Agent appears to be the only person who had sufficient knowledge of migration law and procedure to comprehend the benefit in making such a change to the letter. The Agent would be aware that a personalised letter may add greater weight to support an argument that Ms [XZ] was actively involved in the business. The Agent had access to the relevant information and the opportunity to amend the document and provide it to the Department.
69. In a submission provided in response to the section 308 notice, the Agent’s legal representative stated that *“the RMA is aware and acknowledges that his actions within the scope of his employment with Awesome International Group caused him to be in a position that put both himself and potential clients at risk.”* The Authority agrees with this assessment. However, the conduct discussed above appears to have placed clients at risk irrespective of whether or not they were engaged through the Chinese Entity.
70. As discussed in relation to Ms [DMW]’s matter, I am satisfied that the Agent entered into an agreement with the AO Entity which facilitated an environment where the Agent’s client could be misled on her visa application status and true outcome of the application and therefore enabled the creation and dissemination of a fraudulent document purporting to be from the Department. Additionally, in consideration of the information before the Authority, particularly the statements made by Ms [XZ] at her AAT review, I am of the view that the Agent was a knowing and willing participant in creation and/or facilitation of the fraudulent document which was provided to the Department.
71. Behaviour involving the partaking in, else allowing for the production of a fraudulent document within the Agent’s migration practice is inconsistent with the expectations or obligations of a registered migration agent. Not acting in accordance with the law and the legitimate interests of the Agent’s clients, who were dependent upon the Agent’s advice and knowledge, appears to feature in the conduct discussed within this decision. I am satisfied that by engaging in such conduct the Agent has not taken all reasonable steps to maintain the integrity of the migration advice profession.
72. I find that the conduct discussed above demonstrates the Agent’s lack of regard for his clients and their dependence on his knowledge and/or experience. I am satisfied that he has failed to take into account the legitimate interests of his clients and his obligations to the Department. Consequently, I find the Agent in **breach of clauses 2.1, 2.4, 2.9 and 2.23 of the former Code.**

*Connection with former employer and associated entities*

73. As part of the section 308 notice the Agent was questioned on his relationship and association with Awesome International and Mr [SAH]. The Agent stated that Mr [SAH] was his employer and from his understanding Mr [SAH] may own a number of different entities<sup>41</sup> offshore. The Agent stated that there were numerous restrictions placed upon him as an employee of Awesome International and that he resigned from his role with Awesome International in 2015 and has had no further involvement with Mr [SAH] or any of his companies since that time.
74. ASIC records reveal that the Agent remained a Director and shareholder of Awesome Group Australia Pty Ltd (**Awsome Australia**) until 18 April 2020, when it was ultimately deregistered. Notably, the entity was deregistered after a number of notices were issued to the Agent, by the Authority, highlighting his ongoing connection to Mr [SAH] and the Awesome Group, when the Agent made arguments that this was no longer the case.<sup>42</sup> While Mr [SAH] was not listed as a Director or shareholder of Awesome Australia,<sup>43</sup> he was a Director and shareholder in Awesome International.<sup>44</sup> Awesome International was the primary entity engaged by the Agent during his relationship with Mr [SAH] and one in which he was also a Director for over a three year period.
75. Moreover, the same principal place of business was listed against four (4) entities wherein the Agent had a role. The Agent was a Director in all four entities, at some point, and a shareholder in three. While the Agent asserted he had “severed” all ties with Mr [SAH] and his companies, Mr [SAH] appears to be intrinsically linked to the ‘Awesome’ trademark – where the Agent’s employment as an RMA commenced in 2010 when he was engaged with Awesome International. Three of the entities reflected an ‘Awesome’ naming convention,<sup>45</sup> while the fourth is the Agent’s current business – Giant Partners.<sup>46</sup> Giant Partners was purportedly established on account of the Agent’s separation from his former employment and connection with Mr [SAH] and his entities.
76. However, while the Agent contends that he severed his ties with Mr [SAH] and his entities in December 2015, his newly established corporate entity, Giant Partners, reflected its principal place of business as 530 Collins St, Melbourne<sup>47</sup> from July 2016 until June 2017. Notably, the address was changed to the Collins St address seven months after the purported severing of ties with Mr [SAH] and eight months after the entity was established. Significantly, the address was the very same as that recorded for Awesome International until it was deregistered on 10 February 2020.

---

<sup>41</sup> See footnote 3

<sup>42</sup> Responses provided 04 January 2018, 26 July 2018, and 01 April 2019.

<sup>43</sup> ACN. 167 739 577

<sup>44</sup> ACN. 121 840 551

<sup>45</sup> Awesome Group (Melbourne) Pty Ltd – 161 075 565; Awesome Group Australia Pty Ltd - 167 739 577 and Awesome International Group Pty Ltd - 121 840 551

<sup>46</sup> ACN. 609 206 322

<sup>47</sup> Suite 508, 530 Little Collins Street, Melbourne VIC 3000

77. The Collins Street address was also reflected against Awesome Group (Melbourne) Pty Ltd (**Awesome Melbourne**) until it was deregistered on 6 September 2018 and for Awesome Australia until it too was deregistered on 18 April 2020. Consequently, the shared business address between the entities with that of Awesome International and the Agent's ongoing connection with Awesome Melbourne until September 2018 (Director and shareholder) and Awesome Australia until April 2020 (Director and shareholder) does not support a proposition that the Agent severed all his ties in December 2015. Particularly when Mr [SAH] remained a 55 percent shareholder and former Director of Awesome Melbourne and 80 percent shareholder and former Director of Awesome International.
78. Given the synergies with the company names and the fact that Mr [SAH] was a former Director of Awesome Melbourne and continued to be the majority shareholder, the entity clearly formed part of his business portfolio. Therefore, contrary to the Agent's assertion to the Authority, he appeared to maintain ongoing involvement with Mr [SAH] at a time he was professing that this was not the case. Moreover, departmental records revealed ImmiAccount – Awesome88<sup>48</sup> – was registered to the Agent in association with Awesome Melbourne with the Agent's email address<sup>49</sup> attached to the ImmiAccount. Moreover, departmental records indicate that when the Agent had lodged visa applications through this ImmiAccount, departmental acknowledgment letters were emailed to this email address at a time after the Agent's purported resignation with Awesome International.
79. The Agent and his legal representative argued that his failure to mention Awesome Melbourne in his responses was simply an oversight, as it had not traded, and he was apologetic for his failure to disclose it. While they argued<sup>50</sup> that this did not indicate an ongoing connection to his former employer, the evidence appears to indicate otherwise. As such, I am of the view that the Agent continued to have operational oversight and distinct connections with organisations clearly associated with Mr [SAH] and the Awesome Group. It follows, that I am satisfied that the Agent did not cease all his associations with Mr [SAH], or the entities with a link to Mr [SAH], despite his assertions to the contrary. On that basis, I find that the Agent provided misleading information to the Authority, in **breach of clause 2.9A of the former Code**.

*Access to personal information – email*

80. Throughout his responses to Authority, the Agent argues that his contractual employment arrangement prevented him from having direct contact with his clients and that this was the reason all the communication with the clients was conducted through the AO Entity. In the Agent's response to the section 308 notice he stated that he only had access to two email addresses while employed at Awesome International – [grants\\_love@hotmail.com](mailto:grants_love@hotmail.com) (email one)<sup>51</sup> and [xiechaogo@gmail.com](mailto:xiechaogo@gmail.com) (email two). The Agent elaborated on the arrangement with the AO Entity, stating that in the event of a request for further information, the Department would communicate with him through email. He would subsequently refer the requests to the Chinese Entity, which would collect and collate the information from the clients and forward on to him so he could respond to the request.

---

<sup>48</sup> Created 13 January 2014

<sup>49</sup> [grants\\_love@hotmail.com](mailto:grants_love@hotmail.com)

<sup>50</sup> In the legal representatives response to the first section 309 notice

<sup>51</sup> The Agent's current email address for communicating with the Authority

81. According to the Agent,<sup>52</sup> Mr [SAH] purportedly advised him to create a new email address from which to correspond and to provide Mr [SAH] with access to the account, with which he complied.<sup>53</sup> The Agent went on to explain that most of the exchanges with the Chinese Entity transpired through communication platform QQ.<sup>54</sup> Moreover, that it was difficult to access old or archived correspondence from the platform and consequently he no longer had access to most of the day to day communication he had with the offshore staff, and Mr [SAH], which he could provide to the Authority.
82. As part of the first section 309 notice, the Authority highlighted that further emails were identified which were linked to the Agent which he failed to disclose to the Authority in his response to the section 308 notice. Email address [immi.awesomegroup@gmail.com](mailto:immi.awesomegroup@gmail.com) (email three) was identified through a review of the Agent's caseload and was associated with Awesome Melbourne. The email address was used by the Agent to receive correspondence from the Department in relation to a client who had a nomination application refused in October 2015<sup>55</sup> prior to the Agent's resignation from Awesome International. In his response to the first section 309 notice, the Agent conceded that he did have access and continued to regularly use email three although email two was not as active.
83. In his statutory declaration,<sup>56</sup> provided in response to the second 309 notice, the Agent indicated that he was of the belief that Mr [SAH] deleted correspondence in respect of Ms [DMW] from email two. In his response to the second section 309 notice the Agent stated that *"Mr [SAH] has accessed this [email] address<sup>57</sup> and deleted traces of evidence relating to Ms [DMW]."* However, in his response to the first section 309 notice the Agent stated that he *"kept checking [email two] once [he] left, but Mr [SAH] did not seem to access it any more either. [The Agent] changed the password on [the email account] but Mr [SAH] never questioned [him] about that...It seems [OLL]ke he just abandoned these addresses."* According to the Agent, Mr [SAH] only cared about the monetary factors of the arrangement and he was of the view that Mr [SAH] had directed his staff to create other email accounts from which to correspond with clients.
84. The Agent's responses to the Authority appear to be contradictory, where he asserts that email content was deleted by Mr [SAH] while simultaneously claiming that he no longer appeared to access the email account. Notably, the Agent also stated that he had changed the password on the email account and he was of the view that Mr [SAH] created a new email address, so it is unclear when any deletion may have transpired. While the Agent claimed that he retained copies of some records, which enabled him to provide a select few to the Authority, there is no evidence before the Authority to substantiate his claims that any or all of the files were in fact deleted. Regardless, the Agent was able to provide a select number of documents pertaining to Ms [DMW]<sup>58</sup> despite his statement that the file content was deleted by Mr [SAH]. Consequently, the Agent's assertions in this regard do not appear to be credible.

---

<sup>52</sup> As per his response to a subsequent request for information dated 23 February 2018

<sup>53</sup> Email two

<sup>54</sup> An instant chat platform

<sup>55</sup> Ms [RW] ([redacted], F)

<sup>56</sup> Dated 1 April 2019

<sup>57</sup> Refer to footnote 54

<sup>58</sup> As well as other clients identified in the first section 309 notice

85. Moreover, if the files were deleted, whether the deletion was undertaken by Mr [SAH], as alleged by the Agent, or by the Agent himself, remains unknown. Furthermore, in his correspondence<sup>59</sup> to the Authority the Agent stated that he contacted a former colleague, [G], to confirm whether the documentation he had received from the Department, was on Ms [DMW]'s file. According to the Agent, [G] confirmed the documents were received and were 'backed up' on the company server. If this were the case, there appears to have been no utility in deleting the correspondence on the part of Mr [SAH], as asserted by the Agent. It follows, that I am of the view that the conflicting information and the absence of supporting documentation appears to be an attempt by the Agent to distance himself from the adverse conduct and his obligations. The Agent apportions blame for the most serious adverse conduct onto a third party and where little evidence is submitted from records he was obligated to retain in order to support his contention.
86. Finally, any ability on the part of Mr [SAH] to change or delete content from the email account was enabled by the Agent as a direct consequence of the Agent's actions in providing him access to the account in the first instance. Furthermore, in light of the Agent's statements that he provided Mr [SAH] with access to an email account, which was an email account used by the Department for their communication in relation to applications before them, the Authority cannot be confident that such conduct did not extend to other systems – including the ImmiAccount. Moreover, a person who had access to the email account<sup>60</sup> was in receipt of departmental correspondence for whom it was not intended as they were not the person declared to be the holder or recipient of the email address. Consequently, privileged and personal information was available to Mr [SAH], to which he was not entitled, as a direct result of the Agent's conduct.

#### *Notification obligations*

87. According to the Agent, he was unable to contact Ms [DMW] directly due to his employment arrangements, in order to advise her of the outcomes, and he forwarded the necessary information to the AO entity to notify the client. Consequently, the Agent failed to comply with basic notification obligations as required. Moreover, there is no evidence to indicate that the Agent was instructed to withdraw the second visa application after the nomination attached to [ALE Pty Ltd] was refused or that he ensured, or was able to ensure, that the client was informed on the outcome of her application. Had the Agent complied with his obligations, as required by the former Code, the consequences for Ms [DMW] and the fraud which transpired some years later could have been averted.
88. I note that the Agent has conceded to his failure in complying with a number of obligations in relation to his conduct, including clauses 2.1, 2.4 and 2.8 of the former conduct. I agree with this assessment and find that the Agent failed to have due regard for his client and her dependence on him and find him in breach of his obligations in respect of **clauses 2.1, 2.4 and 2.8 of the former Code**.

---

<sup>59</sup> Dated 23 February 2018 in response to the Authority's subsequent request for information dated 14 February 2018

<sup>60</sup> Mr [SAH]

*Access to personal information – ImmiAccount*

89. In his response to the first section 309 notice, the Agent stated that he retained access to email accounts after he ceased “*all associations*” with Awesome International. The Agent also provided further email addresses that were attached to his businesses practises. According to the Agent, of the ten or so email addresses which he created and used during his employment with Awesome International, he continued to have access to [immi.awesomegroup@gmail.com](mailto:immi.awesomegroup@gmail.com) (email three) and [xiechaogo@gmail.com](mailto:xiechaogo@gmail.com) (email two) as well as the ImmiAccount that was created to lodge the applications – Awesome88.
90. According to the Agent, he was of the view that given he had created the email addresses and ImmiAccount he continued to use them as a matter of convenience as they already contained all the client information. Moreover, that this was particularly beneficial in relation to the clients who elected to retain his services following his departure from Awesome International.<sup>61</sup> The Agent claimed that Mr [SAH] did not have, nor has ever had, access to email address three and the associated ImmiAccount that was linked to Awesome International. Given my discussion earlier, I am not convinced that the Agent restricted the sharing of his systems access to only the one account.
91. The Agent noted in his response that he “*realise[s] that this is a very unusual arrangements and [he] completely understand why OMARA may feel [he] have misled them [sic]*” by continuing to use email addresses and the associated ImmiAccount attached to Awesome International. However, according to the Agent there was no harm in continuing to use these accounts after his resignation as Mr [SAH] “*never accessed it or his other staff*”.
92. Considering the detail contained within the submission by the Agent’s legal representative, dated 24 July 2018,<sup>62</sup> the adverse practises of Mr [SAH] were evident to the Agent at the time of the submission.

*Mr [SAH] has shown that he is perfectly capable of fabricating false documents to deceive their clients where it suited him, it would not be surprising that the RMA's former employers would not bother scrutinising the ImmiAccount profile itself for the actual correct information.*

93. Despite the above statement they nevertheless contended that exporting applications from the Awesome88 ImmiAccount for the purpose of proving disassociation would only have a superficial effect and would “*have no material effect on the relationship between himself, his clients, or his disassociation from Awesome International Group as a matter of fact.*” How a matter of ‘convenience’ might outweigh a complete severing of ties with persons and entities who were clearly engaged in fraud and thereby exposing his clients and potentially himself to risk, and where this was overtly clear to the Agent at the time, remains unclear.

---

<sup>61</sup> Response by legal representative to the first section 309 notice

<sup>62</sup> 24 July 2018



94. Significantly, in the Agent's communication to the Authority in December 2021, he stated that his earlier connection to the Awesome Group has been severed with efforts taken to abolish usage of all mailboxes, ImmiAccount's and companies. However, in light of the Agent's earlier statements, whether or not this latest action will actually result in any material effect on the relationship between him and the Awesome Group is questionable. It follows, that given the inconsistencies in the Agent's responses and noting that any disclosure or action appears to transpire at a time after it is identified and put to the Agent, I do not afford the Agent's statements significant weight.

### **Competence**

95. The Department engaged with the Agent on a number of occasions with respect to Ms [XZ] and the documentation which was submitted on her behalf, specifically the council letters. Departmental records reveal email correspondence was received from the Agent on 05 September 2014, 30 September 2014, 17 October 2014, and 14 November 2014. The email of 05 September 2014 requests an extension within which to provide a response on account of the client being offshore. The email dated 30 September 2014 stated that the documentation in response to the natural justice letter had been posted to the Department. However, departmental records do not indicate that the Department had received any correspondence to which the email of the 30 September had alluded.
96. On 17 October 2014, the Agent emailed the Department providing tracking details of a package that was sent the same day, that is 17 October 2014. Consequently, the departmental delegate questioned whether any documentation was actually in fact posted when the Agent advised this was the case on 30 September 2014. Relevantly, given the 'Letter of Explanation', which formed part of the response, was dated 03 October 2014, it appears improbable that the Agent had posted a response to the delegate on or before 30 September 2014 as advised in his correspondence. It follows, that the Agent was either incompetent or negligent in relation to obtaining and submitting the response within the time provided to do so. In the alternate, it may have been a deliberate attempt on part of the Agent to mislead and deceive the Department.
97. In his communication of 14 November 2014, the Agent emailed what appeared to be a compassionate and compelling response to the Department's natural justice letter. However, the Agent's response was not reflective of the competence and experience which would be expected of a migration agent registered for a four year period. The Agent's email stated that as a registered migration agent he "*can't present any subjective opinion to lead the decision*" and concluded by stating "*Finally [he] feel sorry for disturbing you [the Department]. The applicant is deserving of sympathy.*"
98. The delegate's decision record is indicative that more effort and consideration should have been directed into providing an appropriate response to the natural justice request. The delegate highlighted that in the invitation to comment "*the applicant was specifically requested to provide independently verifiable documents to support her claims.*" A diligent registered migration agent would likely have addressed the claims that were noted in the natural justice letter rather than providing commentary and opinion about the business operations of the applicant.

99. Registered migration agents are required to have sound working knowledge of the Act and Regulations in order to provide accurate advice when providing immigration assistance to their clients. Given the above discussion, I am satisfied that the Agent had breached his obligations in respect of **clauses 2.1 and 2.3 of the former Code** in respect of this conduct.

### ***Financial Obligations***

100. The Agent does not dispute that he provided immigration assistance to the complainants, which necessarily means that the Agent had entered into a client agent relationship from which certain obligations stem. The financial obligations of an agent to clients were set out in clauses 5.2, 5.5, 7.2 and 7.4 of the former Code as related to an Agreement for Services and Fees and a Statement of Services. At clause 5.2, the former Code specified that a registered migration agent must, before commencing work, provide an Agreement for Services and Fees which should outline the services to be provided and the fees associated with the service. Having a service agreement in place ensures both the client and the agent are aware of their obligations.

#### *In respect of Ms [DMW]*

101. In his response to the section 308 notice, in respect of Ms [DMW], the Agent asserted that his contractual obligations with his employer prevented him from complying with his obligations under the Code and that this was the reason he was unable to comply with them. Moreover, the Agent's legal representative stated that his employment put him "*in a position where [the Agent] did not have a say in any fee arrangement*". However there is no clarification provided, in either the Agent's statutory declaration or the submission from the legal representative, on the reasons why a Statement of Services and Fees could not be provided in line with his obligation. A migration agent is unable to contract out of their obligations by entering into arrangements which serve to prevent them from doing so. Irrespective of his contractual obligations to his employer the Agent remained obliged to provide the clients with an Agreement for Services and Fees.
102. As with the Agreement for Services and Fees, in his response to the section 308 notice, the Agent conceded that he was not privy to the fees that were associated with the services he had provided through Awesome International. Consequently no invoices or receipts were provided to Ms [DMW] by the Agent.

*In respect of Ms [OLL]*

103. The Agent, in response to the third section 309 noticed advised that Ms [OLL] did not sign an agreement with him as *“she did not confirm the entrustment relationship with us for the visa application”*. However, Ms [OLL] did sign an agreement with Mr [JT]. The Agent claims that the service agreement the client signed with Mr [JT] had outlined the overall costs including the cost of the migration agent. Despite a request to do so, the agreement provided to the Authority was not translated into English and consequently provided little insight into the contractual content.<sup>63</sup> However, the first page of the agreement reflected the Agent’s company details, for Giant Partners, with a notation indicating ‘Registered Member of Migration Agents Registration Authority’. However, it did not disclose the Agent’s details nor was his MARN recorded and implied the business was registered, rather than a natural person.
104. Ms [OLL] has provided evidence, in the form of bank transfer receipts, that she made payments for services to ‘[GW]’ and also ‘[WC] Ltd’. She has advised the Authority that she did not receive any receipts for her payments from the Agent. Nor had she been advised how the payments she made were distributed towards the services for which [WC] Ltd and Giant Partners were engaged.
105. Ms [OLL] is of the view that she had overpaid the Agent because not all the services for which [WC] Ltd was engaged were provided to her. Furthermore, departmental systems reveal that the Agent did not lodge a visa application for her despite this being a service for which he was engaged. The Agent claims that Ms [OLL] ceased her relationship with him and Mr [JT] before an application could be lodged with the Department.
106. A review of the bank receipts provided by Ms [OLL] reveals that money was transferred to ‘Giant [WC] Ltd’ in October and December of 2018. The Agent, in his response to the third section 309 notice, stated that it was Mr [JT] who forwarded the ‘debit notes’ to the client for his own charges as well as *“the receipt of the nomination application fee to the clients’ company address.”* It appears likely, that the Agent received payment from Ms [OLL] through [WC] Ltd as he had lodged an EOI application and a State nomination application for her. However, the Agent has not provided any evidence that an invoice was issued to Ms [OLL] for any of the payments he likely received, by issuing a receipt or a Statement of Services for a completed block of work, in order to be able to withdraw the payment from his clients’ account.
107. The Agent, through his submissions to the Authority, has argued that since severing his ties with Mr [SAH] he has sought assistance from experienced RMA’s and lawyers in order to change his business practices and ensure he is compliant with his obligations, including providing his clients with agreements, invoices, and receipts. While this is a welcome change, it does not diminish the fact that the Agent’s practices were not aligned with the former Code which resulted in significant adverse conduct to the detriment of his clients.

---

<sup>63</sup>Email request dated 02 July 2019 to Mr [RW2] requesting that all supporting documents be translated to English

**108.** On the evidence before the Authority, I am satisfied that the Agent has not complied with his financial obligations by failing to provide his clients with a service agreements or relevant invoices and receipts as would be expected of a registered migration agent. Consequently, I am satisfied that the Agent was not entitled to the fees or other rewards for the provision of immigration assistance and find him in breach of his obligations in respect of **clauses 5.2, 5.5, 7.2 and 7.4 of the former Code.**

***Maintaining proper client records***

**109.** Pursuant to section 308 of the Act the Agent was requested to provide complete client files for Ms [DMW]. As already discussed throughout this decision, the Agent has advised that his client files only contain documentation of which he had made copies and not the complete records. The Agent stated that due to his employment contract he was unable to retain any documents as he no longer had access to the documentation contained within the email account<sup>64</sup> which he used to correspond with the Chinese Entity. Further, he was unable to provide any electronic communication as he was advised by Mr [SAH] to create an email address specifically to correspond with clients. According to the Agent's account, Mr [SAH] requested that he too have access to the said email address and has since deleted all correspondence relating to Ms [DMW]'s case. Additionally, the other software used to communicate with the client – "QQ" is now outdated and retrieval of information from it is difficult.

**110.** A diligent registered migration agent would keep detailed files notes for his clients and their cases, given the volume of visa lodgements that can be managed at any point in time. The Agent has not provided any file notes, not necessarily available to Mr [SAH], and could have maintained his own records. Given the above discussed, I am of the view that the Agent holds no client files for any of the clients to whom he provided immigration assistance during his period of employment with Awesome International. This is further supported by the fact that the Agent submitted a request for information from the Department, pursuant to the provisions of Freedom of Information, in order to supplement his file for Ms [XZ].

**111.** In March 2020, the Authority contacted the Queensland State Government specifically the Business and Skilled Migration Queensland (BSMQ) and sought the documents which were provided with Ms [OLL]'s EOI application. The EOI application form provided by Ms [OLL], who advised the Authority was provided to her by Mr [JT], was included as part of the application. The signature on the statutory declaration dated 01 April 2019, which the Agent provided to the Authority in response to the second 309 notice, and the signature on the EOI form signed by the migration agent look near identical. In response to the third section 309 notice the Agent had conceded that he was the migration agent who submitted the EOI application on Ms [OLL]'s behalf, to the Queensland State Government and that it was his signature.

---

<sup>64</sup> [xiechaogo@gmail.com](mailto:xiechaogo@gmail.com)

112. Given Ms [OLL] was the Agent's client in 2018, as evidenced by his lodgement of the EOI with the Queensland State Government, it would be expected that a client file in relation to her matter formed part of his records. Even more so, given Ms [OLL] was offshore at the time her nomination was submitted with the Queensland State Government. Consequently, I am of the view that, at a minimum, there should be some communication exchange between the Agent and his client, be it electronic or otherwise. However, Ms [OLL] has not provided any evidence to the Authority of her communication with the Agent in respect of her matter.
113. The Agent claims that the client was provided with a shared Dropbox account where she could upload information, however when the client decided she no longer wanted to continue the relationship with Mr [JT] that she deleted all the contents of the Dropbox. While the Agent claimed he had emails, WeChat, and WhatsApp records he did not provide any of the correspondence with his response to the Authority.
114. Registered Migration Agents are required to keep file notes for their dealings with clients and their cases. In the Agent's responses to the Authority he has conceded that his record keeping practices were not to the standard expected of a migration agent. However, he asserted that he had changed his business practices since 2016, when the Authority recommended improvements as part of a Formal Warning issued to him after consideration of complaint CMP-14309.<sup>65</sup> Ms [OLL] was the Agent's client in 2018, two years after the Formal Warning was issued to the Agent. However, it is apparent that his business practises pertaining to record keeping have not changed given he had not provided any client files in respect of Ms [OLL] to the Authority.
115. Given the above discussed I find that the Agent has engaged in conduct in breach of **clauses 6.1, 6.1A and 6.4 of the former Code**.

***Client instructions and progress updates***

116. Amongst other obligations, the former Code required registered migration agents to provide their clients with
- written confirmation of their clients instructions;
  - written progress updates on their clients applications; and
  - written confirmation of the application outcomes.
117. The Agent was obligated to ensure that he was acting on instructions from his clients and that his clients were provided updates on the progress of their cases. There is no evidence before the Authority to suggest that the Agent was provided with instructions to lodge any of the applications and/or nominations on behalf of Ms [DMW] or that he was entitled to her private information. The Agent was unable to provide evidence of any communication between him and the client and had conceded that he had no direct contact with the client. This was corroborated by Ms [DMW], who stated that there was no direct contact with the Agent and that all the engagement and interaction was undertaken through the Chinese Entity.

---

<sup>65</sup> Dated 08 February 2016

- 118.** In his response to the section 308 notice, the Agent stated that he was employed by Awesome International in 2010 and was appointed as a Director of the company in 2012. Moreover, that on account of the conditions attached to his employment agreement with Awesome International, he was unable to communicate with clients directly. The Agent went on to reject Ms [DMW]'s allegation that she was unaware on the progress of her applications on the basis that she had provided documentation, which she had signed, during the processing of the application. According to the Agent, this should have been indicative that the applications were progressing. However, while Ms [DMW] may have provided documentation upon request, without receiving progress reports as required by the former Code, this was not necessarily indicative that progress was actually being made on the application. It was the Agent's role to ensure that his client was fully and accurately informed on the progress of her application and that such was provided to her in a timely manner.
- 119.** In response to the section 308 notice, the Agent stated that he would forward all departmental requests, received by him, to the Chinese Entity with the expectation that the Chinese Entity would forward the information onto the client. Further, instead of receiving instructions from his client directly he received instructions through a third party. The Agent has not, however, provided insight into how he would confirm that the information would be provided to the client, Ms [DMW]. Moreover, the Agent stated that where further information was required, by him or the Department, he would contact Awesome International and make requests for the documentation and they would in turn send them to him. The Agent stated that he verified whether the documents were provided by the client by comparing her signature on the document to that of her passport and forms provided to him initially. Furthermore, the Agent had provided some documents, to which he had access, that have been certified by him. However, it is unclear how the Agent was able to verify that the documents were in fact originals given that the Agent had no direct contact with the complainant.
- 120.** According to the Agent, as he was provided all the documentation through Awesome International he was unable to provide any evidence of communication with Ms [DMW]. It follows, that in instances where the Agent had no direct contact with the client he would be unaware whether or not he was acting on her instructions and what information may or may not have been conveyed to her. Moreover, in her response to a request for information by the Authority,<sup>66</sup> Ms [DMW] indicated that the Agent was only appointed to her case on 10 May 2014.
- 121.** There is no evidence before the Authority indicating that there were additional requests for information to be provided by the Ms [DMW] in relations to her visa application and/or nomination. Based upon departmental electronic records all the information relating to the client's personal particulars were submitted at the time the respective application was lodged. The only requests made for further information, by the Department, were pursuant to the provisions of natural justice<sup>67</sup> and one request in relation to the [BOA Pty Ltd] nomination where the Agent supplied an organisation chart in response to the request by the delegate.

---

<sup>66</sup> Dated 02 November 2017

<sup>67</sup> Invitations to comment on the nomination refusals

122. In addition to the above there is no evidence to suggest that the Agent was instructed to withdraw the [ALE Pty Ltd] visa application on Ms [DMW]’s behalf. It appears that Ms [DMW] was not aware that a second nomination or visa application was lodged on her behalf. Based upon the evidence before the Authority, specifically the evidence provided by Ms [DMW], the complainant had no knowledge pertaining to her visa application, let alone that there was a second application and visa nomination lodged on her behalf. It remains unknown whether the complainant would have been made aware of any visa matters before the Department, had she not questioned the approval letter. On the information before the Authority, I find that Ms [DMW] was not notified on the progress of her case by either the Agent or AO, upon whom the Agent was relying to provide the information.
123. In regards to Ms [OLL]’s matter, despite the Agent’s contention that he had instigated changes in the manner in which he engaged with offshore entities, the Agent again relied on a third party, Mr [JT], to forward communication to the client. The Agent claims that the agreement signed between him and Mr [JT] ensured that all communication records were to be shared by them from the date the client “entrusts” them by entering into an agreement with them. The Agent also claimed that he provided *“clear instructions to Mr [JT] that no matter what Mr [JT] sent to the client, he needed to inform [him].”* However, the Agent has not provided evidence to the Authority to substantiate his claims. While the Agent submitted an email sent by Mr [JT] to Ms [OLL] in 2019, there is no indication that the email was forwarded to the Agent or that he was carbon copied (CC) into the email at the time it was sent to Ms [OLL]. It is not until December 2021 that the email is provided to the Agent by Mr [JT].
124. According to Ms [OLL], she was first made aware that the Agent was appointed for her migration matter when she received a blank Form 956, from [WC] Ltd, requesting that she sign and return the form. The Agent does not dispute that a blank form 956 was issued to the client. In his response to the third section 309, the agent stated that *“it is true we did not pay enough attention at that time”*. Ms [OLL] also asserted that she had not received any information or communications from the appointed migration agent, in relation to the lodgement of the EOI with the Queensland State Government or any update on her matter. The Agent has conceded in his response to the third section 309 notice that he should have contacted Ms [OLL] directly. However, he also stated that he thought that the client did not want to contact him directly as she was more comfortable discussing the matters in Cantonese with Mr [JT].
125. As discussed elsewhere in this decision, there is no evidence before the Authority of any communication exchange directly between the Agent and Ms [OLL], as would be expected where an agent-client relationship existed. This is despite the fact that the Agent was already made aware of the risks and consequences of such conduct on more than one occasion and in contradiction to the statements put forward on the changes he has implemented. Consequently, I find that the Agent has engaged in conduct in breach of **clause 2.8 of the former Code**.

### ***Client confidentiality***

126. Ms [OLL] has provided evidence that an EOI was lodged with the Queensland State Government on her behalf. The EOI documentation, provided to the Authority by Ms [OLL], reveals that the Agent was the registered migration agent appointed in respect of her matter with the Queensland State Government. As already mentioned, there is no evidence of communication between the Agent and Ms [OLL] which would support the premise that the Agent had received Ms [OLL]’s permission and consent to either receive or disclose her personal information. As such, I find that Ms [OLL] did not authorise the Agent to receive, much less disclose her personal information to a third party, namely the Queensland State Government. In doing so, the Agent is in breach of the former Code on account of the confidentiality disclosure.
127. On the basis of the above discussed, surrounding the disclosure of confidential client information to third parties without their consent or knowledge, the Agent has engaged in conduct in breach of **clauses 3.1 and 3.2 of the former Code**.

### ***Acting in the clients legitimate interests***

128. In response to the section 308 notice, the Agent stated that each visa application lodged, in his opinion, had legitimate prospects for success and that “*no documents provided to [him] were false or misleading.*” The Agent also stated that the visa applications and nominations were refused as a result of the delegate’s discretion and not as a result of the Agent’s actions in lodging unsubstantiated visa applications and nominations.
129. The [BOA Pty Ltd] nomination, was refused as the employment conditions, offered to Ms [DMW], did not meet the criteria as set out in the Regulations and subsequently the visa application was refused. Moreover, the departmental delegate assessing the [BOA Pty Ltd] visa application afforded the client with natural justice which was communicated to the Agent as the client’s authorised representative. The natural justice letter requested the client to provide a comment on the nomination refusal prior to making a determination on the visa application. Departmental records indicate that no response was received from the Agent to this request which in turn resulted in the visa application being refused and no review was pursued for either the nomination or visa application refusals.
130. A review of the Agent’s caseload, specifically nomination applications which had been refused, revealed a number of nomination applications<sup>68</sup> were refused under Regulation 5.19<sup>69</sup> and all the nominees were primarily nominated in role of a Marketing Specialist. Additionally, the nominations which were reviewed had been refused on the basis that there was no genuine need for the employees. The supporting documentation, specifically the employment agreements and the need for employee statements, appear to have been replicated (aside from depicting a different business name).

---

<sup>68</sup>YL(DOB: [redacted]) refused 2014; BW (DOB: [redacted]) refused 2014; XH (DOB:[redacted]) refused 2014/2015 and RW (DOB: [redacted]) refused 2017

<sup>69</sup>Refer to footnote 6



131. A further review of the refused nominations and visa applications indicates that rarely were any of the cases taken to tribunal for review either by the sponsor (for the nomination application) or the client (for their visa application). This appears inconsistent with the Agent's response in the section 308 notice which indicated that the decisions were open to be challenged, due to the discretionary nature of the decisions, thereby implying a review of the discretionary decision. The Agent stated, in his response to the second section 309 notice, that rather than seek review of matters he would offer alternative visa pathways to his clients and given they were overseas they were unlikely to be eligible for review.
132. In the case of the [ALE Pty Ltd] nomination the Regulations on which the nomination was refused by the Department are critical to the processing of the visa applications. A review of the nominations where the sponsoring business is [ALE Pty Ltd] was undertaken as part of the investigation into this complaint matter. The investigation revealed that there was another client,<sup>70</sup> to whom the Agent provided immigration assistance and where the Agent was declared as the representative migration agent for the visa and nomination applications. This nominee, Mr [WX], was sponsored by [ALE Pty Ltd] for the role of a Marketing Specialist some 3 weeks<sup>71</sup> prior to the Agent submitting the visa application and nomination on behalf of Ms [DMW], in his capacity as her appointed migration agent, for the same role. Departmental records also reveal that Mr [WX] was nominated for the role on account of the resignation of Mr [DLZ] which appears to be the very same reason put forward in respect of Ms [DMW]'s nomination with [ALE Pty Ltd].
133. Furthermore, a similar organisational chart appears to have been provided for both clients, as supporting documentation for the respective [ALE Pty Ltd] nomination. Significantly, however, the organisational chart provided did not depict that there would be/was another nominee performing in the same role at the time the nomination applications were lodged with the Department. A review of the employment agreements indicates that despite them being dated 04 December 2013 and 16 April 2014, respectively, the content for the agreements was largely the same.
134. Furthermore, the Statement letters<sup>72</sup> provided to the Department so as to explain the genuine need for the employee was likewise similar, although there is no mention in the statement provided in support of Ms [DMW]'s nomination that there is currently an employee in the position or was being considered for the position. Both nomination applications in respect of Mr [WX] and Ms [DMW] were refused on the same day, 18 May 2014. Further, both applications were refused for the same reason, in that the sponsoring business was not able, due to financial capacity, to afford to have both applicants working for the business.
135. Given the documentation available to the Authority, I find that there were sufficient indicators to alert the Agent that the position for which Ms [DMW] was nominated did not appear to be genuine, and therefore should have prompted further enquiries on the business' operations. Additionally, that such practices should have led the Agent to consider discontinuing his representation of the business associated with the nomination and the Agent's employment with Awesome International.

---

<sup>70</sup> Mr WX

<sup>71</sup> 19 April 2014

<sup>72</sup> The statements are dated 14 April 2014 for Mr X and 22 April 2014 for Ms DMW.

136. I am of the view that a prudent registered migration agent would have provided advice to their client regarding their options following a refusal decision. There is no evidence before me to indicate that the Agent provided Ms [DMW] such advice or in the event that he had that he was instructed not to proceed to review. The Agent argued that policy changes to the occupations lists made by the Department in 2018 were to blame for the high refusal rate.

*In fact, in May 2018, the Department of Home Affairs changed its policy, cutting over 200 positions on the original list by more than half, and only retaining 200 positions. Most of the rejected applications I submitted were basically positions that were cut after the policy change (such as marketing specialist), and the cases officer were more likely to think that these positions were non-genuine in the process of adjudication.*

137. However, none of the applications discussed in this decision pertaining to a refusal on account of regulation 5.19 were submitted either during or subsequent to 2018. Rather, the applications were lodged by the Agent some 4-5 years before the policy changes were introduced and had already been decided by the Department. Consequently, the arguments put forward by the Agent do not appear to have had any bearing on the outcomes of those applications.

138. In his responses, the Agent stated that his employment conditions were not ideal and that he was unable to provide advice to clients directly on account of his employment contract. As the Agent did not provide the immigration assistance directly to his client, she was left with no option than to engage with staff employed by AO who were not qualified to provide immigration advice. Significantly, the Agent placed his client in a vulnerable position resulting in the consequences which ensued. A registered migration agent is not able to contract out of their obligations, by entering into arrangements which would see them in breach of the Code. As such, I reject the Agent's arguments that he was unable to adhere to his obligations and act in the legitimate interests of his client on account of his contractual obligations with his employer.

139. As clients generally engage the services of registered migration agents for the purpose of immigration assistance, they are dependent upon their advice and knowledge. The complainant was dependant on the Agent's knowledge and experience as a migration agent to prepare and lodge applications with the Department on her behalf. Given the above discussed I find that the Agent has engaged in conduct in breach of **clauses 2.1, 2.4 and 2.9 of the former Code**.

### ***Changes to the Agent's business management practices***

140. In the Agent's response to the second section 309 notice, he asserted that his business relationship with Awesome International did not permit him to adequately fulfil his professional obligations under the Code, in respect of his dealings and provision of immigration assistance to his clients. The Agent further advised that, since parting from Awesome International in 2015, he established his own business and has amended his practices to ensure he was compliant with the former Code. According to the Agent's account, he was communicating directly with his clients and ensured he maintained oversight of his business practices so as not to engage in behaviour the subject of former complaints. The Agent maintained that he had engaged a mentor, a professional within the migration advice industry, to assist him with improving his business management and to ensure he adhered to the former Code.

141. Despite the Agent's assertions in his response to the Authority, as part of the second section 309 notice, he does not appear to have made the changes to his business practices or severed ties to offshore entities to which he had alluded. In his statutory declaration dated 01 April 2019, the Agent stated that he *"[has] really changed [his] business practice and now operate a respectable business under which [he has] substantial oversight and maintain all of [his] obligations under the Code of Conduct."* I have taken this to mean since the Agent's purported departure and separation from Awesome International. However, according to the service agreement and EOI, provided by Ms [OLL], the Agent continues to engage in conduct where clients are unaware of his involvement with their matters and there appears to be no authority on their part for the Agent's engagement.
142. The service agreement provided by Ms [OLL], dated October 2018, is indicative that the Agent's migration agency has an ongoing relationship with an offshore entity namely, [WC] Ltd, through which his services are engaged. That is, he states that clients seeking visa pathways to Australia are referred to him for immigration assistance. The Agent's Australian based migration agency was advertised on the [WC] Ltd website,<sup>73</sup> as the agency to whom [WC] Ltd refers clients. A review of the [WC] Ltd website<sup>74</sup> reveals that the Agent's migration agency, Giant Partners, is cited as the "MARA Registered Agent".
143. I am therefore satisfied that the Agent's migration agency, Giant Partners, provides immigration assistance to clients who engage directly with the offshore entity [WC] Ltd, yet where no authority exists or awareness is raised with the clients that there is an Agency agreement in place. The relationship, and business practices, appear to mirror the relationship the Agent had with Awesome International. That is, where the offshore company refers clients to him for immigration assistance, albeit the clients are oblivious to this fact and have not provided their consent to the arrangement, as appears to be the case with Ms [OLL]. Ms [OLL] has provided evidence in the form of bank receipts showing that she made payments to '[GW] Australia Pty Ltd' from Hong Kong, in addition to making payments to [WC] Ltd.
144. On the basis of the above discussed, I am satisfied that the Agent continues to enter into business relationships, such as that between [WC] Ltd and Giant Partners, which limit the control and engagement he has with his clients and impact his ability to meet his obligations. Moreover, the relationship with [WC] Ltd appears to have been in existence at the time the Authority was investigating other complaints raised against the Agent, where the conduct was indicative of arrangements which appear to be designed to circumvent his obligations under the Code. Such conduct was raised as part of the first and second section 309 notices.

---

<sup>73</sup> A review of the Whim website was undertaken on 27 May 2020 - ADD20XX/XXXXX

<sup>74</sup> [redacted] - At the time of decision the website is under construction.

145. The conduct discussed within this decision, as related to Ms [OLL], is consistent with that discussed within the first and second section 309 notices. Ms [OLL] appears to have entered into a contract with an offshore entity, which had instructed the Agent to progress a number of applications in the Agent's capacity as a registered migration agent. On the evidence before me, the Agent appears to have lodged the applications on the instructions of Mr [JT], rather than Ms [OLL]. There is no indication that Ms [OLL] had any knowledge of, or had provided her authority for, this to occur. It appears Ms [OLL], considered to be his client, had only interacted with Mr [JT]; a person not registered with the Authority. According to Ms [OLL], she only became aware of the Agent's involvement after receiving a copy of the blank Form 956. On account of the arrangements entered into, and with no evidence to the contrary, the Agent appears to have placed Ms [OLL], and like clients, in a position where they are not informed on their applications or receive incomplete or incorrect advice. As already mentioned, a registered migration agent is not able to contract out of their obligations, by entering into arrangements which would see them in breach of the former Code.
146. I find that the Agent has continued to engage in arrangements with third parties with a view to circumvent his obligations under the Code. I also find that the practice appears to be systemic and not an isolated incident as claimed in the Agent's response to CMP-31042. I further find that the Agent has engaged in conduct in breach of **clauses 2.1, 2.4, 2.9A and 2.23 of the former Code.**

#### **BREACHES OF THE CODE**

147. Pursuant to paragraph 303(1)(h) of the Act, the Authority may caution a registered migration agent or suspend or cancel their registration if the agent has not complied with the Code as in force at the time of the conduct which is the subject of this decision.
148. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agents obligations under clauses **2.1, 2.3, 2.4, 2.8, 2.9, 2.9A, 2.23, 3.1, 3.2, 5.2, 5.5, 6.1, 6.1A, 6.4, 7.2 and 7.4** of the former Code.

## **INTEGRITY, FITNESS AND PROPRIETY**

149. Pursuant to paragraph 303(1)(f) of the Act, the Authority may caution a registered migration agent, or suspend or cancel their registration, if the Authority becomes satisfied that the agent is not a person of integrity or otherwise not a fit and proper person to give immigration assistance.

150. There is a degree of overlap between 'fit and proper' and 'integrity' to the extent that fitness and propriety include consideration of the honesty of the actions of an individual.

*'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.<sup>75</sup>*

151. 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.

152. At common law, the basic test to determine whether a person is “fit and proper” is known as the “Allinson test”. A person is not fit and proper person if his or her conduct “would be reasonably regarded as disgraceful or dishonourable by his professional colleagues of good repute and competency”.<sup>76</sup>

153. 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. Their Honours stated (at 380):

*[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.*

154. 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.<sup>77</sup>

---

<sup>75</sup> See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

<sup>76</sup> See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

<sup>77</sup> See *Cunliffe v Commonwealth* (1994) 182 CLR 272

**155.** The context in which the reference to 'fit and proper' person occurs in section 290 of the Act is the applicant's giving of immigration assistance. The context also includes:

- a) the Act which creates offences for misleading statements and advertising, practising when unregistered and misrepresenting a matter; and
- b) the former Code contained within the Agents Regulations which refers to the applicant being able to perform diligently and honestly, being able and willing to deal fairly with clients, having knowledge of business procedure and properly managing and maintaining client records and maintaining client confidentiality.

**156.** Key elements of the fitness test are:

- the honesty of the person; and
- the person's knowledge of the migration scheme and ability to fulfil the position of a migration agent.

**157.** The requirement in section 290 that the applicant also be 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.

**158.** Having regard to the body of case law cited above, a consideration of whether the Agent is a fit and proper person or a person of integrity to provide immigration assistance can legitimately include the following:

- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
- the Agent's honesty and competency towards clients, the Department and the Authority;
- a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
- the Agent's knowledge and competency in immigration law and practice;
- the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
- the perception of the conduct by the Agent's "professional colleagues of good repute and competency".<sup>78</sup>

---

<sup>78</sup> *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

**159.** Having regard to the totality of the Agent's conduct in relation to the complaint and my findings above, I am satisfied that the Agent is 'not a person of integrity or is otherwise not a fit and proper person to give immigration assistance'. Based on the evidence before me, I am satisfied that the Agent has:

- Breached multiple clauses of the former Code of Conduct showing an indifference to his professional obligations.
- Failed to maintain client confidentiality by providing client information to a third party without the clients' consent or knowledge.
- Failed to provide clients with an agreement for services or fees, invoices, or statements of service.
- Failed to be in direct communication with his clients and in turn failed to obtain client instructions for their matters.
- Had a professional relationship with an offshore entity which allowed for the creation and dissemination of a fraudulent document.
- Attempted to distance himself from his professional responsibilities, as a registered migration agent, by failing to keep and maintain, proper client records which has prevented him from adequately responding to requests made by the Authority.
- Demonstrated a lack of due regard for the legitimate interests of his clients and their dependence on him.
- Failed to maintain the reputation and integrity of the migration advice profession.

#### ***Consideration of Appropriate Disciplinary Action***

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

- a)** Whether the Agent's behaviour is of a minor or serious nature. The Authority has identified the following behaviour as extremely serious and therefore likely to result in discipline at the higher end of the scale:
  - i.** criminal behaviour;
  - ii.** fraudulent behaviour;
  - iii.** behaviour that demonstrates fundamental lack of knowledge of the law; or
  - iv.** involves a blatant disregard for or a significant degree of indifference to the law;
  - v.** repeated occurrences of the conduct described in subsection 303(1) (d)-(h) and/or;
  - vi.** agent behaviour that has resulted in significant harm or substantial loss to clients.
- b)** Any aggravating factors that increase the Agent's culpability including but not limited to previous conduct.
- c)** Any mitigating factors that decrease the Agent's culpability including but not limited to evidence that the Agent's health has contributed to the Agent's culpability or where the Agent has undertaken steps to remedy the situation.

### ***Seriousness of behaviour***

**161.** In deciding to discipline the Agent under section 303 of the Act, I have taken into account all of the circumstances of the case, including the severity of the Agent's behaviour and any mitigating or aggravating circumstances which may exist. Having regard to the Complaint Classification Matrix, I have considered that the Agent's conduct falls within the Moderate/Major classification for the following reasons:

- The Agent had received a formal warning from the Authority highlighting the deficiencies in his practice yet failed to take adequate measures to ensure the conduct was not repeated.
- The contractual arrangements entered into by the Agent facilitated an environment for fraud to occur.
- The Agent continued to engage in adverse conduct, in breach of his obligations, even after the conduct was brought to the Agent's attention.
- The Agent has not provided accurate and consistent information to the Authority during the investigation process.
- My finding that the Agent is not a person of integrity, nor a fit and proper person to provide immigration assistance.

### ***Aggravating factors***

**162.** I consider the Agents conduct falls short of the standard expected of a registered migration agent and professional colleagues of good repute and competency would also regard the Agent's conduct as unacceptable.

- The Agent provided misleading statements with regards to client contact to the Authority.
- The Agent failed to adhere to financial obligations such as issuing service agreements, statements of service, and invoices.
- The Agent attempted to distance himself from his professional responsibilities as a registered migration agent, and the obligations under the Code, by diverting and apportioning responsibility onto others.
- The Agent failed to obtain authorisation from clients to ensure that their matters could be discussed with third parties.
- The Agent demonstrated a lack of understanding about the client agent relationship.

**163.** The Agent in his responses to the Authority's notices conceded that he:

- Entered into a relationship with an offshore entity allowed for the creation and dissemination of a fraudulent document.<sup>79</sup>
- Entered into a partnership where he was not in control of his office and where in his clients obtained advice from persons not qualified to provide immigration assistance.<sup>80</sup>
- Failed to maintain contact with his clients while their matters were ongoing.<sup>81</sup>
- Failed to maintain and keep proper client records and was unable to provide the requested files to the Authority hindering the investigation.<sup>82</sup>

---

<sup>79</sup> In response to second section 309 notice

<sup>80</sup> In response to the section 308 notice

<sup>81</sup> Refer to footnotes 80 and 81

<sup>82</sup> Refer to footnote 80



### ***Mitigating Factors***

**164.** The Agent has provided the following submissions to be taken into account in making this decision:

- His office has dealt with a significant number of clients over the years who have been satisfied with his services.
- He has taken steps to rectify his practice to ensure that he is in line and adhering with his obligations as per the Code and has appointed Mr [JC], as legal counsel, to address short comings within his business.<sup>83</sup>
- The Agent has acknowledged his short comings and has indicated that further guidance, training and supervision from more senior/experienced practitioners within the migration advice industry would be welcome.
- The Agent stated that should his registration be suspended or cancelled it would have an adverse impact on his current and prospective clients, as they would need to be informed and advised to obtain other representation. Moreover, that for the majority of his current clients he has been their agent since their matters first commenced which would necessarily mean that their cases would be transferred to someone who does not have in-depth knowledge of their migration matters.
- According to the Agent, he respects the Authority and the role it has in maintaining the standards of the migration advice profession and will respect and adhere to any decision made by the Authority in relation to these complaint matters.

**165.** The Agent has in a number of his responses to the Authority's notices advised that he has improved his practices since starting his own business. I acknowledge that the Agent, since being notified of the current complaint matters, has made some improvements to his business. The Agent has provided documentation indicating that a new record keeping system has been created, that service agreements are signed directly with him, and that all communication with the clients are in writing. I have given weight to this change in business practice. However, while the Authority issued a formal warning to the Agent in 2016, it was not until these further complaints were put to the Agent that he undertook more substantive action in improving his business practice.

**166.** The Agent provided references from former clients and current business associates all which attest to his good character and professionalism in managing their immigration matters. They state that the Agent has a positive reputation amongst professional associates and former clients. The letters attest to his character and fitness to continue to be a registered migration agent. I note however that one reference<sup>84</sup> states that they met the Agent through the Chinese Entity and that they were advised the Agent would be leaving Awesome International and starting his own business. According to the character reference, the Agent requested that the client sign a new agreement with his new migration agency however the client refused to do so. The reference goes on to state that the Agent "*accepted to continue my application.*" This speaks to the very issues discussed throughout this decision, namely that the Agent is aware of his obligations yet continues to act in a manner which is in breach of them. As such, the letters appear to substantiate the concerns raised by the Authority.

---

<sup>83</sup> In response to the Authority's email dated 15 December 2021

<sup>84</sup> Attachment 11.b of ADD20XX/XXXXX

167. I have also taken into account that a disciplinary decision would affect the Agent's financial earning capacity and livelihood. The Agent has provided email correspondence between him and his current mentor Mr [JC] wherein the Agent is advised that should his registration be suspended or cancelled then the Agent can turn his mind to other aspects within the business such as sales and marketing.<sup>85</sup> However, the Agent has not provided information to the Authority that he has any other source of income other than his migration practice. As such, I accept that any decision that affects the Agent's ability to practice within the migration advice industry, such as a period of suspension or cancellation, will likely have an impact on his livelihood. I have given weight to these factors in my decision, however I am of the view that this is outweighed significantly by the public interest given the seriousness of the Agent's conduct.

### **Consumer Protection**

168. Consumers of professional services of registered migration agents are often vulnerable and place a high degree of trust in their registered migration agent. Consumers are therefore entitled to a high level of professional service from their registered migration agent. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. I consider that the Agent poses a *serious* risk to consumers. I am satisfied that if the Agent were to continue to practice as a registered migration agent, the Agent would not demonstrate the requisite skills expected of a registered migration agent.

169. I consider that a disciplinary decision is warranted and that the Agent requires further education and training to address the conduct the subject of this decision, and in the interests of consumer protection. 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 is maintained, within the migration advice profession.

---

<sup>85</sup> ADD20XX/XXXXXX email correspondence located within folder titled 'Evidence of Improvement'

## **DECISION**

I have turned my mind to the level of disciplinary action including whether to issue a caution or to suspend or cancel the Agent's registration, in light of the findings made in relation to the Agent's integrity, propriety and fitness.

Following consideration of the information before me, I have decided to **suspend** the Agent under section 303(1)(b) of the Act from being registered as a migration agent from the date of this decision for a period of **2 years**, and until the Agent has met the conditions specified. The Agent is to meet the following conditions, which are to be completed within the period of suspension or no more than four (4) years from the date of suspension:

- a. Evidence that the Agent has completed a total of 10 Continuing Professional Development (CPD) points (as approved by the Authority) for every 12 months that the suspension is in force. The CPD activities are to be completed throughout each year that the suspension is in force and should cover professional standards, conflict of interest and ethics.
- b. Evidence that the Agent has passed the Capstone assessment to assess the Agent's ability to meet the Occupational Competency Standards for Registered Migration Agents; and
- c. A statutory declaration in Commonwealth form stating that the Agent has not made immigration representations for a fee, has not advertised the provision of immigration assistance and has not given immigration assistance whilst suspended.

A/g Senior Professional Standards Officer  
Professional Standards and Integrity Section  
Office of the Migration Agents Registration Authority  
Department of Home Affairs

**Date of Decision: 10 May 2022**