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DECISION RECORD

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| AGENT | Sanaz Manii |
| COMPLAINT NUMBER/S | CMP-57304 |
| DECISION | Suspension - 6 months |
| DATE OF DECISION | 24 July 2024 |
| TERMS USED FOR REFERENCE | Refer Appendix A |

JURISDICTION

1. The Authority performs the functions prescribed under section 316 of the *Migration Act 1958* (the Act).
2. The functions and powers of the Authority under Part 3 of the Act and *Migration Agents Regulations 1998* (the Agents Regulations) may only be exercised by the Minister or by a delegate of the Minister. The Minister has delegated the powers under Part 3 of the Act and the Agents Regulations to officers of the Authority. I am delegated under the relevant Instrument to make this decision.

Relevant Legislation

3. The functions of the Authority under the Act include:
 - to investigate complaints in relation to the provision of immigration assistance by registered migration agents (paragraph 316(1)(c)); and
 - to take appropriate disciplinary action against registered migration agents (paragraph 316(1)(d)).
4. The Authority may decide to cancel the registration of a registered migration agent by removing his or her name from the Register, or suspend his or her registration, or caution him or her under subsection 303(1), if it is satisfied that:
 - the agent's application for registration was known by the agent to be false or misleading in a material particular (paragraph 303(1)(d); or
 - the agent becomes bankrupt (paragraph 303(1)(e); or
 - the agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance (paragraph 303(1)(f); or

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- an individual related by employment to the agent is not a person of integrity (paragraph 303(1)(g); or
 - the agent has not complied with the Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
5. Subsection 314(2) of the Act provides that a registered migration agent must conduct himself or herself in accordance with the Code. The *Migration (Migration Agents Code of Conduct) Regulations 2021* made under the Act prescribes the Code.
6. The Code of Conduct for registered migration agents which was in force at the time of the conduct that is the subject of this decision was made is:
- The former Code of Conduct for registered migration agents (former Code)¹ being Schedule 2 to the *Migration Agents Regulations 1998*, as in force prior to 1 March 2022; and
 - The *Migration (Migration Agents Code of Conduct) Regulations 2021* is the prescribed Code of Conduct for the purposes of section 314(1) of the Act (Code).² It commenced with effect on 1 March 2022.

AGENT BACKGROUND

Agent Registration

7. The Agent was first registered as a migration agent on 19 May 2014, and was allocated the MARN 1463387. The Agent's registration had been renewed annually to 26 May 2015. The Agent submitted late repeat applications on 14 June 2016, 6 July 2017, 26 September 2018, 24 October 2019, 29 October 2020 and 9 November 2021. The Agent's registration was subsequently renewed annually from 28 November 2022 with the most recent registration commencing on 23 November 2023.
8. The Register lists the Agent's current business name as Stream Migration, with Australian Business Number (ABN) of 48645289705, under the business entity name of Sanaz Manii.

Prior disciplinary action

9. The agent was found in breach of **clauses 2.1, 2.3 and 2.4** for the Former Code in 2020 (case CMP-42081), relating to providing poor advice to a client and general incompetence/negligence. The Agent was issued a formal warning for this conduct.

ALLEGATIONS – THE AUTHORITY'S INVESTIGATION

10. On 6 October 2020, the Authority received a complaint from complainant; (XY) about the Agent's conduct as a registered migration agent (RMA).
11. In summary, XY alleged:

¹ A copy of the former Code is annexed at Attachment A

² A copy of the Code is annexed at Attachment A

- The Agent was engaged to assist with the preparation and lodgement of a Regional Sponsored Migration Scheme (subclass 186) visa application on behalf of XY. This visa application was in association with a nomination application for XY's nominated employer; (the sponsoring business).
- The nomination application for (the sponsoring business) was refused and a subsequent nomination application was to be lodged by the Agent. The Agent charged an additional fee of \$3,000 to do so.
- XY's subclass 186 visa application was refused due to the refusal of the nomination application.
- An application to review the nomination refusal decision was lodged by the Agent with the Administrative Appeals Tribunal (AAT). However, it was submitted outside the prescribed timeframe. As such, the AAT had no jurisdiction to consider the matter.
- XY sought a full refund due to the Agent's poor advice and lack of diligent immigration assistance.
- XY and her family lost their chance of permanent residency in Australia and faced removal from Australia back to Nepal due to the Agent's conduct. They were barred under section 48 of the Act and could only apply for a limited number of prescribed visas.

12. XY included the following documentation in support of her allegations:

- A copy of an unsigned Legal Services Fee Agreement between (the sponsoring business) and Stream Migration, dated 11 March 2019 with total fees of \$11,050 to be paid into a bank account for Stream Migration, with account number 486 XXX 598. These fees included visa application fees, nomination fees and a Skilling Australians Fund Levy (SAF). In addition to these fees the Agent's professional fees were listed as \$5,700.
- A copy of a receipt dated 3 April 2019 for a payment of \$5,700 paid into a bank account for Stream Migration with account number 486 XXX 598.
- A copy of a bank statement, in the name of XY, for the period 12 May 2017 to 13 June 2017, showing a payment of \$8,740 to Stream Migration on 22 May 2017.
- A copy of email correspondence dated 4 September 2019, between XY and the Department requesting a copy of the refusal notification for her subclass 186 visa application as the Agent had not provided it to her.
- Copies of email correspondence, sent to the Agent by the AAT, dated:
 - 24 September 2019, acknowledging receipt of the review applications.
 - 9 December 2019, inviting the Agent to comment on the validity of the applications for review.
 - 15 January 2020, notifying the Agent of the decision that the tribunal had no jurisdiction to consider her review applications.

Departmental Records

13. Departmental records show that the Agent was engaged to provide immigration assistance to XY for her subclass 186 visa applications and the associated nomination applications for her nominated employer, (the sponsoring business).

14. Records indicate the Agent lodged two visa applications and three nomination applications on behalf of XY and her nominated employer, (the sponsoring business). These applications were lodged between 23 June 2017 and 05 April 2019.

(The sponsoring business) - Nomination Applications:

Permission Request ID (RID) 420601847

15. On 23 June 2017, the Agent lodged a nomination application on behalf of (the sponsoring business). XY was listed as the nominee for the position of 'Contract Administrator.'
16. On 11 August 2017, the Agent was sent notification that the application had been refused as the nomination failed to meet all the criteria for approval, namely that insufficient evidence was provided to substantiate the claims regarding incurred payroll and training expenses for the business.

RID: 595603641

17. On 14 August 2017, the Agent lodged a nomination application on behalf of (the sponsoring business). XY was listed as the nominee for the position of 'Contract Administrator.'
18. On 5 May 2018, the Agent was sent notification that the application had been refused as the nomination failed to meet all the criteria for approval. Namely that the nominator failed to provide sufficient financial records outlining payroll expenditure and training commitments, nor any evidence of expenditure on staff training or an industry training fund for the previous year during the sponsorship period.

RID: 1560624792

19. On 05 April 2019, the Agent lodged a nomination application on behalf of (the sponsoring business). XY was listed as the nominee for the position of 'Contract Administrator'.
20. On 17 July 2019, the Agent was sent notification that the application had been refused as the decision maker was not satisfied the nominee was performing the tasks of a 'Contracts Administrator'.
21. On 20 September 2019, the Agent lodged an application for review of the nomination refusal decision with the AAT. It is noted that the prescribed period for lodging a review application for this refusal decision ended on 7 August 2019.
22. On 12 December 2019, the AAT sent the Agent an invitation to comment on why the review application was not lodged within the prescribed timeframe. No response was received by the AAT.
23. On 29 January 2020, the AAT determined that as the review application was not made within the prescribed timeframe they had no jurisdiction over the matter. The Agent was notified of this decision on 3 February 2020.

XY - subclass 186 visa applications:

RID: 1235601822

24. On 30 June 2017, the Agent lodged a subclass 186 visa application on behalf of XY. On 1 February 2018, the Agent was sent an 'Invitation to comment' letter from the Department. The Agent was invited to comment on the information that the nomination application lodged on 23 June 2017 on behalf of (the sponsoring business) was refused on 11 August 2017. As such XY's associated visa application could not be approved.
25. On 28 February 2018, the Agent emailed the Department requesting the withdrawal of the subclass 186 visa application with Form 1446 attached. The Agent cited the following reason for withdrawing the application:

'Subsequent to the nomination refusal dated 11 August 2017, a new nomination application with TRNEGOFH8VAJ was submitted on 14 August 2017. This application is still pending decision.

I assumed incorrectly that the existing visa application would be linked to the new nomination application however I now understand that this is not the case. Thus, a new visa application will be lodged shortly for the applicant which will relate to the new nomination application.

Thus, I have attached Form 1446 to effect the withdrawal of the visa application.'

26. On the same date, the Agent was sent an acknowledgement receipt of the application withdrawal, from the Department.

RID: 1800624225

27. On 5 April 2019, the Agent lodged a subclass 186 visa application on behalf of XY.
28. On 17 July 2019, the Agent was sent an 'Invitation to comment' letter from the Department. The Agent was invited to comment on the information that the nominated employer, (the sponsoring business) did not have an approved nomination and the consequential implications for XY's visa application.
29. On 21 July 2019, the Agent provided a response to the 'Invitation to comment letter', on behalf of XY. Included in the response was a request for XY's visa application to '*remain active*' whilst the Agent prepared and lodged a new nomination application.
30. On 22 August 2019, the Agent was sent notification from the Department that XY's visa application had been refused, as the appointment to which the visa application related to had not been approved. The Agent was advised that she could apply to the AAT for a merits review of the refusal decision. Any application for review must have been lodged with the AAT within 21 calendar days, commencing one day after receipt of the refusal notification.
31. On 4 September 2019, XY contacted the Department directly advising that the Agent had informed her that her visa application had been refused, however the Agent had told XY that she was unwell and unable to send the refusal notification. XY requested the refusal notification letter from the Department.
32. On 13 September 2019, XY was sent a copy of the refusal notification and decision record by the Department.

33. On 20 September 2019, the Agent lodged an application for review of the refusal decision for XY's subclass 186 visa application with the AAT.
34. On 9 December 2019, the Agent was sent an email from the Registrar of the AAT inviting the Agent to comment on the validity of the review application. The review application was deemed invalid as it was not lodged within the prescribed timeframe. However, the Agent was invited to submit comments in relation to this issue, by 23 December 2019. The Agent did not respond to the AAT's invitation.
35. On 15 January 2020, the Agent was sent a notification by the AAT advising her that as the review application was made outside of the prescribed timeframe they had no jurisdiction over the matter.

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

36. On 21 April 2023, the Authority sent the Agent a Notice pursuant to section 308³ of the Act, and requested the Agent to address the allegations contained within the Notice, and provide certain documentation.
37. On 17 May 2023, the Agent provided a response to the section 308 Notice⁴. In summary, the Agent made the following relevant submissions;
 - *'To the extent that I am permitted by Professional Indemnity Insurance to make an admission what is alleged is correct'.*
 - The Agent (*redacted for privacy reasons*) at the time she was assisting XY with her visa and associated nomination applications.
 - The Agent accepted full responsibility for errors relating to XY's subclass 186 visa application and associated nomination application.
 - As a result of receiving this complaint, the Agent has (*redacted for privacy reasons*).
 - The Agent considered it appropriate to offer restitution to XY for her professional failure, including costs paid to the Agent for the expired appeal made to the AAT.
 - The Agent indicated that she now:
 - Conducts all communications by email;
 - Fastidiously diarises deadlines and attends to them in a timely manner;
 - Reaches out to colleagues (*redacted for privacy reasons*) when she feels she cannot cope; and
 - Is being mentored by Mr Christopher Levingston for professional and personal matters and he has supported her.

³ Attachment B-section 308 Notice sent to Agent

⁴ Attachment C-Agent's response to section 308 Notice

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

38. On 30 April 2024, the Authority sent the Agent a Notice pursuant to section 309(2) of the Act⁵, advising the Agent that it was considering cautioning her, suspending, or cancelling the Agent's registration under section 303(1) of the Act.
39. 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(b), 2.3, 2.4, 2.8 (b) and (b), 2.17, 2.18, 2.19, 5.2, 5.3(a) and 6.1** of the Former Code and **section 32** of the Current Code. Further, that the Agent was not a person of integrity or otherwise a fit and proper person to provide immigration assistance as per paragraph 303(1)(f) of the Act.
40. On 28 May 2024, the Agent provided a response to the section 309 Notice via written letter⁶.
41. In summary, the Agent stated:
- Her failure to answer questions and provide documents requested in section 308 Notice was not a result of any unwillingness or dismissive intent on her part.
 - The section 308 and 309 correspondence from the Authority affected her most profoundly, which caused her anguish, guilt and regret.
 - Documentation to attest (*redacted for privacy reasons*) at the time she was dealing with XY's case was provided in lieu of responding to requests by the Authority.
 - Her intentions were to concede culpability for the mishandling of XY's case at various points throughout its duration, but also for failing to keep and maintain proper records of all correspondence between her and XY.
 - She was unable to provide documents requested by the Authority as she did not keep sufficient and proper records of the case as prescribed by the Code, (*redacted for privacy reasons*). The absence of these items should have been explained more thoroughly in her response to the section 308 Notice.
 - She regrets her insufficiencies in conducting XY's case immensely, and she is aware of the significant distress and disadvantage her inadequate advice cause XY.
 - XY's case was a 'wake-up call' to her practices and conduct as a migration agent, a role she takes with immense seriousness and responsibility.
 - She now ensures meticulous record keeping practices so as not to repeat the mistakes she made with XY's case.
 - Each of her cases are meticulously filed, documented and archived to ensure her record keeping is maintained in line with her obligations set out in the Code.
 - Each of her clients is assigned an email folder which holds every piece of correspondence between her and the client. This file is then archived in a secure drop box once the case is completed.

⁵ Attachment D- section 309 Notice sent to Agent

⁶ Attachment E-Agent's response to section 309 Notice

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- Her folders are categorised into years, in case a client re-engages her services at a later date.
- Telephone conversations with clients are followed up with an email reiterating the contents of respective calls. This ensures that any communication with a client is held in writing and is contemporaneous. The same process is practised when she has face to face meetings with clients.
- Following discussions with the client, she ensures she provides a copy of the Code of Conduct and Consumer Guide and a Fee Agreement to the client.
- She has worked tirelessly (*redacted for privacy reasons*).
- (*redacted for privacy reasons*).
- (*redacted for privacy reasons*).
- She is concerned about the financial implications in the event of being suspended or deregistered as a migration agent.
- She works full time as a migration agent and is a full-time parent to her children aged 7 and 11.
- Her husband has a demanding job as a company director and has had to make significant cut backs to his salary due to his industry being in downturn.
- Due to the economic climate, she often makes delayed mortgage payments, along with having to pay utility bills, and school fees each month.
- Her role as a migration agent and income is crucial to her family, and deregistration would be distressing and an almost impossible reality to face.
- She has previously stipulated that she would be prepared and willing to restore XY's financial position and fully compensate her for any monetary losses incurred as a result of her conduct.
- The loss of any existing and future clients would be devastating on a professional and financial level.

DECISION: FINDINGS ON MATERIAL QUESTIONS OF FACT

42. In reaching the findings of fact discussed in this decision record, the Authority considered the following evidence:
- Documentation contained in the Authority's complaints files;
 - Information held by the Authority in relation to the Agent;
 - The Agent's response to the section 308 and 309 Notices.
43. Having considered the information before me, I am satisfied the Agent:
- Has engaged in conduct in breach of the Agent's obligations under **clauses 2.1(b), 2.3, 2.4, 2.8 (b) and (d), 2.18, 2.19, 5.3 (a) and 6.1** of the Former Code and **section 32** of the Current Code.

- Is not a person of integrity or otherwise a fit and proper person to provide immigration assistance as per paragraph 303(1)(f) of the Act.

44. My findings and full reasons for the decision are set out below.

Findings

Sound working knowledge of the Migration Act and Regulations / Provision of sufficient supporting documentation

(The sponsoring business)

45. When the Department acknowledges receipt of a nomination application, it duly invites the nominator to support the application with any relevant information. By way of assistance, the Department's acknowledgment letter directs the applicant to a summary guide of relevant information.
46. With regard to the nomination application lodged by the Agent, on behalf of the sponsor (the sponsoring business) on 23 June 2017, the Agent provided a 'Gross Payroll Expenditure' form in support of this application, which included payroll expenses of \$40,305 and education and training expenses as \$4,570.
47. The Agent did not supply any other documentation to substantiate these expenditure claims, which was required to meet the criteria⁷ for the application. This was the reason the Department refused (the sponsoring business)'s nomination application.
48. With regard to the nomination application lodged by the Agent, on behalf of the sponsor (the sponsoring business) on 14 August 2017, she provided profit and loss statements for the financial periods July 2015 - July 2016 and June - December 2016. Included in these statements were expenditure amounts of \$4,570.30 and \$2,819.59 respectively, for education and training.
49. No further breakdown of this expenditure was provided. There was no mention of any other training fees paid for staff for registered training organisations, training of graduates/apprentices, or evidence of consistent contributions made to an industry approved fund. The delegate found that the nomination application did not include complete and consistent details and records of payroll and staff training expenditure for the nominating business which were required to meet the criteria⁸ for the application. These were the reasons the Department refused (the sponsoring business)'s nomination application.
50. With regard to the nomination application lodged by the Agent, on behalf of the sponsor (the sponsoring business) on 5 April 2019, she included a letter from (the sponsoring business) which listed the roles and responsibilities of the 'Contracts Administrator' position.
51. The roles and responsibilities included in this letter were determined by the Department to be inconsistent with that of a 'Contracts Administrator', as defined by ANZCO⁹. The decision maker determined that XY's roles and responsibilities with (the sponsoring business) were more aligned with that of a 'General Clerk'. This was the basis of the refusal for this nomination application.

⁷ Regulations 5.19(3)(f)(i)(A) and 5.19(3)(f)(i)(B)

⁸ Regulations 5.19(3)(f)(i)(A) and 5.19(3)(f)(i)(B)

⁹ The Australian and New Zealand Standard Classification of Occupations

52. Accordingly, it appears that through incompetence and/or unawareness, the Agent failed to provide sufficient evidence supporting the education and training expenditure claims cited in the Gross Payroll Expenditure statement and in the Profit and Loss statements that she provided in support of the nomination applications lodged on 23 June 2017 and 14 August 2017 respectively. This was vital information required to meet the criteria for the nomination applications.
53. As an RMA, the Agent has an obligation to maintain a sound working knowledge of Migration law and Migration Regulations, including section 5.19(3)(f)(i)(A) of the *Migration Regulations 1994*, relating to the sponsor fulfilling commitments relating to training requirements during the period of most recent approval as a standard business sponsor. However, it appears this anticipated knowledge was not reflected in her actions, relating to these nomination applications, resulting in their refusal.
54. It also appears the Agent failed to reference the ANZCO position for Contracts Administrator (511111), which provides a detailed list of roles and responsibilities for this position. This may have assisted the Agent in appropriately advising the sponsor; (the sponsoring business), that the roles and responsibilities included in the letter they provided were inconsistent with the position of 'Contracts Administrator' as listed in the nomination applications.
55. The Agent's actions and conduct demonstrates that she did not deal with her client (the sponsoring business) competently or diligently, and did not have a sound working knowledge of the requisite Migration Regulations relating to these nomination applications. Moreover, the Agent failed to provide sufficient relevant information to the Authority in support of these applications.
56. It is noted the Agent provided evidence (*redacted for privacy reasons*) which raised the following relevant points:
- (*redacted for privacy reasons*);
 - (*redacted for privacy reasons*);
 - (*redacted for privacy reasons*).
57. It was also noted that the referral letter (*redacted for privacy reasons*).
58. (*redacted for privacy reasons*).
59. (*redacted for privacy reasons*) impacted on her ability to perform work during the period the she was assisting XY, nor does it explain how the Agent's (*redacted for privacy reasons*) led to the errors made in the visa applications, associated nomination applications, and merits review application lodged on behalf of XY and (the sponsoring business). Therefore, this evidence in itself is insufficient to support the Agent's claim that the errors made were resultant (*redacted for privacy reasons*).
60. The Agent's given responses to the section 308 and 309 Notices, conceded culpability for the errors made and mishandling of XY's and (the sponsoring business)'s cases. As discussed, the Agent stated the reason she made these errors (*redacted for privacy reasons*). However, as noted above there was no explanation (*redacted for privacy reasons*) led to the errors made or to what extent.
61. Accordingly, based on the aforementioned evidence, and the responses made by the Agent to the section 308 and 309 Notices. I find the Agent's conduct is in breach of **clauses 2.1(b), 2.3 and 2.19** of the former Code.

Acting in a timely matter / Increased costs to clients

62. The Agent's subsequent request for review of the Department's refusal of the abovementioned nomination application (lodged on 5 April 2019), was made to the AAT on 20 September 2019, 13 days after the prescribed timeframe had expired.
63. The AAT's natural justice letter sent to the Agent on 12 December 2019, afforded her the opportunity to comment on the late lodgement of the review application. This was the opportunity for the Agent to raise her situation and potentially seek an extension of time (if possible), based on the given circumstances. However, the Agent did not respond, which resulted in the AAT determining they had no jurisdiction to hear the matter.
64. (*redacted for privacy reasons*) Agent's work was impeded by these issues.
65. (*redacted for privacy reasons*).As the abovementioned nomination applications were lodged 23 June 2017 and 5 April 2019, serious consideration should have been given by the Agent to cease acting for (the sponsoring business), and passing the matter onto another RMA, whose ability (*redacted for privacy reasons*) was not impeded.
66. However, the Agent chose to continue to act for (the sponsoring business), which resulted in the three abovementioned nomination applications being refused, the late lodgement of the AAT review application, and the AAT determining they had no jurisdiction to hear the matter. This resulted in further costs to (the sponsoring business) and XY.
67. This conduct demonstrates the Agent did not act in a timely manner with regard to statutory deadlines, and failed to have due regard for her client's dependence on her knowledge and experience as an RMA.
68. The Agent stated in her section 308 and 309 responses, that she would be prepared and willing to restore XY's financial position and fully compensate her for any monetary losses incurred as a result of her conduct. However, there is no evidence that any compensation has been paid to XY at this time.
69. The Agent's given responses to the section 308 and 309 Notices, conceded culpability for the errors made and mishandling of XY's and (the sponsoring business)'s case. As discussed, the Agent stated the reason she made these errors was (*redacted for privacy reasons*). However, there was no explanation (*redacted for privacy reasons*) led to the errors made or to what extent.
70. Accordingly, I find the Agent was in breach of **clauses 2.4, 2.18 and 5.3 (a)** of the Former Code.

Maintain a sound working knowledge of Migration Act and Regulations

Subclass 186 visa applications - XY

71. In relation to the visa application the Agent lodged on 30 June 2017, on behalf of XY, then subsequently withdrew on 28 February 2018, records indicate that on 28 February 2018, the Agent emailed the Authority and indicated that she had applied for a fresh nomination application on behalf of sponsor; (the sponsoring business), and the decision was still pending. The Agent indicated that she incorrectly assumed this visa application would be linked to the fresh nomination application. The Agent then realised this was not the case and that she would need to lodge a fresh visa application. The Agent also completed a Form 1446 and included this information within.

72. The Agent's actions demonstrate a lack of professionalism through a lack of understanding of procedures surrounding nomination and visa applications and a lack of capacity to provide accurate and timely advice.
73. The Agent's given responses to the section 308 and 309 Notices, conceded culpability for the errors made and mishandling of XY's and (the sponsoring business)'s case. As discussed, the Agent stated the reason she made these errors was due (*redacted for privacy reasons*). However, there was no explanation (*redacted for privacy reasons*) led to the errors made or to what extent.
74. Accordingly, I find the Agent's conduct is in contravention of **clause 2.3** of the former Code.
75. In relation to the subclass 186 visa application the Agent lodged on 5 April 2019 on behalf of XY; on 22 August 2019, she was notified by the Authority that XY's visa application had been refused. The Agent did not notify XY of this refusal decision until 2 September 2019, which was 10 days after she was notified.
76. XY requested a copy of the refusal decision, and the Agent advised her that she could not send a copy as she was ill and not in the office. This resulted in XY contacting the Authority by email and requesting a copy of the refusal decision on 4 September 2019, which was 12 days into the 21 day prescribed timeframe for applying for AAT review. XY did not receive a copy of the refusal decision from the Authority until 13 September 2019, a day after the prescribed timeframe for review had expired.
77. RMA's are obliged to deal with their clients competently, diligently and fairly, advise them of the outcome of an application within a reasonable time, and to have due regard for their dependence on the Agent's knowledge and experience. The Agent's conduct demonstrated a lack of professionalism, attentiveness and showed an indifference to her client, XY, and her situation.
78. The Agent's given responses to the section 308 and 309 Notices, conceded culpability for the errors made and mishandling of XY's and (the sponsoring business)'s case. As discussed, the Agent stated the reason she made these errors (*redacted for privacy reasons*). However, there was no explanation (*redacted for privacy reasons*) led to the errors made or to what extent.
79. Accordingly, I find the Agent to be in breach of **clauses 2.1(b), 2.4 and 2.8 (b) & (d)** of the Former Code.
80. The Agent's subsequent appeal of the Department's refusal decision of the abovementioned visa application (lodged on 5 April 2019), was made on 20 September 2019, 13 days after the prescribed period for review had expired.
81. The AAT's natural justice letter sent to the Agent on 9 December 2019, afforded her the opportunity to comment on the late lodgement of the review request. This would have been an ideal opportunity to raise (*redacted for privacy reasons*) potentially seek an extension of time, based on the given circumstances. However, the Agent did not respond, which resulted in the AAT determining they did not have jurisdiction to hear the matter.
82. (*redacted for privacy reasons*). Serious consideration should have been given to ceasing to act for XY, and passing the matter onto another RMA, whose ability (*redacted for privacy reasons*) was not impeded.
83. However, the Agent chose to continue to act for XY, which resulted in the two abovementioned visa applications being refused, the late lodgement of the review request, and the AAT determining they had no jurisdiction to hear the matter. This resulted in further cost to XY, and could have resulted in her not being able to remain onshore.

84. This also appears to show the Agent did not act in a timely manner with regard to statutory deadlines, and failed to have due regard for her client's dependence on her knowledge and experience. These serious actual, and potential ramifications could have been avoided had the Agent chosen to cease acting for XY.
85. The Agent's given responses to the section 308 and 309 Notices, conceded culpability for the errors made and mishandling of XY's and (the sponsoring business)'s case. As discussed, the Agent stated the reason she made these errors was *(redacted for privacy reasons)*. However, there was no explanation *(redacted for privacy reasons)* led to the errors made or to what extent.
86. Accordingly, I find the Agent has breached **clauses 2.1, 2.4, 2.18 and 5.3(a)** of the former Code.

Responding to requests from the Authority / Failure to confirm your clients' instructions in writing / maintain proper records

87. Agents have a duty to respond to requests from the Authority for information or documents. Paragraph 13 of the section 308 notice sent to the Agent required that she provided a response to the listed allegations in the form of a statutory declaration, which was to include answering all questions included in the notice.
88. The Agent's response to the section 308 Notice provided to the Authority on 17 May 2023, was not completed in the form of a statutory declaration as requested, and she did not answer any of the questions listed on the Notice.
89. The Agent admitted in her response that XY's allegations were correct and declared that this was a result of *(redacted for privacy reasons)*, however, the Agent was required to respond to the Authority properly, as set out in the section 308 Notice.
90. In addition, the Agent's response did not include any emails, notes or other correspondence which showed that she confirmed XY's instructions in writing. This may have accounted for her:
- Not acting in accordance with the XY's instructions, by not sending (or arranging to have sent) a copy of her visa refusal;
 - Failing to keep XY fully informed of the progress of her respective applications;
 - Not acting within a reasonable timeframe after the XY's visa application had been refused (10 days delay).
91. Furthermore, through the Agent's own admissions, she failed to maintain proper records of XY's respective files that should have been made available for inspection in her response to the section 308 Notice response.
92. The Agent's given responses to the section 308 and 309 Notices, conceded culpability for the errors made and mishandling of XY's and (the sponsoring business)'s case. As discussed, the Agent stated the reason she made these errors was *(redacted for privacy reasons)*. However, there was no explanation *(redacted for privacy reasons)* led to the errors made or to what extent.
93. Accordingly, I find the Agent has breached **clauses 2.8 (b) and (d), and 6.1** of the former Code, and **Section 32** of the current Code.

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

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

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- Failed to deal with her clients competently, diligently or fairly;
- Demonstrated deficiencies in working knowledge of Migration Regulations and other legislation relating to migration procedure;
- Demonstrated an indifference towards her client's needs and expectations;
- Failed to confirm her client's instructions in writing, act upon those instructions accordingly, and keep client informed of the progress of each application;
- Lodged applications with the Department and AAT that had no prospects of success, and failed to act in a timely manner to meet statutory deadlines;
- Failed to provide sufficient relevant information in support of applications, and carried out work in a manner that unnecessarily increased costs to her clients;
- Failed to maintain proper client records and files; and
- Failed to respond properly to the Authority.

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

CONSIDERATION OF APPROPRIATE DISCIPLINARY ACTION

96. In deciding to discipline the Agent under section 303 of the Act, I have taken into account all of the circumstances of the case, including the severity of the Agent's behaviour and any mitigating or aggravating circumstances which may exist. I have also considered:
- Whether the behaviour in question could be the subject of rehabilitation;
 - The level of impact, if any, that a sanction would have on the Agent's livelihood;
 - The circumstances of the clients, including any vulnerability; and
 - Any wider issues pertaining to consumer protection or the national interest.

Seriousness of behaviour

97. Having regard to the matters before me, I consider that collectively the Agent's adverse behaviour is of a very serious nature because:
- The Agent demonstrated a fundamental lack of knowledge of the Migration Act, Regulations and associated legislation; in making applications and appeals on behalf of XY and (the sponsoring business), which had no prospects of success, due to insufficient documentation and/or making applications outside of the prescribed period.
 - The Agent has repeated occurrences of the conduct described in subsection 303(1) (d)-(h); which included being issued with a formal warning on 4 May 2020, for providing poor advice to a client and general incompetence/negligence (case CMP-42081 relates).
 - The Agent's behaviour has resulted in substantial losses to XY, who provided a breakdown of additional costs resulting from the Agent's negligence and poor conduct. These costs totalled over \$25,000 and included:
 - Filing an appeal with the Federal Court;
 - Seeking alternative visa options;

- Resigning from her existing position in Sydney;
- Relocating to Kalgoorlie in Western Australia;
- Finding employment, new housing and childcare.

98. Aside from the financial costs, XY has stated that the aforementioned process has caused her and her family significant emotional damage, and has stalled her and her spouse's career.

Aggravating Factors

99. I consider the Agent's failure to take reasonable steps to ensure that only applications with merit are lodged with the Department to be extremely serious. Such conduct has a direct and profound impact upon the integrity of Australia's visa and migration programs, and on her clients.
100. In her responses to the section 308 and 309 Notices the Agent has stipulated that she would be prepared and willing to restore XY's financial position and fully compensate her for any monetary losses incurred as a result of her conduct. However, this has not occurred, which has left the financial burden on XY and her spouse.
101. It is also noted that on 4 May 2020, the Agent was issued with a formal warning for breaching **clauses 2.1, 2.3 and 2.4** of the Former Code (case CMP-42081), relating to the provision of poor advice to a client and general incompetence/negligence.

Mitigating Factors

102. The Agent's given responses to the section 308 and 309 Notices, conceded culpability for the errors made and mishandling of XY's and (the sponsoring business)'s cases. As discussed, the Agent stated the reason she made these errors was (*redacted for privacy reasons*). However, there was no explanation (*redacted for privacy reasons*) led to the errors made or to what extent.
103. The Agent has taken steps to improve her recording and filing practices. Although this is a positive step, the fact remains these practices should have already been in place, so as to avoid the mismanagement of all clients' applications.
104. The Agent has taken steps to improve (*redacted for privacy reasons*). This is also a positive step however, it does not assist XY or (the sponsoring business). As previously discussed, serious consideration should have been given to ceasing to act for XY and (the sponsoring business), and passing their cases onto another migration agent who (*redacted for privacy reasons*), and able to manage their matters properly.
105. I accept that any disciplinary decision will have an impact on the Agent's future livelihood. However, I am of the view that any loss in earnings from the provision of immigration assistance is significantly outweighed by the public interest given the seriousness of the Agent's conduct in relation to the applications, appeals and the information submitted to the Authority. I consider that the serious nature of the conduct reflects adversely on the Agent's fitness to remain in the migration advice industry.

Consumer Protection

106. Consumers of professional services of RMAs 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 RMA.
107. The behaviour demonstrated by the Agent falls short of the standards expected of RMAs. I consider that the Agent poses a serious risk not only to consumers but to the integrity of the

Department's visa programs that are made available to visa product consumers. I am satisfied that if the Agent were to continue to practice as a RMA, the Agent would not demonstrate the requisite skills expected of a RMA. I therefore consider that a disciplinary decision is warranted to address the serious conduct the subject of this decision, in the interests of consumer protection, and in maintaining confidence the integrity of the Australian migration program.

108. I expect that a decision to sanction the Agent would more likely than not deter other RMAs from engaging in a similar practice and ensure that public confidence in the migration agent industry is maintained.

DECISION

109. I have turned my mind to the appropriate sanction action to impose on the Agent. I consider the Agent requires a period of separation from the industry and have not imposed a caution for this reason. I am of the view that a suspension with conditions imposed on the Agent would maintain the interests of consumer protection and the migration program in general.
110. Following consideration of the information before me, I have decided to suspend the Agent from being a RMA from the date of this decision for a period of 6 months, and until the Agent has met the conditions below. This period will commence on 24 July 2024.

Conditions

111. The following conditions are to be completed within the period of suspension or no more than four (4) years from the date of suspension.
112. Evidence the Agent has completed a total of 1 Continuing Professional Development (CPD) point for every one month that the suspension is in force. The CPD activities are to be completed throughout each month that the suspension is in force and must include file management, accounts management and service agreements.
113. Evidence the Agent has successfully completed the following private tuition sessions which are conducted by an individual or individuals approved by the Authority and who are accredited immigration law specialists:
- Three hours of private tuition in relation to compliance with the Code of Conduct and with specific attention to Ethics and Professional Practice;
 - The Agent is not to accrue CPD points from this private tuition.
114. Evidence by way of a report from the Accredited Immigration Law Specialist or Specialists who provided the private tuition lessons indicating that:
- They were provided with a copy of this decision before the sessions conducted; and
 - The Agent has successfully completed the relevant sessions.
115. A statutory declaration in Commonwealth form stating 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.

Position number: 87845582

Office of the Migration Agents Registration Authority
Immigration Integrity and Assurance Branch | Immigration Operations Group
Department of Home Affairs
24 June 2024

APPENDIX A: TERMS USED FOR REFERENCE

The following abbreviations may have been used in this decision:

| | |
|--------------------|---|
| ABN | Australian Business Number |
| AAT | The Administrative Appeals Tribunal |
| BVA/B/E | Bridging Visa A, B or E |
| MARN | Migration Agent Registration Number |
| Section 308 Notice | Notice issued by the Authority under section 308 of the Act |
| Section 309 Notice | Notice issued by the Authority under section 309 of the Act |
| The Act | <i>The Migration Act 1958</i> |
| The Regulations | <i>Migration Agents Regulations 1998</i> |
| The Agent | Sanaz Manii |
| The Authority | The Office of the Migration Agents Registration Authority |
| The Code | The <i>Migration (Migration Agents Code of Conduct) Regulations 2021</i> prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i> |
| The Former Code | Code of Conduct prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i> by regulation 8 and Schedule 2 of the <i>Migration Agents Regulations 1998 – repealed on 1 March 2022</i> |
| The Department | The Department of Home Affairs |
| The Register | Register of migration agents kept under section 287 of the Act |
| VEVO | Visa Entitlement Verification Online |

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APPENDIX B: INTEGRITY, FITNESS AND PROPRIETY

Integrity

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.

‘Integrity’ means ‘soundness of moral principle and character, uprightness and honesty’.¹⁰

Fitness and Propriety

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.

In *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, Toohey and Gaudron JJ indicated several factors that could be taken into account in determining whether a person was ‘fit and proper.’ These included, but were not limited to conduct, character and reputation. At 380 their Honours stated:

[D]epending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

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.¹¹

The context in which the reference to ‘fit and proper’ person occurs in section 303(1)(f) is the person’s giving of immigration assistance. The context also includes:

- the Act, which creates offences for misleading statements and advertising, practicing when unregistered and misrepresenting a matter; and
- section 290(2) of the Act, which provides that in considering whether it is satisfied that an applicant is not fit and proper or not a person of integrity, the Authority must take into account specified matters, including the person’s knowledge of migration procedure; and any other matter relevant to the person’s fitness to give immigration assistance.
- the Code which refers to (among other matters) a registered migration agent acting diligently, ethically, honestly and with integrity, treating persons with appropriate respect, and properly managing and maintaining client records and maintaining client confidentiality.

Key elements of the fitness test are:

¹⁰ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

¹¹ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

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- the honesty of the person (Peng and Department of Immigration and Multicultural Affairs [1998] AATA 12); and
- the person's knowledge of the migration scheme and ability to fulfill the position of a migration agent (Mottaghi and Migration Agents Registration Authority [2007] AATA 60).

The reference in section 303(1)(f) to a registered migration agent not being a 'person of integrity' is not concerned with the person's knowledge of the migration scheme or ability as a migration agent, but is primarily concerned with a person's reputation, moral principle and character, including their honesty (*Tejani and Migration Agents Registration Authority* [2009] AATA 240).

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

- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
- the Agent's honesty and competency towards clients, the Department and the Authority;
- a consideration of the context in which the agent works, for example whether or not the Agent is an employee or owner of the business through which immigration assistance is provided;
- the Agent's knowledge and competency in immigration law and practice;
- the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
- the perception of the conduct by the Agent's "professional colleagues of good repute and competency".