



DECISION RECORD

AGENT	Ravinderjit Toor
COMPLAINT NUMBER	CMP-34439
DECISION	Cancellation
DATE OF DECISION	23 June 2021

Terms used for reference

1. The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>BVA/B/E</i>	Bridging Visa A, B or E
<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>	Ravinderjit Toor
<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

STATEMENT OF REASONS

Background

2. The Agent was first registered as a migration agent on 23 March 2011 and was allocated the MARN 1170356. The Agent's registration had been renewed annually to date. The Agent's registration application which was lodged on 20 March 2020 was granted on 25 January 2021 pursuant to section 300(5) of the Act.
3. The Register lists the Agent's business name as Visa Point Pty Ltd, with the ABN 41 155 175 769.

Prior Disciplinary action

4. The Agent does not have any history of prior disciplinary action.

Complaint

5. The Authority received a complaint about the Agent's conduct as a registered migration agent from Ms AK (**Ms AK**) (CMP-34439) on 13 November 2017.
6. The complainant's allegations are set out below.
7. Ms AK engaged the Agent's services as a registered migration agent in 2013, and again in 2015, to assist her with two applications for student visas.
8. She subsequently approached the Agent in relation to a permanent residency pathway. The Agent suggested that she should start her own business in a regional area, which the Agent offered to help her manage. The aim was to obtain a Regional Sponsored Migration Scheme (**RSMS**) visa.
9. Ms AK was unable to buy an existing business, and, in 2015, the Agent offered to provide her with employment within a company that the Agent had registered, <<removed for privacy>> Pty Ltd (**College 1**).
10. She paid to the Agent \$5000 in cash. He advised her that she would not be able to be a director of the company, however she could invest in the business and in return she would either have a share of the company, or the money would be refunded to her. The Agent advised her that she would run College 1, and work in the position of Office Manager.
11. On 29 September 2015 Ms AK paid to the Agent a further \$8740 for bond and rent for the office premises of College 1. However, Ms AK was not involved in any negotiations in relation to the lease of the office space, as the Agent undertook all dealings in relation to the business premises.
12. Ms AK started working for College 1 in October 2015, and initially worked 8 hours per week, organising marketing and setting up the office premises. Her hours then increased to 20 hours per week whilst she was on a student visa, and became full time once her student visa expired.
13. She paid, from her personal funds, the Goods and Services Tax (**GST**) of \$1900 in October 2015 and \$2065 in February 2016 for College 1.
14. The Agent organised registration with the Australian Skills Quality Authority for College 1, obtaining the Registered Training Organisation number 41489. The Agent advised Ms AK that the audit in relation to the registration would be undertaken by the company Chief Executive Officer (CEO), Mr JS.

15. The Agent subsequently advised Ms AK that she had been made CEO of College 1, in spite of the fact that she did not negotiate or sign a new employment agreement. The Agent advised her that an Office Manager and a CEO were the same thing.
16. Ms AK organised everything in the office, including marketing in nearby shops and distribution of her business cards. She also continued to pay rent and GST for the business from her own funds as she believed she had an interest in the company. Payments were made in cash by Ms AK into an account nominated by the Agent. She was not given access to the company bank account.
17. The Agent requested Ms AK to pay her own superannuation of approximately \$3800 and company tax of \$8000.
18. Ms AK was not paid a salary. However, she deposited money from her own funds into a College 1 bank account, which were then repaid to her so it would appear that she was being paid a salary. She deposited her money into the company account, or gave it to the Agent in cash.
19. Ms AK was asked to pay \$110 to be provided with payslips for the 'salary' she was paid.
20. The Agent advised Ms AK that he would lodge a sponsorship application to sponsor her for a permanent visa. Ms AK paid \$5000 to the Agent to make this application. Additionally, Ms AK paid for the Regional Certifying Body certification¹, as well as for an advertisement of the position on the Seek job search website, in support of the RSMS nomination application
21. She paid the Agent a further \$6368 on 31 March 2016. The Agent issued her with an itemised account for \$11,368.00.
22. The RSMS nomination and visa applications were lodged in May 2016. The Agent did not provide an *Agreement for Services and Fees* in relation to these applications.
23. On 10 October 2017 the Agent advised Ms AK in a telephone conversation that the nomination application was refused.
24. On 11 October 2017 she met with the Agent at his office, and was advised that if she wished to appeal the decision she will need to pay full rent and other expenses for the business, or alternatively pay \$50,000 into the company account to show financial viability. She requested that the Agent transfer the business into her name to enable her to continue to run it. The Agent had advised her that he was not able to transfer the business into her name, and unless the requested payment was made the Agent would not lodge an appeal of the decision with the Administrative Appeals Tribunal.
25. On 12 October 2017 Ms AK learned that the directorship of the business was transferred on 12 October 2017 to Ms SK, who is the Agent's sister.
26. Ms AK obtained an ASIC Historical Extract for College 1 (ACN <<removed for privacy>>) which indicated that:
 - The Agent was the appointed director from the date of initial registration, on 24 February 2015 until 01 January 2016;
 - Mr JS and Mr JSJ were appointed directors from 1 January 2016 until 9 February 2017;
 - Mr HSR was the appointed director from 9 February 2017 until 12 October 2017;

¹ When a individual is nominated for a Regional Sponsored Migration Scheme Direct Entry visa stream, the position they are nominated for must be assessed by a Regional Certifying Body. Regional Certifying Body assessments give the Department of Home Affairs information about local labour market conditions and other relevant regional matters.

- Ms SK was appointed as a director on 12 October 2017.
27. Ms AK had spoken to Mr JS and Mr HSR, two previous directors, who advised her that the Agent had assisted them to obtain permanent residency in Australia, and they had agreed to be directors of the business as a favour to the Agent, but had no actual involvement in the business.
 28. Ms AK paid around \$60,000 to the Agent and into the College 1 bank account, believing that she was investing in a business.
 29. After negotiations with the Agent and his sister, Ms SK, the Agent refunded an amount of \$32,000. This amount was refunded to Ms AK in the presence of two witnesses – Mr SS and Mr MS.
 30. Ms AK advised that due to her visa status, she was forced to return to India. Subsequent to her return, the Agent had made telephone threats against her and her father in law. She had given an interview describing her situation on SBS Punjabi radio, and the Agent was demanding that she retract her comments.
 31. Additionally, Ms AK advised that the Agent had made telephone threats against Mr SS, who was present when the \$32,000 was refunded to Ms AK.

Information received from the Department

32. Records of the Department of Home Affairs indicate the following in relation to Ms AK's visa history:

Student visa:

- a) On 24 August 2012 Ms AK applied for a Class TU Subclass 572 student visa. The Agent was the authorised registered migration agent for this application. The visa was granted on 21 September 2012.
- b) On 14 August 2015 Ms AK applied for a Class TU Subclass 572 student visa. The Agent was the authorised registered migration agent for this application. The visa was granted on 17 September 2015.

RSMS Nomination Application:

- a) On 5 May 2016 a RSMS Nomination application was lodged by the Agent on behalf of College 1, nominating Ms AK for the position of Office Manager (ANZSCO 512111). This application was refused on 10 October 2017 as the nominator did not meet Regulation 5.19(4)(d)(i). The delegate found that "it has not been demonstrated that the employee will be employed on a full time basis in the position for at least two years."
- b) On 27 May 2016 a second RSMS Nomination application was lodged by the Agent on behalf of College 1, nominating Ms AK for the position of Office Manager (ANZSCO 512111). This application was withdrawn by the Agent on 31 May 2016. The Agent stated that the reason for withdrawal was it is a duplicate application lodged due to a lack of receiving an acknowledgement notification when the first nomination application was lodged.
- c) On 11 October 2017 the Agent emailed the RSMS processing area, seeking a reconsideration of the decision, on the basis that no additional information was sought by the decision maker prior to the decision being made.
- d) On 19 October 2017 the Agent lodged a review application with the Administrative Appeals Tribunal.
- e) On 24 November 2017 the review application was withdrawn by the Agent.

RSMS visa application:

- a) On 4 May 2016 a Regional Sponsored Migration Scheme Class RN Subclass 187 visa application (**subclass 187 visa**) was lodged by the Agent on behalf of Ms AK and her family.
- b) On 10 October 2017 an Invitation to Comment on Nomination Refusal was sent to Ms AK.
- c) On 6 November 2017 the visa application was withdrawn by Ms AK, who also advised that she has ceased the Agent's appointment as a registered migration agent for the application.

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

33. On 7 November 2018 the Authority published the complaint to the Agent, advising the Agent that it raised concerns regarding the Agent's compliance with 2.1, 2.1A, 2.2, 2.4, 2.6, 2.8, 2.9, 2.15, 2.19, 2.23, 3.2A, 5.2 of the Code.
34. Pursuant to section 308 of the Act, the Authority requested the Agent to provide the following information:
 - A written response to specific questions asked by the Authority;
 - A copy of the client file.

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

35. On 14 December 2018 the Authority received the Agent's response to the complaint/s by way of a statutory declaration. The Agent made the following claims/submissions:

In relation to the Agent's business interests:

36. The Agent's involvement with College 1 was only for the purpose of assisting Mr STS, who was previously a client of the Agent. Mr STS wanted to establish a business, and the Agent became a director as Mr STS was unable to hold this position due to the fact that he held a student visa. The Agent received no financial benefit from this role, and ceased on 1 January 2016. The Agent provided a statutory declaration from Mr STS in support of this statement.
37. The Agent was secretary of <<removed for privacy>> (**'College 2'**) ACN <<removed for privacy>> between 17 November 2013 and 1 May 2014. The Agent's wife, Ms KT, was sole shareholder and director between 17 November 2013 and 15 November 2018. The company is a Registered Training Organisation which provides vocational education and training to its students. The company was registered in a regional area.
38. The Agent was secretary of <<removed for privacy>> (**'College 3'**) between 18 September 2013 and 30 June 2015. The Agent was appointed as sole director on 12 June 2017, and continues to hold this position, and is also the sole shareholder. The Agent's sister, Ms SK, and wife were sole directors of the company at various times prior to the Agent's appointment. The company is a Registered Training Organisation which provides vocational education and training to its students.
39. The Agent was the secretary of <<company details removed for privacy>> between 3 February 2015 and 6 July 2016. He was also the sole shareholder. The Agent's sister was the director during this period. The company was voluntarily deregistered, and to the Agent's knowledge it never operated or was used for any purpose. The Agent has not provided an explanation for the intended purpose of the registration of this company.

40. The Agent has never held any position or shares in <<company details removed for privacy>>. The Agent's father was the director of the company between 11 June 2018 and 6 September 2018.
41. The Agent's wife was a director of <<company details removed for privacy>> between 1 June 2014 and 5 June 2014, and again between 1 June 2015 and 1 September 2016. She also held shares in this company.
42. The Agent and his wife are directors and equal shareholders in <<company details removed for privacy>>, and were appointed on 29 May 2018. << removed for privacy>>
43. The Agent is the sole director and shareholder of <<company details removed for privacy>>. The Agent intended to use this company to run a website for people to search for colleges in their area, and has lodged an application to deregister the company on 20 November 2018.
44. The Agent, and his family members have never held any positions or shares in:
 - <<company details removed for privacy>>
 - <<company details removed for privacy>>
 - <<company details removed for privacy>>
 - <<company details removed for privacy>>
 - <<company details removed for privacy>>
 - <<company details removed for privacy>>

In relation to College 3

45. The Agent's client agreement, at clause 6, subclause 12 states "*the Agent may receive commissions from referring the client to third-party organisations who will provide products or services to the benefit of the client*". The Agent provided a copy of this agreement, and advised that he also informs clients of this verbally, prior to the contract being signed.
46. The Agent was appointed as a director on 12 June 2017. The Agent was not a director at the time that his sister was nominated by the company on 7 January 2015 for the position of an Office Manager. The Agent's wife, Ms KT, was the director at the time, commencing on 18 September 2013 and ceasing on 1 October 2015. The Agent's sister was subsequently appointed to the role of director on 1 October 2015, and she ceased in this role on 12 June 2017.
47. The Agent represented both College 3 and his sister in the subclass 187 visa application process.
48. The Agent informed all parties of his familial relationship with the nominee and the company director. The Agent has provided a disclosure document in support of this.
49. The Agent provided various evidence of his sister's ongoing employment with the company, including PAYG summaries and bank statements showing payment of wages.

In relation to College 2

50. The Agent's client agreement, at clause 6, subclause 12 states "*the Agent may receive commissions from referring the client to third-party organisations who will provide products or services to the benefit of the client*". The Agent provided a copy of this agreement, and advised that he also informed clients of this verbally, prior to the contract being signed.

Other information in response to Authority's questions

51. The Agent's sister was employed by Visa Point (the Agent's migration business) between February 2015 and August 2015. The Agent was listed as the migration agent on her application. The Agent provided evidence of her employment.
52. The Agent met Ms NP through his wife, as she was also a director of College 2 . The Agent does not have a familial relationship with Ms NP, and she has never been his client.
53. Mr GSS is a friend of the Agent since 2006. He has never been a client.
54. Mr JS was the Agent's client in 2013 and 2015, and they have been friends since.
55. The Agent met Mr JSJ in 2012. Mr JSJ then commenced working at College 2 for the Agent's wife until 2017. He has never been a client.
56. Mr HSR was a client in 2015.
57. The Agent did not offer Ms AK (the complainant) any position with College 1 as the Agent had no authority to do so.
58. The Agent has on one other occasion offered a position within his business to a client. This was to Ms IKB on 24 December 2012. The nomination application was approved, but the visa was refused as the nominee did not meet the qualifications criteria.
59. In support of the response to the section 308 notice, the agent provided:
 - A statutory declaration, responding to the Authority's questions;
 - A defamation notice issued to the complainant on behalf of the Agent on 11 January 2018;
 - The complainant's email response to the defamation notice, on 12 January 2018;
 - ASIC Current & Historical Extracts for: <<various company details removed for privacy>>
 - The client file for Ms SK;
 - Visa Point Migration Services Client Disclosure Documents in relation to College 3 and College 2 ;
 - The client file for Ms AK (the complainant);
 - The client file for College 3;
 - The client file for College 2;
 - The client file for College 1;
 - The client file for Visa Point;
 - A statement clarifying the sequence of events in respect of Ms AK.

Notice/s under section 309 of the Act ("the section 309 notice")

60. On 25 March 2019 the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning him, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
61. 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, 2.1A, 2.4, 2.6, 2.8, 2.9, 2.19, and 2.23** of the Code, and
 - The Agent is not a person of integrity or otherwise not a fit and proper person to give immigration assistance.
62. The Authority invited the Agent to provide written submissions on the matter, pursuant to section 309(2) of the Act, no later than 23 April 2019.

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

63. On 21 May 2019, following a number of approved extension requests, Authority received the Agent's submissions by statutory declaration. The Agent advised, in summary, that:
- He denies the allegations posed to him by the Authority;
 - He denies the complainant's claims;
 - The allegations against him are not supported by evidence.
64. In support of his response, the Agent provided:
- A statutory declarations from: the Agent, Ms SK, Mr JS, Mr HSR, and Mr STS;
 - Visa Point Migration Services Client Disclosure documents signed by various clients, as referred to in Attachment A;
 - A letter of resignation from Ms AK, the complainant;
 - Agreement for Sale of Shares in College 1, between SK and FJI, dated 9 February 2018.

Subsequent Information

65. On 25 July 2019 the Authority sought to clarify the information provided in relation to SK, including the dates of a deposit contained in the Agreement for Sale of Shares. The Authority also sought to clarify reference to documents being attached to SK's statutory declaration in relation to College 1, as no documents other than the Agreement for Sale were attached.
66. On 31 July 2019, the Authority received a response confirming "... *the deposit was paid on 5 February 2018 and it was a typo*" and "*There are no other documents*".
67. The Agent also provided alleged WhatsApp messages between the complainant and the Agent, unofficially translated into English, dated between 12 October 2017 and 19 October 2017.
68. On 2 August 2019 the Agent provided a PDF document including:
- A letter from the Commonwealth Bank, dated 2 August 2019, confirming the bank details for a bank account in the name of SK;
 - Details of a transaction on 19 February 2018, with the description of 'Direct Credit 421520 <<removed for privacy>> College 1' for the amount of \$196,350.00.
69. The PDF document was described by the email it was attached to as '*It is the Commonwealth bank account, in which the amount of sale was received on 19 February 2018. The initial \$22,000.00 was retained by the broker from buyer, until the sale was finalised.*'

Jurisdiction

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

Relevant legislation

72. 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)).
73. 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)).
74. 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.
75. 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 of 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

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

- Information provided by the complainant in respect of complaint CMP-34439;
- Departmental records for Ms AK and College 1

- The Agent's response to the section 308 notice and section 309 notice;
- Supporting documents provided by the Agent.

DECISION AND REASONS

Breaches of the Code

77. 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.
78. 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, 2.1A, 2.1B, 2.4, 2.9, and 2.23** of the Code.

Standard of proof

79. The Agent, through his legal representative, argued throughout his section 309 notice response that he denies any wrongdoing, or that he has breached the Code of Conduct. The Agent contended that there is no evidence to support such findings other than inferences made by the Authority, and that there is no evidence independent of the allegations of the complainant to support any finding that the Agent has been dishonest in his dealings. Further, the Agent contended that the Authority has not met '*even the most basic standard of proof relating to an allegation of potential fraud or deception.*'
80. Administrative decision makers must act according to substantial justice and the merits of a case. While every effort is made to meet the standard established in the rules of evidence, an administrative decision is not bound by technicalities, legal forms or rules of evidence. The Authority weighs all information available in considering the Agent's conduct, including the origins and validity of documents as supporting evidence.
81. The Agent has been provided with all of the information being considered by the Authority in respect to the complaints that are the subject of this decision and has been afforded a reasonable period in which to respond. Considering this, I am satisfied the Authority has complied with the rules of procedural fairness and the Agent has been afforded sufficient opportunity to consider and respond to information before the Authority prior to any decision being made.

Sponsorship of the complainant by College 1

82. Ms AK, the complainant, alleged that she wanted to gain permanent residency in Australia through a **RSMS** visa. Ms AK further alleged that she approached the Agent in regards to this matter in 2015, and the Agent offered to provide her with employment within a company that he had registered, being College 1.
83. The Agent denied these allegations, stating that whilst he was the director of College 1, he had limited involvement in the business or daily management and no authority to offer a person employment in the company. In light of the Agent's contentions, I have considered the Agent's involvement with College 1, and what bearing it may have on the complainant's claims. In doing so, I have considered:
- Initial directorship of College 1;
 - Change of directorship to Mr JSJ and Mr JS

- Change of directorship to Mr HSR;
- Change of directorship to Ms SK;
- Other evidence of the Agent's involvement in the business.

Initial directorship of College 1

84. ASIC records indicate that the Agent was the appointed director of College 1 from the date of initial registration, on 24 February 2015 until 1 January 2016.
85. The Agent stated that he became a director of College 1 due to the fact that his former client, Mr STS, wanted to open up a college, but was unable to be a director himself as he held only a student visa. Departmental records confirm that Mr STS was the Agent's client, and the Agent assisted him in respect of two student visa applications:
- First student visa applied for on 8 November 2013 and granted 17 December 2013;
 - Second student visa applied for on 7 February 2015, and granted 10 March 2015.
86. The Agent stated that he ceased in the role as director of College 1 on 1 January 2016 when Mr STS decided to transfer the business to another person.
87. In support of this statement, the Agent provided a statutory declaration, dated 29 November 2018, signed by Mr STS which stated (of relevance):
- *"The purpose of my contact was to seek Mr Toor's assistance in setting up a training business for my long term goal. As I was on a student visa, during my meeting I sought his assistance to register a business for me and I requested if I could use his business address as my company's registered office."*
 - *"Towards the end of September 2015, Mr Toor called me and asked if I would be interested to talk to a lady who is interested to get some work experience"*
 - *"One of the first tasks I gave her was to ask her to help me in searching for office furniture."*
 - *"On 2 October 2015 during my meeting with Mr Toor I requested him to sign lease on my behalf... the duration of the lease was for one year from 6 October 2015 to 5 October 2016."*
 - *"I was satisfied with AK's performance and agreed that she goes on payroll from 9 November 2015."*
88. The Agent provided a further statutory declaration from Mr STS, dated 14 May 2017.² The second statutory declaration states that Mr STS:
- (a) Thought he could not be a director due to his visa status, and never sought the Agent's advice in regards to being a director when seeking his assistance;
 - (b) Regularly visited the Toowoomba premises, but continued to work as a cleaner in Brisbane *'to have enough money to make the company a success';*
 - (c) Realised he *'could not make the business work'* and around the end of 2015 had let Mr JSJ and his associate Mr JS take over the business.
 - (d) The business "made no money" and Mr STS "could not waste any more effort in trying to make it work."

² In light of the fact that this latter statutory declaration makes reference to the former one, I accept that the date is erroneously typed as "2017," and should in fact state "2019."

- (e) Had an offer to work for <<removed for privacy>> as a trainer.
 - (f) The Agent acted in the role of director only at Mr STS's request.
89. Mr STS's two statutory declarations indicate that he had agreed to offer the complainant paid employment from 9 November 2015, however a month later he realised that he could not make the business work and decided to hand it over to Mr JSJ and Mr JS. It is implausible that a business owner would offer paid employment to someone if the business was not making any money at the time, suggesting that he could not afford the position financially.
90. Further, Mr STS's statutory declaration states that he had an offer to work for <<removed for privacy>> as a trainer. No evidence has been provided to support this statement.
91. Departmental records indicate that in support of the second student visa application lodged by the Agent on behalf of Mr STS, on 10 March 2015 the Agent submitted a "statement for genuine temporary criterion", dated 23 February 2015. This statement makes the following assertions:
- *"I have completed advanced diploma level education of business and management. I wish to gain further understanding and expertise in business and marketing area."*
 - *"If I am able to successfully complete this qualification (Advanced Diploma of Marketing) I can seek employment as a marketing director. I am looking forward to it."*
 - *"After completing advanced diploma of marketing and business I can either start or undertake Bachelor of Business and Marketing, or I can seek employment for the following positions: Senior executive; Senior marketing director.... I will enjoy either of the above options."*
 - *"My father <<removed for privacy>> is supporting me financially... I have not been employed in Australia because of lack to time due to classes."*
92. The statement is dated one day before College 1 was registered with ASIC. The statement provides information that is inconsistent with the subsequent statutory declarations provided from Mr STS. The statement indicates that Mr STS has not been working in Australia, whereas the statutory declaration dated 14 May 2019 indicates that Mr STS "continued to work as a cleaner in Brisbane." Further, the statement indicates that Mr STS's goal was to gain a position as either a senior executive or senior marketing director, in the field of marketing. The statutory declaration dated 29 November 2018 states that Mr STS's goal was to set up a training business.
93. A review of ASIC records does not support a proposition that Mr STS had any lawful role in the company – he was neither an officer holder or a shareholder. There is no verifiable third party evidence to support the assertion that Mr STS was actively involved in the day to day running of College 1. Further, there are significant inconsistencies between a document that Mr STS submitted to the Department in March 2015 and the two statutory declarations provided by the Agent in support of his response to the Authority. As such, there is no evidence to support the claims made in the statutory declarations, and there are inconsistencies with information previously provided to the Department. Therefore I give this evidence little weight.
94. I have also considered evidence that indicates the Agent was in fact involved in the business during this time. Communication between the Agent and the complainant indicates the Agent's active involvement in the business:
- Text messages on 23 November 2015 from the complainant to the Agent, in which the complainant questioned an e-mail she has received from the Commonwealth Bank. The email, dated 23 November 2015 indicates a Bill payment of \$500, made

by “Ravinderjit Toor” to ‘Ergon Energy Queensland Pty Ltd,’ with the description “Security Bond Ergo.” I find that it is implausible that the migration agent would pay an energy account bond for a business, without a personal stake in that business.

- Text messages sent between the complainant and the Agent in November 2015. On 25 November 2015, when the Agent was still the director of College 1, the complainant sent him photos of the college premises. The photographs are sent to the Agent with the comments “*These are office pics. I just keep it coz carpet is very dirty looks black. May be they lol ask in end of lease Or you can send to property manager.*”

95. I have also considered the client file notes which the Agent contended are further evidence in support of the denial of the allegations made by the complainant. The client file notes (of relevance) are as follows:

- “29/09/2015 Client request agent to find her somewhere to work to get work experience in either office admin or as a restaurant manager. Agent referred client to STS, to gain work experience.”
- “21/12/2015 Client visited office. Requested agent to request STS to sponsor her under RSMS if possible.”

96. Contrary to the Agent’s contentions, it is more likely that a visa applicant (in this case the complainant) would request sponsorship directly from her employer, rather than the Agent, unless the Agent was also the employer.

97. The Agent asserted that he had limited involvement in the business or daily management and was a director to assist one of his clients. He also asserted that his communication with the complainant was ‘polite and friendly’ in the context of ‘good manners and business relationships.’ I have considered the Agent’s claims and I find that it is improbable that the Agent was not involved, in light of the fact that the complainant sent him the messages with a suggestion that he forward the photographs to the property manager. The complainant has made no reference to Mr STS’s involvement in the business. Had Mr STS been involved in the business as asserted by the Agent, the complainant would have been aware of Mr STS’s role, and sent these documents to him and not the Agent.

98. The Authority contended, in the section 309 notice that the Agent’s statement about the reason he was director of College 1 is misleading as there is no requirement pursuant to the *Corporations Act 2001* (Cth) that a person have a specific visa status in order to be eligible to be a director of a company.³ The Agent has denied this assertion on the basis that he is not legally trained, and at most, it was ‘an honest mistake of fact’. However, the Agent further asserted that he is ‘a successful businessman’ and has assisted many individuals and families ‘from a business perspective’. As discussed throughout this decision, the Agent is and has been the director of multiple entities. It is not unreasonable to expect that, in spite of not being legally qualified, in light of his purported successful experience in business, as well as his experience in the role of a director of multiple entities, the Agent would be well aware of the requirements of becoming a director. I therefore do not accept his statement that it was an ‘honest mistake of fact’. I am satisfied that the Agent’s purported ignorance of the requirements to become a director of a company represents an attempt to avoid any adverse findings by the Authority about his conduct. I am further satisfied that these statements by the Agent are false and misleading.

³ Although Sections 201A(1) and 201A(2) of the *Corporations Act* require that at least one director must ordinarily reside in Australia, this requirement does not extend to a particular visa status.

99. Further, the Agent asserted that as a '*very well-known and highly regarded member of the <<removed for privacy>> community in Brisbane*' he was assisting a fellow member of his ethnic community. I find that it is improbable that the Agent would provide services so removed from his core role of providing immigration assistance, being to assist a former client to set up a business such as a training college, pay energy bills and deal with the property manager.
100. The Agent acknowledged in his response to the section 308 notice that the complainant approached him in regards to a permanent residence visa prior to his cessation as a director of College 1.
101. The Agent was the director of College 1 at this time. It is not unreasonable nor uncommon for a director of a small business to have a strong involvement in the operations of the business, including offers of employment. The Agent, in his response to the section 309 notice, asserted that he '*did not have a strong involvement in the operations of the business*'. Further, the Agent contended that the Authority had produced no evidence to the contrary.
102. Whilst the Agent's contentions are noted, I am satisfied that the inconsistencies and improbabilities discussed in this decision serve as strong evidence that it is more than likely that the Agent was in fact actively engaged in the running of College 1 from the time of its registration until 31 December 2015, including at the time that the complainant was offered employment at College 1.

Change of directorship to Mr JSJ and Mr JS

103. ASIC records indicate that on 1 January 2016 the Agent was replaced as director of College 1, and two new directors were appointed - Mr JSJ and Mr JS. It is noted that Mr JSJ was a student visa holder, and not a permanent resident or a citizen at the time he took on the position with College 1, further undermining the Agent's statement that he was under an *honest mistake of fact* that a student visa holder could not be a director of a company.
104. I have considered whether the Agent's involvement with College 1 continued beyond 1 January 2016, in spite of the fact that the Agent was removed from the position of director.
105. The complainant has corroborated the involvement of these two persons in the business. Her complaint stated that the Agent informed her of 'his friends' – 'JS and JSJ' and advised that she was to '*work with them in the same company and they help us to maintain business.*' The complainant stated that she did not initially meet the two persons, but was given Mr JS's telephone number and spoke to him to introduce herself. She has further stated that she subsequently met JSJ as a manager of College 2, and that during discussions JSJ '*did not know anything about College 1.*'
106. The Agent stated that Mr JSJ was his friend. Mr JSJ was nominated under temporary business sponsorship for a position of Customer Service Manager within College 2 on 9 December 2015, a business where the Agent's wife was a director at the time. The Agent was the appointed representative on this application. It is implausible that Mr JSJ was offered a position at College 2, and within less than a month took on the role of a director of College 1, in spite of the fact that the Offer of Employment submitted by the Agent with the College 2 nomination application contained an '*exclusive employment*' clause, explicitly forbidding engagement '*directly or indirectly ...in any other business activity outside of the Company's business hours*'.
107. The Agent was the migration agent representing College 2 in this application, and would have been aware of the content of the employment contract. The Agent conceded that Mr JSJ was nominated as stated, however the visa did not proceed. Departmental records confirm that Mr JSJ did not apply for a subclass 457 visa linked to the nomination

application, and the nomination was withdrawn on 28 July 2016 as the employer stated *'we do not need to sponsor the nominated person anymore'*. Departmental records further indicate that Mr JSJ was granted a subclass 485 visa as a Motor Mechanic (General) on 8 July 2016 – an application that was also lodged by the Agent. The Agent lodged both applications, one being for a role of Customer Service Manager in a business operated by the Agent's wife, and the other for a Motor Mechanic (General). Whilst the Agent has acknowledged the nomination application, he has provided no explanation in regards to the significant disparity in the occupations under which Mr JSJ applied, or intended to apply for visas. I find that the discrepancies are indicative of a lack of veracity of the applications.

108. The other director of College 1 appointed on 1 January 2016, Mr JS, was the Agent's client whom the Agent represented for an ENS nomination and visa application which were approved and granted on 23 September 2015. The Agent has provided a statutory declaration from Mr JS, in which he states that:

- STS was *'walking away'* from the College, and he and Mr JSJ could obtain it for free.
- He entered into the business with Mr JSJ, taking on the role of CEO but Mr JSJ was responsible for the day to day running of the College. He lived and worked in Brisbane at the time.
- Ms AK was already working in the college as a trainer. The new directors agreed that Ms AK *'could be a person who could assist with in (sic) the College to build up the business'*.
- Ms AK was offered a position of an Office Manager on 31 March 2016.
- The decision to offer Ms AK a position was made by the two directors who *'would have sponsored her if the business had been successful as (they) believed she would have been an asset to the College'*.
- Mr Toor did not ask the directors to sponsor Ms AK .
- Mr JS struggled to continue working and living in Brisbane, and managing College 1 in Toowoomba. Accordingly, Ms AK was offered the position of Office Manager to allow her to take over the running of the college.
- The college was not making money, and in late 2016/early 2017 he had discussion with JSJ about closing the college as it was a financial loss and had no students.
- Mr HSR agreed to take over College 1, and the two directors transferred their interest to him at no cost.
- He was *'very happy to be out of the College personally as it was a financial drain'*.

109. The statutory declaration made by Mr JS contains implausible statements which undermine his claims. The statutory declaration indicates that Ms AK was offered a position of an Office Manager, even though she was working in the position of a trainer. Ms AK took on the job of office manager to *'allow her to basically take over the running of the College'*. It appears that the complainant was the only employee of this training college at the time, and it is thus unclear who conducted training if her position changed from trainer to office manager.

110. Mr JS alleged that due to family and work commitments and distance between his residence in Brisbane and the college in Toowoomba, the decision was made to give up the business, at no cost, to Mr HSR.

111. In spite of acknowledging Ms AK's significant involvement in the running of the college, and that she was seen as someone who was assisting within building up the business,

Mr JS does not state why he did not consider or discuss transferring the business to Ms AK, who would have been a logical choice to take over the business due to her long-term involvement, knowledge of the business and interest in running the college. I find the explanation for the transfer of the business to Mr HSR implausible, and as such place little weight on the statutory declaration provided by Mr JS.

112. I have also considered other evidence in regards to the Agent's involvement with College 1 during this time. The complainant provided correspondence from a real estate agent seeking to arrange an inspection of the premises, forwarded to her by the Agent on 10 February 2016. In response, the complainant has sought the time for the inspection, to which the Agent responded that he will *'call them and confirm times'*. It is implausible that such tasks, being to follow up on the time of property inspection, would be undertaken by the Agent if he did not have a personal interest in the business, especially as at this date he was no longer a director. The email exchange corroborates the complainant's claims that the Agent was the liaison point with the property manager, and continued to be involved in running the business.
113. The complainant has also provided evidence in the form of communications throughout 2016, when the Agent was no longer director, in which she provided the Agent with updates in regards to the progress of the College 1 premises, including matters such as signage and business cards. The Agent's responses include:
- An email dated 10 February 2016 from the Agent to the complainant, stating *'Please take photos of signage required. I'll get logos and signs stickers printed. I will call them and confirm times'*.
 - An email dated 6 March 2016 from the Agent to the complainant stating *'Hi <<removed for privacy>>, I have paid for seek ad'*.
 - A text message exchange between the Agent and the complainant, where the Agent praises the complainant's work with company signage.
 - A text message exchange between the Agent and the complainant, dated 22 June 2016, in regards to business cards.
 - An email from the Agent to the complainant, dated 26 August 2016 in regards to payments related to Business Activity Statement (BAS) owing.
 - An email dated 12 October 2016, from the Agent to the complainant, reminding the complainant to pay *'GST plus your PAYG'*.
114. It was put to the Agent by the Authority that it was implausible that someone in a migration agent-client relationship would take such detailed interest in the operations of a sponsoring company. In response, the Agent asserted that as a *'respected businessman in the <<removed for privacy>> community'* he is willing to assist his clients in the establishment of their business, careers and personal lives as this is not just good business sense but a sense of support for his community. The Agent further asserted that *'he was being nothing more than polite and friendly'* when responding to the complainant's messages. The Agent did not state why his communications were not with the directors of the business, who he alleged were running the college at the time.
115. Contrarily, available evidence indicates that the Agent's involvement with College 1 during the time that Mr JSJ and Mr JS were directors was beyond what would be expected as 'polite.' The statutory declarations on which the Agent relies as evidence contains implausible statements which undermine the claims made, and as such does not support the Agent's assertions.
116. On the information before the Authority, the directors (Mr JSJ and Mr JS) had little or no involvement in the day to day running of the business. Contrarily, available evidence indicates that the Agent continued to be involved in the running of the business. As such.

on the basis of the available evidence, I am satisfied that the Agent continued to have an active involvement in the running of the business during the time that Mr JSJ and Mr JS were listed as directors.

Change of directorship to Mr HSR

117. ASIC records indicate that on 9 February 2017 the directorship of the business changed again, with Mr HSR appointed as sole director. The Agent assisted Mr HSR in 2016 in relation to a subclass 187 visa.

118. The Agent provided a statutory declaration from Mr HSR, dated 15 May 2019, in which he states:

- He was sponsored for a subclass 187 visa in July 2016, but the company subsequently closed down in early 2017.
- He met JSJ in 2016, as a member of the <<removed for privacy>> community.
- He expressed his interest to JSJ to run a business in the future, and subsequently in late 2016 or 2017 received a call with an offer to take over College 1, as the directors were *'just going to walk away'*.
- He became director on 9 February 2017.
- Ms AK requested that he continues her sponsorship as she was providing professional training and making enough money for the company to pay herself. Accordingly, he agreed to continue the sponsorship, but advised her that he did not wish to have any additional expenses other than rent for the property.
- Ms AK had complete access to the company bank account, email address and the office. She gave the impression that the company cash deposits were company turnover from the non-accredited training she provided.
- On 17 May 2017 he signed a lease for another office in Toowoomba, from 1 June 2017 to 30 November 2017.
- He arranged for College 1 to be registered with the Australian Skills Qualification Authority.
- There was no accredited training ever provided to any students until he was the director of the business.
- On 10 October 2017, the Agent advised him that the RSMS nomination application for the company was refused.
- On 12 October 2017 Ms AK requested that he lodge a review application. *'In the same phone call her husband <<Mr PS>> started to threaten me on the phone that I should not change directorship of the company.'*
- *'Until 12 October 2017, AK never complained about her position in the company.'*
- He became *'very distressed at the attitude of <<Ms AK>> and both her husband's and her aggressive nature. It was at this time I decided I would get out of the company'*.
- He was struggling to run the company whilst working in Brisbane, and also had a young baby.
- He was aware that Ms SK was running College 3 in the same building, and offered her College 1.

- He told Ms SK that 'the company was not making any money and if I could walk away like the previous owners, I would be happy.' She accepted the offer, but did not pay any money as she determined the business would require a lot of work.
- The Agent, as a respected member of the business and <<removed for privacy>> community, did share his knowledge in regards to running a training organisation '*as he had good knowledge of RTO business*'.
- The Agent was not involved in the sponsorship of Ms AK , running of the company, or the company sale and had no financial interest in the company.

119. Departmental records corroborate Mr HSR's claims in respect of his visa status, indicating that he was granted a subclass 187 visa on 28 July 2016. The Agent was the registered migration agent authorised on this application. Departmental records further indicate that the Agent assisted Mr HSR in respect of a student visa application, granted 24 March 2015.

120. The statutory declaration made by Mr HSR contains various inconsistencies which undermine the credibility of his claims. Firstly, he stated that Ms AK was making enough money to pay her own wages and avoid financial burden to the employer, but subsequently contradicts this statement by saying that '*the company was not making any money*'.

121. Further, whilst Mr HSR states that until 12 October 2017 Ms AK had never complained about her position in the company, he also states that he became distressed by Ms AK's attitude and aggressive nature, and decided to get out of the company. However, it is on the same date, being 12 October 2017, that Ms SK became director of College 1. The statutory declaration thus indicates that within the timeframe of a day, Mr HSR decided to hand over the business to the Agent's sister, for no payment. This is improbable in light of his claims that he had built up the business by registering it with the Australian Skills Qualifications Authority, worked towards the business providing accredited training and the business was not a financial burden. As a result of the inconsistencies and improbability of the statements made, I give little weight to this statutory declaration.

122. The complainant has corroborated the involvement of Mr HSR in College 1, stating that 'one day' the Agent came to the college with Mr HSR and introduced him to the complainant as the new director of the company. I have noted that the complainant has not been specific in relation to the dates of this involvement. In light of this, as well as third party evidence in the form of ASIC records, I accept that Mr HSR had some involvement in College 1.

123. However, I have considered whether the Agent was involved in College 1 during this time. It was put to the Agent that an email he sent to the complainant, dated 27 February 2017, in which he advised the complainant that '*As <<Mr HSR>> has taken over directorship we need to declare that to ASQA. I will fill online form and attach you (sic) stat dec via Asqanet*' supports the premise that he continued to exert a level of control over the business. At the time of this email the Agent had not been a director of College 1 for over 12 months.

124. Whilst a certain degree of community support and friendliness may be expected in the ethnic community, the interactions between the Agent and the complainant are beyond the politeness and friendliness asserted by the Agent, and more indicative of an intimate knowledge of the inner workings of a company in which the Agent had a personal interest or a level of control. The evidence considered includes not only a message from the Agent to the complainant dated 27 February 2017 referred to above, but also a follow-up message from the Agent to the complainant, dated 1 March 2017, in which he reminds the complainant that the statutory declaration is required, and she should get it attested by a '*JP*' and return to him '*asap*.' It may be accepted that in support of his community the Agent may provide advice to his clients to assist them in establishing themselves, it is

improbable that the Agent would extend any such support to following up on outstanding documentation, unless it was in the Agent's interest to do so.

125. The available evidence, in the form of various communication between the Agent and the complainant, indicates that, in spite of the fact that the Agent was not a listed director of College 1, he retained a significant degree of knowledge and control over the operations of the company and was a de facto controller or owner of the business.

Change of directorship to Ms SK

126. On 12 October 2017, the Agent's sister, Ms SK, was appointed as sole director of College 1. The Agent stated that he was not involved in the appointment of his sister as a director and referred to Mr HSR's statutory declaration as being evidence of this. As discussed above, as a result of the inconsistencies and improbability of the statements made Mr HSR, I give little weight to this statutory declaration.

127. The Agent provided a statutory declaration from Ms SK, dated 17 May 2019, in which she declared:

- She is the sister of Ravinderjit Toor ('Robbie'), the Agent.
- She obtained a permanent residency subclass 187 visa in August 2015, through a sponsorship by College 3.
- She was a director of College 3 in Sunshine Coast from October 2015 until June 2017, and moved the college from Sunshine Coast to Toowoomba in early 2017.
- During this time she was also the main carer of her <<removed for privacy>> , who was admitted to hospital several times in 2016 and 2017 due to various health issues.
- Due to her <<removed for privacy>> deteriorating health she had to resign from her position in College 3 and move to Brisbane, allowing the Agent to take over in June 2017.
- Mr HSR operated College 1 next door to the College 3 premises in Toowoomba. He was not coping with the business, and advised her that he wanted to get out and would transfer anything to her. She accepted it as a good opportunity as College 1 was a registered training organisation. She became director in October 2017.
- She first met Ms AK around 19 or 20 October 2017, after the refusal of her RSMS nomination application. Ms AK sought for the decision to be appealed, and Ms SK agreed to appeal and to allow Ms AK to continue working in the business.
- Ms AK appeared unhappy and became abusive. In November 2017, during a meeting, Ms AK resigned.
- The experience with Ms AK caused Ms SK a lot of stress, and she decided she did not want to continue with the business.
- In December 2017 her <<removed for privacy>> suffered a stroke.
- On 9 February 2018 she sold the business, through a broker, to a FJI, for \$220,000.00. The value of the business was in that it was a registered training organisation.

128. The statutory declaration made by Ms SK contains inconsistencies which undermine her claims. Firstly, she states that throughout 2016 and 2017 she was the primary carer for her <<removed for privacy>> , and had some other personal problems. The pressure of this was such that she resigned from her position as director of College 3 in June 2017 in

order to move from Toowoomba to Brisbane to fulfil her carer responsibilities. In spite of <<removed for privacy>> deteriorating health, in October 2017 she became a director of College 1, located in Toowoomba, and has stated that she discussed this opportunity with Mr HSR and her <<removed for privacy>> in early September. It seems implausible that Ms SK would resign from a position of a director of a training organisation due to carer responsibilities and distance between Brisbane and Toowoomba, only to consider a similar role in the same location less than three months later, especially as there was no indication that her carer responsibilities had diminished in any manner.

129. Further, Ms SK advised that she took on the role in College 1 as her <<removed for privacy>> suggested that she *'should start my own business'* and it *'seemed a good opportunity'*. However, the information provided indicates that Ms SK already had her own business as the sole director of College 3. No explanation has been provided for any changes in circumstances in the few months between her resignation from College 3 and taking on the role of director with College 1, other than that Ms SK was in a *'much better space personally'*. No evidence to support this statement has been provided.
130. Prior to taking on the role of director at College 1, Ms SK was advised by Mr HSR that *'the only income coming into the business was from the work <<Ms AK>> was doing'* but Ms SK intended to build up the business. Further, no evidence has been provided to support the statement that taking on directorship of this business was a *'good opportunity'* especially in light of the fact that the previous director was unable to *'make it work'*. In light of a lack of supporting evidence and the inconsistencies in the statement made, I do not accept Ms SK's explanation of why she took on the directorship of College 1.
131. Ms SK declared that after she took on the role of director, the complainant, Ms AK, *'became very strange'* and *'abusive,'* and subsequently resigned in November. Ms SK provided a copy of a resignation letter, dated 21 November 2018.
132. Ms SK further declared that as a result of the *'experience'* with Ms AK, and associated stress, she decided she did not want to continue with the business and appointed LK Business Brokers as agents to sell it. The business was sold for \$220,000, with a deposit of \$22,000 made on *'05.02.2017,'* and settlement of sale on 21 February 2018. The Agent's legal representative has confirmed that an error was made, and the deposit was paid on 5 February 2018, not in 2017. I accept this clarification.
133. On 2 August 2019 the Agent provided a PDF document containing:
- A letter from the Commonwealth Bank, dated 2 August 2019, confirming the bank details for a bank account in the name of 'SK';
 - Details of a transaction on 19 February 2018, with the description of 'Direct Credit 421520 <<removed for privacy>> College 1' (sic) for the amount of \$196,350.00
134. The PDF document was described by the Agent's legal representative as *'It is the Commonwealth bank account, in which the amount of sale was received on 19 February 2018. The initial \$22,000.00 was retained by the broker from buyer, until the sale was finalised.'*
135. I have noted that whilst the letter from the Commonwealth Bank confirms the details of the bank account held in the name of SK, it is stated to be 'Page 1 of 1.' The subsequent page merely provides the details of a single transaction, and does not provide details of the account in which the transaction is received. I have considered that the credit is made by '<<removed for privacy>>,' which, according to publicly available information,⁴ is the business broker utilised in the transaction. In light of the consistency between the Agreement of Sale and this transaction, I accept that the amount of \$196,350.00 was received by Ms SK for the sale of College 1.

⁴ <http://www.abr.business.gov.au/ABN/View?abn=62713678381>

136. However, in light of the significant financial profit made, I do not accept Ms SK's statement in regards to why she sold College 1. Ms SK's statutory declaration indicates that within four months of becoming a director of College 1, for which she made no payment, she gained a profit of \$220,000. She has not indicated that she made any significant improvements to the business during this time, and it is the previous director, Mr HSR, who arranged business accreditation. I therefore find that Ms SK sold the college for the purpose of making a profit, and not for the reasons stated in her statutory declaration.
137. I have also considered the timing of Ms SK's involvement with College 1. Departmental records indicate that the RSMS nomination application lodged by College 1, nominating Ms AK (the complainant) for a permanent residency visa was refused on 10 October 2017. The following day, 11 October 2017, the Agent emailed the Department seeking a reconsideration of the decision. Ms AK advised that on 11 October 2017 she discussed with the Agent the possibility of the business being transferred into her own name, but was advised by the Agent that this is not possible. Then on 12 October 2017, Ms SK, the Agent's sister, became the sole director of the business.
138. The Agent has denied the complainant's version of events on 11 October 2017, and has instead stated that he was aware that '<<Mr HSR>> was not continuing with the business' and his sister '*will be the new owner*'. He advised the complainant of the same, and advised the complainant that she would require his sister's support for an appeal application. He further stated that he did not have the legal authority to transfer the business to the complainant, and did not tell her he could. Whilst the Agent's denial of the complainant's version of events is noted, it is also noted that he has not denied that the conversation in regards to the transfer of the business to the complainant took place. The fact that the Agent's sister took over directorship of the business at a time that the complainant had sought to have the business transferred into her name supports the complainant's assertion that the Agent continuously maintained control of the business, in this instance by utilising a family member.
139. The Agent has also provided alleged *WhatsApp* conversation between himself and the complainant between 12 October 2017 and 19 October 2017. The evidence was provided in PDF format, and appears to be a transcription of the conversation, rather than screen shots of the actual messages. The messages from the complainant apologise for her and her husband's behaviour, and seek to find out about an appeal process. Due to the format in which this evidence was provided, I give little weight to this evidence. However, I accept that it is likely that the complainant (and her husband) became upset when they found out that the nomination application was refused. It is plausible that this resulted in some verbal aggression directed towards the Agent, especially if, as alleged in this case, the Agent had significant control over the sponsorship process through his continuous involvement in College 1 and the complainant had invested significant funds into the process.
140. College 1 was initially registered with ASIC by the Agent. It was subsequently taken over by a number of the Agent's clients, who the Agent claimed were his friends and acquaintances. The business was then sold by the Agent's sister for a profit of \$220,000. This gives significant weight to the complainant's claims that the Agent continued to be involved in the business and likely shared in the profit made.

Other evidence of the Agent's involvement in College 1

141. The Agent has denied involvement with College 1 and relied on the statutory declarations referred to in this decision as evidence to support his claims. As discussed earlier in this decision I have placed little weight on each of the statutory declarations relied upon due to the inconsistencies and improbabilities contained therein, which undermine the claims made. The statutory declarations were not supported by evidence. Contrarily, other

available evidence discussed indicates that the Agent continued to be actively involved in the running of the business, in spite of not being in a position of director.

142. I have also considered the complainant's claims made in her statement of complaint in regards to the various persons involved in College 1. Whilst I acknowledge that the complaint lacks specific details such as dates, the general timeline and details of involvement of Mr JSJ, Mr JS, Mr HSR and Ms SK are corroborated by the Agent's response. I find that this corroboration gives veracity to the complainant's claims.
143. The complainant has further alleged that she had made numerous deposits to a College 1 bank account to pay GST, as well as to create an appearance that she was being paid a salary. The complainant provided numerous deposit receipts to substantiate her claim. The Agent has advised that he has no knowledge of this matter, and he had no control over the bank accounts of the business at the time alleged. Further, the Agent relied on the statutory declarations provided by the various directors of College 1 as evidence for the source of the funds. The Agent provided the College 1 bank statement as part of the client file.
144. Ms AK has provided deposit receipts for the following payments made at the Commonwealth Bank, to a bank account number ending in x1443:
- (a) \$900 on 31 January 2017
 - (b) \$1800 on 9 February 2017
 - (c) \$5600 on 24 February 2017
 - (d) \$1800 on 14 March 2017
 - (e) \$890 on 20 March 2017
 - (f) \$550 on 23 March 2017
 - (g) \$340 on 27 March 2017
 - (h) \$700 on 4 April 2017
 - (i) \$1080 on 11 April 2017
 - (j) \$1780 on 27 April 2017
 - (k) \$700 on 2 May 2017
 - (l) \$700 on 4 May 2017
 - (m) \$380 on 9 May 2017
 - (n) \$1100 on 23 May 2017
 - (o) \$1800 on 2 June 2017
 - (p) \$600 on 8 June 2017
 - (q) \$1780 on 29 June 2017
 - (r) \$3720 on 13 July 2017
 - (s) \$1000 on 27 July 2017
 - (t) \$1650 on 1 August 2017
 - (u) \$800 on 17 August 2017
145. The College 1 bank statement the Agent provided as part of the client file indicates that a Commonwealth Bank account, ending in numbers x1443 belongs to College 1. Additionally, corresponding deposits appear on the statements provided, including \$900 on 31 January 2017; \$1800 on 9 February 2017; \$5600 on 24 February 2017; and the

four payments made in March 2017. No bank statements were provided for the College 1 bank account after March 2017.

146. As stated, the complainant provided deposit receipts for the listed payments. I accept that she was able to provide such receipts due to the fact that she personally deposited the money into the College 1 account. Had the money been deposited for a business purpose, such as the depositing of fees paid by clients in cash, such receipts would have been maintained by the business for bookkeeping purposes, rather than by the complainant personally. The fact that the complainant remained in possession of the deposit receipts gives weight to her claim that she deposited the money in her personal capacity, which was then repaid to her, to create an appearance that she was being paid a salary.
147. The Agent's assertion that he had no knowledge of these payments, and was not the director of the company is noted, as is his contention that the allegations are based on an inference rather than evidence. The Agent relies on numerous statutory declarations provided by previous directors of College 1, the veracity of which has been undermined earlier in this decision.
148. Available evidence supports the premise that even though the Agent was not a listed director of College 1, he maintained a significant degree of knowledge of and control over the operations of the company. As such, I find that he was aware of, and possibly the instigator of the deception that the complainant was working for College 1 by instructing the complainant to deposit money into the College 1 account, so that she could be repaid this money to create an appearance that she was being paid a salary.
149. This admission by the complainant indicates that the position that was offered to her through College 1 was not a genuine position, but rather one that was fabricated as a means of achieving permanent residency. Whilst the complainant contends that she thought she was investing into a business, she has also admitted to knowingly paying money into the company bank account, which was then repaid to her so as to create the appearance that she was being paid a salary. I find that this was undertaken with the expectation that she would be granted a permanent visa. I acknowledge that the complainant was likely involved in this deception, however it is the Agent's conduct that is the subject the Authority's jurisdiction and this decision.

Conclusion

150. The complainant would not have been in a position to orchestrate this deception without the assistance of the Agent, who was the director of College 1 at the time that the complainant commenced her employment there. As such, I find that the Agent's cessation in the role of director of College 1 was to facilitate the complainant's application and an attempt to remove the perception of his conflict of interest. I further find that the purpose of the Agent's continued involvement in managing College 1 was to create the position and associated supporting documents, in order to assist the complainant in securing a permanent visa outcome. The Agent maintained intimate knowledge of the workings of the company, and I find that in spite of not being a named director, he maintained control of the company.
151. The directors of College 1 have all been clients, friends or family members of the Agent, placing the Agent in a position to exercise a significant degree of knowledge and control over the operations of the company. The various relationships between the Agent and the numerous directors of College 1 give weight to the complainant's claims. The Agent has acknowledged that the persons appointed as directors of College 1 have been known to him, and that he has relied on the statutory declarations provided by each person as evidence that the positions were not undertaken as a '*favour*' to the Agent. However, as discussed earlier in this decision, mainly for reasons of implausibility, inconsistency and

lack of evidence, I give little weight to the statutory declarations provided. The fact that the college was subsequently sold by the Agent's sister for a profit of \$220,000 within four months of becoming a director gives further weight to the complainant's claim that the Agent maintained control of the business through friends and family members. In light of the Agent's extensive level of control, it is plausible that the Agent has shared in this profit.

152. The Agent's level of control was such that he was able to orchestrate an intricate arrangement aimed at securing a permanent visa for the complainant through bogus employment. As such, the Agent encouraged the complainant to make statements in support of an application under the Migration Regulations which he knew or believed to be misleading or inaccurate, in breach of Clause 2.9 of the Code
153. The matters discussed above are of a serious nature, indicating potential fraud and deception on part of the Agent. Although the Agent categorically denied the allegations put to him, nonetheless I find that he was involved in College 1 as discussed, and his actions may be damaging to the reputation and integrity of the migration advice industry and a breach of clause 2.23 of the Code.
154. For completeness, the complainant alleged that she was not provided with an Agreement for Services and Fees. As part of the client file provided in response to the section 308 notice, the Agent provided a copy of a Form 956 for the purpose of an "RSMS subclass 187 application," signed by the complainant on 31 March 2016, and an "*Immigration Services Migration Client Agreement*," signed by the complainant on 31 March 2016. I accept that the agreement was executed in accordance with the obligations under the Code.

Conflict of Interest – provision of training invoices

155. Clause 2.1A of the Code prohibits an agent from accepting a person as a client if the agent would have a conflict of interest, including where '*there is any other interest of the agent that would affect the legitimate interests of the client.*' Similarly, Clause 2.1B requires an agent who becomes aware of a conflict of interest mentioned in Clause 2.1A in relation to a client, to within 14 days advise the client, and cease to deal with the client in the agent's capacity as registered migration agent.
156. Available evidence, which has been acknowledged by the Agent, indicates the Agent's interests in College 3 and College 2, as follows:
- ASIC records indicate College 3 was first registered on 18 September 2013. The Agent was appointed as the sole director of College 3 on 12 June 2017, and was the secretary from 18 September 2013 until 30 June 2015. The Agent has also been the sole shareholder since the date he was appointed to the role of director.
 - ASIC records further indicate that the sole director between 18 September 2013 and 1 October 2015 was Ms KT, who is the Agent's wife; and that the Agent's sister, Ms SK, was a sole director between 1 October 2015 and 12 June 2017. The Agent's wife and sister were also sole shareholders during their respective periods of appointment to the position of director.
 - ASIC records indicate that the Agent was appointed as the secretary of College 2 between 17 November 2013 and 1 May 2014. The Agent's wife has been the appointed sole director since the registration of the company on 17 November 2013.
157. Available evidence, as listed in Attachment A, indicates that the Agent has lodged multiple subclass 457 and subclass 186 nomination applications on behalf of clients where the

training criterion of the respective applications was supported by invoices and training plans issued by either College 3 or College 2 .

158. In order to address a possible conflict that training is provided by companies that the Agent or his family members control, the Agent stated in his response to the section 308 notice that he has a disclosure clause in his client agreements, a copy of which has been provided to the Authority. The Agent also asserted that he informs clients of this verbally, prior to the contract being signed. At clause 6, subclause 12 the Agent's client agreement states *'the Agent may receive commissions from referring the client to third-party organisations who will provide products or services to the benefit of the client'*.
159. The disclosure clause potentially alerts clients to the fact that the Agent may receive a commission from a third party referral. However, it was put to the Agent in the section 309 notice that the disclosure clause does not alert the client in regards to which particular referral the Agent may obtain a commission from, the amount of that commission or the actual nature of the relationship between the third party and the Agent. As such, the declaration does not serve to alert the Agent's clients to the nature and impact of the potential conflict of interest that the "third-party organisation" may have in that the office holders and/or owners were at various times the Agent's family members.
160. In response to the section 309 notice the Agent provided further disclosures signed by the clients listed in Attachment A, which state:
- i. *"... I understand that the principal migration agent Ravinderjit Toor or his family is a financial beneficiary, director and shareholder of College 3.*
 - ii. *I understand that the principal migration agent Ravinderjit Toor or his family is a financial beneficiary, director and shareholder of College 2 .*
 - iii. *The client has not been referred to Visa Point by College 3 or College 2..."*
161. The same disclosure document is signed by each client, suggesting that it is a standard document utilised by the Agent. The Agent has not clarified why a sample of this document was not provided in response to the section 308 notice, in spite of the fact that the issue of a potential conflict in relation to the Agent's clients utilising College 3 and College 2 to provide evidence of meeting the training requirement was brought to the Agent's attention. I acknowledge that specific clients were not referred to in the section 308 notice, however, the document appears to be a standard document utilised by the Agent, and as such it is reasonable that a sample copy would be provided. This is especially in light of the fact that the section 308 notice specifically asked the agent what information he provides to clients in regards to his interests (pecuniary or otherwise) in the two colleges. As these documents have only been provided after the Authority drew attention to the lack of other suitable evidence in the section 309 notice to support the Agent's section 308 notice responses, and lack any supporting evidence to verify how and when the Agent obtained them, I am not satisfied that these documents can be verified.
162. Further, in spite of any such disclosures being made, nonetheless the interests of the Agent and his family members in College 3 and College 2 and the interests of the clients that the Agent is representing may not necessarily align.
163. The satisfaction of the training requirement is a criterion of each respective application lodged, without which the application cannot be successful. To satisfy the training requirement, a business would generally provide evidence in the form of receipts or training plans. It is in the client's interest to be able to satisfy the training criterion of their application. The Agent's interests are of a pecuniary nature, as indicated by the commissions he declares he may receive. Further, the Agent was asked in a section 308 notice to provide details of all businesses where he has a financial interest, and listed numerous companies in response including College 3 and College 2 .

164. As a registered migration agent, the Agent's duty is to act in the legitimate interests of his clients. The Agent's position is one of significant influence on the client's decision, and the Agent must have due regard to the client's dependence on his knowledge and experience. In representing clients for subclass 457 and 186 nomination applications, the Agent provides advice to clients in regards to the criterion of the applications, and the requirements to satisfy that criterion. By referring clients to obtain evidence of training from companies where the Agent has an interest rather than advising the client to find an independent training provider, the Agent has acted in his own interest (or that of his close family members) rather than that of the client, by denying the client the opportunity to identify an independent training provider that may have been more effective for the client's needs.
165. As evidence that his interest in College 3 and College 2 is limited, in response to the section 308 notice the Agent provided a letter from <<removed for privacy>> Tax Accountants & Business Advisors, dated 26 November 2018. This letter stated that they acted as accountants for the Agent since the 2013-2014 financial year, and that they have *'received information and instructions for meeting various Australian Income Tax Law compliance from Mr Ravinderjit Toor for the above two companies only,'* referring to both Visa Point Pty Ltd and College 3. However the letter refers to the information and instructions received by the accountants, rather than information about actual interests held by the Agent in a variety of organisations. The Agent's involvement in both College 2 and College 3 has been both direct and through his close family members who have been office holders. Accordingly, the Agent may have gained indirect benefits from these organisations where his family members held various positions, and there is no evidence that the Agent disclosed these benefits to his accountant. Further, the letter does not serve as evidence of the interests held by the Agent, but what information the Agent may have provided to the accountant. As such, I place little weight on this letter as evidence of a lack of Agent's interest in College 3 and College 2 .
166. The Agent asserted that he *'always has been open and transparent with his clients and he denies any conflict whether actual or perceived was not handled appropriately'*. The Agent stated that he addressed the conflict through a disclosure clause in the client agreements signed by the respective clients. However, as discussed, the disclosure clause does not adequately alert the clients to the nature of the potential conflicts. Further, in spite of acknowledging that a conflict existed, as evident through the Agent's disclosure to the clients, the Agent persisted in accepting each person as a client, and failed to cease to deal with the clients in his capacity as a registered migration agent. Additionally, by referring clients to utilise the services of businesses where the Agent had an interest, the Agent took advantage of the client's dependence on his knowledge and experience, and acted in his own interests rather than those of the client. The Agent continued to represent the clients, in spite of being aware of his own interests in College 3 and College 2 . As such, I find that the Agent has breached his obligations under clauses 2.1, 2.1A, 2.1B and 2.4 of the Code.

Conflict of Interest – sponsorship and representation of clients

167. The Agent has represented clients who were sponsored by businesses where either the Agent or the Agent's wife were a director at the time of the sponsorship, as follows:
- Departmental records indicate that on 13 November 2015 a Standard Business Sponsorship application was lodged on behalf of College 2 . The related nomination application, nominating Mr JSJ for the position of Customer Service Manager, was lodged on 9 December 2015. The Agent was the migration agent representing both applications. At the time that the two applications were lodged, the Agent's wife was the sole director of College 2 . Additionally, two invoices issued by College 3, dated 22 October 2015, were provided in support of the

training requirement for the application. At the time the invoices were issued and the application was lodged, the Agent's was the sole director and shareholder of College 3.

- Departmental records indicate that on 20 April 2015 a Standard Business Sponsorship nomination application was lodged on behalf of Visa Point Pty Ltd. On 9 May 2015 the related visa application was lodged by Mr JTS, who is the Agent's wife's brother. Further, on 26 June 2017 an ENS nomination application, and related visa application were lodged on behalf of Visa Point Pty Ltd and Mr JTS. The Agent was the director of Visa Point Pty Ltd and represented both the company and the nominee in these applications. Additionally, training invoices issued by College 2, of which the Agent's wife was a director, were provided in support of the training requirement of the ENS application.
- Departmental records indicate that on 7 January 2015 an RSMS nomination application was lodged on behalf of College 3 for the position of Office Manager. The related visa application was lodged on 28 January 2015 by Ms SK, who is the Agent's sister. At the time that these applications were lodged, the Agent was the secretary of College 3, and the Agent's wife was the sole director and shareholder. The Agent was the appointed migration agent on both applications. No explanation was provided in regards to the significant occupation change between the Agent's sister's sponsorship by Visa Point Pty Ltd in 2013 for the position of a Sales and Marketing Manager and College 3 in 2015 for the position of Office Manager.
- Departmental records confirm that Ms SK was granted a subclass 187 visa on 28 August 2015, and was sponsored by College 3 for this visa. The Agent represented both the visa applicant and the nominator. ASIC records confirm that Ms SK became director of College 3 on 1 October 2015, and remained in this role until 12 June 2017, when the Agent took over this position.
- Ms SK statutory declaration acknowledges that she resigned from College 3 Professional Training and *'later on Robbie took over as director in June 2017'*. Whilst the specific date of resignation is not clear, the statutory declaration indicates that by the time the Agent took over the role of director at College 3 Professional Training, on 12 June 2017, she had already resigned from the position. It was a requirement of the subclass 187 visa that was granted to Ms SK, that she remained in the nominated position for a period of at least two years after the grant of the visa. Failure to fulfil this requirement rendered the visa subject to cancellation pursuant to section 137Q of the Act. By her own admission, Ms SK resigned from the nominated position before fulfilling the two year requirement of her visa. There is no evidence in the documents provided by the Agent, or Departmental files that Ms SK was provided with advice by the Agent in regards to the potential impact of the resignation, nor that the Department was advised of the breach of conditions. I have considered that the Agent represented both the visa applicant and the nominator, and had subsequently taken on the role of director of the business. As such, he would have been aware of both the potential for visa cancellation and the change of Ms SK's circumstances.

168. Whilst it is noted that the Agent disclosed his familial relationships to the parties involved in each application, such disclosure may not have sufficiently alerted clients to the repercussions of the potential conflicts involved, due to the vulnerability and dependence of clients who may not be familiar with the requirements of the visa application process. Additionally, disclosure of the conflict is insufficient as a remedy – the Agent has taken no steps to remove himself from the conflict.

169. The Agent has denied any wrongdoing, and asserted that there is a lack of evidence in regards to a breach of the Code of Conduct beyond inferences made by the Authority.

170. I have considered that:

- Mr JSJ is a friend of the Agent;
- Mr JTS is the Agent's brother-in-law (wife's brother); and
- Ms SK is the Agent's sister.

171. Each person was sponsored for a position within a company where the Agent had a financial interest, either directly, or indirectly through family members. Further, the supporting evidence in regards to the training requirement of two of the applications was provided by another organisation where the Agent, or his immediate family members, had a financial interest. The Agent was the registered migration agent representing both the sponsor and the visa applicants in each of these applications. The Agent has confirmed his relationships with these persons and organisations in his responses to the section 308 and 309 notices, and as such these are not mere inferences.

172. I acknowledge that the businesses in question are distinct legal entities. However, the fact that the Agent (or a family member) was the sponsor, nominator and training provider and had a familial or personal relationship with the nominees brings into question the authenticity of the documents provided and whether the positions offered was genuinely required by the business. I am satisfied that, under the guise of distinct legal entities, the Agent was utilising companies where the Agent or the Agent's close family members are directors to facilitate immigration outcomes. The Agent's connection to the nominees and the businesses indicates that he was acting in his own interests, and the interests of the business of his family interests, above the legitimate interests of his clients, and did not show due regard to a client's dependence on his knowledge and experience.

173. I find that the Agent has breached his obligations under clauses 2.1, 2.1A and 2.4 by representing persons who were nominated for various positions by the three businesses discussed above, in which the Agent and the Agent's close family members had an interest.

Provision of misleading or inaccurate information in applications

174. Registered migration agents are expected to refrain from providing misleading or inaccurate information in support of an application made under the Migration Act or Migration Regulations.

175. The Authority has considered the Agent's close relationship with College 3 and College 2 as discussed elsewhere in this notice, and what bearing this may have on documents provided in support of applications lodged by clients represented by the Agent.

176. As discussed above, numerous sponsoring businesses whom the Agent represented have provided training receipts issued by College 2 and College 3, to meet the criteria with respect to training, in support of their applications. Further clients who were sponsoring employers include:

- College 2 issued an invoice on 18 November 2015 to <<removed for privacy>>, for training for "Manage Risk (BSBR501B)", invoiced for one quantity at a cost of \$455. However, it appears that the same training course was invoiced to another client whom the Agent represented, <<removed for privacy>>, on 22 January 2015, some 10 months earlier, for \$600. This invoice was provided in support of a Standard Business Sponsorship application lodged on 27 September 2015. These invoices indicate a reduction in the cost for the training of \$145 between January and November 2015.

- <<removed for privacy>> was also invoiced by College 2 on 22 January 2015 for \$600 for “Ensure safe workplace” online training. The same training course was invoiced to <<removed for privacy>> on 14 October 2014 for \$550. The Agent represented <<removed for privacy>> in an Employer Nomination Sponsorship application lodged on 16 December 2015. These invoices indicate an increase in the costs for the training of \$50 between October 2014 and January 2015.
- An invoice issued on 29 June 2014 by College 3 for \$1100 for “BSBCUS501C Manage quality customer service training” was provided in support of an application lodged on behalf of <<removed for privacy>>. The same training was invoiced by College 3 on 15 December 2014 to <<removed for privacy>> for \$450. The Agent represented <<removed for privacy>> in a Standard Business Sponsorship application lodged on 18 January 2015. These invoices indicate a reduction in the costs for the training of \$650 between June and December 2014.
- Similarly, an invoice was issued on 10 April 2014 to <<removed for privacy>> for “BSCCUS501A – Manage quality customer service (online)” for \$600. An invoice for the same training was issued to <<removed for privacy>> on 12 May 2014 for \$450, which indicates a reduction of \$150 for the costs of the training in a one month period.

177. It is reasonable to expect that any business, including a training college, would increase its fees over time. This is evident in the increase of fees for the “Ensure safe workplace” training invoice issued by College 2 between 14 October 2014 and 22 January 2015 where the costs increased by \$50 over a three month period. However, it is less plausible or likely for a business to reduce its fees, from \$600 on 22 January 2015 to \$455 on 18 November 2015. Similarly, it is less plausible that the costs of training provided by College 3, such as “BSBCUS501C Manage quality customer service training” would reduce from \$1100 in June 2014, to \$450 some six months later.

178. The training criterion that was required to be satisfied by each of the Agent’s clients required evidence that the client, as a sponsor, spent the equivalent of 1% of their payroll expenditure on training their employees. It would be expected that each business would have a different payroll expenditure, and as such would be required to spend a different amount on training. The Agent, in spite of being the migration agent in each application and having a familial relationship with the training providers has not provided any explanation for the differences in costs for the same training to different clients.

179. The Agent asserted that there is no commercial impediment to either reduce or increase fees, and denies any wrongdoing.

180. It seems implausible that a genuine training organisation would reduce its fees by such significant amounts, especially as there is no indication on any of the invoices of particular discounts being applied. However, I have considered that the evidence available compares three types of training, spread out over some months. I have also considered the Agent’s assertions in respect of commercial impediment to vary fees. Accordingly, in weighing up the information and evidence before me, I am unable to make a finding in respect of this allegation.

Integrity, fitness and propriety

181. 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.

182. 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.
183. 'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.⁵
184. 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.
185. 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”.⁶
186. 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.*
187. 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.⁷
188. 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.
189. 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.
190. 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.
191. 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:

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

⁶ See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

⁷ 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'⁸.

192. 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'.

193. Based on the evidence before me, I am satisfied that the Agent has:

- Orchestrated an intricate arrangement involving College 1 and a number of persons acting as directors, in order to facilitate the complainant's permanent residency visa through bogus employment;
- Potentially engaged in criminal conduct by lodging an application for a nomination for a person to gain permanent residence for a non-genuine position relying on the provision of fraudulent information;
- Placed himself in a position of a significant conflict of interest by representing persons who were nominated for various positions by businesses in which the Agent or the Agent's close family members had an interest;
- Placed himself in a position of significant conflict of interest by referring clients to utilise services of businesses where the Agent had an interest;
- Prioritised his own financial benefits over his professional obligations;
- Failed to maintain the reputation and integrity of the migration advice profession.

194. I am satisfied the Agent's actions have been dishonest and fraudulent. The Agent was able to undertake such action due to his unique position as a migration agent, afforded the client's trust and confidence.

195. By failing to comply with various requirements of the Code; taking advantage of the trust clients placed in the Agent's professional expertise; and knowingly perpetrating fraud, the Agent has caused significant detriment to the reputation and integrity of the migration advice profession.

196. The Agent has potentially engaged in criminal conduct by lodging an application for a nomination for a person to gain permanent residence for a non-genuine position relying on the provision of fraudulent information. The Agent lodged the application with the Department even though he knew that the application was not genuine. Knowingly providing false or misleading information to the Department is unacceptable conduct by a registered migration agent and is contrary to the Code. It undermines the trust that the Department places in registered migration agents that the applications they lodge on behalf of clients meet the visa criteria and are supported by genuine documents and truthful information. The fact that the Agent knowingly provided misleading information to both the Department and the Authority indicates his willingness to contravene the law,

⁸ *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

and breach the trust placed in him. Such behaviour is incompatible with honesty, integrity and moral character required of a migration agent.

197. The findings discussed in this notice are matters that relate to the Agent's honesty and integrity. On the basis of the findings made, I find that the Agent's conduct is indicative of someone who is not a person of integrity and/or otherwise not a fit and proper person to give immigration assistance.

Consideration of Appropriate Disciplinary Action

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

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

Seriousness of behaviour

199. 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.

200. 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 conduct, involving matters of fraud and dishonesty, demonstrates a blatant disregard for, or a significant degree of indifference, to the law, the Authority, the Department and the best interests of his clients;
- (b) The Agent has acted in a manner that has had little regard for his clients' legitimate best interests, and has instead prioritised his own financial interests;
- (c) The Agent's conduct has, or is likely to have an adverse impact on or undermine the reputation of the migration advice profession;

- (d) The Agent's failure to demonstrate accountability or remorse for his conduct indicates that he is unlikely to rectify the behaviour, which is the subject of the Authority's findings, resulting in a real likelihood of repeated misconduct; and
- (e) The Agent's conduct demonstrates that he is not a person of integrity or is not a fit and proper person to give immigration assistance.

Aggravating factors

201. I consider the Agent's conduct falls short of the standard expected of a registered migration agent. Despite the Agent's submissions, and that of his legal representative in response to the section 309 notice, I am satisfied that there is significant evidence to find that the Agent has engaged in extremely serious conduct. I find that the following are aggravating factors that increase the severity of the sanction:

- The Agent has demonstrated disregard for the law, which is evidenced by dishonest and deceitful conduct;
- The Agent has not expressed any accountability for his actions, or appreciation of the seriousness of the allegations

202. The Agent has demonstrated behaviour of a serious nature by acting in a manner that demonstrates an indifference towards the law and his obligations as a member of the migration advice profession. I am not satisfied that the Agent has given due consideration to the entirety of his conduct, which is the subject of this decision, or comprehended that such conduct is contrary to his obligations as a registered migration agent.

Mitigating Factors

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

- The Agent is '*a pillar of the <<removed for privacy>> community in Brisbane and Queensland ... and he has helped hundreds of people and families with their visa issues and resettling in Australia*'.
- The complainant is not a credible witness, and the allegations of the complainant have been clearly rejected by various parties who have provided statutory declarations.
- The Agent acknowledged that '*he could have possibly considered the issue of conflict in more detail and review his procedures*'.
- This is the first complaint against the Agent.
- There is no evidence independent of the complainant to support any finding that the Agent was dishonest with the Department
- The Agent stated that he has cooperated fully.

204. I have taken into account the Agent's arguments in regards to the credibility of the complainant and the alleged lack of evidence to support the complainant's claims. The Agent asserted that numerous statutory declarations support his argument. However, as discussed throughout this decision, the statutory declarations provided contain numerous improbabilities, which undermine the claims contained therein. Conversely, whilst I acknowledge that the information provided by the complainant lacks some specific details

such as dates of events, the general nature of the events described by the complainant is corroborated by evidence provided in support of the complaint as well as evidence available from Departmental records.

205. I have also considered that the Agent acknowledged that he did not sufficiently address the issue of a conflict of interest. However, in spite of this acknowledgement, the Agent did not provide any evidence of a review or change in his procedures to ensure that such conflicts are avoided in the future.

206. While the Agent has not advanced any evidence with respect to hardship, I have nevertheless considered the potential impact that a disciplinary decision may have on his livelihood, and how such a decision would affect the Agent's financial earning capacity. Information before the Authority indicates that the Agent is also a director of College 3, a registered training provider. It is likely that the Agent draws some income from this business. However, there is no detailed information before the Authority as to the Agent's financial circumstances or specific details about his means of income. I acknowledge that a decision to cancel or suspend the Agent's registration for a prolonged period of time would likely result in financial hardship. However, I am of the view that impact on the Agent's livelihood is significantly outweighed by the public interest, given the severity of the Agent's conduct.

207. Further, I have considered that the Agent has not previously been subject to a sanction or disciplinary action by the Authority. However, I am of the view that this alone does not mitigate the conduct which is the subject of this decision.

Consumer Protection

208. 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.

209. The behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. I consider that the Agent poses a serious risk to consumers. I am satisfied that if the Agent were to continue to practice as a registered migration agent, the Agent would not demonstrate the requisite skills expected of a registered migration agent. I consider that a disciplinary decision is warranted to address the conduct the subject of this decision, and in the interests of consumer protection.

DECISION

210. I have turned my mind to the appropriate sanction action to impose on the Agent. The Agent, by his conduct, has shown a blatant disregard for, or a significant degree of indifference to the law, culminating in fraudulent conduct. Given the seriousness of his conduct, I consider that this conduct would likely continue and that disciplinary action against the Agent is required.

211. I have also considered that the Agent has not been previously subject to a sanction, however the behaviour demonstrated by the Agent falls short of the reasonably expected standards of a registered migration agent. I consider that the Agent poses a serious risk to consumers.

212. Having regard to all the information before me, I consider that a decision to suspend the agent, even for a prolonged time, would not be sufficient, given the seriousness of the

Agent's behaviour and the overall indifference and disregard for Australian law and the Code of Conduct for registered migration agents which the Agent has shown.

213. In all of the circumstances, and in the interests of consumer protection, I consider that it is appropriate to cancel the Agent's registration.

214. Based on the facts and evidence before me, and my findings as discussed in the decision, I have decided to cancel the Agent's registration as a migration agent under subparagraph 303(1)(a) of the Act. I am satisfied for the purposes of subparagraphs 303(1)(f) and (h) that:

- the Agent is not a person of integrity, or is otherwise not a fit and proper person to give immigration assistance; and
- the Agent has not complied with clauses of the Code.

215. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be registered within five years of the cancellation.

216. Accordingly, this cancellation will be in effect for a period of five years from the date of this decision.

Senior Professional Standards Officer

Professional Standards and Integrity Section

Office of the Migration Agents Registration Authority

Department of Home Affairs

Date of Decision: 23 June 2021

Attachment A

List of cases lodged by the Agent on behalf of clients, where training evidence was provided from either College 3 or College 2

College 3 :

- (a) Standard Business Sponsorship application lodged on 18 January 2015 on behalf of <<removed for privacy>>, where an invoice issued by College 3 , dated 15 December 2014, was provided in support of the training requirement for the application. The Agent was the secretary of College 3 at the time this invoice was issued, and at the time that the application was lodged. The Agent's wife was the director and shareholder of College 3 at the time the invoice was issued.
- (b) An Employer Nomination Scheme ('ENS') application lodged on 18 March 2015 on behalf of <<removed for privacy>>, where an invoice issued by College 3 , dated 30 June 2014 was provided in support of the training requirement for the application. The Agent was the secretary of College 3 at the time this invoice was issued, and at the time that the application was lodged. The Agent's wife was the director and shareholder of College 3 at the time the invoice was issued.
- (c) An ENS Temporary Residence Transition stream application lodged on 14 December 2014 on behalf of <<removed for privacy>>, where an invoice issued by College 3 , dated 27 January 2014 was provided in support of the training requirement for the application. The Agent was secretary of College 3 at the time this invoice was issued, and at the time that the application was lodged. The Agent's wife was the director and shareholder of College 3 at the time the invoice was issued.
- (d) Standard Business Sponsorship application lodged on 7 February 2015 on behalf of <<removed for privacy>>, where invoices issued by College 3 , dated 28 May 2014 and 19 January 2015 were provided in support of the training requirement for the application. Additionally, a training plan issued by College 3 on 3 March 2015, indicating that training was to be provided in June 2015 was also provided in support of this application. The Agent was the secretary of College 3 at the time this invoice was issued, and at the time that the application was lodged. The Agent's wife was the director and shareholder of College 3 at the time the invoice was issued.
- (e) Standard Business Sponsorship application lodged on 27 September 2015 on behalf of <<removed for privacy>>, where invoices issued by College 3 , dated 17 August 2015, 11 September 2014, 22 August 2014 and 22 April 2014 were provided in support of the training requirement for the application. The Agent was the secretary of College 3 at the time these invoices were issued. The Agent's wife was the director and shareholder of College 3 at the time the invoice was issued.
- (f) Standard Business Sponsorship application lodged on 21 September 2014 on behalf of <<removed for privacy>>, where invoices issued by College 3 , dated 25 August 2014 and 18 August 2014 were provided in support of the training requirement for the application. Additionally, a training plan issued by College 3 on 18 August 2014, indicating that training was to be provided in 2014, 2015 and 2016 was also provided in support of this application. The Agent was the secretary of College 3 at the time this invoice was issued, and at the time that the application was lodged. The Agent's wife was the director and shareholder of College 3 at the time the invoice was issued.

College 2 :

- (a) Standard Business Sponsorship application lodged on 5 November 2015 on behalf of <<removed for privacy>>, where a training plan issued by College 2 on

4 November 2015 was provided in support of the training requirement for the application. The Agent's wife was the director and shareholder of College 2 at the time the training plan was issued, and the application lodged.

- (b) An ENS application lodged on 23 August 2016 on behalf of <<removed for privacy>>, where invoices issued by College 2, dated 4 March 2016 and 29 February 2016, were provided in support of the training requirement for the application. The Agent's wife was the director and shareholder of College 2 at the time the invoice was issued, and the application lodged. Further, the Agent represented the company in relation to a Standard Business Sponsorship application lodged in 2014.
- (c) An ENS application lodged on 27 February 2016 on behalf of <<removed for privacy>>, where an invoice issued by College 2, dated 13 April 2015 was provided in support of the training requirement for the application. The Agent's wife was the director and shareholder of College 2 at the time the invoice was issued, and the application lodged. The Agent represented the company in relation to a Standard Business Sponsorship application lodged in 2014. Additionally, an invoice issued by College 3, dated 10 April 2014, was also provided in support of this application. It is noted that the Agent was the secretary of College 3 at the time these invoices were issued. The Agent's wife was the director and shareholder of College 3 at the time the invoice was issued.
- (d) Standard Business Sponsorship application lodged on 4 May 2015 on behalf of <<removed for privacy>>, where a training plan issued by College 2 on 8 May 2015 was provided in support of the training requirement for the application. The Agent's wife was the director and shareholder of College 2 at the time the training plan was issued, and the application lodged.
- (e) An ENS application lodged on 26 June 2017 on behalf of VISA POINT PTY LTD, where invoices issued by College 2, dated 4 December 2015, 30 October 2014 and 20 November 2013 were provided in support of the training requirement for the application. The nominee for the application was Mr JTS, who is the Agent's wife's brother. Again, the Agent's wife was the director and shareholder of College 2 at the time the invoice was issued, and the application lodged. The Agent represented the company in relation to a Standard Business Sponsorship application lodged in 2015. Additionally, it is noted that the Agent was, and continues to be, the director of VISA POINT PTY LTD.
- (f) Standard Business Sponsorship application lodged on 27 November 2015 on behalf of <<removed for privacy>>, where an invoice issued by College 2 on 18 November 2015 was provided in support of the training requirement for the application. The Agent's wife was the director and shareholder of College 2 at the time the training plan was issued, and the application lodged.