



## **DECISION RECORD**

<b>AGENT</b>	Hee Kyoung Kim
<b>COMPLAINT NUMBERS</b>	CMP-31748, CMP-34989, CMP-36454, CMP-36956, CMP-38932/41095
<b>DECISION</b>	Suspension – 24 months
<b>DATE OF DECISION</b>	6 January 2020

## **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</i>	The department administering requests under the <i>Freedom of Information Act 1982</i>
<i>MARN</i>	Migration Agent Registration Number
<i>PIC</i>	Public Interest Criteria
<i>Section 308 notice</i>	Notice issued by the Authority under section 308 of the Act
<i>Section 309 notice</i>	Notice issued by the Authority under section 309 of the Act
<i>The Regulations</i>	<i>The Migration Regulations 1994</i>
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Agent</i>	Hee Kyoung Kim
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations
<i>The Department</i>	The Department of Home Affairs
<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>
<i>VEVO</i>	Visa Entitlement Verification Online
<i>ASIC</i>	Australian Securities and Investments Commission

## **STATEMENT OF REASONS**

### **Background**

1. The Agent was first registered as a migration agent on 10 August 2015 and was allocated the MARN 1573593. The Agent's registration had been renewed annually to date. An application for repeat registration was received by the Authority on 8 August 2019, which is still under consideration.
2. The Register lists the Agent's business association as an employee with the migration firm Hansol Migration Professionals Pty Ltd with the ABN 19 120 689 483.

### **Prior Disciplinary action**

3. The Agent does not have a history of prior disciplinary action.

### **Complaints**

#### **Summary of publication of complaints**

Complaint number and complainant	Date received	Date published to agent
CMP-31748 - Ms NEK	28 June 2017	Published in first section 308 notice on 7 August 2017
CMP-34989 – Mr AB	28 December 2017	Published on 5 April 2018
CMP-36454 – Mr DSS	28 March 2018	Published in third section 308 notice on 11 December 2018
CMP-36956 (Departmental complaint)	1 May 2018	Published in third section 308 notice on 11 December 2018
CMP-38932/ CMP-41095 – Ms CW	20 August 2018/ 14 December 2018	Published in second section 308 notice on 28 September 2018  Re-opened as own motion complaint following complainant withdrawing complaint.

### **CMP-31748**

4. On 28 June 2017, the Authority received a complaint from Ms NEK concerning the Agent's conduct as a registered migration agent.
5. In summary, the complainant alleged the following:
  - In 2014, Ms NEK engaged the services of former registered migration agent, Mr Kyung Jun (Kevin) Lee (Mr Lee - MARN 0533540) who was trading as Hansol Migration Professionals Pty Ltd (Hansol) to assist her with the preparation and lodgement of an Employer Nomination Scheme (ENS) (subclass 186) visa application.
  - She paid the fees for the proposed services including, \$400 for a Korean Penal Clearance and Australian National Police Certificate.
  - In July 2015, Ms NEK requested Mr Lee to provide information regarding the lodgement of her application. She received this information in October 2016, more than 12 months later, through a different email address, heekyoungkim01@gmail.com.

- Mr Lee explained to her that the new email belonged to the Agent, his employee and had been provided to the Department for 'convenience'.
  - Due to a lack of communication from Mr Lee and the Agent, Ms NEK transferred her application into her own ImmiAccount.
  - On 26 March 2017, she requested that the Agent withdraw the application of her estranged husband and his two children, who were dependents on her ENS application. In support of this request, she provided the Agent with relevant paperwork, namely, a court filing receipt for the divorce and an interim order from South Korea.
  - On 17 May 2017, the Agent forwarded Ms NEK evidence of the withdrawal request submitted to the Department on 27 April 2017, however she could not locate this within her departmental record and believes the above information and supporting documents have not been provided to the Department.
  - Ms NEK felt she could not trust either Mr Lee or the Agent anymore and advised the Department that she had withdrawn Mr Lee's appointment as her migration agent. Following this, Ms NEK was required to complete a relevant form and only at that time, she found out that it contained the MARN 1573593, which belonged to the Agent and not to Mr Lee.
  - For the above reasons, she understands that the Agent while acting as her registered migration agent, failed to demonstrate the required professional standards.
  - Ms NEK requested that the Agent return her original Korean Penal Clearance and National Police Certificates, however at the time of lodging her complaint with the Authority, had not received any response. In her complaint, Ms NEK sought the return of these original documents or reimbursement of the \$400 fee she had paid to obtain these documents to support her visa application.
6. In support of her complaint, Ms NEK provided the Authority with the following documentation:
- Email correspondence containing an attachment Ms NEK advised was a tax invoice issued by Mr Lee for payment of "ENS" and dated 6 October 2014;
  - Email received by Ms NEK from general@hansolimmi.com.au on 20 February 2017, containing an email sent from the Department to the Agent's email address heekyoungkim01@gmail.com on 13 February 2017, advising that no timeframe could be provided for finalisation of Ms NEK's visa application but that it was being actively processed;
  - Email correspondence from Mr Lee dated 22 July 2015 containing departmental acknowledgement of the ENS nomination for The Trustee for MIC Trust, nominating Ms NEK;
  - Form 956 signed by the Agent and Ms NEK and dated 8 May 2017, withdrawing the appointment of the Agent; and
  - Email from the Agent to the Department on 15 November 2016, submitting additional supporting documents for the application, including passports, IELTS results, and personal identity documents from South Korea.

#### Publication of the complaint

7. On 7 August 2017 the complaint was published to the Agent, pursuant to subsection 308(1) of the Act (the first section 308 notice). The Agent was requested to respond to the Authority's questions in the form of a statutory declaration by 4 September 2017. The Authority also required the Agent to provide a copy of the Service Agreement with Ms NEK, and her communication with the client and the Department throughout the processing of the visa application, including progress updates, and responses to requests

for information. The Authority requested that the Agent return Ms NEK's the original documents or provide a refund of \$400 to the client. In addition to the publication of Ms NEK's complaint, the Authority informed the Agent in the section 308 notice that according to information obtained from the Australian Securities and Investments Commission (ASIC), the Agent's employer, Hansol, was subject to an insolvency notice.

Response to first section 308 notice

8. On 1 September 2017 the Authority received the Agent's response to the first section 308 notice by way of a letter, not in statutory declaration form, and a number of documents. In summary, the Agent's response stated:
- When asked whether she had informed Ms NEK that she would be taking over her matter following the cancellation of Mr Lee's registration, the Agent advised that she had been with Hansol for approximately six years in total, including handling Ms NEK's initial subclass 457 visa application in 2011. Ms NEK was initially referred to Hansol by her employer (sponsor), and Hansol was in close contact with both parties during the period. While it was agreed that Hansol would communicate mainly through Ms NEK's employer, in order to keep the communication "*unanimous*", it was necessary to communicate with the complainant directly where required for her visa application. The Agent asserted that she informed Ms NEK's employer that she would be handling Ms NEK's application. The Agent believed Ms NEK was subsequently informed by her employer, who would be willing to provide a statutory declaration to this effect if required.
  - The Agent asserted that while she had communicated appropriately with the Department on behalf of Ms NEK and her sponsor, she regrettably neglected maintaining the proper documentation "*prepared for this issue in advance...[and c]onsidering the history and the relationship among the employer and the complain[an]t, it never crossed that this could be an issue. I have learnt my lesson and will be more thorough in having the documentation in order*".
  - In response to the Authority's request that the Agent return Ms NEK's documents or refund her the \$400, the Agent advised the Authority that a refund had been paid to Ms NEK for the police certificates.
  - The Authority sought to confirm whether the paperwork, including the court filing receipt for her divorce and the interim order from South Korea, were provided to the Department along with Ms NEK's withdrawal request. In response, the Agent focused on addressing communication difficulties by asserting that an email with the relevant documents was sent to the Department on 27 April 2017. She stated, however, that she cannot confirm whether the email, which had a large number of documents attached, was received due to size limitations. As the Agent had been withdrawn as Ms NEK's registered migration agent, she argued that she was unable to follow up on receipt of this email, which is her usual practice. The Agent asserted that she had spent a considerable amount of time preparing the documents for Ms NEK, including translating her relationship statement into English for no charge, as she had issues with writing fluently in English. Further, the Agent asserted that she had provided Ms NEK with a "*considerable depth of advice...in relation to this issue. In fact I had to spend threefold of time in providing advise and preparing for the documents as the employer, the complaint and the dependent applicants could not reach to an agreement as to what they wish to do about this issue. [Ms NEK] was not willing to speak to the employer or the dependent applicants about this so she had asked me to communicated with them where necessary. Again this was not in the scope of our work but I had communicated on behalf the complain[an]t to the other parties on numerous occasions...[which] the employer has agreed to provide Statutory Declaration to this effect if required*"(sic). In light of the extra services and assistance provided to Ms NEK in her difficult situation, the Agent argued that it was "*unfair*" for Ms NEK to accuse her of failing to communicate.

- The Agent disputed that Hansol was subject to liquidation, having checked with both ASIC and the company's accountants. In support, she provided the Authority a copy of the ASIC and Australia Business Register (ABR) search results for Hansol, showing the company's status as 'Registered' and/or 'Active'.
9. The Agent provided the following documents in response to the section 308 notice:
- Email correspondence between the Agent, the Department and Ms NEK containing her email to Ms NEK on 4 October 2015, forwarding the Department's acknowledgement of application received.
  - Emails between Hansol and Ms NEK in March and April 2017 regarding Ms NEK's request to remove her estranged husband and his two children from her application and add her current partner, including the receipt of supporting documentation, and the Agent's subsequent email to the Department on 27 April 2017, requesting that Ms NEK's estranged husband and his two children be removed from her application;
  - ASIC Company Summary extract for Hansol Migration Professionals Pty Ltd dated 29 August 2017, showing the company's status as 'registered';
  - ABN look up search result details for Hansol Migration Professionals Pty Ltd dated 29 August 2017, showing the Australian Business Number (ABN) status as 'active'; and
  - Transfer receipt for refund payment of \$400 made on 1 September 2017.

Additional request for information

10. The Authority made a number of subsequent requests for additional information between 11 September 2017 and 22 December 2017, to clarify the Agent's responses to the first section 308 notice in relation to Hansol's registration status. The Authority also sought to obtain evidence of the Agent's email to the Department on 27 April 2017, given the Department had advised the Authority that there was no record of this being received. The Agent provided her responses and additional evidence for these matters, which were not pursued further by the Authority.
11. On 19 October 2017 and 8 February 2018 the Authority requested additional information and documents from Ms NEK including all correspondence she had with Mr Lee and the Agent in relation to the subclass 186 visa application. The Authority received these by way of email on 24 October 2017, and on 8 and 26 February 2018. Ms NEK advised that she had received, and sent, correspondence through four different Hansol email addresses. Specifically, [general@hansolimmi.com.au](mailto:general@hansolimmi.com.au); [klee@hansolimmi.com.au](mailto:klee@hansolimmi.com.au); [heekyoungkim01@gmail.com](mailto:heekyoungkim01@gmail.com); and [skim@hansolimmi.com.au](mailto:skim@hansolimmi.com.au). Ms NEK has provided the Authority with copies of all the correspondence that she received and sent from these email addresses.
12. Ms NEK also provided the following information to the Authority:
- Ms NEK then sent a text message to Mr Lee on 5 May 2016 to confirm that he had provided all the documents to the Department and advised him that she would not require any further extension as all the documentation had been provided by her. At the time she was unaware that Mr Lee's registration had been cancelled. Mr Lee called her to advise that she could still change her mind on the withdrawal request.
  - On 26 March 2017 she sent the last email with all necessary documents to Hansol and confirmed that she did not have any further documents to provide and that no further extension should be requested from the Department as a result, which she also reiterated by telephone. Ms NEK was advised by the Agent following this that it was highly likely that her application would be refused as she could not provide the required documents for her son. In response, she alleged that she requested that all documents she provided to Hansol be submitted to the Department. She received multiple confirmations that these documents had been submitted to the Department.
  - She was concerned with the information provided by Mr Lee and contacted the Department directly to submit a Form 956 withdrawing her migration agent on 8 May

2017 through ImmiAccount. She updated the correspondence email address to hers on 10 May 2017. Following a Freedom of Information (FOI) request, Ms NEK has been able to access a copy of a Form 1193 submitted to the Department on 10 May 2017 to update her application. She asserted that she did not sign this document.

#### Departmental records

13. Departmental records show that two documents were uploaded to Ms NEK's application on 10 May 2017; a Form 1022 Change of circumstances and the Form 1193 referenced above that Ms NEK advised that she did not sign. A review of ImmiAccount records showed that only a private user ImmiAccount, erinkim1005@gmail.com, which was registered to Ms NEK, accessed and uploaded documents to the application on this day.
14. In light of this information, which indicates that Ms NEK's private account, rather than the ImmiAccount registered to Hansol<sup>1</sup> was used to submit this document, I have not pursued Ms NEK's subsequent allegation that she did not sign the Form 1193 further.

#### **CMP-34989**

15. On 28 December 2017 the Authority received a complaint regarding the Agent's conduct as a migration agent from Mr AB.
16. In summary, the complainant alleged that:
  - Mr AB wanted to apply for a Skilled sponsored migration visa while studying in Australia in 2009. He met with a few migration agencies and decided to work with Hansol.
  - In February 2009, he met with representatives from Hansol, where it was decided that the most appropriate visa option for him was to apply for a subclass 176 visa.
  - Mr AB entered into a Service Agreement with Hansol to authorise the preparation and lodgement of the visa application, made the agreed payments, and provided the required supporting documents. He mostly interacted with one of Hansol's registered migration agents, Mr Kevin Lee.
  - After some time, Mr AB enquired about the progress of the visa application with Mr Lee, only being told the application was still in progress.
  - He applied for another visa himself, a subclass 489 visa, on 4 January 2014, which was granted on 7 July 2014. Mr AB considered that this was evidence that Hansol had not lodged the visa application correctly for his subclass 176 visa.
17. Mr AB subsequently sent an email to Hansol on 28 December 2017, the same day as lodging his complaint with the Authority, requesting information about his visa application, which was previously managed by Mr Lee. Mr AB had not received a response to his email as at 30 March 2018.<sup>2</sup>
18. In support of his complaint, Mr AB provided the Authority the following relevant supporting documentation:
  - Hansol Migration Professionals Pty Ltd's Skilled Independent Student pre-assessment interview for Mr AB, undated;
  - Service Agreement between Mr AB and Hansol, dated 24 February 2009, to prepare and lodge a subclass 176 Skilled Sponsored visa application, for the agreed professional fee of \$2200, signed by Mr AB and Mr Lee on the same date;
  - Email correspondence 20 June 2012 to 30 May 2016 between Mr AB and Mr Lee regarding the outstanding application lodged by Mr Lee in 2009;

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<sup>1</sup> Hansol's ImmiAccount is HANSOLMIGRATION1

<sup>2</sup> Prior to the Authority publishing the complaint to the Agent.

- Email correspondence between Mr Lee and the Department between 30-31 October 2014 regarding the status of Mr AB's application, which was forwarded to Mr AB on the same day;
- Departmental notification of grant of a Skilled Regional Sponsored (Provisional) (class SP) Skilled - Regional Sponsored (Provisional) (subclass 489) visa for Mr AB, dated 11 July 2014 and sent to Mr AB's email address;<sup>3</sup>
- Form 1276 Application for general skilled migration to Australia for Mr AB, containing Hansol's contact details for correspondence, and identifying Mr Lee as having provided assistance completing the form and as the cardholder paying the visa application charge. The application does not contain Mr AB's signature or the date but does include Mr Lee's signature in the payment details section. The application form has 'copy' and 'posted' stamps on the front page, and a registered post number sticker attached;
- Emails sent by Mr AB to one of Hansol's business email addresses, addressed to Mr Lee on 30 May 2016, 24 August 2017 and 5 September 2017 demanding updates on the progress of his outstanding visa application, with an anonymous response received on 29 August 2018 providing visa options; and
- Email from Mr AB to the Agent on 28 December 2017, forwarding his last unanswered correspondence to Hansol on 5 September 2017, advising that he had identified the Agent as Hansol's only registered migration agent when lodging his complaint, and seeking information on the outcome of the outstanding application lodged in 2009.

#### Departmental records

19. Departmental records show that the only visa application lodged in 2009 for Mr AB was his subclass 572 Student visa, which was granted shortly thereafter. The only Skilled visa lodged for Mr AB was the subclass 489 visa that he lodged himself in January 2014, and which was subsequently granted on 11 July 2014.

#### Publication of the complaint

20. The Authority published Mr AB's complaint to the Agent by email on 5 April 2018. The Agent was requested to provide evidence of the steps she had taken to assist Mr AB with his visa application, as she appeared to have carriage of the matter following Mr Lee's cancellation, as the only registered migration agent listed on the Authority's records in association with Hansol. The Authority also requested that the Agent provide details of all the clients she had taken over from Mr Lee and the status of any ongoing applications. The Agent was required to respond to the Authority by 12 April 2018.
21. On 12 April 2018 the Authority received an email from the Agent containing two documents. The first was a copy of email correspondence from the Agent, forwarding Mr AB's email dated 28 December 2017 to Mr Lee's personal email address on 4 January 2018 to request that he advise the location of Mr AB's client file as Hansol's electronic records showed no client records for Mr AB. This correspondence also contained follow up emails to Mr Lee on 18 January and 20 February 2018, with no responses. The second document was email correspondence between the Agent and a legal firm, [removed]. In this correspondence, the Agent emailed the firm on 15 March 2018 to explain the situation and seek legal advice regarding obtaining the client file from Mr Lee, and how to protect Hansol from possible liability that may result from Mr AB's complaint and missing client file. The correspondence contains a response from [legal practitioner of removed law firm] on 16 March 2018, asking whether Hansol entered into an employment agreement with Mr Lee. In relation to the Authority's request that the Agent provide details of all the clients that she had taken over carriage from Mr Lee, the Agent advised that she did not "have any ongoing clients that were taken over from Mr Lee".

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<sup>3</sup> Being the second application lodged by Mr AB, following no progress reports or outcomes being provided on the status of the application lodged by Mr Lee in 2009

22. On 26 September 2018 the Authority sent the Agent an email requesting that she provide the details of all clients, both ongoing and non-ongoing, that she had taken carriage of, since the cancellation of Mr Lee's registration on 2 May 2016. The Authority did not receive any response from the Agent and subsequently requested the information pursuant to section 308(1) of the Act (as part of a second section 308 notice sent to her on 28 September 2018. The Agent did not respond to this request.
23. On 11 December 2018, the Authority published additional complaints to the Agent pursuant to section 308(1) of the Act (the third section 308 notice). In this notice, the Agent was requested to provide an update on her attempts to retrieve Mr AB's client file from Mr Lee, following her email to a legal practitioner, *[of removed law firm]*, on 15 March 2018. The Authority advised the Agent that the response was to be provided by 22 January 2019. The Agent made a request for an extension on the due date, which was granted until 21 February 2019.
24. On 21 February 2019, the Agent provided her response to the third section 308 notice, not in a statutory declaration. The response stated *"[t]here was few communications attempts (including mails, phone calls and visit in person) made by the lawyer. There was no response from Mr Lee on any of the attempts"*. The Agent did not provide any evidence of these attempts to support her statement. The Authority contacted the Agent again on 17 April 2019 to request the evidence by 1 May 2019. Following a subsequent request for an extension of time, the Agent provided the Authority with an email on 22 May 2019 from *[legal practitioner]*, which was dated 4 February 2019, and stated that the email's purpose was to *"give you an update on the case. We haven't got any response back from Kyung Jun Lee at this stage. There is one other strategy we may want to try. I will contact you shortly to brief you on this"*. No further documentation including any documentation from Mr AB's client file have been provided to the Authority to date.

#### **CMP-36454**

25. On 28 March 2018, the Authority commenced an own motion investigation following receipt of information referred from the Department in relation to a visa applicant that the Agent had represented. The referral information alleged that:
  - The Agent had failed to notify a client of Hansol, Mr DSS, that his subclass 186 visa application was refused in December 2016.
  - Mr DSS checked VEVO in March 2017 and discovered that the application had been finalised. However, when he spoke to the Agent she instead told him that the application was still being considered by the Department.
  - The Agent subsequently lodged a second visa application for this client without his knowledge or permission on 28 March 2017, and provided him with the new transaction reference number (TRN). Mr DSS advised that the sponsor had ceased operating before the second application was lodged and was not in a position to sponsor him.
  - When Mr DSS requested an explanation about the new TRN he had been given, the Agent told him that there had been a system error and that the Department had issued a new TRN for the first application. It would, therefore, appear that the Agent was not honest with Mr DSS.

#### **Departmental records**

26. Departmental records show that an Employer Nominated Scheme (ENS) nomination application for the sponsor TM Pty Ltd, nominating Mr DSS, was lodged on 8 April 2016, with the Agent listed as the authorised contact and registered migration agent for the application. The email address listed for electronic communication was klee@hansolimmi.com.au, which belonged to the Agent's former colleague Mr Kyung Jun (Kevin) Lee.<sup>4</sup> No supporting documentation was lodged with the nomination application. On the same day, an ENS Temporary Residence Transition (subclass 186) visa

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<sup>4</sup> Mr Lee's registration was cancelled by the Authority on 2 May 2016



application was lodged for Mr DSS. As with the nomination application, the Agent was identified in the application as the appointed registered migration agent but the email address listed for electronic communication was klee@hansolimmi.com.au.

27. The nomination was refused by the Department on 3 November 2016 on the basis that no information or documentation, other than that in the application form, had been provided with the nomination application. Moreover, there was no evidence that the sponsor had met the training requirements set out in the standard business sponsorship approval. This refusal decision was sent to klee@hansolimmi.com.au addressed to the Agent, as the appointed registered migration agent in the application form. On the same day, an invitation to comment on the nomination refusal, in relation to Mr DSS' subclass 186 visa application, was also sent to klee@hansolimmi.com.au, addressed to the Agent. As the Department did not receive a response in relation to this correspondence, Mr DSS' visa application was refused on 6 December 2016, with the notification sent to klee@hansolimmi.com.au, addressed to the Agent.
28. Mr DSS contacted the Department on 20 March 2017 to ascertain the status of the visa application lodged on 8 April 2016. He was subsequently advised that the decision had been sent to his registered migration agent. He informed the departmental contact officer that he would contact his migration agent to obtain the outcome. Mr DSS also contacted the Department on 21 March, 11 April, 11 November, 29 November and 5 December 2017, to obtain information as to the outcome of the first visa application, and his visa status. He advised the Department in several of these exchanges that his registered migration agent was being uncooperative and would not provide him with correct information about his visa application and immigration status.
29. On 28 March 2017 a second nomination application for TM Pty Ltd, nominating Mr DSS, and corresponding subclass 186 visa application for Mr DSS were lodged. In both the nomination and visa applications, the Agent was identified as the authorised contact and registered migration agent, with the email address for electronic communication listed as heekyoungkim01@gmail.com. The nomination was lodged with a number of supporting documents, all of which were dated from mid-2016 or earlier excluding the Certification Form – Paying for visa sponsorship, signed by the director of TM Pty Ltd, Mr PRS on 28 March 2017.
30. The Department sent a 'Request for more information' in relation to the second nomination application lodged on behalf of TM Pty Ltd, to the Agent at heekyoungkim01@gmail.com on 7 March 2018, requesting further information and , updated records for 2017 including:
  - *Established business/organisation;*
  - *Evidence that the nominee will be employed on a full-time basis in the nominated position for at least two years from the date of permanent residency visa grant and that the terms and conditions of employment do not preclude the possibility of extending the period of employment;*
  - *Evidence of meeting the training benchmarks for nominations made in the Temporary Residence Transition; and*
  - *The nominee has been employed, in the occupation in respect of which they hold the Subclass 457 visa for a total period of at least two years in the period of three years immediately before the nominator made the application (requiring 2017 payslips).*
31. The Department did not receive any response to this request from either the Agent, or the sponsor, and subsequently refused the nomination application on 18 April 2018, with the notification and refusal decision record sent to heekyoungkim01@gmail.com. Prior to this, the Department also sent a Request for more information in relation to the second subclass 186 visa application to heekyoungkim01@gmail.com on 7 March 2018, requesting an updated Australian Federal Police (AFP) clearance National Police Check, a Form 80 - Personal particulars for character assessment, updated confirmation of Mr DSS' employment, and Immigration Health Examinations. No response was received prior to Mr DSS sending two Form 956s to the Department on 28 March 2018, signed by the Agent and Mr DSS, withdrawing her appointment as his registered migration agent for his second visa application.

### **CMP-36956**

32. On 1 May 2018, the Authority received an internal complaint from the Department in relation to information received regarding the visa application of the Agent's client Mr DSS, who was also the subject of the Authority's investigation (CMP-36454). In summary, the complaint alleged:
- The Department received a training benchmark document on 13 April 2017, in association with the nomination lodged on 28 March 2017, along with the subclass 186 visa application that is the subject of CMP-36454. The Agent was listed as the registered migration agent for this application, and it was identified that her employer was Hansol Migration Professionals Pty Ltd (Hansol).
  - The training benchmark document contained an invoice for \$1650, addressed to Mr DSS' sponsor, TM Pty Ltd, and dated 30 July 2015, for the delivery of three workshops for one attendee between 27-29 July 2015.
  - The processing officer identified that the invoice was issued by another company, LLC Pty Ltd, and that both Hansol and LLC Pty Ltd had the same director listed, Ms HJL. It therefore appeared that LLC Pty Ltd was an associated entity of the Agent's employer, and that there may be a conflict of interest in the registered migration agent utilising their services, but failing to declare the association.
  - The Department alleged that it appeared that the training document issued by LLC Pty Ltd may have been produced with the sole intention of manufacturing evidence for Mr DSS' nomination.

### **Departmental records**

33. Department records indicate that in addition to the training benchmark B invoice dated 30 July 2015, which was provided to the Department on 13 April 2017, the Department subsequently also received the following documents issued by LLC Pty Ltd in support of the nomination application on 7 December 2017:
- Receipt dated 31 August 2014 and issued to TM Pty Ltd for payment of \$1650 for the delivery of three workshops by LLC Pty Ltd;
  - Receipt dated 31 July 2015 and issued to TM Pty Ltd for payment of \$1650 for the delivery of three workshops outlined in the aforementioned invoice; and
  - Receipt dated 15 March 2016 and issued to TM Pty Ltd for payment of \$1760 for the delivery of three workshops by LLC Pty Ltd.

### **Publication of complaints CMP-36454 and CMP-36956**

34. On 11 December 2018 the Authority published complaints CMP-36454 and CMP-36956 to the Agent in the form of a notice pursuant to section 308(1) of the Act (the third section 308 notice). The Agent was requested to provide responses to the Authority's questions in relation to Mr DSS and TM Pty Ltd, as well as client files associated with the matters contained in the two complaints by 22 January 2019...
35. On 22 January 2019, the Authority received an email from the Agent requesting an extension of time to respond to the notice until 20 March 2019 on the grounds that while *"a response is being prepared...in order to fully address the new complaints by the Department I need to obtain documents and information from the client and the employer associated with the case of concern. They have agreed to a meeting on 20 February 2019. For this reason, I would like to request for an extension in providing... a full response addressing all requests. This is for the meeting scheduled for 20 February and an ample time for us to prepare response based on the information obtained at the meeting."* The Authority provided the Agent with an extension of time until 21 February 2019.

36. On 21 February 2019 the Agent provided her response to the third section 308 notice in the form of written responses, not in statutory declaration form, and provided the following documents relating to CMP-36454 and CMP-36956:
- Emails between employees of Hansol, including the Agent, and Mr PRS and Mr DSS on 10 December 2015, 6 December 2016, 28 March 2017, 8 March 2018, and 18 April 2018. A review of the metadata properties for each document containing copies of the email correspondence identified that the PDF was created on 21 February 2019 and that the author is listed as “Kevin Le”;
  - A copy of a Service Agreement between Mr PRS, on behalf of TM Pty Ltd, and Hansol dated 10 November 2015, for a subclass “186 nomination and visa application”, signed and dated by both the Agent and Mr PRS on 10 December 2015;
  - A copy of a Service Agreement between Mr DSS and Hansol, dated 10 November 2015, for a subclass “186 [visa] application”, signed and dated by both the Agent and Mr DSS on 10 December 2015;
  - Hansol tax invoice, issued to TM Pty Ltd and dated 4 February 2016, for \$9784.70 for “ENS visa application” professional fees and government charges;
  - Hansol tax receipt, issued to TM Pty Ltd and dated 7 February 2016, for payment of \$9784.70 for “ENS visa application” professional fees and government charges on 6 April 2016;
  - Typed letter dated 20 February 2019, signed by Mr DSS, disputing the allegations in CMP-36454 and CMP-36956, and advising that he had not lodged the complaints as Hansol had “*done its job to the required standard...[and that he didn’t want Hansol or you] to be disadvantaged or penalised in anyway [sic]*”. A review of the document’s metadata identified that it appeared to be a PDF scan, had been created on 21 February 2019 and that the author is listed as “Kevin Le”;
  - Typed letter dated 6 April 2016, signed by Mr PRS on behalf of TM Pty Ltd, indicating that he had received advice “*about the potential risks of not obtaining a full set of documents required for the process prior to lodging an ENS (subclass 186) nomination and visa applications [sic]*”. Further, that Hansol was released from any liability or financial responsibility as a result of following Mr PRS’ instructions on this matter. A review of the document’s metadata identified that it appeared to be a PDF scan of the document which was created on 21 February 2019 and that the author is listed as “Kevin Le”, and
  - Typed letter dated 20 March 2017, signed by Mr PRS on behalf of TM Pty Ltd, advising that he was “*aware that Hansol Migration Professionals and LLC consulting share a mutual director. I have approached LLC on my own accord in order to carry out training on my employees. I understand that there may be a potential conflict of interest arising from the relationship and I was advised of the possible implications by both Hansol Migration Professionals and LLC.*” A review of the document’s metadata properties identified that it appeared to be a scanned PDF document of the original document, created on 21 February 2019 and that the author is listed as “Kevin Lee”.
37. In summary, the Agent’s written response to the Authority’s questions in the third section 308 notice stated:

#### CMP-36454

- Mr DSS first approached Hansol on 10 December 2015 to seek assistance with preparing and lodging a subclass 186 visa application, by way of meeting with the Agent and another employee of Hansol, Ms JH at Hansol’s business’ office. Also in attendance was Mr DSS’ employer. The Agent discussed general requirements of the ENS including fees and documents required and provided a quick outline of what would occur in the event of employment termination and the business closure. The Agent then

drafted and sent an email to all attendees documenting the matters discussed and advice provided, a copy of which she included in her response to the Authority.

- The Agent entered into Service Agreements with Mr DSS and a representative of TM Pty Ltd on the same day as the meeting. Mr DSS did not pay any fees to the Agent as his employer paid all incurred costs. As a result, no invoice or receipt was issued to Mr DSS.
- TM Pty Ltd paid a total of \$9784.70, inclusive of a professional fee of \$5500, Australian Federal Police processing fee of \$100, and government charges of \$545.85 and \$3638.85 for the nomination and visa application charges, respectively. The Agent received this payment on 6 April 2016 by bank transfer and issued an invoice and receipt to TM Pty Ltd for the payment.
- In response to the Authority's question regarding any conflict of interest in representing both sponsor and nominee, the Agent stated that she had discussed the potential issues that would arise if Mr DSS' employment was terminated or the business closed at the meeting on 10 December 2015. The Agent asserted that she had advised both parties that in such circumstances she may withdraw her services, and they should seek to engage their own separate registered migration agents or lawyers.
- The Agent was responsible for the lodgement of both the nomination applications and corresponding visa application for Mr DSS. In response to the Authority's question as to why no supporting documents were provided with the first nomination application, the Agent asserted that she had been *"advised to lodge the application first as this would allow Mr DSS' visa application to be processed sooner. Rather than waiting until all documents were prepared and ready for lodgement. I explained [to] TM Pty Ltd the potential risk of lodging the application without supporting documents. I have also received a signed disclaimer from the director of TM in this regard"*.
- The Authority requested that the Agent explain why she was listed as the registered migration agent on both the first nomination and visa applications, but Mr Lee's email address had been provided instead of hers for electronic communication. In response, the Agent asserted that, to the best of her knowledge, Mr Lee's email address had been auto-filled as the designated address at that time, and that the Agent had intended to use her email address instead.
- The Agent argued that she did not realise that the incorrect email address had been provided to the Department until she received no decision records from the Department despite identifying that the nomination and visa application had been finalised in ImmiAccount. The Agent subsequently advised Mr PRS and Mr DSS of the decisions by email,<sup>5</sup> using her own email address. It was not the Agent's standard practice to use Mr Lee's email address for correspondence with the Department, and she advised the Authority that she *"remember[ed] this was the only incident that this had happened"*.
- The Authority noted that departmental records suggested Mr DSS had contacted the Agent on or around 20 March 2017 to seek an explanation on why his visa application appeared to be 'finalised' when he conducted a VEVO check and subsequently discussed the matter with a departmental officer. The Authority requested that the Agent provide details of if, and when, Mr DSS had contacted her to discuss this matter, what she had advised him, and whether she had made a record of this interaction. In the Agent's response, she did not answer these questions, but instead stated that *"[a]s Mr DSS was aware of his visa refusal by this date, the contacts from Mr DSS at this stage was mainly concerning his second application"*.
- The Agent asserted that she had received verbal instructions from both TM Pty Ltd and Mr DSS to lodge the second nomination application and subclass 186 visa application, which she followed up on with confirmation emails to both parties. The Agent also asserted that she had subsequently also notified both parties of the lodgement of these applications by email. In support of these statements, the Agent provided a copy of an email she had sent to Mr DSS and a representative of TM Pty Ltd on 28 March 2017,

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<sup>5</sup> Evidenced by the email dated 6 December 2016 that was included in the Agent's response

advising of the lodgement and containing a copy of the departmental acknowledgement of lodgement.

- The Agent asserted that most of the documents she had submitted to the Department for the second nomination application were provided to her by TM Pty Ltd between November 2016 and March 2017, either in person or through email. In the case of Mr DSS' second visa application, the Agent asserted that most of his documents *"were ready by early 2016"*, and that he had provided her with a few payslips and evidence of work for the second visa application. The Agent advised that she had received most documents from Mr DSS in person.
- The Agent stated that she received the request from the Department for further information dated 7 March 2018 and forwarded it to the sponsor by email. She then contacted the sponsor several times and sent emails on a number of occasions to obtain instructions in relation to responding to the Department's request. However, she did not receive any instruction from the sponsor.
- The Agent then received the refusal decision for the second nomination application sent to her by email on 18 April 2018, and forwarded this to the sponsor by email.<sup>6</sup>
- In response to allegations that the Agent misled Mr DSS as to the outcome of the first visa application, and that she had lodged the second visa application on 28 March 2017 without his knowledge or permission,<sup>7</sup> the Agent stated that she had *"met and spoken to Mr DSS on this matter on 20 February 2019. Further, "[h]e has admitted that he wanted to find a way to get through his situation at the time as he knew that the closure of his sponsor's business had put him in a tight spot. He believed that if no written evidence was sent to the Department on his allegation, he thought the Department would not act on his story. Mr DSS has written a letter outlining that all application procedures for his first and second applications were carried out in a proper manner."*
- In addition to the email advising Mr DSS of the lodgement of the second nomination and visa application on 28 March 2017, the Agent provided a copy of an email sent to Mr DSS and a representative of TM Pty Ltd on 6 December 2016, forwarding the refusal decision for the visa application, and *"once again"* attaching the nomination refusal decision for reference.

#### CMP-36956

- The Agent asserted that she had received the training benchmark documents from the director of TM Pty Ltd between November 2016 and March 2017, after the first nomination application was refused by the Department.
- When asked by the Authority to explain the relationship between Hansol and LLC, and whether the Agent considered that a conflict of interest existed, she asserted that *"[o]ther than the fact that the entities share a mutual director, I have not come across LLC much while working at Hansol. I have received a waiver of conflict letter from the director of TM Pty Ltd in this regard"*.
- The Agent cannot recall the exact number of her clients that have used LLC Pty Ltd to obtain documents in support of their nomination or visa applications but claims that there have only been a few. Where her clients use LLC Pty Ltd's service for their training, the Agent advised that she requests that they sign a waiver letter, which results in many employers choosing to use other training providers instead, as they consider that by signing a waiver letter, regardless of content, that the application is less likely to be approved outright.
- When responding to the Department's allegation that LLC Pty Ltd had manufactured the invoice and three receipts as evidence to assist the nomination application lodged by Hansol, the Agent argued that TM Pty Ltd had independently initiated contact with Lee and Lee to provide training. She also asserted that TM Pty Ltd were unaware at

<sup>6</sup> Evidenced by the email dated 18 April 2018 that was included in the Agent's response

<sup>7</sup> Which he advised the officer of during his interactions with the Department on 20 March and 5 December 2017

that time of obtaining this training that LLC Pty Ltd had the same director as Hansol. It was only after the director of TM Pty Ltd provided the Agent with the invoice and receipts from LLC Pty Ltd that she notified him of the potential conflict of interest issue and requested that he sign the waiver letter. To the best of the Agent's knowledge, Hansol only has a "*minimal relationship*" with LLC Pty Ltd, and she has no interest or shares in either Hansol or LLC Pty Ltd. If the Agent believed that a document was 'manufactured' then she would refuse to proceed with the application. To the best of her knowledge, the Agent believes that the LLC Pty Ltd documents were genuinely obtained.

#### Broader Issues - staffing at Hansol and email addresses

- The Agent confirmed that the only email addresses belonging to her which she has used to communicate with clients of Hansol and other employees of Hansol, are skim@hansolimmi.com.au and heekyoungkim01@gmail.com.
- The Agent listed the office holders and employees of Hansol since January 2016 as:
  - Ms HJL (Director)
  - Mr KK (Manager)
  - Hee Kyoung Kim (Self)
  - EB (Marketing)
  - KH (Admin)
  - Ms JH (ceased employment)
  - YI (ceased employment)
  - KHCW (ceased employment)
- The Agent had tried to meet with Mr Lee's clients following the cancellation of his registration to explain the situation and receive instructions from the clients. Some of them appointed other migration agents. For the ones who retained her services, the Agent reviewed "*all their files with them so I could make sure that all procedures were transparent and agreed upon by the clients*".

#### **CMP-38932/CMP41095**

38. On 20 August 2018 the Authority received a complaint regarding the Agent's conduct as a migration agent from Ms CW. In summary, the complainant alleged that:
- She engaged the Agent's services in 2015 to help her apply for a subclass 457 visa. She had not received an outcome for this visa application by 2017, and instead requested that the Agent withdraw the application. The Agent agreed to withdraw the application as well as refund the agent fees on 31 May 2017.
  - At the time of lodging her complaint Ms CW had not received the refund for fees paid, even though the application had been withdrawn in August 2017, and she had repeatedly emailed the Agent following the withdrawal request to seek the agreed refund. She had received no reply from the Agent for nine months prior to her lodgement of the complaint.
39. Additional information was received from Ms CW on 2 September 2018, including that the Agent did not advise her of the departmental invitation to comment on information letter dated 3 February 2017, or the notification of refusal letter dated 15 March 2017.
40. In support of her complaint, Ms CW provided the Authority with the following supporting documents:
- Emails between the complainant, the Agent, and a person/persons named "*Kelvin*" / "*Kevin*" from Hansol Migration Professionals Pty Ltd, between 9 November 2015 and 6 August 2018;

- Hansol Migration Professionals tax invoice dated 17 August 2015, addressed to RQ Pty Ltd, for the amount of \$8327 for professional fees and government charges for a subclass 457 visa;
- Departmental acknowledgement of a Temporary Work (Skilled) visa application for Ms CW, dated 28 August 2015;
- Departmental notification of grant of a Bridging visa for Ms CW, dated 19 February 2016; and
- Departmental notification of grant of a Bridging visa for Ms CW, dated 17 November 2016.

#### Departmental records

41. A Temporary Work (Skilled), subclass 457 visa application was lodged on 28 August 2015 for Ms CW, with Mr SZ listed as a dependent applicant.
42. The migration agent initially appointed for the application was Mr Lee. The Agent provided a Form 956 to the Department on 19 May 2016, advising that she had been appointed to act as the representative migration agent for Ms CW.
43. On 20 May 2016, the Department sent the Agent an email stating that Ms CW's application had been withdrawn on 22 March 2016, in line with the declaration on the visa application form in the event of a refusal nomination. The Department requested evidence in writing regarding Mr SZ's intentions to proceed or withdraw, as the application form at the time did not specify whether dependents were also to be withdrawn and each applicant over 16 was required to inform the Department individually.
44. Departmental records indicate that on 23 May 2016, a withdrawal notice was received for Mr SZ, and he was withdrawn from the application on the same day.
45. Ms CW lodged a second subclass 457 visa application on 30 March 2016, with Mr SZ again listed as the dependant applicant.
46. The Agent was listed as the registered migration agent for this application, however she provided Mr Lee's email address klee@hansolimmi.com.au for correspondence.
47. On 17 September 2016, the Department sent the Agent an Invitation to comment on Information letter, via the email address provided for correspondence, klee@hansolimmi.com.au. The letter advised that the applicant's sponsor, TS Pty Ltd, did not have an approved nomination for the applicant at the time, and that as a result the visa application was unlikely to be successful. The letter invited the applicant to state her intentions regarding the visa application, to withdraw the application, or provide a comment or relevant information in response to the adverse information.
48. On 14 October 2016, the Agent responded to the Department using the email address heekyoungkim01@gmail.com and provided information regarding lodgement of a new nomination application. On 18 October 2016, the Department advised the Agent that the visa application had been linked to the new nomination.
49. On 3 February 2017, the Department sent the Agent another Invitation to comment on Information letter, advising her that the applicant's sponsor, TS Pty Ltd, did not have an approved nomination for the applicant. This was similar to the letter sent to the Agent on 17 September 2016. Departmental records indicate that no response to this letter was received from either the Agent or the applicant.
50. On 15 March 2017, the Department refused Ms CW's subclass 457 visa application. The refusal notification was sent to the Agent, on behalf of Ms CW, via the email klee@hansolimmi.com.au.

#### Publication of the complaint

51. On 28 September 2018 the Authority published Ms CW's complaint to the Agent in a section 308 notice. She was requested to respond to the Authority's questions in the form of a statutory declaration. The Authority also requested that the Agent provide a copy of Ms CW's complete client file for her visa application in association with the nomination applications for TS Pty Ltd.
52. Also in the notice the Agent was asked to provide the details of all clients, both ongoing and non-ongoing, that the Agent had taken carriage from Mr Lee, since the cancellation of his registration on 2 May 2016.<sup>8</sup> The Agent was provided until 28 October 2018 to respond to this notice.
53. The Authority received the Agent's response on 26 October 2018 by letter not in statutory declaration form. In summary, the Agent stated:
  - She had advised both Ms CW and the sponsor of the invitation to comment on information letter, dated 3 February 2017, and the Notification of refusal letter dated 15 March 2017. While the Agent stated that she had provided copies of her communication with both parties as evidence, no documents were included in her response to the Authority.
  - The Agent confirmed that she was still the only registered migration agent working at Hansol.
  - When asked why the Agent, as the appointed registered migration agent, had not contacted Ms CW directly, despite the client having contacted Hansol on repeated occasions concerning her visa application and refund, the Agent stated that she had *"regarded this as an administration issue at first. The client didn't want to pursue the application any longer and we agreed on the refund of fees. As there was no application on hand, I had considered it as an administration issue and normally administration works are carried out by administration staffs. In cases of refunds, usually the director provides instructions to the administration staffs so I thought there were no issues with the case or with the client."*
  - In an email received by Ms CW on 27 June 2017, another staff member from Hansol had advised Ms CW that her visa application was withdrawn, when in fact the visa application was refused on 15 March 2017. The Agent was asked to explain why she had not contacted her client to inform her of the status of her application. She was also asked to comment on her statement to the Authority on 12 April 2018 that she did not have any ongoing clients whose matters she had taken carriage of from Mr Lee, which in light of Ms CW's complaint appeared to be misleading. In response, the Agent asserted that Ms CW and her sponsor had wanted to continue to pursue other visa options after the refusal, but changed their mind and instead advised the Agent shortly afterward that they did not want to pursue further visa applications. As they had used the term 'withdrawal' in this correspondence, the Agent believed the staff member at the time had also used the same phrase to communicate back to Ms CW that Hansol had stopped processing any additional applications. Further, this matter had been handled by Hansol's administrative staff as it was not an ongoing visa matter.
  - Given Ms CW's communication with a person(s) by the name of Kelvin and/or Kevin, the Authority asked the Agent to advise of any ongoing connection or communication she had had with Mr Lee. In response, the Agent stated that she had made several attempts to contact Mr Lee regarding issues experienced with his former clients, particularly retrieving their information, but had not received any reply from him. Other than these attempts, the Agent had not had any other ongoing connection or communication with Mr Lee.
  - In light of the Agent's statement to the Authority on 12 April 2018 that she did not have carriage of any ongoing clients from Mr Lee, the Authority highlighted that Ms CW had been one of Mr Lee's clients prior to 19 May 2016. As Ms CW's matter was ongoing in August 2018, the Agent appeared to have provided the Authority with incorrect

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<sup>8</sup> Following the Agent's failure to comply with the Authority's requests on 16 March and 26 September 2016.



information. In addressing this, the Agent asserted that she had interpreted the Authority's request of the ongoing client file list as only referring to those clients with ongoing matters before the Department, who were still in active communication with Hansol. Ms CW's visa application was finalised at this time and she did not have any intention of pursuing other applications with Hansol. Further, as the only remaining business between Hansol and Ms CW was the outstanding refund, this was handled by Hansol's administration staff and the director, and not the Agent. As such, the Agent had not regarded her as an ongoing client. Where there are no ongoing matters before the Department, the Agent does not consider consultations or email enquiries by former clients to constitute an ongoing client status. She also asserted that it was never her intention to mislead the Authority in any way by providing the identified response, and it was her "*candid understanding*" that the Authority was only concerned with locating and cautioning affected clients who had previously engaged Mr Lee. For this reason, the Agent had only considered clients whose applications were before the Department.

- In relation to the outstanding list of all ongoing and non-going clients the Agent had taken carriage from Mr Lee, she asserted that if she were "*to consider clients that I am dealing with and still in contact with (even if the application is / was not with the Department) then there is an extensive list of clients I need to prepare. I am going through emails and past consultation records to sort out this list. Kindly allow for additional time for me to complete the compilation so I have the correct list on hand before I submit it to the authority*" [sic].

54. The Agent did not provide the Authority with any documents in support of her response, or furnish a copy of Ms CW's client file in accordance with her obligations under section 308(1) of the Act.

#### **Additional request for information and documents following second section 308 notice**

55. On 23 November 2018 the Authority wrote to the Agent again to request the outstanding client information and files, which had not been provided following receipt of her response on 26 October 2018. The Agent was given until 7 December 2018 to provide the requested information and documents. On 7 December 2018 the Authority received a client transfer list from the Agent. There were no documents from Ms CW's client file received. In her correspondence, the Agent stated that she had been advised that Ms CW had withdrawn her complaint to the Authority, and requested that this be confirmed.
56. The Authority responded to the Agent on 10 December 2018, advising that no withdrawal request had been received from Ms CW, and as such, the Authority would continue to investigate the complaint. On the same day, the Authority received an email from Mr SZ requesting that a complaint, with a different identifier, to that of Ms CW's be withdrawn. Included in this email was email correspondence from the Agent, instructing Mr SZ to withdraw the complaint on two occasions on 23 November and 10 December 2018. The Authority responded to Mr SZ on 11 December 2018 advising that the complaint number was incorrect, and that as Mr SZ was not a complainant or authorised representative, the complaint would not be withdrawn.
57. On 11 December 2018, the Authority published a third section 308 notice to the Agent, which contained additional questions regarding Ms CW's engagement of Hansol, and whether the Kelvin/Kevin referred to in Ms CW's correspondence was Mr Lee. The Authority also requested, for a third time, that the Agent provide Ms CW's complete client file, given she had failed to do so when responding to a prior notice section 308 notice and an additional request in November 2018.
58. On 14 December 2018 the Authority received a second email from the same email address containing a withdrawal request from Ms CW<sup>9</sup>. The email advised that the "*issue with the agent has been resolved and I would like to stop any further action in relation to this issue*". The Authority withdrew Ms CW's complaint, in accordance with the request,

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<sup>9</sup> This is the same email address provided by Ms CW to the Authority as her contact email address at the time of lodging her complaint

however the matters highlighted during the initial investigation raised serious issues with the Agent's conduct. On that basis the Authority opened an own motion complaint - CMP-41095. On the day Ms CW's complaint was withdrawn, the Authority notified the Agent that the investigation remained ongoing and that she was still required to respond to the requests for information and documentation specified within the third section 308 notice.

59. Following a request for an extension of time, the Authority received the following responses to the third section 308 notice on 21 February 2019:
- Ms CW had engaged Hansol in August 2015 for her visa application. She initially interacted with Mr Lee, prior to the Agent taking carriage of her matter in May 2016.
  - The Agent did not respond to specific questions regarding Ms CW's Service Agreement but referred to a copy of the document, which was provided as part of this response. The Service Agreement, dated 5 August 2015, for a subclass 457 visa application, was signed and dated by both Ms CW and Mr Lee on the same day. The Authority reviewed the metadata properties of the document submitted, which revealed that the PDF was a scanned copy of the Service Agreement created on 21 February 2019 with the author listed as "*Kevin Lee*".
  - In response to the Authority's question regarding who Kelvin/Kevin was and whether Mr Lee was the former agent who was disciplined by the Authority, the Agent advised that Kelvin HCW was a former employee of Hansol's who had worked as an administrative assistant and had spoken to Ms CW and Mr SZ by telephone on a number of occasions when the client had called Hansol's office.
  - The Agent did not provide any other documentation from Ms CW's client file.

#### **Further request for information and documents following third section 308 notice**

60. Following review of the Agent's response to the third section 308 notice, the Authority contacted her on 17 April 2019 to ascertain whether the documents provided on 21 February 2019 constituted the complete client files for Mr DSS, TM Pty Ltd, Ms CW, and Mr AB.<sup>10</sup> The Authority requested the Agent to provide all remaining documents from these client files to the Authority by 1 May 2019. The Agent was also asked to provide further documentation to confirm Mr HCW's employment at Hansol.
61. On 1 May 2019 the Authority received a request for an extension of time from the Agent, stating that she had identified that some documents were missing from her response on 21 February 2019, and that while she was in the process of having these documents compiled, there was a delay in getting the files delivered from the outside storage due to "*holidays*". The Authority granted an extension to 22 May 2019 but cautioned the Agent that it was unlikely any further extensions of time would be granted to provide the requested documents unless she presented evidence of exceptional circumstances that were beyond her control.
62. On 22 May 2019 the Authority received client file documents for Mr DSS and TM Pty Ltd. However, Ms CW's client file only consisted of copies of departmental notifications. The Agent also provided the Authority with a copy of Mr HCW's employment contract with Hansol, dated 25 January 2016, and a copy of the email from Mr Harley referred to in the Agent's response provided to the Authority on 12 April 2018.<sup>11</sup>

#### **Mr Lee's cancellation of registration**

63. Publicly available information on the Authority's website reveals that the Authority cancelled Mr Lee's registration as a migration agent on 2 May 2016. The Authority found that Mr Lee had created fraudulent correspondence in an attempt to mislead his former clients, and in doing so had breached clauses 2.1, 2.4, 2.8, 2.9, 2.9A, 2.18, 2.19 and 9.3 of the Code of Conduct for Registered Migration Agents. The Authority also found that Mr

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<sup>10</sup> or all evidence of your attempts to obtain Mr AB's documents from Mr Lee since 12 April 2018

<sup>11</sup> Being that no response had been received from Mr Lee to date following requests for Mr AB's client file.

Lee was not a person of integrity or was otherwise not a fit and proper person to give immigration assistance.

**Communication with Agent following disciplinary action against Mr Lee**

64. Following the cancellation of Mr Lee's registration, the Authority telephoned the Agent on 17 May 2016 to enquire whether she was in an employment relationship with Mr Lee, which she confirmed to be the case. Following the verbal exchange, the Authority sent an email to the Agent on the same day, which stated:

*"Dear Ms Kim*

*I am writing to confirm our telephone conversation this afternoon.*

*I telephoned you because a visa processing area brought to my attention that you lodged a Form 956 for a client where you gave your contact email address as KLEE@HANSOLIMMI.COM.AU. The Form 956 also stated that you are associated with Hansol Migration Professionals Pty Ltd.*

*You have confirmed with me that you are employed by Kevin (Kyung) Lee.*

*The OMARA cancelled the registration of Mr Lee on 2 May 2016. The OMARA found, among other things, that Kyung Lee was not a person of integrity or otherwise not a fit and proper person to give immigration assistance.*

*The Migration Act 1958 does not allow a person who is related by employment to an individual who is not a person of integrity to be registered as a migration agent (section 290). Under section 303 of the Act the OMARA may cancel the registration of a registered migration agent, or suspend his or her registration, or caution him or her if the OMARA is satisfied that an individual, related by employment to the agent, is not a person of integrity.*

*You should go to the OMARA website and look at the disciplinary decisions and read the decision cancelling the registration of Kyung Lee. If there are other registered migration agents working at Hansol they too should read the decision.*

*Kyung Lee is unable to provide immigration assistance to clients. He is required to inform his clients of this and advise them to seek the assistance of another migration agent. Any registered migration agent who is in an employment relationship with Mr Lee may be disciplined by the OMARA under section 303 or their application for registration may be refused under section 290.*

*Could you please let me know what you intend to do about your employment relationship with Mr Lee?"*

65. The above email referred to a Form 956 submitted to the Department by the Agent on 16 May 2016 for Mr TW, a former client for Mr Lee. The Form 956, which was signed and dated by both the Agent and Mr TW on 11 May 2016, listed her email address for the purpose of receiving communication from the Department on behalf of Mr TW as klee@hansolimmi.com.au.
66. The Authority's records show that on the morning of 19 May 2016, an officer of the Authority made a call to the Hansol agency office and asked to speak to the Agent. The receptionist advised that the Agent had not yet arrived at the office for the day. The officer then asked whether Mr Lee was at the office, and was advised that he was not currently in the office. When asked what time he comes in to the office, the receptionist advised that Mr Lee comes in to the office in the afternoon. The officer requested that the Agent return her call once available, which she did later that day. The Agent advised the officer that Hansol was going to remove Mr Lee as a Director, and asked whether this was sufficient to disassociate herself professionally from him. The officer directed the Agent to review section 278 of the Act with regards to relation by employment. The Agent also asked the

officer whether she needed to provide new Form 956s to the Department for Mr Lee's former clients, which the officer confirmed. The officer also advised the Agent that as she did not have an independent ImmiAccount not accessible to Mr Lee and that the use of the existing ImmiAccount would be blocked until she could prove that she was no longer related by employment to Mr Lee. The officer requested that the Agent provide evidence of the steps that she, and any other migration agent working at Hansol, had taken to ensure Mr Lee was not working at the business anymore. Further, the officer informed the Agent of the receptionist's comment during the telephone conversation that morning, wherein the receptionist had said that Mr Lee appeared to still be attending the office in the afternoons.

67. This conversation was followed by an email from the officer stating:

*"Dear Ms Kim*

*Thank you for returning my telephone call.*

*I am confirming that I have asked you to provide me with information about the steps you and or Hansol Migration are taking to ensure that Kyung Lee no longer has any association with the business and is not "related by employment" to you or to any other migration agent.*

*If you could provide evidence of the steps being taken by Friday 27 May 2016 that would be good. Please call me to discuss any questions you have"*

68. On 26 May 2016 the Agent responded to the request by providing two documents by email. These documents were an acknowledgement receipt on the lodgement of a Form 484 Change to company details, submitted to ASIC on the same day for Hansol, and a letter from Hansol's accountant, Ms YB, advising that the Form 484 had been lodged to "resign" Mr Lee as a director of Hansol.

69. The Agent received a response from the officer on 27 May 2016, advising the documents provided were not sufficient to demonstrate that she was no longer related by employment to Mr Lee.<sup>12</sup> Particularly, that the Agent had not provided any information from ASIC to show who the directors and other executive officers of Hansol were, and that Mr Lee was not a shareholder or held any executive office of the company. The Agent was requested to provide a full copy of Hansol's ASIC records showing previous and current Shareholders and Office holders, principal place of business and the registered office, and that she and other registered migration agents associated with Hansol should update the Authority's register to reflect who was working there. The Agent was also requested by the Authority to provide evidence that the email address klee@hansolimmi.com.au was no longer operating and that Mr Lee will not be able to access the address, and that she was required to provide responses to questions regarding Hansol's operation, including her employment and whether any other registered migration agents worked for the business, in the form of a statutory declaration by 28 June 2016.<sup>13</sup>

70. The Authority received the Agent's response to the request for information and documentation on 28 June 2016 by way of:

- A statutory declaration from the Agent, responding to the questions and the new director outlining responses for business information, financial information and email address. In particular, the director of Hansol, Ms HJL<sup>14</sup> advised that Mr Lee would not be involved in the business, and the Agent stated in her own statutory declaration that she was the only registered migration agent employed by Hansol;
- ASIC information for Hansol reflecting previous and current details; and
- An email account management print out from a website hosting and management provider, showing current email addresses for @hansolimmi.com.au administered by

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<sup>12</sup> In accordance with section 278 of the Act, and the *Migration Agent Regulations 1998*

<sup>13</sup> The Authority also invited the Agent to include statutory declarations from new office bearers of Hansol, the Agent's supervisor, or anyone else who is able to assist with responses to the questions.

<sup>14</sup> Who is not a registered migration agent

Hansol's office manager, Mr KK. The email address klee@hansolimmi.com.au is not listed. The Agent asserted in her correspondence with the Authority that this document was demonstrative that Mr Lee's email account was not in operation.

71. Following receipt of the Agent's application for repeat registration on 9 August 2016, a registration officer of the Authority emailed the Agent on 5 September 2016 to seek clarification on a number of matters for registration purposes. It was identified that Hansol's website continued to show Mr Lee, and JHS, listed as registered migration agents despite the Agent's statement, in her statutory declaration on 28 June 2016, that she was the only registered migration agent in the business. It, therefore, appeared that the website was not in compliance with clauses 2.11 and 11.4 of the Code. The Agent was asked to ensure the necessary changes were made so the website would adhere to the Code. The officer advised that while the Agent had indicated in her application that she charged fees in advance for services, information before the Authority indicated that Hansol was under 'external administration'. The officer requested that the Agent provide the contact details of the external administrator for confirmation that client monies were protected. The officer also identified that Hansol had non-beneficially held shares. The Agent was requested to explain why Hansol had non-beneficially held shares, and whether Mr Lee held any of these shares. Further, the Agent was requested to provide evidence of her active professional library subscription, and current professional indemnity insurance in the form of a certificate of currency. Pursuant to section 308 of the Act, the Authority requested that she provide the aforementioned information and evidence by 12 September 2016.
72. The Authority received the Agent's response on 12 September 2016. In addition to providing copies of her professional library and professional indemnity insurance, the Agent advised that the website had been updated, Hansol had received advice from its accountant to offer non beneficially held shares, that Mr Lee did not hold these, or any other type of shares for Hansol, and that the Agent would forward the external administrator's details shortly. As no further email was received, the registration officer emailed the Agent on 14 September 2016 to request the administrator details, and a link to Hansol's updated website, as the new changes were not available on the existing website, by 19 September 2016. No response was received. The registration officer emailed the Agent again on 27 September 2016, and provided her with an extension to 30 September 2016 to provide this information. The Authority received the Agent's response on the due date.

### **Departmental records**

#### **Relationship between Mr Lee and Ms HJL**

73. The Department's records indicate that Mr Lee and Ms HJL had previously advised the Department that they were in a spousal relationship.

#### **Email addresses used by Mr Lee**

74. The Department's records show that Mr Lee provided the following email addresses to send and receive correspondence from the Department on behalf of his clients since he was first registered:
- hansol.vision@hotmail.com – 1 November 2005 to 14 June 2006
  - hansol\_master@hotmail.com – 1 November 2005 - present
  - klee@hansolimmi.com.au – 6 October 2011 - present
75. The Department received notification on 12 July 2016, two months after Mr Lee's registration was cancelled, that his business email address effective from that date was hansol\_master@hotmail.com.

TAW Pty Ltd

76. While reviewing the Department's records in relation to applications showing Mr Lee's email address as the recipient address for correspondence, the Authority identified that the Agent had provided the Department with Form 956s on both 17 May and 22 July 2016 appointing her as the registered migration agent for one of Mr Lee's former clients, TAW Pty Ltd. In the Form 956, which was signed by the Agent and the client, dated 11 May 2016, the email address klee@hansolimmi.com.au was provided as the email address for communication with the Department on behalf of the client. The Department sent correspondence to this email address on 22 July 2016 but is unclear whether the email account was still active at this time, as no error message was recorded in departmental systems as being received.

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

77. On 30 August 2019, the Authority sent the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
78. 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, 2.8, 2.9A, 6.1, 6.1A, and 9.3 of the Code of Conduct for registered migration agents ("the Code"). Further, that it also open to find that the Agent was not a person of integrity or otherwise not a fit and proper person to provide immigration assistance on the basis that it appeared she had continued to be related by employment to an individual who is not a person of integrity and had likely been dishonest with the Authority in relation to this continued association with Mr Lee.
79. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 11 October 2019. On 4 October 2019 the Agent's legal representative requested an extension of time until 1 November 2019 to respond to the section 309 notice, which the Authority agreed to.

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

80. On 1 November 2019 the Authority received the Agent's submissions, through her legal representative, responding to the Authority's potential findings raised in the section 309 notice. In addition to a written submission (*Appendix A*), the Agent's legal representative provided statutory declarations from the Agent, Mr KK, the office manager of Hansol, and Ms HJL, the director of Hansol. The Agent's legal representative also provided the following documents:
- Independent Computer Forensic Expert Report prepared by [removed] and dated 31 October 2019. The report related to the recording of "Kevin Lee" as the author in the metadata properties of the documents provided by the Agent to the Authority, whether the password for the email address [klee@hansolimmi.com.au](mailto:klee@hansolimmi.com.au) had been changed and whether the account was still accessible to any employee of Hansol, and whether the same contact name could be attributed to more than one email account in Hansol's email system;
  - Email from the Agent to Mr AB dated 30 December 2017, in response to Mr AB's email two days prior on 28 December 2017;
  - Waiver letter signed by Mr PRS, on behalf of TM Pty Ltd, and dated 6 April 2016, acknowledging the advice provided by Hansol regarding lodging the nomination application with all requisite documentation;
  - The Agent's email to Mr DSS and Mr PRS on 3 November 2016, forwarding the nomination refusal decision and invitation to comment, which she advised she had obtained through ImmiAccount;

- The Agent's email to Mr DSS and Mr PRS on 6 December 2016 notifying them of the Department's decision to refuse Mr DSS' visa application and seeking further instructions;
- The Agent's email to Mr DSS and Mr PRS on 28 March 2017 notifying them of the lodgement of the second application;
- The Agent's email to Mr DSS and Mr PRS on 8 March 2018, forwarding the Department's request for more information, received on 7 March 2018;
- Email correspondence between the Agent, Mr DSS and Mr PRS, wherein they requested that the Agent resend the Department's request for more information dated 7 March 2018. This correspondence shows that the Agent resent this on 21 March 2018;
- The Agent's email to Mr DSS and Mr PRS on 18 April 2018 forwarding a copy of the Department's decision to refuse the second nomination application;
- The Agent's email to Ms CW's partner Mr SZ and her sponsor, TS on 5 March 2017, confirming the lodgement of a second nomination application; and
- The Agent's email to Mr SZ on 15 March 2017 forwarding the visa application refusal decision, and advising that she was preparing a new visa application to lodge for Ms CW.

81. The Agent's legal representative, in summarising the Agent's statutory declaration (*Appendix B*), made the following points:

- The Agent conceded that her responses to the Authority over the last two years have been deficient and lacking precision, and at times not made in a timely way. However, the Agent's actions were not an attempt to mislead the Authority but due her mental health during this time.<sup>15</sup>
- The Agent conceded that she had inadvertently failed to provide or update the Department with her email address instead of Mr Lee's email address on at least four occasions. She also conceded to failing to maintain proper records, in particular, files notes of material oral communications with her clients, on a number of matters including the CW and DSS files. As such, the Agent accepted that she had breached clauses 2.1(b), 6.1, 6.1A and 9.3 of the Code.
- The Agent disputed the Authority's potential findings that she is related by employment to Mr Lee or that she had been dishonest in her dealings with the Authority in relation to her continued association with Mr Lee. She also disputed the Authority's potential findings that she had:
  - been dishonest in her dealings with the Authority in responding to the five complaints;
  - attempted to mislead the Authority in relation to obtaining and providing Mr AB's client file;
  - attempted to conceal Mr Lee's conduct in not lodging any visa application for Mr AB and his involvement after his cancellation;
  - not received and forwarded the Department's notifications in November and December 2016 to Mr DSS and TM Pty Ltd;
  - attempted to mislead the Authority by stating she remembered that the application for Mr DSS was the only time she had inadvertently provided Mr Lee's email address to the Department for correspondence with her clients;

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<sup>15</sup> The Agent's legal representative nor the Agent provided clarification of this, other than stating that the Agent was inexperienced and overwhelmed with responding to the Authority.

- failed to notify Ms CW of the progress of her subclass 457 visa application or its refusal on 15 March 2017; and
  - failed to respond properly to the Authority's requests for information and documents throughout the investigation of the five complaints, in an attempt to avoid culpability for the allegations against her and your employer.
- The Agent did not take carriage of Mr AB's matter when Mr Lee's registration was cancelled, and she has no "knowledge" of his file. She *"had no knowledge of or access to the email address hansol\_master@hotmail.com; She was not aware that Mr Lee sent emails to Mr AB on 18 May 2016 and 29 August 2017"*. Further, Mr Lee was not involved in preparing the Agent's response to the Authority on 21 February 2019, and was not connected to, or involved in the operation of, Hansol.
  - The office manager of Hansol, Mr KK, had advised in his statutory declaration that the email address hansol\_master@hotmail.com is not an email address owned or used by any staff at Hansol Migration. He did change the password for the email account [klee@hansolimm.com.au](mailto:klee@hansolimm.com.au) following Mr Lee's sanction but *"accepts that it may not have been as secure as it should have been. He did not realise at the time the importance of Mr Lee not having access to that email"*. Mr KK later deleted this email account on or about 27 June 2016 from Hansol's website and email hosting platform.
  - Mr KK asserted that he is the current administrator of Hansol's internal Information technology (IT) system. This system comprises of a number of computers, was set up initially by Mr Lee, and that his profile and details had been inadvertently left on the system.
  - Mr KK assisted in creating and compiling the pdf documents that were attached the Agent's response to the Authority of 21 February 2019 and had not removed Mr Lee's details from Hansol's computer system *"due to his ignorance of the issue, nor does he know how to do so"*.
  - Mr KK asserted that he had only told Hansol support staff to take messages for Mr Lee and that someone else from Hansol would return their call. He did not indicate to them that Mr Lee would not be returning to Hansol's office and waited until late May 2016 to advise the staff of Hansol of Mr Lee's registration cancellation. He requested that they do not mention this fact if anyone telephoned asking for Mr Lee. He also stated that following his registration cancellation, Mr Lee had attended the Hansol office a few days after his cancellation to collect his personal belongings.
  - In response to the Authority's potential findings regarding the link between Mr Lee and Hansol's current director, Ms HJL advised in her statutory declaration that she had separated from Mr Lee, her ex-husband, in about November 2016. Ms HJL declared that she had only had contact with him in person on approximately four occasions since that time, which has been restricted to custody meetings for the couple's children.<sup>16</sup> Mr KK also declared that Ms HJL had advised him of her separation from Mr Lee in late 2016.
  - Both Mr KK and Ms HJL reiterated the Agent's statement that Mr Lee is not connected to, or involved in, the operation of Hansol.
  - In relation to Mr AB's client file, Ms HJL advised that once she had been made aware of the missing file by the Agent, she telephoned Mr Lee but he refused to discuss the matter with her. She declared that she had subsequently sent emails to him on 4 January, 2 February and 14 March 2018 to request the file but did not receive a

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<sup>16</sup> Departmental records show that Ms HJL made declarations to the Department for unrelated matters on 4 June 2018 and 24 September 2019 in which she listed her occupation as 'housewife' and Mr Lee as her emergency contact, listing his email address as [removed]@hotmail.com (2018) and [removed]@hotmail.com (2019). The residential address given by Ms HJL is the same address that was previously declared to the Department as her and Mr Lee's address prior to November 2016.



response. Ms HJL sent these emails to the email address [removed]@hotmail.com. Being aware of the Agent's failed attempts to contact Mr Lee, Ms HJL then authorised the engagement of a law firm to retrieve the file.

- The Agent's legal representative drew attention to the Independent Computer Forensic Expert Report by [removed], which she advised explained why the metadata of the documents attached to Ms Kim's email of 21 February 2019 listed the author as "Kevin Lee", while there was not an identified author in the metadata properties of the other documents submitted by the Agent. Based on this report, the Authority should find that:
  - Mr Lee was not the creator of these documents;
  - Mr Lee sent the 18 May 2016 and 29 August 2017 emails to Mr AB but the Agent had no knowledge of these emails being sent;
  - Mr Lee is not connected to Hansol or involved in its operation; and
  - Consequently the Agent is not related by employment to Mr Lee.
- The Agent's provisions of Mr Lee's email address provided to the Department for correspondence with her clients *"may amount to a lack of due diligence in failing to ensure that her contact details were accurately provided"*. However, the Agent's legal representative advised that *"a system of checking the ImmiAccount was also in place at Hansol [as detailed in paragraphs 58 and 74 of the Agent's statutory declaration], thereby ensuring that all notifications were promptly received and dealt with. In none of the matters particularised, did her failure to update her email address result in any client not being informed of the relevant Departmental notifications and decisions"*. It was argued that the Authority should consider this as a *"relevant and significant factor when considering any penalty that might be imposed for this breach"*.
- The Agent's legal representative advised that, prior to the Agent receiving Mr AB's email on 28 December 2017<sup>17</sup> she had no information or knowledge of Mr AB or his file. Upon receiving his email, the Agent acted in a *"prompt and reasonable"* manner to attempt to contact Mr Lee to retrieve the file, including sending three unanswered emails between January and February 2018, and seeking legal advice in March 2018.<sup>18</sup> The lawyer retained by Hansol to retrieve these files confirmed in February 2019 that no response had been received from Mr Lee, and the retainer for these services ceased due to an unrelated dispute between [removed law firm] and Hansol.<sup>19</sup> It would be unreasonable to expect the Agent to personally incur the costs of engaging new legal representation to seek to retrieve Mr AB's file, given previous *"reasonable attempts"* had failed to successfully obtain the client's file.
- The Agent does not hold any records for Mr AB and therefore cannot provide them to the Authority.<sup>20</sup> As such, the Agent rejected the Authority's allegation that her statements in response to the Authority's requests for Mr AB's client file were false and misleading, or that she had breached clauses 2.1(a), 2.9A, and 9.3 in this regard.
- The Agent also affirmed that she was unaware of Mr Lee's contact with Mr AB after his cancellation, as detailed in paragraphs 43 and 44 of her statutory declaration, and rejected the Authority's allegation that she attempted to conceal his conduct in not lodging any visa application for Mr AB and his involvement after his cancellation.
- In response to the Authority's potential finding that *"it is likely that [the Agent] did not notify TM Pty Ltd or Mr DSS of their refusal decisions or the invitation to comment"* the Agent provided evidence to dispute this, in particular the email correspondence

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<sup>17</sup> The Agent's legal representative listed as 27 December 2017 in her submission, which appears to be a typographical error.

<sup>18</sup> Detailed in paragraph 35 of the Agent's statutory declaration

<sup>19</sup> Detailed in paragraph 34 of Mr Kang's statutory declaration

<sup>20</sup> Detailed in paragraphs 34, 36 and 40 of the Agent's statutory declaration

between the Agent, the representative for TM Pty Ltd, Mr PRS, and Mr DSS.<sup>21</sup> As such, the Agent's *"failure to update her email address details did not lead to Mr DSS not being afforded the opportunity to comment on the first nomination refusal, nor being notified of the refusal decisions"*. The Agent's legal representative argued that the Agent had not breached clauses 2.1(b) and 2.8 of the Code in her handling of the TM Pty Ltd and Mr DSS' matters.

- The Agent in her statutory declaration advised the Authority that she should have paid more attention to both the nomination and visa applications and amended the email address from Mr Lee's to hers, as she was the registered migration agent appointed for these matters. The Agent also advised the Authority that she had lodged the nomination application for TM Pty Ltd without any documentation because she had not received any from the sponsor and had received instructions to lodge without any requisite documentation, despite her cautioning both sponsor and nominee of the risks.<sup>22</sup> In relation to the second nomination application and visa application, the Agent stated that, following notification of the refusal of the first visa application,<sup>23</sup> she had taken both *"the client's and the sponsor's"* instruction by phone but had not made a record of the telephone calls or file notes of the conversations. The Agent had instead sent an email to Mr DSS on 28 March 2017, which confirmed his instructions.
- The Agent's legal representative *"accepted"* that the Agent had failed to provide this documentation to the Authority in any of her previous responses but argued that she had not done so with the intent to mislead but rather out of oversight.
- The Agent affirmed that she had notified Ms CW of the first nomination application refusal and of the first visa application refusal, though had done so through her partner, Mr SZ, purportedly according to her instructions. The Agent submitted emails dated 5 and 15 March 2017 which evidenced Mr SZ's instructions to lodge a new nomination application<sup>24</sup>, as well as the Agent's notification of the visa application decision. The Agent's legal representative asserted that it was clear that the Agent had not breached clause 2.8 as she had notified Ms CW of her visa application refusal within a reasonable time after the application was decided.
- However, the Agent conceded that she had not maintained proper records of her interactions with Ms CW, and in particular her instructions authorising Mr SZ to act on her behalf, and to lodge the new application.<sup>25</sup> As such, she conceded to breaching clauses 6.1 and 6.1A of the Code.
- The Authority should not find that the Agent is 'not a person of integrity or is otherwise not a fit and proper person to give immigration assistance'. Whilst the Agent has candidly admitted failing to respond to the Authority in an appropriate and timely manner, her actions were not an attempt to avoid culpability for the allegations against her and Mr Lee. Instead, the Agent had relatively little experience when she became the sole registered migration agent at Hansol, and struggled to properly respond to the Authority due to feeling overwhelmed and stressed.
- The Agent has learned from this experiences and *"undertakes to comply with her duties of record keeping set out in the Code of Conduct."*
- In light of her acknowledgement that she has breached clauses of the Code, *"albeit it is accepted that this has come at a late stage"*, the Agent is willing to undertake whatever remedial action is thought necessary by the Authority. As such, it is submitted

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<sup>21</sup> Correspondence dated 3 November and 6 December 2016, respectively, and referenced in paragraphs 51 to 55 of the Agent's statutory declaration

<sup>22</sup> As set out in the waiver letter signed by Mr PRS, on behalf of TM Pty Ltd, and dated 6 April 2016

<sup>23</sup> Received via ImmiAccount as the Agent did not receive the email correspondence sent by the Department to klee@hansolimm.com.au

<sup>24</sup> It appears that the Agent was taking instructions from Mr SZ, on behalf of his spouse and the nominee Ms CW, for the nomination application instead of the sponsor.

<sup>25</sup> As detailed in paragraphs 65 – 67 of the Agent's statutory declaration

*“that a caution pursuant to s 303(1)(c) of the Act would be the appropriate punishment in all of the circumstances”.*

#### *Agent’s statutory declaration*

82. In addition to the points made in her legal representative’s submission, the Agent also made a number of statements in her statutory declaration that are relevant to the Authority’s consideration of her conduct. In summary, the Agent’s submissions were:

- She conceded that she had not responded appropriately to, nor followed up on, the Authority’s requests for information in September 2016 in relation to the operating status of Hansol for her application for repeat registration. She advised that her delays in providing the Authority with this information were due to her awaiting further information from the company’s external administrator and accountant. The Agent also asserted that she was *“quite fragile”* at this time and had been under an *“enormous amount of stress”* due to Mr Lee’s cancellation, concern for her own career, and the financial status of Hansol, which affected her mental state and left her not thinking as clearly as she ordinarily would.
- In relation to the use of klee@hansolimm.com.au as her contact email address in her clients’ applications, the Agent conceded that in addition to the four applications identified by the Authority in the section 309 notice, she also failed to correct the same error in the second subclass 457 visa application lodged for Ms CW on 30 March 2016. She asserted that all cases, her failure to identify and amend this information was an oversight.
- In response to the Authority’s potential findings that her statement that she remembered that Mr DSS and TM Pty Ltd’s applications being the only to contain Mr Lee’s email address, the Agent asserted that she was *“not trying to be misleading”*. While she now accepts that this was included in at least three other applications, the Agent asserted that these applications had not come to mind at the time of providing her response to the Authority’s section 308 notices. She apologises for her error.
- The Agent advised that she had failed to notify the Authority within 14 days that her business address had changed, in accordance with her obligations under the Code, after Hansol relocated from Level 4, 239 George Street approximately a year ago. The Agent also advised that she had failed to update her business address to the current business address location in her latest application for repeat registration in August 2019. The Agent asserted that her failure to inform the Authority of this change in business details was that she had been advised by Hansol’s office manager Mr KK that the relocation was temporary, and that Hansol would be returning to the George Street office. She advised that this no longer appears to be the case, and that Hansol will remain at the current business address, and apologised for her failure to notify the Authority.
- Since she was first registered as a migration agent in August 2015, the Agent has only worked for Hansol, and has been Hansol’s only registered migration agent since Mr Lee’s cancellation. Prior to receiving Mr AB’s complaint, the Agent had not received any complaints nor had she been found in breach of the Code. She has no criminal history.
- If her registration was suspended or cancelled by the Authority, the Agent would be forced to find work outside of the migration advice industry, which is the only field of work she has been employed in since graduating from university.

#### *Independent Computer Forensic Expert Report*

83. The independent computer forensic report conducted by [removed], which was provided in support of the Agent’s submission, made the following relevant findings:

- The documents that contained metadata properties listing Mr Lee as the author were created by scanning hardcopy documents as JPG format files, and then converting these to PDF. The author details had not been changed in the relevant software on Mr KK's computer since Mr Lee, the original/previous user had set up the software, and therefore his name was still the default author. This can be amended but Mr KK had advised [removed] that he did not know this default existed or how to change it.
- There was no record of the mailbox for klee@hansolimmi.com.au being accessed on any of the computers at Hansol. He was unable to make a determination on the emails purportedly sent and received after Mr KK advised he had deleted this email address without examining the recipient email accounts. However, from the review of the email address general@hansolimmi.com.au<sup>26</sup>, it appeared this account had been active since at least 23 July 2016.

### **Second notice under subsection 309(2) (second section 309 notice) of the Act**

84. Following receipt of the Agent's submissions on 1 November 2019, provided in response to the first section 309 notice, the Authority conducted a broader review of the Department's holdings with a focus on the email addresses klee@hansolimmi.com.au and hansol\_master@hotmail.com.

85. The Authority identified the following information which is directly relevant to the Agent's statements:

- On 10 May 2016 the Department sent a notification to one of Mr Lee's clients, Ms HKW, advising her of Mr Lee's registration cancellation. The Department also advised Mr Lee by email to klee@hansolimmi.com.au on the same day that they had contacted his client to notify them of his registration cancellation.
- On the same day the Agent emailed the Department using the email address hansol\_master@hotmail.com to advise them that she was the newly appointed migration agent for Ms HKW's application. Attached to this email was a Form 956, completed and signed by both the Agent and Ms HKW, dated 10 May 2016. In the contact information provided for corresponding with the Department electronically, on behalf of Ms HKW, the Agent provided the email address hansol\_master@hotmail.com.
- On 17 May 2016 the Department forwarded the request for more information that was sent to Mr Lee on 21 April 2016 to the Agent, using the email address hansol\_master@hotmail.com, as the authorised email address for correspondence. The Agent responded to the contents of the request by providing the requested information and documents on 8 June 2016, though from a different email address, heekyoungkim01@gmail.com. A copy of the Department's email, which was sent to hansol\_master@hotmail.com, was included in the email history.
- On 13 December 2016 the Department sent a second request for more information to the Agent, with respect to Ms HKW, to the authorised email address the Agent had provided for correspondence, namely, hansol\_master@hotmail.com. On 11 January 2017 the Agent responded to the contents of the second request by providing the requested information and documents from the email address heekyoungkim01@gmail.com. As with her response to the first request, a copy of the email sent to hansol\_master@hotmail.com on 13 December 2016 was included in the email history.
- On 10 February 2017 the Agent was contacted by the Department, again by email which was sent to her using hansol\_master@hotmail.com to advise that the documents she had provided had not addressed the specific information requested on 13 December 2016. The Department offered the Agent another 28 days to provide evidence of Ms HKW's current business and personal assets. On 10 March 2017 the agent responded to this email using the email address

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<sup>26</sup> That Mr KK advised had been set up to replace klee@hansolimmi.com.au on it being deleted from Hansol's systems on approximately 27 June 2016

heekyoungkim01@gmail.com. As with her responses to the previous requests, the Agent included the email sent to hansol\_master@hotmail.com on 10 February 2017 within the email history. She sent further emails to the Department, containing additional documents, on 14 and 21 March 2017 from the email address heekyoungkim01@gmail.com.

- On 21 March 2017 the Department granted Ms HKW's visa, though it appeared no notification was sent by email. On 10 April 2017 the Agent telephoned the Department to advise that she had not received a grant letter. A file note made by the officer with whom the Agent corresponded noted:

*"The grant letter has not been emailed to the M/A (migration agent), the M/A has emailed the VPC (visa processing centre) in regards to grant letter a few times. The M/A said they have been corresponding with C/O (case officer) on new email address heekyoungkim01@gmail.com **but said they can still receive emails on** hansol\_master@hotmail.com [my emphasis]*

*Contacted the VPC and they advised they will get the C/O to email the grant letter today (advised M/A)."*

- The Department emailed Ms HKW's grant letter to the Agent using the authorised email address, hansol\_master@hotmail.com, on the same day (10 April 2017).
86. On 11 December 2019 the Authority published this information to the Agent in a second notice pursuant to section 309(2) of the Act (the second section 309 notice), advising the Agent that it was considering cautioning her, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
87. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to find that the Agent had acted contrary to the law by preparing and signing a statutory declaration that contained statements that she knew, or should have reasonably known, were false and misleading, and submitting this to the Authority. On this basis, it was open for the Authority to be satisfied that the Agent had engaged in conduct that breached her obligations under clauses 2.1(a) and 2.9A of the Code, and was not a person of integrity or otherwise not a fit and proper person to provide immigration assistance.
88. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matter by 18 December 2019. Upon request from the Agent's legal representative, the Authority permitted an extension of time until 20 December 2019.
89. The Authority received the Agent's response by email on 19 December 2019, containing a statutory declaration and four emails. These four emails, dated 6 June 2016, 13 December 2016, 10 February 2017 and 10 April 2017, show the Department's correspondence to hansol\_master@hotmail.com listed at paragraph 83<sup>27</sup> being forwarded to the Agent's email addresses, heekyoungkim01@gmail.com and skim@hansolimmi.com.au. The Agent's statutory declaration responding to the Authority's potential findings stated the following:

*I, Hee (Sarah) Kim of business address, Level 3, 240 George Street Brisbane,<sup>28</sup> in the State of Queensland, migration agent, do solemnly and sincerely declare that:*

*I refer to the Notice under s309(2) of the Migration Act ('the s309 Notice'), received on 11 December 2019.*

*I am addressing 6 points address on the point 11 of the s309 Notice.*

<sup>27</sup> Being emails on 2 June 2016, 13 December 2016, 10 February 2017 and 10 April 2017

<sup>28</sup> The Agent had stated in her statutory declaration dated 1 November 2019 in response to the first section 309 notice that this had not been her business address in more than 12 months.

*Point 1: As per the 956 form for Ms HKW, I have used 'hansol\_master@hotmail.com' address. At the time, it was only few days after I was advised of Mr Lee's cancellation. I had not had a chance to think through what to do. Ms HKW's application was the first application that came across since Mr Lee's cancellation. Mr KK, our office manager, had suggested that it would be better to use 'hansol\_master@hotmail.com' and make this email accessible to all staff members in the office. At the time it seemed like a good idea as opposed to using my personal email. The call from the MARA on 17 May 2016 had changed my mind about using an email address that was associated with Mr Lee. From this date on a new email address 'Heekyoungkim01@gmail.com' was used for all correspondence with the Department. The email address 'hansol\_master@hotmail.com' was never made accessible to the office staffs. However, Mr KK had made it clear with Mr Lee that all relevant emails will be forwarded to us.*

*Point 2: The email dated 17 May 2016 was forwarded to me by Mr Lee on 6 June 2016. I had received the email on 6 June 2016 and prepared the documents. It was then sent to the Department on 8 June 2016.*

*Point 3: The email dated 13 December 2016 was forwarded to me by Mr Lee on the same day. I had then sent the email to the Department on 11 January 2017 with the required documents.*

*Point 4: The email dated 10 February 2017 was forwarded to me by Mr Lee on the same day. I had then sent the Department on 14 and 21 March 2017.*

*Point 5: On 10 April 2017, Ms HKW had contacted me advising her receipt of a letter from Medicare. The letter indicated that the applicant's eligibility had changed to PR status. Therefore I had made an inquiry to the Department on the same day. I had advised the officer that 'hansol\_master@hotmail.com' is still accessible because Mr Lee had no issue forwarding me the emails up to this point. I was afraid that if the officer asked for a new 956 form for the new email address, the receipt of the visa grant letter may be delayed.*

*Point 6: The grant letter dated 10 April 2017 was forwarded to me by Mr Lee on the same day. I had then forwarded it to Ms HKW for her record.*

*Looking back at the series of actions I had taken. I now realise the incompetency in my actions. From the beginning I should have distanced myself from Mr Lee and his belongings as per the Code of Conduct. I accept that I actions were careless. However, I dispute that I had access to 'hansol\_master@hotmail.com' email address.*

### **Jurisdiction**

90. The Authority performs the functions prescribed under section 316 of the Act.
91. 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 his 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**

92. 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)).
93. 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 Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
94. Subsection 314(2) of the Act provides that a registered migration agent must conduct himself or herself in accordance with the Code. Regulation 8 of the Agents Regulations made under the Act prescribes a Code.
95. 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**

#### **1.10 The aims of the Code are:**

- (a) to establish a proper standard for conduct of a registered migration agent;*
- (b) to set out the minimum attributes and abilities that a person must demonstrate to perform as a registered migration agent under the Code, including:*
  - (i) being a fit and proper person to give immigration assistance;*
  - (ia) being a person of integrity and good character;*
  - (ii) knowing the provisions of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, in sufficient depth to offer sound and comprehensive advice to a client, including advice on completing and lodging application forms;*
  - (iii) completing continuing professional development as required by the Migration Agents Regulations 1998;*
  - (iv) being able to perform diligently and honestly;*
  - (v) being able and willing to deal fairly with clients;*
  - (vi) having enough knowledge of business procedure to conduct business as a registered migration agent, including record keeping and file management;*
  - (vii) properly managing and maintaining client records;*
- (c) to set out the duties of a registered migration agent to a client, an employee of the agent, and the Commonwealth and its agencies;*
- (d) to set out requirements for relations between registered migration agents;*
- (e) to establish procedures for setting and charging fees by registered migration agents;*
- (f) to establish a standard for a prudent system of office administration;*
- (g) to require a registered migration agent to be accountable to the client;*
- (h) to help resolve disputes between a registered migration agent and a client.*

**1.11** *The Code does not list exhaustively the acts and omissions that may fall short of what is expected of a competent and responsible registered migration agent.*

**1.12** *However, the Code imposes on a registered migration agent the overriding duty to act at all times in the lawful interests of the agent's client. Any conduct falling short of that requirement may make the agent liable to cancellation of registration.*

### **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**

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

- Documents contained in the Authority's complaint files for CMP-31748, CMP-34989, CMP-36454, CMP-36956, and CMP-38932/41095, including information and documents provided by the Agent in response to the Authority's notices;
- Information held by the Authority in relation to the Agent; and
- Records held by the Department.

### **DECISION AND REASONS**

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

Clause 2.1 of the Code as relevant states:

*2.1 A registered migration agent must always:*

- (a) *act in accordance with the law (including, for an agent operating as an agent in a country other than Australia, the law of that country) and the legitimate interests of his or her client; and*
- (b) *deal with his or her client competently, diligently and fairly.*

Clause 2.9A of the Code as relevant states:

*2.9A In communicating with, or otherwise providing information to, the Authority, a registered migration agent must not mislead or deceive the Authority, whether directly or by withholding relevant information.*

Clause 3.1 of the Code as relevant states:

*3.1 A registered migration agent has a duty to preserve the confidentiality of his or her clients.*

Clause 8.1 of the Code as relevant states:

*8.1 A registered migration agent has a duty to exercise effective control of his or her office for the purpose of giving immigration advice and assistance.*

Clause 8.2 of the Code as relevant states:

*8.2 A registered migration agent must properly supervise the work carried out by staff for the agent.*

Clause 8.3 of the Code as relevant states:

*8.3 All immigration assistance must be given by a registered migration agent unless the assistance is permitted under section 280 of the Migration Act.*

#### **Association with Mr Lee**

97. The Authority raised with the Agent that it appeared a number of PDF documents that she had provided in her response to the third section 308 notice on 21 February 2019 contained metadata information listing Mr Lee as the author. In response to this information, the Agent sought an independent computer forensic expert to review Hansol's IT systems to identify how this may have occurred, given the Agent's and Mr KK's

statements that only they had created and compiled the section 308 notice responses. In light of the forensic expert's report, I accept that the documents that were created on Mr KK's computer as JPG format files before being converted to PDF format contained pre-existing default metadata information that had originally been set up by Mr Lee.

98. In Mr KK's statutory declaration, provided by the Agent in support of her response to the complaint, he stated that he had deleted the email address klee@hansolimmi.com.au from Hansol's website and email management platform or 'port' on or around 27 June 2016. This, and the document provided to the Authority by the Agent on 28 June 2016,<sup>29</sup> do not show that the email account had been 'shut down', only that it had been removed from Mr KK's list of current email addresses managed for Hansol. Departmental records show that correspondence was sent to email address klee@hansolimm.com.au after this date, as the Agent had provided Mr Lee's email address to the Department for the purpose of communication connected with her clients. No emails have been received by the Department from this email address since June 2016.
99. It appears that Mr AB did not receive a response to his email of 30 May 2016, and had sent an email to hansol\_master@gmail.com on 24 August 2017 and 5 September 2017. Mr AB received an email response from Hansol on 29 August 2017, from email address hansol\_master@hotmail.com, which did not contain a signature block and included immigration advice on his migration options.
100. The Authority conducted a review of the Department's records concerning the email addresses used by Mr AB to correspond with Mr Lee after his registration was cancelled. The Agent's first statutory declaration in response to the publication of the emails sent to Mr AB from klee@hansolimmi.com.au and hansol\_master@hotmail.com, asserted:

*"I did not receive these emails. **I do not, nor have I ever had direct access to these email addresses** [my emphasis]. I am aware that after Mr Lee's cancellation the email address klee@hansolimmi.com.au was monitored and I would be notified of any relevant emails that were received. I cannot explain why I was not made aware of these emails, and accept that there was a failing of the system that we had in place to deal with any correspondence received to this address.*

*I did not receive Mr AB's email of 5 September 2017. **I understand that this email was sent to Kevin at hansol\_master@hotmail.com. This is not an email address I had access to** [my emphasis]. I understand that it belonged to Mr Lee."*

Further, in relation to the email sent from hansol\_master@hotmail.com on 29 August 2017, responding to Mr AB's email to Mr Lee of 24 August 2017, the Agent declared:

*"I have no knowledge of these emails. I did not send the email of 29 August 2017 to Mr AB. I know that hansol\_master@hotmail.com is an email address that Mr Lee used. **I have never had access to that email account** [my emphasis]. I was not aware of the email from Hansol Migration sent to Mr AB on 24 August 2017<sup>30</sup>. I did not write or send this email."*

101. The Department's records reveal that that not only did the Agent have access to this email address, but that she had used it to communicate with the Department on 10 May 2016, when she advised them that it was her designated email address for corresponding with the Department electronically. The Agent subsequently received correspondence through this email address over the following year.

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<sup>29</sup> An email account management print out from a website hosting and management provider, as detailed in paragraph 68 of this decision

<sup>30</sup> This appears to be a typographical error and should read 29 August 2017, as Mr AB had sent the preceding email to hansol\_master@hotmail.com on 24 August 2017.

102. In response to the publication of this information in the second section 309 notice, the Agent conceded that in the Form 956 she had *“used 'hansol\_master@hotmail.com' address....Mr KK, our office manager, had suggested that it would be better to use 'hansol\_master@hotmail.com'”*. The Agent went on to assert *“However, I dispute that I had access to 'hansol\_master@hotmail.com' email address.”* Moreover, she also advised that following the Authority’s correspondence on 17 May 2016 she had *“changed my mind about using an email address that was associated with Mr Lee...The email address 'hansol\_master@hotmail.com' was never made accessible to the office staffs. However, Kay had made it clear with Mr Lee that all relevant emails will be forwarded to us”*. The Agent asserted that all the correspondence sent by the Department after 10 May 2016, associated with Ms HKW, sent to hansol\_master@hotmail.com was forwarded to her by Mr Lee. In support of this, she provided copies of the emails being forwarded from the hansol\_master@hotmail.com email account to her two email addresses. However, there is no indication in these emails as to who was responsible for forwarding them from the hansol\_master account.
103. Contrary to the Agent’s arguments that she did not have access to the hansol\_master@hotmail.com email account, the email sent to the Department from this email address on 10 May 2016 contained her signature block and included an attached Form 956 appointing her for Ms HKW’s matter and included her signature. I therefore reject the Agent’s statements, made in both of her statutory declarations, that she did not have access to this email account and find that she has repeatedly provided false and misleading information to the Authority. Notwithstanding this finding, I consider the Agent’s most recent statements that she allowed Mr Lee, a former agent who had his registration cancelled by the Authority, to continue receiving communications from the Department for her clients to be highly inappropriate.
104. Both responses made by the Agent to the Authority, in respect of this matter, were in the form of a Queensland statutory declaration, subject to the Queensland *Oaths Act 1867*. In light of that discussed above, I find that the Agent has intentionally provided false and misleading information in her statutory declarations to the Authority in an attempt to distance herself from being associated with, and having knowledge of, Mr Lee and his conduct following the cancellation of his registration by the Authority. The making of false statements in a statutory declaration is an offence under the *Criminal Code Act 1899 (Qld)*.<sup>31</sup> Accordingly, I am satisfied that the Agent acted contrary to the law by preparing and signing a statutory declaration that contained statements that she knew, or should have reasonably known, were false and misleading. As such, I am satisfied that the Agent’s responses to the Authority constitute breaches of **clauses 2.1(a) and 2.9A** of the Code.
105. The information published to the Agent in the second section 309 notice, and her subsequent statutory declaration have both contradicted the statements made by Mr KK in his statutory declaration provided by the Agent’s legal representative responding to the first section 309 notice. Specifically, Mr KK had declared that *“The email address hansol\_master@hotmail.com is not an email address owned or utilised by any staff at Hansol Migration. I am aware that this email address was used by Mr Lee prior to 2010 when the email domain hansolimmi.com.au was set up, from which time Mr Lee would use klee@hansolimmi.com.au. I have no information about the password for that Hotmail account nor have I ever had access to it.”*
106. Given the contradictory statements and evidence before the Authority, I consider that Mr KK’s statutory declaration, which was also sworn under Queensland *Oaths Act 1867*, contains statements that appear to be false and misleading. In light of this, I give little weight to the statutory declaration made by Mr KK as evidence to support the Agent’s submissions.
107. I also note that Mr KK and Ms HJL made statements on 1 November 2019 to the effect that the spousal relationship between Mr Lee and Ms HJL had broken down in late 2016.

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<sup>31</sup> A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 3 years — see section 194 of the *Criminal Code Act 1899 (Qld)*.

Ms HJL stated that she had only seen Mr Lee on approximately four occasions since November 2016 for about an hour during child custody visits but had refused to discuss work matters. She also declared that he had refused to respond to her emails to obtain Mr AB's file, sent to the email address [removed]@hotmail.com on 4 January, 2 February and 14 March 2018. However, Ms HJL has provided information to the Department on two occasions since November 2016, being 4 June 2018 and 24 September 2019, where she listed Mr Lee as her emergency contact, using the email address [removed]@hotmail.com<sup>32</sup>, and her occupation as 'housewife'. Further, she declared her residential address on these dates as the same address that she had previously declared to the Department she had shared with Mr Lee. If Ms HJL and Mr Lee were separated, had not seen each other more than four times in three years, and that he did not respond to her emails, it would not be expected that Ms HJL would declare her "ex-husband" as her emergency contact. Further, that she would provide the Department with the same email address she had used to unsuccessfully attempt to contact him in early 2018. In light of the information before the Authority, I consider that Ms HJL's statements appear to be false and misleading. I, therefore, give little weight to her statutory declaration and reject her description of her relationship with Mr Lee, or any implication that he is not connected to, or involved in, the operation of Hansol.

108. As such, contrary to the Agent's assertion and that of the statements made by Ms HJL and Mr KK) that Mr Lee is no longer connected to the business, it appears that the former Agent has continued his association with the business and the individuals attached to it.
109. Further, it appears that the Agent has exposed her colleagues to the potential of criminal prosecution by facilitating the provision of statutory declarations for the purpose of supporting her submissions to the Authority that she knew, or should have reasonably known, contained false statements, in contravention of the law. This speaks to the Agent's moral character and ethics.
110. In her first statutory declaration, the Agent stated that she did not know anything about Mr AB or his client file until she received his email on 28 December 2017, to which she responded,<sup>33</sup> despite Mr AB's allegations to the contrary. Within this same declaration, the Agent also asserted that she had made attempts to retrieve the client file from Mr Lee by emailing him, telephoning him on multiple occasions, and engaging a legal representative, to which Mr Lee had failed to respond. The email address that the Agent advised she had used to email Mr Lee on 4 January, 18 January and 20 January 2018 and request the client file for Mr AB was kleejun@hotmail.com. It is unclear why the Agent would not have attempted to contact Mr Lee on the hansol\_master@hotmail.com address, which she had advised he still had access to on 10 April 2017, and based on Mr AB's emails, continued to do so as late as August 2017.
111. The Authority put to the Agent in the second section 309 notice that her access to and use of the email address hansol\_master@hotmail.com as late as 10 April 2017 was only four months before the unsigned email was sent to Mr AB on 29 August 2017.<sup>34</sup> In light of this information, the Agent was advised that it may be open for the delegate to reject her statements relating to her knowledge of this correspondence, and find instead that she had access to, and continued to use, a private email address that belonged to Mr Lee, for at least a year after his registration was cancelled. Further, the Authority reiterated its concerns of the Agent's ongoing association with Mr Lee after his registration was cancelled, and that she appeared to be aware that Mr Lee was providing immigration assistance from this email address while his registration was cancelled but failed to act to address this.
112. The Agent conceded that *"Looking back at the series of actions I had taken. I now realise the incompetency in my actions. From the beginning I should have distanced myself from Mr Lee and his belongings as per the Code of Conduct. I accept that I actions were careless."* It appears that the Agent has conceded that she continued to be associated

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<sup>32</sup> In the September 2019 declaration, she listed the email address for Mr Lee in the June 2018 declaration as [removed]@hotmail.com, though it is unclear if this a separate email address for Mr Lee, or a typographical error by Ms HJL when providing the Department with this information.

<sup>33</sup> The Agent provided evidence to the Authority that she had responded to this correspondence

<sup>34</sup> In response to the email Mr AB sent to this email address and addressed to Mr Lee on 24 August 2017

with Mr Lee and had arranged departmental correspondence for her clients to be sent him, which according to the Agent were then forwarded to her by Mr Lee. The Agent argued that she did not update the Department with a different email address for correspondence as she *“was afraid that if the officer asked for a new 956 form for the new email address, the receipt of the visa grant letter may be delayed”*. However, this only relates to the final correspondence with the Department on 10 May 2017. The Agent has not addressed why she did not notify the Department of a different email address for correspondence following communication with the Authority on 17 and 19 May 2016 in relation to her ongoing association with Mr Lee, or anytime in the preceding 11 months until Ms HKW’s matter was finalised. I consider the Agent’s decision to continue to allow Mr Lee access to departmental correspondence for her clients, or that she relied on him to forward these to her, to be in direct defiance of the instructions she received from the Authority after Mr Lee’s registration cancellation. With regard to her statements about the use of the hansol\_master email account, as well as the continued use of Mr Lee’s email account klee@hansolimmi.com.au after his cancellation, the Agent allowed personal information about more than one client to continue to be sent to, and accessed by, Mr Lee. I consider this conduct constitutes a significant failure by the Agent to preserve the confidentiality of her clients’ information and their privacy. This behaviour is demonstrative of the Agent’s extremely poor moral and professional judgement and integrity.

113. The Agent conceded in her first statutory declaration that there were failings in Hansol’s handling of the email account klee@hansolimmi.com.au in relation to Mr AB’s matter and that she was not notified of the emails sent by Mr AB on 13 and 30 May 2016, despite both her and Mr KK stating that this email address was managed daily. Further, it appears that either Mr Lee, or someone purporting to be Mr Lee, sent a return email from klee@hansolimmi.com.au on 18 May 2016 that contained information constituting immigration advice and assistance. As I have given little weight to Mr KK’s statements, I reject his statements regarding Mr Lee’s presence in Hansol’s office after his registration was cancelled. Mr KK declared that Mr Lee had only attended the office on one occasion shortly after his registration was cancelled, and that he had provided Mr KK with his password to klee@hansolimmi.com.au to make changes to the account so as to enable Hansol employees to monitor the existing client caseload on two of the business’ computers. He then changed the password to one that he conceded was a general password used throughout Hansol’s office for all staff to use to access computers and email accounts. Mr KK conceded that Mr Lee would have known this password and that he did not realise the importance of ensuring that Mr Lee could not continue to access this email address by using a more secure password.
114. I reject the assertions made by the Agent and Mr KK that this email account was monitored daily by Hansol employees, including Mr KK, while simultaneously arguing that they failed to notice both emails sent by Mr AB, and the response sent on 18 May 2016. Mr KK’s statement that the email account could only be accessed on two of the business’ computers implies that for Mr Lee to have responded to Mr AB on 18 May 2016 he had either accessed an email account from Hansol’s onsite computers after his registration cancellation (and the Authority’s subsequent enquiries on 17 May 2016)<sup>35</sup> or that he had remote access to the account. If I were to accept that the Agent did not send this email, as she maintains, it points to a conclusion that another person at Hansol had provided a response to Mr AB. In light of the fact the Agent was the only person registered to provide immigration assistance at the business, provision of immigration assistance by any other person employed at the business would have been unlawful. Moreover, the Agent is required under Part 8 of the Code to properly supervise the work carried out by employees under her control for the purpose of giving immigration advice and assistance.
115. In light of the Agent’s attempts to conceal her ongoing association with Mr Lee, I reject her statements that she was unaware that Mr Lee continued to have access to this email account. Given the statements to the Authority on 17 and 19 May 2016, I consider it likely that Mr Lee continued to attend the Hansol office after his registration was cancelled and that he likely responded to Mr AB on 18 May 2019 providing migration advice, despite not

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<sup>35</sup> Consistent with the comments of the Hansol employee that spoke to the Authority’s officer on the telephone on 19 May 2016

being registered. Regardless of whether it was Mr Lee or another person at Hansol not registered to provide immigration advice and assistance, I am not satisfied that the Agent exercised effective control of her office for the purpose of giving immigration advice and assistance. It appears that she did not take reasonable steps to ensure that Mr Lee could not continue to access this email account or gain access to Hansol's clients, and in doing so allowed breaches of her clients' confidentiality. The Agent was also deficient in her supervision of other employees at Hansol, who were responsible for monitoring this email account and notifying her of emails received. As such, I am satisfied that the Agent breached **clauses 3.1, 8.1, 8.2 and 8.3** of the Code.

#### Responding to the Authority's notices pursuant to section 308 of the Act

Clause 2.1 of the Code as relevant states:

*2.1 A registered migration agent must always:*

- (a) act in accordance with the law (including, for an agent operating as an agent in a country other than Australia, the law of that country) and the legitimate interests of his or her client; and*
- (c) deal with her or her client competently, diligently and fairly.*

Clause 9.3 of the Code as relevant states:

*9.3 If the Authority gives a registered migration agent details of a complaint made to the Authority about:*

- (a) the work or services carried out by the agent or the agent's employees; or*
- (b) any other matter relating to the agent's compliance with this Code – the agent must respond properly to the Authority, within a reasonable time specified by the Authority when it gives the details to the agent.*

116. Section 308(1) of the Act stipulates that registered migration agents may be required to make a statutory declaration in answer to questions, and provide the Authority with specified documents or records relevant to their continued registration.<sup>36</sup>

117. The Authority raised with the Agent in the section 309 notice that she had repeatedly failed to respond properly to the Authority's requests for documents, including client files, as set out in the notices issued pursuant to section 308 of the Act. Particularly, the Authority drew attention to the Agent's failure to provide requested documentation for Mr AB in its potential findings.

118. The Authority has not pursued any finding against the Agent in relation to Mr AB's client file. However, the Agent has acknowledged in her statutory declaration response that she had repeatedly failed to provide complete client files to the Authority, which raised potential findings against her in relation to her failure in notifying Mr PRS, Mr DSS and Ms CW of correspondence and notifications sent from the Department. The Agent conceded that her responses to the Authority over the last two years have been "*deficient and lacking precision*", and "*at times not made in a timely way*", which she acknowledged were in breach of her professional obligations and clause 9.3 of the Code. However, she argued that her actions were not an attempt to mislead the Authority but on account of her mental health during this time.<sup>37</sup>

119. The Agent has repeatedly failed to respond properly to the Authority to a number of formal and informal requests made to her since the Authority first requested evidence that Mr Lee was no longer related to her by employment. The Agent's failure to properly respond to notices has continued in her responses the publication of the five complaints identified in this decision. The Agent has not been forthcoming in responding to the publication of information to her by the Authority, and has unnecessarily prolonged the investigation of

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<sup>36</sup> Section 308(1)(a) and (c) of the Act

<sup>37</sup> The Agent's legal representative nor the Agent provided clarification of this, other than stating that the Agent was inexperienced and overwhelmed with responding to the Authority.

these complaints. Despite the Authority affording the Agent multiple opportunities to provide client files, she did not provide the requested documents, even going as far as advising the Authority that the documents were attached to her responses when this was not the case. I consider that the Agent's failure to do so is indicative of a lack of care and attention to detail when responding to the notices.

120. In light of the Agent's concessions, I find that her behaviour demonstrates an unwillingness to engage with the Authority transparently and comply with requests in a timely manner. This only changed after she was issued with a notice pursuant section 309(2) of the Act. The Agent conceded that her responses to the second and third section 308 notices did not contain the specified documents and/or records requested by the Authority, and I consider this to be a failure to comply with subsection 308(1)(c) of the Act.

121. Accordingly, I find that the Agent acted contrary to her obligations as set in the Code and Act, and in doing so, breached **clauses 2.1(a) and 9.3** of the Code.

#### Provision of Mr Lee's email address for correspondence with Department

122. The Agent included Mr Lee's contact details in the first nomination and subclass 186 applications for TM Pty Ltd and Mr DSS, shortly before his registration cancellation in May 2016, despite the Agent being the registered migration agent for these applications. The Agent did not identify this until after both applications had been refused in November and December 2016, respectively, and the notifications from the Department had not been received by email. She stated in her response to the Authority on 21 February 2019 that it was not her standard practice to use Mr Lee's email address for correspondence with the Department, and that she *"remember[ed] this was the only incident that this had happened"*.

123. However, the Department identified that the Agent had submitted a Form 956 to the Department on 16 May 2016 for Mr TW, a former client of Mr Lee. The form, which appointed the Agent as Mr TW's new registered migration agent, was signed and dated by both her and Mr TW on 11 May 2016, but contained Mr Lee's email address for the purpose of receiving communication from the Department on behalf of Mr TW. Further, in reviewing the use of Mr Lee's email addresses in the Department's systems, the Authority identified that another Form 956 provided to the Department on 22 July 2016, appointing the Agent as the registered migration agent for another of Mr Lee's former clients, Tony & Wally Pty Ltd, contained klee@hansolimmi.com.au as the contact email address. This is further evidence of the Agent's failures to preserve the confidentiality of her clients, contrary to clause 3.1 of the Code.

124. The Authority put to the Agent, in the section 309 notice, that it was open for the delegate to reject her assertion that she could *"remember"* only having used Mr Lee's email address for the first nomination and subclass 186 applications for TM Pty Ltd and Mr DSS, and instead find this statement to be untrue and misleading. Further, in light of the original complaint allegations by Mr DSS and departmental records showing that all correspondence was sent to Mr Lee instead of the Agent, it was likely that the Agent had not notified TM Pty Ltd or Mr DSS of their refusal decisions or the invitation to comment.

125. In response to the section 309 notice, the Agent conceded that she had inadvertently failed to provide or update the Department with her email address instead of Mr Lee's email address on at least five occasions,<sup>38</sup> both prior to, and following, the cancellation of his registration by the Authority. As such, the Agent accepted that she had breached clause 2.1(b) of the Code. The Agent conceded that it was inappropriate for her to have allowed Mr Lee's email address to be provided to the Department for correspondence with her clients, including while he was still registered to practice. She argued, however, that her failings to identify and rectify these errors was accidental and as a result of a lack of care

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<sup>38</sup> The Agent identified a fifth instance, in addition to the four identified by the Authority in the section 309 notice, that she had provided Mr Lee's email address to the Department for correspondence with her clients.

and attention to detail on her part when completing the forms for her clients which, according to the Agent, were electronically pre-filled. The Agent further argued that she had not intended to mislead the Authority with her response indicating that the applications for Mr DSS and TM Pty Ltd were the only instances where such an error occurred, as she could not recall the other applications at the time she had responded to the section 308 notices.

126. Such conduct indicates a lack of due diligence and attention to detail by the Agent in ensuring that her contact details provided to the Department, for communication on behalf of no less than five matters, were accurate. I consider it particularly concerning that the Agent enabled Mr Lee to receive correspondence from the Department, on behalf of her clients, which were directed to her, in light of the severity of the Authority's sanction against Mr Lee for his conduct. I accept the Agent's argument that she regularly monitored ImmiAccount, and was aware of departmental correspondence as she has provided the Authority with evidence that she notified Mr DSS and Mr PRS, on behalf of TM Pty Ltd, of the departmental requests and application outcomes. As such, I accept that Mr DSS was afforded an opportunity to comment on the first nomination refusal and notified of the refusal decisions, and was therefore not adversely affected by the incorrect email address. Nonetheless, I find that the Agent's repeated failure to amend this information in different forms submitted to the Department would not have simply been an oversight in reviewing pre-filled information. I am of the view that it is indicative of a tendency by her, or other employees working under her and Mr Lee's supervision at Hansol, to supply the Department with the email address [klee@hansolimmi.com.au](mailto:klee@hansolimmi.com.au) for all matters. Further, that it appears that the Agent remained under Mr Lee's supervision, even after his registration was cancelled.
127. The Agent's failure to recognise the inappropriateness of this practice, and amend her clients' forms to ensure that she received all email correspondence from the Department, as their appointed registered migration agent, may have resulted in her not receiving important information from the Department and adversely affect her clients. In line with her own admissions, I find that this conduct demonstrates a significant degree of carelessness and lack of due diligence on the part of the Agent. As such, I am satisfied that the Agent breached **clauses 2.1(b) and 3.1** of the Code in her handling of no less than five client matters before the Department.

#### Failure to maintain proper records

Clause 6.1 of the Code as relevant states:

*6.1 A registered migration agent must maintain proper records that can be made available for inspection on request by the Authority, including files containing:*

- (a) a copy of each client's application; and*
- (b) copies of each written communication between:*
  - (i) the client and the agent; and*
  - (ii) the agent and any relevant statutory authority; and*
  - (iii) the agent and the Department regarding the client; and*
- (c) file notes of every substantive or material oral communication between:*
  - (i) the client and the agent; and*
  - (ii) the agent and an official of any relevant statutory authority; and*
  - (iii) the agent and the Department regarding the client.*

Clause 6.1A of the Code as relevant states:

*6.1A A registered migration agent must keep the records mentioned in clause 6.1 for a period of 7 years after the date of the last action on the file for the client.*



128. In responding to the Authority potential findings that the Agent had failed to appropriately notify her client, Mr DSS, of the Department's invitation to comment, and the first visa application refusal decision, the Agent rejected the Authority's statements and provided evidence of her correspondence with both the sponsor and the visa applicant.
129. More specifically, the Agent has provided evidence, as part of her response to the section 309 notice, that shows she had emailed Mr DSS on 8 March 2018 seeking to obtain information and documents listed in the Department's email sent on 7 March 2018, and subsequently provided the Department's email to Mr DSS on 21 March 2018. On the matter of the request for information for TM Pty Ltd, the Agent has only provided a copy of her email to Mr PRS on 21 March 2018, the sponsor's authorised contact person, forwarding the Department's correspondence from 7 March 2018. The Agent asserted in her statutory declaration that she was in communication with both clients by telephone following receipt of the Department's respective requests for information on the nomination and visa application, sent on the same day. She also stated that both Mr PRS and Mr DSS requested that she "again" forward a copy of the departmental request letters to them on 21 March 2018, purporting that she had forwarded the Department's emails to both clients prior to this date.
130. The Agent has not provided the Authority with any evidence that she forwarded the departmental request letter for the nomination application for TM Pty Ltd to Mr PRS prior to the 21 March 2018. In the case of the request for Mr DSS, while he and Mr PRS were notified of the contents of the request letter for the visa application on 8 March 2018, by email, it does not appear that the Department's request letter was forwarded to them. On the information before the Authority, it appears that either the Agent had failed to provide evidence of her initial time she had forwarded these notifications, or that she did not forward the request for information for the nomination application to Mr PRS until two weeks after receiving it from the Department.
131. The Agent has also not provided the Authority with evidence to substantiate that she contacted Mr PRS and Mr DSS by telephone, which she advised had taken place following receipt of the requests from the Department, presumably to notify both clients of the contents of these documents. As there is no evidence currently before the Authority that the Agent notified Mr PRS of the departmental request for information for the nomination application prior to 21 March 2018, it appears that the Agent has either failed to maintain records of her interactions with Mr PRS in relation to notifying him of the request, or delayed providing him the Department's notification by two weeks, adversely affecting his preparation time. A finding of the latter would indicate the Agent had not acted in the legitimate interest of and with due regard for the sponsor, TM Pty Ltd, and Mr PRS as the authorised contact person who was dependent on her as the appointed registered migration agent.
132. In relation to the preparation and lodgement of the second nomination and visa application, the Agent stated that she had taken both "*the client's and the sponsor's*" instruction by phone but had not made a record of the telephone calls or file notes of the conversations. The Agent had instead sent an email to Mr DSS on 28 March 2017, which she argued confirmed his instructions for the lodgement. I acknowledge that, contrary to his original complaint, it appears Mr DSS was aware of the second visa application. However, the email referred to by the Agent is addressed to both the sponsor and the visa applicant. It would be expected that the Agent would have either sought individual instructions from both clients in writing, or would have adequate records of all her interactions with her clients, including any telephone conversations where she had received instructions to prepare and lodge applications with the Department on their behalf.
133. In the client files provided by the Agent, the delegate was not able to locate any file notes in relation to the client instructions, records of any physical meetings, or any meaningful record of communication engaged in. On this basis, and the Agent's response to the Authority, I am of the view that there was correspondence between her and the sponsor and visa applicant that was not properly documented in the client file/s for the three year

period that they had engaged her services. Particularly, the telephone conversations referenced by the Agent in her response to the section 309 notice in relation to notifying both clients on the receipt of the departmental requests for both the nomination and visa application.

134. I am, therefore, satisfied that the Agent's interactions with both clients were not limited to those for which she has provided evidence to the Authority. As such, I find it likely that her failure to maintain records of all interactions extends to other verbal or in-person interactions with Mr PRS and Mr DSS. In light of her admissions that she had failed to properly document her telephone conversations with both clients, I find that the Agent did not maintain proper records of her interactions with Mr PRS and Mr DSS, which likely extended more broadly to similar interactions with these parties during the period of engagement of her services.
135. The Agent's statement where she only refers to Mr DSS as the client also raises concerns that the Agent does not perceive that the sponsor, TM Pty Ltd, was also her client. I acknowledge that the Agent has not argued at any stage of the Authority's investigation that she did not consider TM Pty Ltd as her client. However, her language indicates that she may not perceive that she had entered into an agent-client relationship with the sponsor, despite her Service Agreement with Mr PRS provided by the Agent to the Authority on 21 February 2019. I consider that the Agent's statement may be demonstrative of a shortcoming in her understanding of the agent-client relationship.

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136. In her complaint, Ms CW alleged that as she had not received notification by 2017 that her visa application, lodged on 28 August 2015, had been finalised she requested that the Agent withdraw the application. The Agent agreed to do so on 31 May 2017. Ms CW also alleged that she had not received the departmental invitation to comment on information letter dated 3 February 2017, or the notification of refusal letter dated 15 March 2017 from the Agent. In the section 309 notice, the Authority put to the Agent that Ms CW was advised, in an email she received on 27 June 2017 from a staff member from Hansol, that her visa application was withdrawn, when it had in fact been refused on 15 March 2017. The Agent asserted in her response, to the second section 308 notice, that Ms CW and her sponsor wanted to pursue other visa options after the refusal, but changed their mind and instead advised her shortly thereafter that they did not want to pursue further visa applications. As they had used the term 'withdrawal' in this correspondence, the Agent argued that the staff member at the time used the same phrase to communicate back to Ms CW that Hansol had stopped processing any additional applications. It was put to the Agent that she had not provided any file notes of interactions or emails to the Authority that evidenced Ms CW had been notified of the progress of her subclass 457 visa application or its refusal on 15 March 2017 by either the Agent or another employee of Hansol.
137. The Authority's notice to the Agent also referred to email correspondence provided by Ms CW in support of her complaint, including her email on 27 May 2017, where she requested the subclass 457 visa application be withdrawn and the professional fees paid be refunded. The Authority advised that, on the information before it, it was open to the delegate to reject the Agent's assertion that Ms CW was referring to different visa application, and instead find that the Agent had failed to keep her client fully informed of the progress of her visa application. The Authority advised it was also open to find that the Agent had failed to notify Ms CW of the refusal decision within a reasonable time after it was decided, in breach of clause 2.8 of the Code.
138. In response to the section 309 notice the Agent provided a copy of an email sent to Ms CW's partner Mr SZ and her sponsor, TS, on 5 March 2017 advising of the lodgement of the second nomination application. She also provided the Authority with a copy of a separate email sent on 15 March 2017 to Mr SZ providing notification of the visa application refusal and advising that a new visa application was being prepared. The Agent conceded in her statutory declaration response that she had taken instructions from Ms CW over the telephone, which permitted Mr SZ to act on her behalf, but had failed to

make a record of this, and did not obtain these instructions in writing from Ms CW. The Agent advised that she recognised this was a “failing” by her to keep records of “important instructions” from her client.

139. The Agent asserted that Mr SZ was authorised by Ms CW to act on her behalf, but that she failed to keep records of this instruction. While Mr SZ was a secondary applicant on Ms CW’s visa application, there is no written evidence currently before the Authority to confirm he was authorised to receive Ms CW’s correspondence from her registered migration agent or to make decisions of Ms CW’s behalf. There appears to be some confusion as to whether Ms CW received a number of important notifications from the Agent, given her complaint allegations, though I note these were withdrawn by Mr SZ, and subsequently by Ms CW. I consider this confusion was likely the result of the Agent’s decision to correspond with Mr SZ instead of directly with her client, which has prevented her from being able to evidence that Ms CW was made aware of the notifications. In light of there being no evidence of this authorisation from Ms CW on the Agent’s client file, I am unable to accept the Agent’s assertions that Mr SZ was authorised to act on Ms CW’s behalf, and that the Agent was instructed to provide all notifications and updates on the progress of the application(s) to someone who had not provided her with instructions to lodge applications.

### *Conclusion*

140. The Agent has conceded to failing to maintain proper records, in particular, files notes of material oral communication with her clients, including maintaining written records of conversations with Ms CW, Mr PRS and Mr DSS regarding their instructions to proceed in lodging applications with the Department. Accordingly, I find that the Agent has breached **clauses 6.1 and 6.1A** of the Code in relation to these clients.

### Failure to notify the Authority of a change in business address

Clause 2.22B of the Code as relevant states:

*2.22B A registered migration agent must:*

- (a) notify the Authority, in writing, of any changes to the registration details of the agent in relation to any of the following matters:*
  - (i) the agent’s full name;*
  - (ii) any business names of the agent or the agent’s employer;*
  - (iii) the business address for the agent;*
  - (iv) the telephone number for contacting the agent;*
  - (v) any of the matters mentioned in paragraphs 3V(a) to (da) of the Regulations*
- (b) notify the Authority*
  - (i) in advance; or*
  - (ii) not later than 14 days after the change or changes if advance notice would be unreasonable in the circumstances.*

Clause 3.5 of the Code as relevant states:

*3.5 If a registered migration agent changes his or her address, telephone number or any other details that are recorded on the Register of Migration Agents, the agent must give written notice to the Department, the Authority, any review authority and all current clients of the agent:*

- (a) in advance: or*
- (b) no later than 14 days after the change or changes if advance notice would be unreasonable in the circumstances.*

141. The Agent conceded in her statutory declaration response to the section 309 notice that she had breached the Code by failing to notify the Authority of a change to Hansol’s

business address within 14 days, which occurred approximately a year prior to her response. The Agent argued that her reasons for not notifying the Authority was that she had been advised by Mr KK that the relocation was intended to be temporary, and that Hansol would return to the previous address. However, the Agent has advised that this move is now permanent. The Agent also conceded that she had not updated this information in her most recent application for repeat registration but that it had been an oversight.

142. Following consideration of the available evidence, I am satisfied that the Agent has acted contrary to **clauses 2.22B and 3.5** of the Code, by failing to notify the Authority in writing, in advance or within 14 days, of changes to her business address.

143. In relation to the Agent's concession that she had also provided the former business address to the Authority in her most recent application for repeat registration, I accept, that this was unintentional, but reflective of the Agent's lack of due diligence and attention to detail already addressed in this decision. The incorrect information provided by the Agent related only to the business address of her employer, and did not extend to matters of character or other requirements for approval that may affect the outcome of the application. I am not satisfied that the Agent's failure to amend this information was an attempt to provide false or misleading information significant on her suitability to practice. She, however, listed her previous business address in her sworn statutory declaration dated 19 December 2019 responding to the second section 309 notice. It would be expected that the Agent would review any declaration being prepared in accordance with the law to ensure the contents were true and accurate. The incorrect information in the Agent's most recent statutory declaration appears to be the result of the Agent using pre-filled templates or sentences without reviewing the information for accuracy. I consider this is further demonstrative of endemic failures in the Agent's care and due diligence in preparing documentation.

### **Breaches of the Code**

144. 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.

145. 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, 2.9A, 2.22B, 3.1, 3.5, 6.1, 6.1A, 8.1, 8.2, 8.3 and 9.3 of the Code.**

### **Paragraph 303(1)(f) of the *Migration Act 1958* – not a person of integrity or is otherwise not a fit and proper person to give immigration assistance**

#### **Integrity**

146. There is a degree of overlap between "fit and proper" and "integrity" to the extent that fitness and propriety includes consideration of the honesty of the actions of an individual.

147. "Integrity" means "soundness of moral principle and character, uprightness and honesty".<sup>39</sup>

#### **Fitness and Propriety**

148. 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.

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<sup>39</sup> See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

149. 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.

150. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.<sup>40</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>41</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>42</sup>

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 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:

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<sup>40</sup> See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

<sup>41</sup> See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

<sup>42</sup> See *Cunliffe v Commonwealth* (1994) 182 CLR 272

- 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>43</sup>.

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'.

160. Based on the evidence before me, I am satisfied that the Agent knowingly and purposefully attempted to mislead the Authority by providing two statutory declarations in response to the two section 309 notices that contained false and misleading information. In doing so, the Agent has repeatedly demonstrated a blatant disregard for the law and the migration advice regulatory scheme. She has attempted to divert blame for her actions, and repeatedly hindered the Authority's investigation into the complaints by failing to comply with requests under the Act for information and documents. I am satisfied her reasons for doing so were to conceal her ongoing association with an individual who was found not to be a person of integrity, Mr Lee

161. By allowing Mr Lee to receive emails from the Department concerning clients and their applications before the Department the Agent allowed serious breaches of the confidentiality and privacy of people who were supposed to her clients and to whom she owed a duty to act with integrity.

162. The Agent continued her association with Mr Lee, despite being notified of her obligations, and the consequences of such an association by the Authority on no less than two occasions. As discussed in this decision, the Agent continued to be aware that Mr Lee had access to Hansol's clients after his registration had been cancelled. I also consider that her failure to exercise effective control of the work carried out by employees of Hansol resulted in Mr Lee or another person not registered with the Authority, providing immigration assistance. I find the Agent's conduct in its totality is demonstrative of repeated poor judgement, dishonesty and negligence by the Agent of her professional and ethical obligations.

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

163. 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;

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<sup>43</sup> *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

- 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***

164. 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.

165. Having regard to the Complaint Classification Matrix, I have considered that the Agent's conduct falls within the Major classification for the following reasons:

- (a) The Agent has repeatedly attempted to mislead the Authority during its investigation and has provided false and misleading information in statutory declarations, in breach of the law;
- (b) The Agent's conduct has resulted in multiple breaches of the Code, indicative of systematic poor practices;
- (c) The Agent failed to exercise effective control and proper supervision of the employees working at Hansol, resulting in someone who was not registered in providing immigration advice and assistance;
- (d) The Agent failed to fully cooperate with the Authority's investigation into five complaints over a significant period; and
- (e) The Agent's failure to comply with a number of requests made by the Authority, including those pursuant to section 308 of the Act, is indicative of her attempts to avoid providing information and documents to the Authority, and in doing so, evade culpability for the alleged conduct.

### ***Aggravating factors***

166. I consider the Agent's conduct falls short of the standard expected of a registered migration agent. The Agent has demonstrated a propensity for dishonesty by lying in a statutory declaration, and not being honest with the Authority in her written responses. She has also implicated her office manager, Mr KK, in providing false and misleading information as he provided a statutory declaration that the Agent has subsequently contradicted, exposing him to possible criminal prosecution. The Agent repeatedly hindered the Authority's investigation into the complaints and her continuing association over a number of years with a former migration agent who had his registration cancelled. The Agent hindered the investigation by withholding information and documents, inhibiting the Authority's investigation of the complaint matters against her and unnecessarily delaying the resolution of the complaints.

167. I also consider that the Agent's failure to properly respond to no less than four requests for information and documentation pursuant to section 308(1) of the Act demonstrates a serious failure by the Agent to abide by the regulatory scheme under which she has been registered since 2015.

168. In relation to Ms CW's complaint, it was identified that the Agent appeared to have made a number of written requests to Mr SZ, evidenced in two emails, seeking to have Ms CW withdraw her complaint following the Authority's publication of the complaint in the second section 308 notice, to which the Agent failed to respond properly. The Authority subsequently received emails from Mr SZ and Ms CW, that contained responses

dismissing the complaint allegations. I also note that similar written responses were submitted by the Agent for Mr PRS and Mr DSS, following her meeting with them on 20 February 2019. I consider it highly inappropriate for registered migration agents to apply any form of pressure on complainants to withdraw complaints made against them. In light of the Agent's failure to respond properly to Ms CW's complaint, put forward in the second section 308 notice, I am of the view that her correspondence with Mr SZ was an attempt to shut down the Authority's investigation in order to avoid responding in full to the request for information and documents. In light of the similarities between this correspondence, and the statements made and signed by Mr PRS and Mr DSS, I consider that the Agent's conduct, in seeking to have complainants contradict their initial allegations, is demonstrative of repeated attempts to have complaints withdrawn their complaint rather than the Agent properly responding to the Authority.

### ***Mitigating Factors***

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

- She was inexperienced, and overwhelmed by the Authority's notices and the situation she found herself in as Hansol's only remaining registered migration agent following the cancellation of Mr Lee's registration;
- The Agent has only worked in the migration advice profession since graduating from university. She would be forced to seek employment outside of the industry, if she were to have her registration suspended or cancelled by the Authority and has no other work experience to rely on;
- The Agent has no criminal record and prior to receiving Mr AB's complaint, had not been subject to any complaint nor been found to have breached the Code by the Authority; and
- She is willing to undertake any remedial training required by the Authority to address her breaches of the Code, and enable her to continue to practice as a registered migration agent.

170. While the Agent has not previously been subject to a sanction or disciplinary action by the Authority, I do not accept that this alone mitigates her conduct made out in this decision.

171. I consider the Agent's conduct can be rectified through additional training and education, and acknowledge that she has indicated her willingness to undertake any remedial action deemed appropriate by the Authority.

172. I have also considered that some of the conduct originally alleged by the complainants related to the Agent's former colleague, Mr Lee, whose registration was cancelled by the Authority less than a year after the Agent was first registered as a migration agent. As such, I accept that the Agent was relatively inexperienced when taking carriage of Mr Lee's former caseload, in what appears to have been an improper handover, inconsistent with his obligations. However, I do not accept that the Agent's inexperience or feelings of being overwhelmed by the Authority's investigation mitigates all of her failures to respond properly to the Authority's requests for information and documentation over a period of more than two years.

173. The Authority's investigation into these complaints has shown that, in spite of being alerted by Authority of the threat to her registration as a migration agent by remaining in an employment relationship with a person whom the Authority had found was not a person of integrity, the Agent has remained employed at a company which Mr Lee arguably had de facto control of. Further, that she made many attempts to obfuscate this situation.

174. The Agent and her legal representative both stated, in the section 309 notice submissions, that she had been affected by [removed] during the Authority's investigation into the five complaints. No evidence or further detail was provided to elaborate on these statements. On review of the information provided, I am satisfied that these comments relate only to



the Agent's feelings of being overwhelmed by the Authority's requests for information and documents. As such, I am satisfied that they do not raise concerns with the Agent's broader fitness to practice [removed] that need to be addressed separately to the above considerations.

175. In light of the Agent's statements regarding her employment, I have taken into account that a disciplinary decision would affect the Agent's financial earning capacity and livelihood. There is no information currently before the Authority that the Agent has any other sources of income other than her employment at Hansol as a registered migration agent. As such, I accept that any decision that affects the Agent's ability to practice within the migration advice profession, such as a period of suspension or cancellation, will likely have an impact on her livelihood.

### ***Consumer Protection***

176. 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.
177. The behaviour demonstrated by the Agent falls well short of the reasonably expected standards of a registered migration agent. I consider that the Agent has demonstrated that she does currently hold the requisite skills expected of a registered migration agent, and therefore requires further education and training to address the conduct the subject of this decision, and in the interests of consumer protection. As such, I consider that a disciplinary decision with conditions for remedial action is warranted.

### **DECISION**

178. In light of the findings made, I have turned my mind to the appropriate sanction action to impose on the Agent. Having regard for all the information before me, I consider that a decision to cancel or suspend the Agent for a prolonged period would be excessive, in light of her disciplinary record. I note that some of the more serious allegations made by the complainants related to, or was the result of, the conduct of their former agent Mr Lee both prior to and following the cancellation of his registration by the Authority. I also consider that the Agent has been negatively impacted by taking over Mr Lee's former clients, including his failure to complete a comprehensive handover of his client matters and files. Nonetheless, I am of the view that the Authority's findings, which relate to the Agent's judgement, honesty and compliance with her professional obligations, and the relevant laws, require the Agent to undertake a period of separation from the profession and corrective action to address the deficiencies in her knowledge and practice. The Agent has not presented any factors that mitigate the failings in her conduct, including her repeated failure to respond properly to requests for information and documents over a prolonged period of time.
179. Following consideration of the information before me, I have decided to suspend the Agent from being registered as a migration agent from the date of this decision for a period of 24 months, 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 points (as approved by the Authority) for every 12 months that the suspension is in force. The Continuing Professional Development 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 offered by The College of Law (Limited) 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.

Senior Professional Standards Officer  
Professional Standards and Integrity Section  
Office of the Migration Agents Registration Authority  
Department of Home Affairs  
Date of Decision: 6 January 2020