



DECISION RECORD

AGENT	Huan HUANG
COMPLAINT NUM BER/S	CAS-04937-F1H2
DECISION	CANCELLATION
DATE OF DECISION	22 November 2021

Terms used for reference

1. The following abbreviations may have been used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>BIR</i>	Business Intelligence Report. The report lists all applications lodged by the Agent in a specified period and is issued by the Department.
<i>BVA/B/E</i>	Bridging Visa A, B or E
<i>FOI</i>	The department administering requests under the <i>Freedom of Information Act 1982</i>
<i>MARN</i>	Migration Agent Registration Number
<i>PIC</i>	Public Interest Criteria
<i>Section 308 notice</i>	Notice issued by the Authority under section 308 of the Act
<i>Section 309 notice</i>	Notice issued by the Authority under section 309 of the Act
<i>The Regulations</i>	<i>The Migration Regulations 1994</i>
<i>The Act</i>	<i>The Migration Act 1958</i>
<i>The Agent</i>	Huan HUANG
<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 9 February 2018 and was allocated MARN 1801056. The Agent's registration had been renewed annually to date, with the most recent registration period commencing on 9 February 2021.
3. The Register of Migration Agents (the **Register**) currently lists the Agent's business as The Trustee for Lucky Huang Family Trust with ABN 80 784 723 848. Prior to this business, the Agent was an employee for STG International Service Group Pty Ltd with ABN 48 156 372 986, from the time she was first registered until July 2021. During July and August 2021, the Agent was also recorded as having a connection to Melbourne Consultant Pty Ltd (ABN 19 630 662 190) and Lucky Huang Pty Ltd (ABN 16 628 589 926).

Prior Disciplinary action

4. The Agent does not have a history of prior disciplinary action. **Summary of complaints**

5. The Authority has considered one matter relating to the Agent's conduct as a registered migration agent and employee of STG International Service Group Pty Ltd (**STG**). The complaint matter is outlined below.

CAS-04937-F1H2 – The Authority's investigation

Background

6. The records held by the Authority indicate the Agent was first registered as a migration agent on 9 February 2018 and that she was employed by STG for most of her registration period, for which Mr Teng Zhao (Mr Zhao) is the company Director. The Agent declared her association with STG as an employee from 20 December 2017, after obtaining evidence of her completion of the Graduate Certificate of Australian Migration Law and Practice on 19 December 2017.
7. Following the investigation into Mr Zhao's conduct, and the applications submitted to the Department of Home Affairs¹ which were associated with STG, the Authority instigated an investigation into the Agent's conduct while in the company employ. Information from the Australian Securities and Investments Commission (**ASIC**) confirmed that Mr Zhao remained the sole Director of STG and maintained 100 percent of the company shares as at 22 November 2021.
8. For the purpose of the Agent's registration with the Authority, the Agent had initially recorded huanghuan1990@hotmail.com (the **Huang email** address) as her primary and secondary email address. This email address was recorded against her record on the Register, which is publically available on the Authority's website, until it was changed on 1 September 2021 to auvisa2021@gmail.com (the **auvisa email** address).

¹ And its former manifestations

The Authority's investigation

9. The Authority undertook a review of visa applications submitted to the Department which were associated with a number of email addresses and ImmiAccounts which established a link to the Agent and/or STG in some form.
10. The review commenced with visa applications found to be associated with the Agent's Migration Agent Registration Number (**MARN**) as at 20 July 2021. The applications totalled 354 matters, at the relevant date, which were submitted to the Department between 28 August 2015 and 20 July 2021. In thirty nine (39) of the matters the Agent was added as the representative migration agent after the date the applications were submitted to the Department. A list of these applications is made available at **Annexure A**.
11. The investigation proceeded to direct focus on visa applications reflecting email addresses and ImmiAccounts which were either recorded against the Agent's MARN, or connected through her personal particulars. Consequently, the conduct associated with the respective visa applications is discussed in further detail within this decision, to the extent where the conduct was attributed to the Agent.

Email addresses

12. Departmental records for visa applications where the Huang email address was provided for communication with the Department was undertaken. Additionally, of the 354 applications listed against the Agent's MARN, multiple STG email addresses were provided in the visa applications for the purpose of receiving correspondence from the Department. Three email addresses were initially considered and are listed below:
 - [HH]@[hotmail.com](mailto:[HH]@hotmail.com) (the **Huang email** address)
 - [VV]@[stgservice.com.au](mailto:[VV]@stgservice.com.au) (the **Vicky email** address)
 - [SS]@[stgservice.com.au](mailto:[SS]@stgservice.com.au) (the **Summer email** address)
13. In addition to the above three addresses, a further eleven (11) email addresses were identified within the visa applications where the Agent was the declared representative migration agent. The additional eleven email addresses are listed and discussed within this decision in addition to a further email address where no migration agent was declared.²

ImmiAccounts

14. ImmiAccounts which appeared to be linked to the Agent were also given consideration during the investigation process. Visa applications submitted to the Department, connected to the Agent's MARN or her personal particulars, were considered further. These included:
 - [HH]@[hotmail.com](mailto:[HH]@hotmail.com) (the **Huang ImmiAccount**)
 - [DH]@[stgservice.com.au](mailto:[DH]@stgservice.com.au) (the **[DH] ImmiAccount**)
 - [VK]@[gmail.com](mailto:[VK]@gmail.com) (the **[VK] ImmiAccount**)

² [VK]@[gmail.com](mailto:[VK]@gmail.com)

15. The ImmiAccounts and email addresses gave rise to undertaking a data matching exercise to other visa applications associated with either the email addresses or the ImmiAccounts which established a link to the Agent and/or STG. This included thirty (30) student visa applications submitted through the [DH] ImmiAccount³ where no migration agent or authorised recipient was declared. Twenty of these visa applications listed the contact email address as CLu@stgservice.com.au (the **CLu email** address) while 10 applications listed the **Sabrinama email** address (sabrinama@stgservice.com.au). The visa applications included the three batches highlighted below:
- 10 applications lodged in January or February 2017 (the **CLu 2017 cases**)
 - 10 applications lodged between April and July 2018 (the **CLu 2018 cases**)
 - 10 applications lodged in July or August 2018 (the **Sabrinama cases**)
16. An examination of the statements addressing the genuine temporary entrant requirement (the **GTE statements**) was undertaken. The analysis included the three batches listed in the preceding paragraph as well as visa applications submitted through the [VK] ImmiAccount and visa applications where the Summer email address was provided for communicating with the Department. The comparative analysis revealed the below:
- Each visa applicant within a batch made one or more comments (including whole paragraphs) that were identical or nearly identical to those of one or more other visa applicants within the batch.
 - A comparison of GTE statements between applications from the three batches and the student visa applications submitted through the [VK] ImmiAccount, where no registered agent was declared, also contained identical or near identical sentences and paragraphs.
 - A comparison of a GTE statement from a student visa application where the Agent was appointed as the representative migration agent also contained identical or near identical comments to those comprising the GTE statements submitted through the [VK] ImmiAccount.
17. A list of the applications from the three batches, those submitted through the [VK] ImmiAccount and the case where the Agent was listed as representing the applicant are outlined in **Annexure B**. The identities of the visa applicants where no registered agent was declared on the application have been anonymised.
18. In light of the investigation undertaken on visa applications submitted to the Department, which were cross referenced to email addresses that were declared to be the Agent's contact email addresses, the Authority raised issues of conduct on part of the Agent, in respect of:
- Providing immigration assistance to visa applicants without disclosing her assistance in the visa applications;

³ The account name for the [DH] ImmiAccount was changed from [DH] to Vicky Huang on 1 July 2021

- Failing to disclose she had provided immigration assistance to clients in relation to a significant number of visa applications;
- Acting in contravention of section 312A of the Act, by failing to declare that she provided immigration assistance in association with those applications;
- Preparing GTE statements for visa applications which were not an accurate representation of the applicant's circumstances and were thereby misleading;
- Knowingly submitting applications to the Department which the Agent knew were misleading and inaccurate;
- Facilitating non-genuine visa applications which served to undermine the integrity of the visa programs; and
- Acting in breach of the Code of Conduct for registered migration agents in association with this conduct.

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

19. On 16 August 2021, the Authority sent to the Agent a notice pursuant to section 309(2) of the Act (the **Notice**), advising the Agent that it was considering cautioning, or suspending or cancelling the Agent's registration under section 303(1) of the Act.
20. 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:
 - a. had engaged in conduct that breached the Agent's obligations under clauses 2.1, 2.9 and 2.23 of the Code;⁴ and
 - b. was related by employment to person who is not a person of integrity;⁵ and
 - c. was not a person of integrity or otherwise not a fit and proper person to provide immigration assistance.⁶
21. Pursuant to section 309(2) of the Act, the Authority invited the Agent to provide written submissions on the matters contained within the notice by 14 September 2021.

The Agent's response to the section 309 notice

22. On 10 September 2021, the Authority received the Agent's response by way of a submission and statutory declaration signed 10 September 2021. The response also included forty two (42) attachments through five emails. The five emails comprised the following documents:

Email ONE

- statutory declaration
- submission
- a copy of the section 309 notice
- a list of attachments (picture form)

⁴ Paragraph 303(1)(h) of the Act

⁵ Paragraph 303(1)(g) of the Act

⁶ Paragraph 303(1)(f) of the Act

Email TWO comprised of attachments

- A1, A2, B, C1, C2, D1.1 - D1.11

Email THREE comprised of the same attachments as provided in email TWO

- A1, A2, B, C1, C2, D1.1 - D1.11

Email FOUR comprised of attachments

- D2.1 - D2.12, E1, E2, E3, F1, F2, F3, F4, G

Email FIVE comprised of attachments

- H, I, J1, J2, K, L, M

23. On 13 September 2021, the Agent was informed that an attachment referred to in the list provided, did not appear to form part of her response package. The Agent was requested to review her correspondence to ensure that it contained everything she was seeking to submit for consideration. The Agent was invited to submit anything inadvertently omitted from her response by the week ending 17 September 2021.
24. The Agent submitted a further attachment (J3) on 14 September 2021, a National Police Certificate⁷ (N) on the 16 September 2021 and an updated list of clients (F3.1) on the 17 September 2021.
25. A summary of the Agent's submission (**Annexure C**)⁸ and her statutory declaration (**Annexure D**) is outlined below, noting there appear to be a number of points repeated within the each document as well as between the two documents.

Submission

Applications in general

26. She registered as a migration agent on 9 February 2018, and worked for STG together with other registered migration agents (**RMAs**), education agents and support staff (referred to attachment K).
27. She acted on behalf of clients during her employment with STG, and declared her assistance when submitting visa applications.
28. The 39 applications, referred to in Attachment A to the section 309 Notice, relate to clients who had either lodged their application without assistance or were represented by other RMAs before she represented them (referred to attachments A1 and A2 for further details).

Email addresses

29. The Huang email address is her personal email address, used for the purpose of her registration records with the Authority and for personal applications submitted through the Huang ImmiAccount (referred to attachment B for details on the applications).
30. The Vicky email address is her STG appointed work email.

⁷ From the Australian Federal Police, dated 6 September 2021

⁸ Annexure C includes basic descriptors of the attachments submitted with Agent's response

31. The Summer email address belongs to a support staff employee at STG (referred to attachments C1 and C2 for further details).
32. The other email addresses mentioned in the Notice, such as jacob@stg and nicole@stg, all belong to different support staff at STG from whom she can request support, in order to increase efficiency in her responses to her clients. The support staff also provide support to other employees at STG. Referred to attachments D1 and D2 for further details.
33. The [VK]@gmail is the email address used *'as the username of an ImmiAccount mentioned in the notice which totally without [her] acknowledgement and awareness.'*
34. A new email address (auvisa2021@gmail.com) was updated with the Authority *'for [her] future activities temporarily'*.

Internet Protocol (IP)

35. Applications lodged using the company network will have the same IP address.
36. Applications lodged through a VPN connection, while working from home, will contain the same IP address as it works through the company's internet connection. Referred to attachments J1, J2 and J3 for further details.

ImmiAccounts

37. The Huang ImmiAccount is her personal ImmiAccount, and the applications lodged through this ImmiAccount were for her parents, in-laws, family members and close friends where no fees were charged. Referred to attachment B.
38. The [DH] ImmiAccount was one created, owned and used by STG. Only some of the applications lodged through this account were in relation to her clients. The *'operation that changing the name from [DH] to Vicky Huang were not done myself and without [her] consent and acknowledgement, same did the operation that applying the VEVO access on the same day with [her] name and MARN'* (referred to attachment E1). She had requested VEVO access for 'stgshengtang' at the request of STG, before she terminated her employment (referred to attachment E2). After leaving STG, she deleted all access related to her registration (referred to attachment E3).
39. The [VK] ImmiAccount was created in her name but without her consent or acknowledgement. She was not aware of this account or the applications lodged through the ImmiAccount until she received the Notice (referred to attachment F1).
40. The Summer ImmiAccount is an ImmiAccount *'that I really have no idea and I received no response from STG regarding this ImmiAccount.'*

MARN 1801056; address for correspondence; applications associated with the Huang email address; Vicky email address; and other email addresses

41. Applications associated with the Huang email address were for her parents, 'parents-in-law', family members and close friends – without charging a fee (referred to attachment B).
42. Applications associated with the Vicky email address were applications for difficult clients during her service with STG.
43. Applications associated with other email addresses where @stgservice was used and where her MARN was declared were applications she lodged for her clients also during her service with STG. The email addresses belonged to her support staff who assisted her with clerical work in order to increase her efficiency so that she can spend more time communicating with, and responding to, her clients and their demands as quickly as possible.
44. They provided her with support, such as document checking, receiving correspondence from the Department, help her file the correspondence, summarising and filing documents she received from clients, translating and school applications. Referred to attachment D1 for '*evidencing different support staffs in the company who have provided clerical supports to [her].*' These support staff also helped other employees in the company (referred to attachment D2 and K). She used email addresses of support staff only for increasing the work efficiency '*instead of participation in cases of any other for benefit.*' Evidence of her income is at attachment M.
45. She has renewed her email address with MARA for her future activities after her termination of employment (referred to attachment F4).

Applications associated with the Summer email address

46. The Summer email address belongs to one support staff member at STG.
47. Some applications with the Summer email address used for correspondence, where she is declared as the RMA, 'belong' to her clients.
48. This support staff member also provided support to other employees in the company (referred to attachments C1 and C2).

[VK] ImmiAccount

49. This ImmiAccount was created with her name but totally without her consent and acknowledgement. She was not aware of this ImmiAccount and the applications lodged through the ImmiAccount, until she received the Notice.
50. The name of the Payer is the same as the name of the ImmiAccount holder, thus shown as Vicky Huang. However, she was '*actually not the account holder and the one who did the payment.*'
51. The card is owned by the Director of STG and not her.
52. The IP address is the company IP address. Applications lodged with the company's internet connection have the same IP address. So far, she has no idea who lodged these applications.

53. She tried to *'lodged in the ImmiAccount but have no password or other account information. No one in the company admitted the acknowledgement of this ImmiAccount.'*
54. She communicated with STG regarding this matter but was informed *'that there exists misunderstanding of such conduct.'*
55. This matter that *'shows no respect for [her] is one of the main reasons that [she] decided to put [her] plan of ending employment forward.'* Referred to attachment F1.

Genuine Temporary Entry (GTE) statements

56. The structure of and aspects covered by the GTE statement are publically available on the Department's website and similar information as well as *'specific ideas of the GTE statement are publically available on the internet.'* Referred to attachment G.
57. STG has a *'template structure of the GTE statement, as well as samples and links to those open source mentioned above, provided to clients in assist with their GTE writing.'*
58. The resources provided to the clients are available across the company and many students have very similar background as well as their ideal universities.
59. She also *'informed [her] clients not to replicate the contents of the template but in future practice [she] will help the client to examine the statement more carefully so that the GTE statements could be more personalised.'*

Employment relationship to person who is not of integrity

60. She did not link her personal details to the [DH] ImmiAccount on 1 July and was not aware of it.
61. She was not aware of Mr Zhao's investigation and cancellation of registration before 4 July 2021, when she read an email sent anonymously to most employees of STG (referred to attachment L).
62. She spoke to Mr Zhao about her termination of employment on 5 July 2021. The only reason she did not leave STG as soon as she became aware of what had been happening was on account of her responsibility towards her clients and handing over her work.
63. She *'did not know [VK] ImmiAccount until [she] received this notice.'*
64. Before receiving the Notice she planned to terminate her employment with STG in October along with her plan to take a career gap for the delivery and care of her newborn (referred to attachment I).
65. She has put her plan forward and now terminated her employment and removed her information from STG (referred to attachments F1 and F2).
66. She has advised her clients of her termination of employment and is in the process of a handover (referred to attachment F3).

67. Her registration is currently maintained by her, including a new ImmiAccount for business purposes, professional indemnity insurance as well as LegendCom subscription (referred to attachment F4).
68. She has *'re-studied the Practice Guide – Registered migration agents and companies that available from the Authority's website and will improve [her] conduct accordingly.'*
69. She will be more careful to maintain the reputation and integrity of the migration advice profession when she returns to a full-time career in the future. She will *'take full due diligence of [her] future employment.'*

Integrity, fitness and propriety

70. She has been trying her best to comply with the law and respecting the Australian visa programs since she registered as a migration agent. She has been providing immigration assistance in accordance with the Code of Conduct and acting on behalf of her clients in a timely manner and with integrity.
71. In respect of declaring her assistance, the Agent stated: *'I have declared my representation as my clients' registered migration agent, providing them with detailed and correct consultation and helping them prepare and check supporting documents. I have a good reputation among my clients.'* Referred to attachment H.
72. She should have *'been more careful and taken all possible steps to supervise the use of [her] personal information as well as [her] MARN.'*
73. She has been providing immigration assistance to her clients *'diligently since [she] became the registered migration agent.'* She has kept a good reputation among her clients and has no previous complaints or breaches. Referred to attachment H.

Relevant factors

74. A decision to suspend or cancel her registration would have a detrimental impact upon her livelihood. Her estimate delivery date is in October and under *'currently global pandemic [she] need[s] to be a full time mother for taking care of the child in the near future. Providing immigration advice as a registered migration agent occasionally and within [her] ability would be the only way that [she] could help [her] husband to relief the financial burden of [their] family of three.'* Referred to attachment I.
75. Regarding her employment the Agent stated: *'The decision of terminating my employment as I take the career gap for my delivery and re-plan the specific professional area for my career was made before I receive the Notice, which evidencing my attempts to maintain the reputation and integrity of the migration advice profession and my adhere to the code of practice. Please kindly find Attachment F1.'*
76. She has *'not conducted in a manner which has caused [her] clients to suffer any financial loss and [she has] been always helping [her] clients in a positive way without receiving any complaints from [her] clients.'*

Documents

77. The Agent provided a list of attachment (A-L) forming part of the response package.

Concluding remarks

78. Overall, she sincerely expects the Authority to consider her explanations to decide whether disciplinary action is needed.

Statutory Declaration

Applications in general

79. She began working at STG as an 'admin' and later registered as a migration agent on 9 February 2018. She worked with other registered migration agents, education agents and support staff at STG and has been trying her best to provide immigration assistance to her clients. She helped them lodge applications, and declared herself as the representative agent, even if the clients came to her after the visa application had been lodged with the help of another agent.
80. Some clients have withdrawn their appointment and went to other agents and some have terminated their agreement with her as their applications were finalised. Currently, she is still in the process of communicating with her clients and handing over her work. Therefore, some clients might still withdraw their appointment and the number of her ongoing cases might change. She has declared herself as the representative agent in all her clients' applications. The 39 applications, referred to in Attachment A to the section 309 Notice, relate to clients who had either lodged their application without assistance or were represented by other RMAs before she represented them, or applications *'with different lodgement date and agent declared date due to any ImmiAccount mechanism that [she does] not know clearly. Evidence has provided to illustrate in detail.'*
81. In general, she considers *'[her] practice since the registration as a migration agent complying section 312A of the Migration Act 1958 (Cth) that declaring [herself] as the representative agent for [her] clients.'*

Email addresses

82. The Huang email address is her personal email address, used for the purpose of her registration records with the Authority. This email address is used for receiving correspondence from the Department in relation to applications lodged through the Huang ImmiAccount.
83. The Vicky email address is her STG appointed work email. She sincerely apologises for *'not clearly filled out the information in the system of the Authority and [she] will use only one email address for [her] registration or provide both [her] private and working email as the primary and secondary email addresses for registration in the future.'*
84. The Summer email address belongs to a support staff employee at STG. This support staff employee, not only assisted her, but also assisted many other company employees, including the Director Mr Teng Zhao. Since the employee left the company in June, she has asked the company to provide some of the emails that she sent to other staff in the company or to a third party.

85. The other email addresses mentioned in the Notice, such as jacob@stg and nicole@stg, all belong to different support staff at STG from whom she can request support, in order to increase efficiency in her responses to her clients. Assistance provided to her included, school applications, document checking, summarising and forwarding emails from the Department, filing and translating. Emails that these support staff sent to her have been provided. The support staff also provide support to other employees at STG. She has asked these support staff to send her some emails that they sent to others in the company.
86. The [VK]@gmail, the email address used as the username of an ImmiAccount mentioned in the notice, was *'not created or ever used by [her]. The ImmiAccount linked to this email was also created without [her] consent and acknowledgement.'* She will explain this issue further in a later paragraph.
87. She has now registered a new email address (auvisa2021@gmail.com) and updated it with the Authority *'for [her] future activities temporarily after [her] termination of employment.'*

Internet Protocol (IP)

88. All the employees work in the STG office. Even during the lockdown period, when they have to work from home, all employees are required to connect through the VPN so they can have access to all the documents. Connecting and disconnecting the VPN was inefficient, so to her knowledge a lot of employees kept their computer connected to the company's VPN until they completed work at the end of the day.
89. To her understanding, the IP address is allocated to the individual internet. She never noticed the IP address during her work, but does remember that their company had signed at least two internet contracts due to the re-arrangement of the office leasing in the building. Applications lodged by anyone in the company or anyone who connected to the VPN at home would have the same IP address. She thinks that this might be the reason why a lot of applications are lodged with the same IP address. However, only some of these applications are for her clients.
90. She has asked two other employees who also work from home to provide the details of their household internet details as well as details of the IP address while the VPN is connected.
91. Applications lodged using the company network will have the same IP address.

ImmiAccounts

92. The Huang ImmiAccount is her personal ImmiAccount, and the applications lodged through this ImmiAccount were for her parents, in-laws, family members and close friends where no fees were charged. She has provided a list of these applications.
93. The [DH] ImmiAccount was one created, owned and used by STG. This ImmiAccount was created before she was employed by STG. Some of the applications lodged through this account were in relation to her clients and within which she had declared herself as the migration agent. She wishes she could provide more comments on the other applications in this ImmiAccount, however, they were not lodged by her and she does not have the information regarding the applications and clients.

94. She *'swears the operations of linking [her] name to the [DH] ImmiAccount on 1 July 2021 as well as the VEVO request on the same day were not done by [her].'* Her Wechat history with her friend on 13 July 2021 can prove this claim. She is more than willing to cooperate if she is requested to prove the authenticity of the screenshot that she has provided.
95. On the 2 July 2021 she was told by STG that her *'details were used to request a new VEVO'*. Although she was quite uncomfortable about her personal details being used without her consent, she just thought that the company needed access to another VEVO. However, it was on 4 July 2021 when she read an anonymous email sent to most employee of STG, that she knew of the investigation into Mr Teng Zhao and the cancellation of his registration. She then *'realised why her personal details were used by STG to link to the [DH] ImmiAccount and request VEVO access.'*
96. As soon as she realised what had happened, on 5 July 2021 she spoke to Mr Teng Zhao of her plan to terminate her employment. However, before she formally left the company, she was still an employee and as an employee what she could decide and do was *'quite limited.'* The request for VEVO access undertaken by STG would not have been successful because the company did not know that the email she registered with the Authority was the Huang email address. STG asked her to request VEVO access before she formally left the company. On 14 July 2021, she delinked her name and cancelled the VEVO request made by STG without her consent. At the same time, she *'applied for a VEVO access by [her]self in stgshengtang.'* However, at that time she had already made up her mind to terminate her employment and started the process of handing over her work because she knew that *'as a registered migration agent, [she] have to maintain [her] integrity and be cautious who [she] work for.'* After she left STG, she deleted all access related to her registration.
97. The [VK] ImmiAccount is an ImmiAccount created in her name but totally without her consent and acknowledgement. She was not aware of this ImmiAccount and the applications lodged through the ImmiAccount until she received the Notice. A detailed explanation is provided at paragraphs 32-34 (of the statutory declaration).
98. The Summer ImmiAccount is an ImmiAccount *'that I really have no idea as well. I asked the company and even the support staff who used the Summer email address during the service but all claimed to be unaware of this ImmiAccount.'*

MARN 1801056; address for correspondence; applications associated with the Huang email address; Vicky email address; and other email addresses

Applications associated with Huang email address

99. Applications associated with the Huang email address were only for her parents, 'parents-in-law', family members and close friends. She has provided a list of these applications. Although these application are for herself, her family member and her best friend, after clearly *'re-studied the requirement prescribed by section 312A of the Migration Act 1958 (Cth) and regulation 7G of the Migration Agents Regulations Act 1958 (Cth), she realised that [she] should have also provide Form 956 for [her] relatives and friends applications. Currently only her father's S/C 143 visa application is ongoing, [she has] now updated the Form 956 and sent to the corresponding processing centre.'*

Applications associated with Vicky email address

- 100.Applications associated with the Vicky email address are part of applications lodged for her clients during her service with STG. She used this working email address for correspondence when the case was *'of clients who requires high level of attention and immediate response.'*

Applications associated with other email address

- 101.Applications where her MARN was declared, but with correspondence email addresses other than the Vicky email address, are also applications that she lodged for her clients during her service with STG. These email addresses belonged to support staff recruited by STG to help *'different registered migration agent and education agents.'* The main reason she used their email addresses for correspondence, in terms of her own cases, was to increase the working efficiency in managing substantial cases.
- 102.STG use support staff to help registered migration agents and education agents to increase work efficiency, so that registered migration agents like her or other education agents can respond to clients as quickly as possible and spend more time communicating with the clients instead of organizing and filing documents. Support staff do not work on a *'one to one basis.'* Their work varies according to how they provide support in each case under the instructions of corresponding registered migration agents and education agents at STG. She is not clear how they assist others in the company. However, she only allowed these support staff to provide basic administrative work for her. She has never permitted or authorized supporting staff at STG to engage with the Department or provide immigration services to clients on her behalf.
- 103.Among the applications where she was declared as the representative agent, support staff were involved in some applications with their email addresses for correspondence. They provide her with clerical support, such as document checking, receiving correspondence from the Department, help her file the correspondence, summarising and filing documents she received from clients, translating and school applications. They support her work under her supervision. The email addresses of support staff that she used were not to conceal, confuse, or otherwise impede the work of the Department. The only reason for doing so was to increase work efficiency and spend more time with clients.
- 104.All the applications where she has *'declared [her]self as the registered migration agent are for [her] own clients instead of participation in cases of any other for benefit.'* Her earning were from services that she has provided to her clients and she has also provided proof of income to support this claim.
- 105.Normally, she would tell her clients that there will be support staff helping her and would obtain her clients consent to disclose their personal information to the support staff. However, she was the only one who communicated with the clients and provided them with advice. This can be evidenced by one of her client's statutory declarations.
- 106.In the future, she will be more careful when preserving the confidentiality of her clients to ensure that she complies with clauses 3.1 and 3.2 of the Code. Even if she requires any support from clerical staff in the future, she will only use one email address for correspondence with the Department, which is the one that belongs to her and is registered with the Authority.

Applications associated with the Summer email address

107. As stated previously, the Summer email address belongs to one support staff member in the company. This is the working email which belongs to that support staff member thus she is *'not clear about how this email address was used by this staff in her work.'*
108. She received clerical support from this support staff member in only a few cases, in which she had declared her assistance as the migration agent and provided a Form 956.
109. All support staff at STG do not work on a one-to-one basis. Given that this *'support staff was not under [her] management, and neither does any other support staffs, [she does] not know her responsibilities as well as her daily tasks. Support staffs in STG provide supports to any employee in the company randomly based on their workload. Therefore [she does] not know details of other applications associated with her email address.'*
110. *'This support staff helped [her] apply schools, checking and filing documents provided by the clients, and forwarding correspondence sent by the Department to [her]. This support staff also provide support to other employees and the company owner Mr Teng Zhao. However [she does] not know what specific work she has done when working with other employees in the company. Some of the applications with Summer email address for correspondence belong to [her] clients, in which [she has] declared [her]self as the registered migration agent. [She] put her email address for correspondence in these applications because [she] asked her to help [her] forward and file the correspondence sent by the Department. However [she does] not know her involvement in other applications associated with her email address. [She] has provided some emails this support staff sent to [her].'*

[VK] ImmiAccount

111. As she has stated previously, she was not aware of this ImmiAccount and the applications lodged through the ImmiAccount, until she received the Notice. She tried to *'logged into this ImmiAccount to see what applications had been lodged in this ImmiAccount but no one in the company admitted the acknowledgement of this account. Therefore [she] have no password or other information related to this account to log in and see the details. [She has] also communicated this issue with STG however [she] was informed is that "there exists some misunderstanding".'*
112. The name of the Payer is the same as the name of the ImmiAccount holder, thus shown as Vicky Huang. However, she was *'actually not the account holder and the one who did the payment.'* The card for the payment is not owned by [her] as well. The visa application charge was paid from Mr Teng Zhao's credit card. In terms of the IP address, as [she has] explained previously, anyone who use the internet in the company or connected to the company's VPN, would have a same IP address.
113. *'Several information indicated that his matter was raised with in STG. [She] really want to provide more comment regarding this matter however [she has] provided all details that [she has] known about. The fact that STG concealed the matter regarding Mr Teng Zhao's registration and used [her] personal details in the [DH] ImmiAccount could also be the proof of [her] submission relating to [VK] ImmiAccount.'*

114. *This matter that shows no respect to [her] is one of the main reasons that [she] decided to put [her] plan of ending employment forward. [She] was extremely disappointed with the response from the company and in writing notices STG [her] termination of employment on 18 August 2021 because [she has] to take all reasonable steps to maintain the reputation and integrity of the migration advice profession.'*

Genuine Temporary Entry (GTE) statements

115. *The structure of and aspects covered by the GTE statement are publically available on the Department's website and prescribed by Direction 69 under section 499 of the Migration Act 1958 (Cth). 'There are many websites helping students who "DIY" their Australian student visa write GTE. Similar information as well as specific ideas of the GTE statement are publically available on these websites.'*
116. *Students are generally quite confused about what information they need to provide and how they should organise this information. Therefore STG will have a 'template structure of the GTE statement, as well as samples and links to those open source mentioned above, provided to clients as a guide in assist with their GTE writing because most students are from China and they have very similar backgrounds as well as their ideal university.'*
117. *The resources provided to the clients 'are available across the company, which lead to the similarity of the statement provided by different clients, including the clients to whom [she had] provided immigration assistance and those of whom [she is] not the representative agent.'*
118. *However, she has also 'informed [her] clients not to replicate the contents of the template. Upon the completing of their GTE statements, [she] has always ensured that students write their own GTE statements reflecting their genuine intention to study in Australia. One of [her] clients statutory declaration can support [her] claim.'*
119. *She has 'always remembered that as a registered migration agent, we must not make statement in support of an application if we know or believe to be misleading or inaccurate. [She has] never misled or deceived the Authority whether directly or withholding relevant information.'*
120. *She understands that 'GTE is an important part in student visa assessment and [she has] also tried [her] best in screening and examining the eligibility of [her] clients. Among [her] clients who have applied for student visas, some chose higher education, or schooling sector, others aimed at vocational education or just as the secondary applicant. Some clients' visa got refused because they did not express their reasons for study and career plans clearly. Some clients did not be granted the student visa because they had an unsatisfactory study history. However what [she] can confirm is that although some of [her] clients were not students with outstanding academic performance, they were genuine students. [She] act[s] on behalf of them in accordance with their instructions and in accordance with the law.'*
121. *She is only able to give comments on her owns clients as well as the information and documents they have provided in support of their visa application. She can 'guarantee that [her] clients are genuine students and their documents are credible. However in the future, [she] will be more careful when examining the clients' documents and will advice clients who apply for student visas to tailor their GTE statements to be more personalised.'*

Employment relationship to person who is not of integrity

122. She started working at STG as an 'admin' and shortly thereafter became a registered migration agent in 2018. It is a fact that Mr Teng Zhao's registration has been cancelled, however when taking this matter into account in terms of her personal investigation, she would like to refer to *Narayanan v Migration Agents Registration Authority* [2006] AATA 353 AT [132] per senior member Pengils.

123. *'In Narayanan, the Tribunal in deciding whether a sanction should be exercised took into the following factors into considerations.*

- *The nature of the professional's breach, particularly whether the professional is acting in good faith during the commission of the breach;*
- *Whether there were any factors that were beyond the professional's control and could have reasonably contributed to the professional's breach;*
- *The professional's efforts to rectify or mitigate the effect of the breach, where possible;*
- *The professional's record of prior disciplinary breaches;*
- *The professional's community and professional reputation, etc. '*

124. When considering the nature of her breach, it is not her 'will of being related to a person who is not of integrity. Firstly, [she] did not linked [her] personal details to [DH] ImmiAccount on 01 July and [she] was not aware of it. Secondly, [she] was not aware of Mr Teng Zhao's investigation and cancellation of registration before 04 July 2021 when [she] read the email sent on 3 July 2021 by an anonymous person to most of the employees of STG. As soon as [she] knew it she talked to him about the termination of [her] employment on 5 July 2021. Thirdly, [she] did not know [VK] ImmiAccount until [she] received this notice and [she] put [her] plan of terminating employment forward because of the disrespect and misconduct of STG. As an employee, [she] was not able to know all the misconduct of the company as well as Mr Teng Zhao.

125. When considering factors beyond her control, it is a fact that although she tried to 'protect the use of [her] MARN and personal details, [she] could not completely avoid anyone from doing so deliberately. The [VK] ImmiAccount as well as the operations in [DH] ImmiAccount on 1 July 2021 were never within her contemplations.

126. In terms of her efforts to rectify any possible breach that would 'raise after the cancellation of Mr Teng Zhao's registration, and to maintain the reputation and integrity of the migration advice profession, she has put forward [her] plan of terminating [her] employment with STG.'

127. Her plan of terminating her employment with STG was initially made before she received the Notice. One reason was stated in paragraphs 13-16 [to the statutory declaration], the other reason is that she would like to take a career gap for the delivery and care of her first child.

- 128.Originally she planned to terminate the employment in October before her estimated due date. Her family members are not able to come to Australia to help her, therefore she has to suspend her career to take care of the baby. At that time, she knew nothing about the investigation of Mr Teng Zhao's registration as well as other misconduct of STG. Each employee works independently and they seldom communicate clients' details with each other. Although she could see that there were many applications lodged through the [DH] and [STG] ImmiAccounts, she *'has not viewed the application details, actually there was no reason and no need for me to see details of who are not my clients.'*
- 129.Later, when she knew of Mr Teng Zhao's matter in early July, she *'talked to him orally that [she] would terminate her employment before October. The reason that [she] did not leave the company immediately to maintain the reputation and integrity of the migration advice profession is that [she] need time to hand over [her] cases in order to protect her client's interest. Some clients have a very close due date of their current visa and some clients need to respond to their S 56 as soon as possible. [She] need to act in a timely manner for her clients and their legitimate interest cannot be affected by [her] personal matter.'*
- 130.Her plan of terminating her employment was later brought forward after she became aware of the [VK] ImmiAccount issue upon receiving the Notice. She considered that *'the longer [she] stayed in the company, the worse it would be to both [her] clients' interest and [her] own professional reputation. [She has] now terminated the employment and removing [her] information from STG. [She] has also informed [her] clients about this issue and is still currently under the process of handover. [Her] registration is currently maintained by [her], including the new ImmiAccount for business purpose, professional indemnity insurance as well as LegendCom subscription.'*
- 131.She has *'re-studied the Practice Guide – Registered migration agents and companies that available from the Authority's website and will improve [her] conduct accordingly. [She] will be more careful to maintain the reputation and integrity of the migration advice profession when [she] return to a full-time career in the future. [She] will take full due diligence of [her] future employment.'*

Integrity, fitness and propriety

- 132.In *Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12, Deputy President McMahon in paragraph 26 observed that the concept of integrity means 'soundness of moral principle and character, uprightness and honesty'. She has always been trying her best to comply with the law and respecting the Australian visa programs since she registered as a migration agent. She has been acting in the best interest of her client and has been providing immigration assistance in accordance with the Code of Conduct. She has *'declared [her] representation as [her] clients' registered migration agent, providing them with detailed and correct consultation diligently in a timely manner and with integrity. [She has] kept a good reputation among her clients and [has] no previous complaints and breaches. This can be evidenced from the Statutory Declarations provided by [her] clients.'*

133. The definition of 'fit and proper' was explained aptly in *Australian Broadcasting Tribunal v Bond* (1990) HCA 33, where Mason CJ found that one must have regard to all of qualities and characteristics of the subject individual that are relevant to the license, approval, certificate or authorization sought by the individual. The High Court stipulated that decision makers must consider 'whether improper conduct has occurred, whether it is likely to occur, when it can be assumed it will not occur, or whether the community will have confidence it will not occur.' As submitted, she has '*declared [her]self as the representative agent in all applications of [her] client and [she has] provided evidence to proof that she was actually not aware of many improper misconduct of STG before early July 2021 or before [she] received the Notice.*' She acknowledges that she still needs continuous improvements, '*not only about [her] professional knowledge but also when it comes to the integrity of [her] employment environment.* She will only use her registered email address for correspondence with the Department in the future. She will take '*full due diligence of [her] future employment and will take all possible steps to supervise the use of [her] personal information as well as [her] registration.*'
134. In all the circumstances, she believes '*that [she is] a person of integrity and [she is] a fit and proper person to give immigration assistance in accordance with s303 (1) (f) of the Migration Act 1958 (Cth).*'

Relevant factors

135. A decision to suspend her registration for a long time or even cancel her registration would have a detrimental impact upon her livelihood, especially when she is about to take her parental leave and have a career gap under the current situation of a global pandemic.
136. She began '*her first job as a registered migration agent in February 2018.*' She has been working in this industry as a registered migration agent for the whole period. This means that practicing as a registered migration agent and providing education and immigration assistance is the only work experience she has and '*what [she] solely lives on.*' Travel restrictions and border closures have already '*crucial influences on the migration advice industry and it has been really a hard time for [her] both mentally and financially since the outbreak of COVID- 19. [Her] husband and [her] are waiting to welcome [their] first child to be delivered in October this year and, until all travel and boarder (sic) restrictions to be lifted, none of [their] family members will be able to come to Australia and help [them] for taking care of the baby, which means [she has] to depend on [her] own so that [her] husband can secure his job at this hard time.*'
137. Her household expense will increase after the birth of her child and the family income will reduce by half during the time she will be on parental leave. She has terminated her employment with STG International Services Group and is currently maintaining her registration on her own. The economic impact of Covid-19 in Victoria is devastating, if she is not able to practice and needs to contemplate a career change, it would be almost impossible to '*seek for other employments as [she] only have litter (sic) experience in the non-migration industry. Then unemployment rate in Victoria is relatively high. As a result, cancelling [her] registration as a registered migration agent would be as cutting off the household income that [she] could help to contribute during this hard period.*'

138. Secondly, her initial decision of terminating the employment with STG International Service Group was not made on the basis of receiving the Notice. As she was approaching her estimated delivery date and found that the border would not be open in the near future, she had *'decided to slow down the pace of her career and take it as an opportunity to re-plan [her] career and develop [her] professional competence in order to improve [her] profession and make ethical decisions better.'*

Her initial plan was:

- a. Taking [her] parental leave and terminating her employment before [her] delivery;*
- b. Improving her professional knowledge systematically with the current and updating versions of relevant legislations during the time [she is] as a stay-at-home mom;*
- c. Enrolling in single units of Graduate Diploma in Migration Law (units LML XXX and XXX of XXX University) in order to improve her knowledge in detailed regarding different kinds of visas before [she] start to plan going back to [her] full-time career;*
- d. Assessing her professional knowledge and identifying [her] strengths and weakness. [She] was thinking about focussing [her] immigration assistance services on a few types of visas so that [she] can better maintain [her] professional knowledge and experience and act in accordance with the law and the legitimate interests of [her] clients.*

139. She has been thinking about what services she could bring to her client *'with reliable and good quality and ensuring their legitimate interest will not be impaired.'* She has also realised that practicing in this industry she should keep learning and *'regularise [her] conduct to act in accordance with the law and protect the public interest. That is why [she] had made such plan above before [she] receive the Section 309 Notice. [She] has been thinking about improvement and [she has] been taking steps to make improvements. The only change that the Section 309 Notice has brought to [her] initial plan is that [she] put her plan of ending employment forward.'*

140. In addition, she has *'not conducted in a manner which has caused [her] clients to suffer any financial loss. Actually [she] has been always helping [her] clients in a positive way without receiving any complaints from [her] clients. [She does] not have any history of prior complaints or disciplinary decisions before the Authority and [she is] a person of good character in general. There are sufficient evidences above indicating that [she is] a person of integrity and fit and proper person to give immigration assistance.'*

141. She *'acknowledge that [she has] always declared [her] involvement in the visa applications in which [she] provided immigration assistance. [She has] never facilitated non-genuine visa applications which served to undermine the integrity of the visa programs. [She has] never submitted applications to the Department which [she] knew were misleading and inaccurate. Besides, no act of commission or omission has been undertaken by [her] to provide any misleading or bogus information to the Authority.'*

JURISDICTION

142. The Authority performs the functions prescribed under section 316 of the Act.

143. 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

144. 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)).

145. 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)).

146. 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.

147. 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

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

- Departmental records for the persons and businesses discussed throughout this decision.
- Records held by the Authority for the persons and businesses discussed throughout this decision.
- The Agent's responses to the section 309 notice.
- Supporting documentation provided by the Agent in response to the section 309 notice.

DECISION AND REASONS

Breaches of the Code

149. 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. A copy of the relevant clauses of the Code are at **Annexure E**.

Standard and burden of proof

150. In response to the notice issued pursuant to section 309 of the Act, and more specifically on any aspects regarding potential knowledge and involvement in criminal conduct and breach of the law, on part of the Agent, the Agent cited a number of cases for the Authority to consider. The Agent referred to *Narayanan v Migration Agents Registration Authority* [2006] AATA 353, *Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 and *Australian Broadcasting Tribunal v Bond* (1990) HCA 33. However, it is important to distinguish administrative decisions to that of civil and criminal proceedings. Most significantly, that neither party in administrative proceedings carries an onus of proof as highlighted in *Kurt Kraues v Migration Agents Registration Authority* [2016] AATA 1086 at [59] when citing *McDonald v Director-General of Social Security* [1984] FCA 57; 1 FCR 354.

151. That said, I accept that the rules arising from the decisions provide relevant guidance material for decision makers and that administrative decision makers must act according to substantial justice and the merits of the case. While every effort is made to meet the standards established in the rules derived from the proceedings, an administrative decision is not, however, bound by technicalities, legal forms or rules of evidence.⁹

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

⁹ Refer to section 311 of the Act

FINDINGS ON MATERIAL QUESTIONS OF FACT

THE AUTHORITY'S INVESTIGATION (CAS-04937-F1H2)

MARN 1801056 and STG

153. The Agent was first registered as migration agent on 9 February 2018 and was employed by STG for most of her registration period. For the purpose of the Agent's registration, the Agent had initially recorded the Huang email address as her primary and secondary email address until it was changed to auvisa2021@gmail.com (the **auvisa email** address) on 1 September 2021.

154. In the Agent's response to the Notice, she stated that she initially began working at STG as an 'admin' and then registered as a migration agent on 9 February 2018. According to the Agent, during her employment with STG she worked with other registered migration agents, education agents and support staff and tried her best to provide immigration assistance to her clients. The Agent also provided an STG organisational chart¹⁰ with her response, which reflected STG's structure as comprising three RMAs (former RMA Zhao, RMA XXX, and herself), seven education agents¹¹ and twelve support staff¹² all of whom report to the Director (Mr Zhao). The Agent contends that she declared her assistance as the representative agent when submitting applications to the Department, even in instances when clients engaged her services after the visa application was lodged with the assistance of another agent. In general, she considers *[her] practice since the registration as a migration agent complying section 312A of the Migration Act 1958 (Cth) that declaring [herself] as the representative agent for [her] clients*.

155. The Agent did not detail how long she was employed by the company before she was registered or in what capacity (aside from the broad 'admin' descriptor). Consequently, the Authority reviewed records held by the Department which were submitted by the Agent in support of her subclass 189 visa application. According to the records,¹³ the Agent was employed by STG since April 2016 as an accountant (and a consultant), some two years before she was registered as a migration agent.

156. Furthermore, immediately prior to her employment with STG, the Agent declared her employment with Central Hope Pty Ltd¹⁴ from January 2015 to March 2016 as an internal accountant to both STG and Central Hope.¹⁵ It follows that the Agent has held pivotal roles within STG and Central Hope for almost seven years, and it appears reasonable to assume that her association with STG would likely have continued unabated if not for the action on part of the Authority. The corporate structure¹⁶ reflected the Agent to be one of only three RMAs at STG, and given her experience and corporate knowledge, would have ensured the Agent enjoyed a senior and entrusted position within the organization. Consequently, I am satisfied that in her role as an accountant, consultant, and finally migration agent, the Agent would have been acutely aware of the inner operations and workings of STG.

¹⁰ Attachment K of the section 309 response package

¹¹ Freya, Han, Fiona, Lucas, Zarina, Felix and Lucasth

¹² Summer, Jacob, Kathy, XL, Tanya, Sabrina, Crystal, Sonia, Claire, Sara, Amber and Lily

¹³ Personal particulars form (CLD2017/XXXXXX32)

¹⁴ ABN 53 161 968 494 – same office address as STG at the time (see Annexure I)

¹⁵ Annexure J

¹⁶ Attachment K of the section 309 response package

Email addresses for corresponding with the Department

Applications associated with the Huang email address

157. While the Agent's primary and secondary email address provided as part of her records with the Authority was the Huang email address¹⁷ this did not appear to be the email address that was utilised in association with the visa applications she submitted to the Department. Departmental records indicate that only four applications were attached to this email address. The Agent declared her assistance in two of the applications and was an authorised recipient for the applications in the two remaining matters (see below).

MARN	ImmiAccount & E-mail	Date	Request ID	Internet Protocol (IP)
956A	huanghuan1990@hotmail.com	9 Jan 20	XXXXXX145	XXX
1801056	huanghuan1990@hotmail.com	31 Mar 19	XXXXXX566	XXX
956A	huanghuan1990@hotmail.com	27 Aug19	XXXXXX228	118
1801056	huanghuan1990@hotmail.com	31 Mar 19	XXXXXXXX340	XXX

158. According to the Agent, the Huang email address is her personal email address, which was used for the purpose of her registration records with the Authority. Further, the email address was only used for receiving correspondence from the Department in relation to applications lodged through the Huang ImmiAccount, which included her parents, in-laws, family members and close friends where no fees were charged. The Agent provided a list of the applications submitted through the Huang ImmiAccount¹⁸ detailing the applicants' relationship to her. I note that the Agent included her own applications, that of her spouse, and her parents, which were not considered by the Authority.

159. The Agent went on to state that although these applications were for herself, her family members and her best friend, after she clearly '*re-studied the requirement prescribed by section 312A of the Migration Act 1958 (Cth) and regulation 7G of the Migration Agents Regulations Act 1958 (Cth), she realised that [she] should have also provide Form 956 for [her] relatives and friends applications. Currently only her father's S/C 143 visa application is ongoing, [she has] now updated the Form 956 and sent to the corresponding processing centre.*'

160. I note that the Agent only appeared to become aware of some of her obligations under the Act after receiving the Notice. However, given her response there also appears to be confusion on the difference between the Act and the Agents Regulations, all of which go to the Agent's knowledge requirements.

¹⁷ From February 2018 until August 2021

¹⁸ Attachment B of the section 309 response package

161. Given the Agent's period of registration (over 3 years) and in light of the Agent's statement on the use of the Huang email address, it does not appear in dispute that the Agent used email addresses other than the Huang email address in association with the immigration assistance she provides and the visa applications she submits to the Department. Moreover, according to her own account, the Agent failed to declare her immigration assistance in applications where assistance was provided, and appeared oblivious on her obligations under the Act, in breach of clauses 2.1 and 2.3 of the Code.

Applications associated with the Vicky email address

162. According to the records held by the Authority, a draft application for registration as a migration agent which contained the Agent's personal particulars (name, address, telephone, and passport number)¹⁹ was created for the purpose of lodgement on 2 January 2018 but not progressed further. This draft registration application listed the Vicky email address as the Agent's primary and secondary email address (**Annexure F**).

163. Open source information formerly on the STG website at <http://www.stgch.com.au/> displayed a facial image which closely resembled the facial image in the photograph the Agent submitted to the Authority with her registration application. The name appearing immediately below the photograph on the STG website, before it was removed, was 'Vicky' (**Annexure G**). It follows, that I am satisfied that the Agent publicised and used 'Vicky' as an anglicised version of her given name and that she is also known as Huan (Vicky) Huang or simply Vicky Huang in association with the provision of immigration assistance and potentially even more broadly.

164. A review of applications submitted to the Department, where the Vicky email address was provided, and where the Agent was declared, revealed that only four (4) such applications were lodged between 11 July 2018 and 4 August 2020, from the time the Agent was first registered. These applications are listed below for reference.

MARN	E-mail address	Date	RID	IP
1801056	vicky@stgservice.com.au	11 Jul 18	XXXXXXXX942	N/A
1801056	vicky@stgservice.com.au	9 Oct 18	XXXXXXXX408	N/A
1801056	vicky@stgservice.com.au	22 Jul 19	XXXXXXXX401	118
1801056	vicky@stgservice.com.au	4 Aug 20	XXXXXXXX849	220 (DH)

165. In her response to the Authority, the Agent stated that the Vicky email address was her STG appointed work email and the applications associated with the Vicky email address form part of applications lodged for her clients during her service with STG. Consequently, it does not appear to be in contention that the Vicky email address is an email address to which the Agent had access and has actively used for more than a two year period. However, while this was her primary STG appointed work email address, it transpires that the address was only used in respect of four visa applications submitted to the Department for the duration of her registration period.

¹⁹ ~~As the date of birth (DOB) entered into the field did not reflect that listed in passport number XXXXXXXXXXXX – it is taken to be a typographical error~~

166. As part of her response, the Agent went on to express her apologies for *'not clearly filled out the information in the system of the Authority and [she] will use only one email address for [her] registration or provide both [her] private and working email as the primary and secondary email addresses for registration in the future.'* However, the point the Authority was highlighting in the Notice, centered on the exorbitant number of email addresses which were put forward in association with applications submitted to the Department where she was declared as the migration agent on record. This is a distinct point from which email address the Agent had elected to record and use for communicating with the Authority.

167. The Agent stated that she used this working email address (Vicky email address) for correspondence when the case was *'of difficult clients who requires high level of attention and immediate response.'*²⁰ This appears to indicate that clients who do not require a high level of attention, and where no urgency is attached, are not actioned directly by the Agent. Moreover, that only four such cases required her attention over the course of her registration period. Any application can become complex and require urgent attention on account of the dynamic nature of applications which are impacted by personal circumstances subject to change. These changing circumstances may not be evident or foreseeable when the applications are submitted to the Department, so as to enable the making of such a distinction at one point in time. There appears no discernible reason why the applications would be differentiated by the email addresses, which are declared for communicating with the Department, unless the immigration assistance was provided, and managed, by persons other than the Agent, as discussed further in this decision.

IP Addresses

168. Of the four applications submitted listing the Vicky email address, one was submitted through an IP address ending in 118 (the **118 IP address**) and another through an IP address ending in 220 (the **220 IP address**). An application submitted through the Huang ImmiAccount, Request ID XXXXXX228, was also submitted through the 118 IP address. Given these lodgments and the Agent's statements that she had submitted these applications, it does not appear to be in dispute that the Agent had used and had access to both the 118 IP address and the 220 IP address for the purpose of submitting applications to the Department.

169. In her response to the Notice, the Agent stated that applications lodged using the company network will all have the same IP address. Furthermore, that applications lodged through the company VPN connection, while working from home, will likewise contain the same IP address. Consequently, applications lodged by anyone in the company, or anyone connected to the corporate VPN when working from home, would have the same IP address and is the principal reason why many of the applications are lodged through the same IP address. The Agent submitted 26 pages of screenshots²¹ on the remote VPN access in respect of three email addresses (Vicky@STG, Claire@STG and Sabrina@STG) to argue that all the employees share the VPN addresses and only some of the applications submitted through the IP addresses are for her clients.

²⁰ Paragraph 21 of the Agent's statutory declaration

²¹ Attachments J1, J2 and J3 of the section 309 response package

170. The Authority does not dispute the fact that both the 118 IP address and the 220 IP address are attached to STG and are made available to those who are authorised to access and use them. In essence, that was the very point highlighted by the Authority. The arguments put forward by the Agent, in her response and the screenshots submitted, appear to confirm this. Consequently, I am satisfied that the Agent did have access to both IP addresses (IP 118 and IP 220) and has actively used them throughout her employment with STG. Furthermore, as the application submitted through the 220 IP address²² was lodged using the [DH] ImmiAccount, it follows that the Agent has actively used and had access to the [DH] ImmiAccount.

[DH] ImmiAccount

171. As discussed, one application submitted through the 220 IP address²³ was lodged using the [DH] ImmiAccount, to which the Agent had access. Significantly, the account name attached to the [DH] ImmiAccount was changed from DH to Vicky Huang on 1 July 2021, one day after the Authority cancelled the migration agent registration of STG Director, Mr Zhao. This is the same ImmiAccount through which the CLu 2017, CLu 2018, and the Sabrinama cases were submitted, where no registered migration agent was declared in association with the applications reviewed.

172. According to the Agent, the [DH] ImmiAccount was created, owned and used by STG and only some of the applications lodged through this account were her clients and she had declared her assistance in those applications. Given the ImmiAccount is an organisational account, the Authority accepts that applications submitted through this account also include applications submitted by persons associated with STG, other than the Agent. The Agent argued that while she would like to provide more comments on the other applications submitted through this account, she does not have this information as they were not lodged by her.

173. The Agent also asserted that the *'changing the [DH] ImmiAccount name from [DH] to Vicky Huang were not done [by her] and without [her] consent and acknowledgement, same did the operation that applying the VEVO access on the same day with [her] name and MARN'*. I take the Agent's statement to mean that she did not make the 1 July changes to the ImmiAccount or request VEVO access, nor did she approve them. To evidence this claim, the Agent referred the Authority to attachment E1, which contained a Wechat exchange between her and a 'friend' which purportedly transpired on 13 July 2021 at 12:01.

174. A review of the exchange reveals the Agent advised a person unknown, that *'she just changed it... For completing the CPD register... I changed it to the current company.'* The other party advised the Agent that they saw it and went on to state *'Because VEVO request is still being verified'* to which the Agent replied *'VEVO request will not be approved. They did not ask me for permission when they used my mara to bind [DM] immi.'* However, according to the Agent she was informed by STG that her *'details were used to request a new VEVO'* on the 2 July 2021,²⁴ some ten days earlier.

²² RID XXXXXXXX849

²³ Ibid

²⁴ Paragraph 16 of the Agent's statutory declaration

175. Furthermore, the Agent stated that although she was quite uncomfortable about her personal details being used without her consent, she just thought that the company needed access to another VEVO.²⁵ Consequently, even if I were to accept that the Agent did not make the changes to the ImmiAccount details herself, she has conceded that she was made aware of the changes the following day. It follows, that while it was open for her to take any reasonable action to disassociate herself from the account, if she had any concerns on the changes applied, she had elected not to do so.
176. The Agent contended that when she read an anonymous email sent to most employees of STG on 4 July 2021,²⁶ she became aware of the investigation into Mr Zhao and the cancellation of his registration. A copy of the anonymous email was submitted to the Authority as part of the Agent's response and appears to have been sent to info@stgservice.com.au on 3 July 2021 at 00:35 hours. The email included statements in Chinese script and contained a link to the decision made by the Authority in respect of Mr Zhao. A basic Google translation²⁷ on the script within the email revealed the communication referenced the return of hard earned money and questioned whether STG staff had a conscience and their ability to sleep peacefully, indicative of a person who felt financially aggrieved.²⁸ According to the Agent, it is at this time that she *'realised why her personal details were used by STG to link to the [DH] ImmiAccount and request VEVO access.'* Accepting the Agent's own account, not only was she informed on the changes applied to the account, she was also well aware of the reasons for doing so, however took no action to change this at the time.
177. In her response, the Agent asserts that as soon as she realised what had happened, she spoke to Mr Zhao on 5 July 2021 of her plan to 'terminate' her employment. The Agent also stated that before she formally left the company, she was still an employee and as an employee what she could decide and do was *'quite limited.'* Whether such a conversation actually took place on 5 July remains unknown. What is evident however, is that the Agent neither mentioned nor implied such an intention only eight days later, when communicating with her friend,²⁹ even though she flags that her permission was not sought when *'they used [her] mara to bind [DM] immi.'* This communication also reveals that the reason she changed the company details on the Authority's records, was *'for completing CPD register'*, rather than on account of any concerns she held about STG, its' Director, or her association with the company.
178. The records held by the Authority, reveal that several changes were made to the Agent's MARN contact record on 13 July 2021. The primary business was changed from STG to Lucky Huang; then changed to Melbourne Consultant; and a secondary business was added the same day to initially reflect STG and then Lucky Huang. Further changes to the primary and secondary business were again made on 16 July, 21 July and 1 September; all of which included STG in some form.

²⁵ Paragraph 16 of the Agent's statutory declaration

²⁶ Attachment L of the section 309 response package

²⁷ Annexure H

²⁸ The translation for 坑, while including 'pit' also appears to extend to 'cheat' or 'defraud'

²⁹ 13 July 2021

179. Changes were likewise made to the residential address, telephone number, and email address. These included changes made at 5:31 PM on 19 July 2021, when her residential address was changed to reflect the STG business premises; the Huang email address changed to the STG Vicky email address and her mobile number was replaced with the STG office landline. All the changes clearly reflecting an even closer association to STG, rather than a separation, before some were reverted back on 21 July. The changes made on 19 July, appear to coincide with the time the Department rejected a request for VEVO access, sent to the Vicky email address, on account that only the family name was provided with the request.
180. In her response to the Authority, the Agent stated that the request for VEVO access undertaken by STG would not have been successful because the company did not know that the email she had registered with the Authority was the Huang email address. Moreover, that STG asked her to request VEVO access before she formally left the company. According to the Agent, on 14 July 2021 she delinked her name and cancelled the VEVO request made by STG without her consent. At the same time, she *'applied for a VEVO access by [her]self in stgshengtang.'* The Agent maintains that she had already decided to terminate her employment at the time and commenced handing over her work as she knew that *'as a registered migration agent, [she] have to maintain [her] integrity and be cautious who [she] work for.'* After she left STG, she deleted all access related to her registration.
181. Despite the Agent's assertion that by the 14 July 2021, she had already decided to terminate her employment with STG, citing the need for an RMA to maintain their integrity, only five days later³⁰ she proceeded to change the details on her registration record to reflect the STG business address, STG phone number, and her STG email address. This appears at odds with the statements she has put forward to the Authority, on her intended separation from the company and the associated discussions that allegedly occurred on 5 July 2021. The Agent also stated that the VEVO access requested by STG would not have been successful as her Huang email address was registered with the Authority. If the Agent was of that view, it is unclear why she would then proceed to cancel the request on 14 July 2021, as claimed.
182. Furthermore, one day earlier, in the communication exchange with her friend on 13 July 2021, the Agent had stated that the *'VEVO request will not be approved'*. While one VEVO request³¹ was not approved by the Department, it was not refused due to the email address, nor did it appear connected to any request to cancel the VEVO request submitted by STG. Rather, the request was refused³² on the basis that every VEVO request requires disclosure of the registered account holders' full name. Significantly, the Agent was only notified of the refusal decision on 19 July 2021, six days after she had advised her friend that the request would not be approved. Whether or not the refusal was in fact related to the initial VEVO request submitted by STG, as alleged by the Agent, or a subsequent request³³ that was yet to be submitted, does not change the fact that the Agent would not have been privy to a decision outcome of which she was yet unaware.

³⁰ 19 July 2021

³¹ It is unclear which ImmiAccount this request was attached to

³² Attachment E2 of the section 309 package

³³ According to the Agent - the VEVO request for 'stgshengtang' was made on 14 July 2021

183. Moreover, if the Agent was actually intending to cease her employment, and was genuinely concerned about her integrity, it appears unlikely that she would have agreed to submit new requests for additional departmental accounts by willingly using her details, at the request of STG. Particularly, when done with full knowledge that integrity issues had been identified with conduct with the business and that upon her departure there would be no other registered migration agents attached to STG. While I acknowledge that the stgshengtang ImmiAccount was deleted at the Agent's request on 2 September 2021,³⁴ this does not excuse or condone the fact that she had opened it at the request of STG in the first instance.
184. Likewise, if the Agent had delinked herself from the account on 14 July 2021, as she contends was the case, what would have been the impetus to contact the Department on 1 September 2021³⁵ advising them of her resignation and seeking confirmation about whether or not the [DH] ImmiAccount was linked to her 'RMA'.³⁶ Significantly, the Agent questioned whether the account was linked to her details and if so how she could 'unbind it' and wanted to know if this would affect the use of this ImmiAccount, such as reviewing applications and submitting new ones. It follows, that if the Agent did want to ensure she was permanently detached from the ImmiAccount, it appears she had not taken any action on the account earlier, contrary to what she had indicated in her response. In the alternate, and given her intimate knowledge of STG operations, either she was of the view that STG would have no regard for the details provided to the Department so long as it provided a means for the business to continue operating or she herself would continue to provide services to STG unofficially.
185. Further, if the Agent had ceased her employment and connection with STG, and had undertaken her handover of her clients, there appears no reason why she would have an ongoing interest in whether the STG ImmiAccount could still be used for either viewing or submitting applications. The Agent's interest in the use of the ImmiAccount would imply that her purported separation from STG was merely superficial and designed to portray a severing of links while continuing to service the organization. It is also possible that she was enquiring on behalf of STG, as she was aware that the provision of immigration assistance would continue, irrespective of whether or not an RMA was employed by the company.
186. Either way, the Agent's conduct gives rise to serious concerns on her integrity and proactive willingness to engage in conduct unbecoming of an RMA. The inconsistencies highlighted and the blurring of factual details provided by the Agent are indicative that the information she has put to the Authority is not credible. Furthermore, I am of the view that any separation with STG, genuine or otherwise, was not triggered by the Agent's concern for her integrity because of her association with STG, but was undertaken in response to the Notice sent to her on 16 August 2021. The Notice, as well as the advanced state of her pregnancy,³⁷ are the more likely reasons the Agent had made a decision to cease her employment at this time, if that were the case, as she would have been made aware that the Authority held concerns about her own conduct.

³⁴ Attachment E3 of the section 309 package

³⁵ Ibid

³⁶ Presumably referring to her MARN

³⁷ Attachment I of the section 309 package

Applications associated with other email address

187. As departmental records revealed a total of eight (8) visa applications, across the two email addresses attached to the Agent, the Huang and Vicky email addresses, a further examination of visa applications associated with her details was undertaken.

188. Department records indicate that the Agent's MARN number (1801056) was declared in relation to at least 354 visa applications, as at 20 July 2021, which were submitted to the Department between 28 August 2015 and 20 July 2021.³⁸ This number included 39 applications that were submitted before she was registered with the Authority but was subsequently appointed for the applications. In her response to the Authority, the Agent stated that the 39 applications referred to in Attachment A to the section 309 Notice, relate to clients who had either lodged their application without any assistance or were represented by other RMAs before she represented them.³⁹ The Authority accepts this was the case and made mention of the 39 cases for this very reason. Namely, that they were added to the Agent's caseload at a time after they were submitted to the Department.

189. A sample of the applications were reviewed with ten (10) of the cases listed in the below table.

Request ID (RID)	Lodgement	IP	ImmiAccount	Email ⁴⁰
XXXXXX703	29/08/2019	N/A	N/A	jacob@stg
XXXXXX200	29/01/2021	118	STG	nicole@stg
XXXXXX911	08/02/2021	118	STG	kathy@stg
XXXXX487	25/02/2021	118	STG	xlu@stg
XXXXXX329	11/03/2021	118	STG	tanya@stg
XXXXXX213	17/03/2021	118	STG	sabrinama@stg
XXXXXX555	30/04/2021	118	STG	sonia@stg
XXXXXX618	18/05/2021	118	STG	tanya@stg
XXXXXX476	28/06/2021	118	STG	kathy@stg
XXXXXX943	28/06/2021	118	STG	lily@stg

190. Of the ten listed applications, where the Agent was declared as the representative migration agent, eight applications contained a different email address for the purpose of communicating with the Department. Notably, this reflected seven different addresses for the Agent over a five month period, including two different email addresses for visa applications lodged on the very same day (28 June 2021).

191. In addition to the above email addresses, recent engagement with the Department in association with the agent's MARN, also included the below STG email address:

claire@stgservice.com.au	28 Jul 2021
sara@stgservice.com.au	27 Jul 2021
amber@stgservice.com.au	23 Jul 2021

³⁸ Annexure A

³⁹ Attachment A1 and A2 of the section 309 response package

⁴⁰ All the email addresses contain the full format as XXX@stgservice.com.au

192. Personal particulars and sensitive client information, including but not limited to; health and character details; requests for information; notice of adverse information; and the status and progress of a visa application, can only be disclosed to a client's appointed registered migration agent. This forms the privileged status of agents registered with the Authority, from which certain obligations towards clients, the Department, and the Authority arise.
193. It follows, that only the person who is lawfully permitted to provide immigration assistance, and who has been appointed by the client to act on their behalf, can discuss the client's case with the Department, send and receive sensitive personal information, and represent the client in relation to the applications. Consequently, the Department will only communicate with the appointed representative migration agent, and does so on the premise that the communication address nominated by the appointed representative is that which belongs to, and is accessed by, the lawfully appointed representative.
194. The Authority accepts that, where necessary, occasions do arise when the appointed representative agent has cause to change their nominated address, for the purpose of communicating with the Department in relation to their clients. However, the extent to which this has transpired in relation to the Agent's cases, appears to be significantly higher relative to what may be considered reasonable and necessary.

Activities undertaken by support staff

195. According to the Agent, applications associated with these alternate email addresses, and where her MARN was declared, were applications she had lodged⁴¹ for her clients during her service with STG. The Agent maintained that the email addresses belonged to her support staff who assisted her with clerical work in order provide her with more time to communicate with, and respond to, her clients and their demands. They supported her and worked under her supervision and the main reason she *'use[d] their email addresses for correspondence'* was to improve efficiency.
196. The Agent contended that STG recruited support staff to help RMAs and education agents to increase work efficiency by organising and filing documents. The support staff provided assistance to anyone who required it and were not employed to work on a *'one to one basis'* with any specific migration or education agent. Further, the support provided varied as it was dependent upon the instructions provided by the respective RMA or education agent. The Agent maintained that she only permitted support staff to undertake basic administrative duties and was not aware of the assistance they provided to others in the company.
197. I note that the Agent argued that she was unaware of the assistance the support staff may have provided to others in the company, while simultaneously submitting evidence to the Authority of emails transpiring between the support staff and others within STG.⁴² Therefore, the correspondence appears to have been readily available to the Agent and goes to some of the duties the staff were engaged in.

⁴¹ Paragraph 22 of the Agent's statutory declaration and point five on page 3 of the submission

⁴² Attachments D2.1 to D2. 12 of the section 309 response package

198. Furthermore, as most of the applications for clients represented by RMAs linked to STG were submitted through the [DM] ImmiAccount, to which the Agent had access, she would have been privy to all the applications and the exchanges which transpired on the cases. Consequently, contrary to her statements to the Authority, she would have been aware on the actions of the support staff as she not only had access to the ImmiAccount but was also overtly familiar with the staff to whom the respective email addresses were attached.
199. The Agent contended that she used the email addresses of support staff to increase her work efficiency⁴³ and that her earnings were derived from the services she had provided to her clients. While the Agent provided her Notice of Assessment (NOA) from the Australian Tax Office (ATO) for the year ending 30 June 2020, it remains unclear as to what the Agent was seeking to evidence with the NOA. The Agent's level of income from her employment with STG is not a concern for the Authority. Moreover, the NOA⁴⁴ does not serve to support an argument that the Agent complied with the law, or the Code, in respect of her conduct. The NOA has no bearing on the manner in which she provided immigration assistance or on her interactions with the support staff at STG. The same extends to the National Police Clearance (NPC) that the Agent submitted with her response (attachment N). The absence of a criminal conviction does not evidence that the Agent had not engaged in adverse conduct, even one of a criminal nature. What it does show however, is that the Agent had no criminal convictions at the time the NPC was issued.
200. Furthermore, the Agent has argued that applications associated with other email addresses,⁴⁵ where her MARN was declared, were submitted by her⁴⁶ during her service with STG. If that were the case, this would not explain why correspondence from the Department would need to be brought to her attention by the support staff, as was the case with some correspondence forming part of attachments C1, D1.1, D1.4, D1.5, D1.7, D1.9, D1.10 and D1.11. While the Agent maintains that the addresses used to submit the applications were designed to increase her work efficiency, I am at a loss as to how the use of one email address, over that of another, would serve to increase her work efficiency. Particularly, as the involvement of a third party would necessarily require an additional step. However, if the conduct of the third party extended beyond basic administrative assistance, then this might explain how efficiencies with a large client cohort, processed by a number of staff, could be achieved.
201. Had the Agent undertaken the work, as claimed, she could just as easily have used her Vicky email address in preference to any other. Consequently, the more likely explanation on the efficiency argument, is that the support staff were purporting to be the Agent and had engaged in conduct that far exceeded basic administrative tasks as was argued by the Agent. A review of attachment D1.3 reveals that a request for further information, sent by the Department on 9 July 2021, was reviewed and summarised by Kathy, before she sent an email to the Agent indicating what was required from the client. The same process transpired with departmental requests for further information in relation to applicants [HPC] on 19 March 2021, [LPY] on 17 May 2021 and [YYY] on 4 August 2021.⁴⁷

⁴³ ~~Paragraph 22 of the Agent's statutory declaration~~

⁴⁴ Attachment M of the section 309 response package

⁴⁵ Ending with @stgservice

⁴⁶ See point five on page 3 of the Agent's submission

⁴⁷ Attachment D1.6 of the section 309 response package

202. Similarly, attachment D1.8 contains correspondence from Sonia to the Agent, requesting more photographs for visa applicant [ZQZ] as there are no photographs on file and indicates it would be *'best with his friends and family'*. Another email, for the same client, requests the Agent to inform the applicant of the requirement for a medical examination to be undertaken. It follows, that the support staff appeared to provide the Agent with update summaries of what had transpired with the case. That is, what was received and what was required. Conversely however, it should be the Agent reviewing the cases and advising the support staff on what was complied with, what remains outstanding, and whether or not any further action is required. Following which, the Agent would be in a position to assign 'basic administrative duties' to the support staff – if that were required.

203. I do not accept that it is either reasonable or appropriate to rely on support staff, who are not registered migration agents, to assess the progress of an application so as to provide an update to the Agent. The Agent cannot decide to delegate this duty, for the sake of 'increasing work efficiency', but should exercise full carriage and responsibility of the cases for which she is appointed. That is, the support staff should act on her instructions, for basic administrative tasks – not to summarise the cases for her which, aside from being inappropriate, would provide ample opportunity for errors to occur. It is for this reason that there exists a requirement for every migration agent to have a sound working knowledge on migration law and procedure. For persons not registered to undertake a review of migration cases and decide what is required, would be contrary to the very reasons a regulatory scheme was put in place.

204. While the Agent argued⁴⁸ that she has never permitted or authorised support staff to engage with the Department or provide immigration assistance to clients on her behalf, this would be difficult to sustain given their email addresses were the primary contact points for engaging with the Department throughout the processing of the applications. Moreover, the Agent also stated⁴⁹ that support staff were *'involved in some applications with their email addresses for correspondence'*, which would necessarily mean that they were engaging with the Department. Consequently, the Agent appears to contend that the alternate email addresses were used by both her and the support staff. If this were the case, it would make the communication, more specifically its author, hard to differentiate between them.

205. A review of attachment A2 reveals one email which was sent to the Department from Ying@STG, with a 956 form attached, discussing a request for a Waiver to be exercised, which purports to be from the Agent and contains her signature block. However, the Agent indicated that she had signed the 956 form and lodged the Waiver request *'through [her] support'*. As the Vicky email address was blind copied into the correspondence, it appears that Ying was the person who had sent the communication to the Department, and not the Agent, as would be implied by the signature block.

⁴⁸ Paragraph 23 of the Agent's statutory declaration

⁴⁹ Paragraph 24 of the Agent's statutory declaration

206. Further examples of support staff portraying to be the Agent were identified in attachment C1, in respect of clients Mr [LQ]⁵⁰ and Ms [DXM]⁵¹ wherein the Summer@STG email address was engaged. An email sent to the Department on 21 January 2021 at 11:04, in respect of Mr [LQ], specifically stated *'My name is Huang Huan and I am writing on behalf of my client... Best Regards, Huang Huan'* where the Vicky email was blind copied. With respect to Ms [DXM] two emails were sent to the Department, one on 1 January 2021 at 10:11 and the other on 9 March 2021 at 10:18, again stating *'This is Huan Huang, writing on behalf of my client....'* and where the Vicky email was again blind copied. These are additional instances where the support staff are representing themselves as the Agent and of which the Agent was clearly aware. Not only is this contrary to the Agent's statement that she did not permit support staff to engage with the Department, but her knowledge of and involvement in this practice, speaks to her integrity.

207. Where support staff assist an Agent with administrative duties, they should not engage in misleading conduct by portraying themselves to be the Agent. This highlights how the use of support staff, and their email addresses,⁵² serve to blur the boundaries and make it difficult, if not impossible, to ultimately distinguish who was providing the assistance and communicating with the Department at any given time. According to the Agent's own account, the support staff assisted her with document checking, translations, receiving correspondence from the Department on her behalf⁵³ and summarising and filing documents she had received from clients. To support her argument, the Agent referred the Authority to attachments D1⁵⁴ of her response package to evidence that support staff *'...provided clerical supports to [her]'* and to attachments D2⁵⁵ and K where they assisted other employees in the company.

208. A review of attachments D2.1 -D2.12, which relate to matters where STG support staff would afford assistance to persons other than the Agent, provide further insight into the activities within STG. More specifically, attachments D2.1, D2.2, D2.4, D2.5, D2.8, D2.10, D2.11 and D2.12 all contain correspondence from the Department to the visa applicants, through their nominated authorised recipients, all of whom were education agents in the employ of STG. Attachment D2.2 contains a visa refusal notification in respect of Ms [ZYF] sent to email Claire@STG at 11:35 on 28 April 2021, which was subsequently forwarded to Zarina@STG at 11:41 the same day. The process being identical to that which transpired when departmental correspondence is received where an RMA is appointed for the visa application. Even the typed 956A forms resemble the 956 forms completed for STG RMAs – including the support staff email addresses, STG address and office phone number.⁵⁶

⁵⁰ RID 1025615663

⁵¹ RID 745617397

⁵² If this were the case

⁵³ Paragraph 24 of the Agent's statutory declaration

⁵⁴ The D1 attachments appear to include D1.1 to D1. 11 – emails from support staff to Agent

⁵⁵ The D2 attachments appear to include D2.1 to D2. 12 – emails from support staff to others

⁵⁶ See Annexure K

209. In light of the scale and organized structure of STG, through which thousands of visa applications were progressed, I reject the notation that the education agents were merely authorised recipients for the applicants. Moreover, the manner in which the communication was processed and actioned, is consistent with the process applied when the Agent had received support in her capacity as an RMA. In consideration of the Agent's statement, that her Vicky email address was used for difficult clients who require a high level of attention,⁵⁷ it appears reasonable to conclude that STG education agents would also engage in providing assistance with straightforward student visa applications with little intervention on part of the RMAs. This would explain, to some extent, how STG was able to progress significant volumes of visa applications where they failed to declare the immigration assistance. This does not however absolve any of the company RMAs from disclosing their assistance with any such applications. Consequently, I am of the view that the education agents, as well as other persons in the employ of STG, where all engaged, to some degree, in what is defined as, and falls within the scope of, immigration assistance and that the Agent was aware of this fact and a party to the conduct.
210. The Agent referred the Authority to attachment F4, indicating that she has now registered a new email address⁵⁸ and updated her records *'for [her] future activities temporarily after [her] termination of employment'*. While the Authority's records reflect this new email address, this does not alter the fact that on the evidence before the Authority, the Agent either actively encouraged or delegated the support staff to engage in conduct which was beyond what would be expected of administrative support staff.
211. Finally, the number of email addresses the Agent had nominated for the purpose of the Department communicating with her in relation to her clients and their applications, does not appear to be an efficient manner in which to manage a substantial caseload. Consequently, I am of the view that the use of numerous email addresses over a finite period, most notably two in a single day, appears to have been applied not out of reasonable necessity or the sake of efficiency, but alternate reasons. More specifically, I am satisfied that the different addresses were applied as a deliberate strategy invoked to conceal involvement of the parties and impede the work of the Department.
212. Moreover, the use of the different email addresses, and that already discussed throughout this decision, support the proposition that persons other than the Agent were providing immigration assistance to visa applicants, where she was declared as the representative migration agent. As many such applications would require a Form 956, including the Agent's signature, and given the Agent was aware of the inner workings of STG, I am satisfied that the Agent was a willing participant in this activity and the primary facilitator of what would constitute unlawful conduct. In so doing, I am satisfied that the Agent was likewise acting in contravention of the law and in breach of her obligations as a registered migration agent. It follows that I find the Agent in breach of clauses 2.1, 2.9 and 2.23 of the Code.

⁵⁷ Paragraph 21 of the Agent's statutory declaration

⁵⁸ auvisa2021@gmail.com

Confidential Information

213. According to the Agent, she would normally tell her clients that there will be staff assisting her and would obtain her clients' consent to disclose their personal information to the support staff. The Agent stated that she would exercise more care when preserving the confidentiality of her clients⁵⁹ in the future, to ensure that she complies with clauses 3.1 and 3.2 of the Code. This appears to be in contradiction of her statement⁶⁰ that she had advised her clients that their personal information would be disclosed to support staff, and that she obtained their consent to do so. Moreover, whatever the Agent proposes to do in the future, does not impact on what may already have transpired and whether or not she had complied with these obligations in the past. From the above discussion, where the support staff appear to have had full carriage of applications, and only conferred with the Agent if and when necessary, I am not satisfied that the Agent has complied with maintaining the confidentiality of her clients. Consequently, I find that the Agent had acted in breach of clauses 3.1 and 3.2 of the Code.

Applications linked to the Agent

214. In analysis of the email correspondence the Agent had submitted to the Authority raised further concerns on her disclosure to the Department. More specifically, attachment D1.2 which contains an email sent from Skilled Migration Tasmania to a visa holder, Mr [GJY], requesting that he complete a settlement survey forming part of his obligation in association with the state's nomination for his subclass 190 visa. The request was sent to email address XXXX@hotmail.com (the Hotmail address) on 8 June 2021 at 13:53 and forwarded by Claire to the Agent at 13:55 on the same day. Given the timing on these transactions,⁶¹ the Hotmail email address appears to be one that STG was managing, not the visa holder. According to the Agent's own account, the assistance provided to her by the support staff was associated with her caseload. Consequently, as the correspondence was forwarded to the Agent, who subsequently sent it to XXXX@gmail.com⁶² at 14:42, it stands to reason that the visa holder was the Agent's client. Furthermore, that the visa holder's email address was the Gmail address to which the Agent forwarded the survey, and not the Hotmail address which was managed by STG.

215. A review of departmental records on the subclass 190 visa application for Mr [GJY] revealed that the application was submitted on 4 December 2018⁶³ through the [DH] ImmiAccount. The application, which was submitted using the 220 IP address, had no registered migration agent declared as assisting with the application and the Hotmail email address was provided for communicating with the primary visa applicant. Access to this email address and the management of it by STG was already discussed above. As the Agent was already registered when this application was submitted, had access to both the ImmiAccount and the IP address, and given the actions of both the administrative staff member and the Agent,⁶⁴ I am satisfied that Mr [GJY] was the Agent's client and that she failed to declare her assistance on the subclass 190 visa application submitted to the Department.

⁵⁹ Paragraph 27 of the Agent's statutory declaration

⁶⁰ Paragraph 26 of the Agent's statutory declaration

⁶¹ The passage of two minutes

⁶² Presumably the email address of the visa holder

⁶³ A time after the Agent was registered with the Authority

⁶⁴ In relation to the Tasmanian settlement survey

216. Attachment D1.2 also contains correspondence sent from the Department on 30 June 2021, to email address XXXXXXXXXX@hotmail.com which was addressed to visa holder [ZFJ]⁶⁵ reminding him that his visa was about to expire. This email was forwarded by Claire to the Agent on the same day. A review of departmental records reveals that the email was sent to the visa holder in association with his student visa, which was submitted on 6 September 2019, granted on 21 October 2019, and was valid until 14 July 2021. However, as with Mr [GJY], while the application was submitted through the [DH] ImmiAccount (and the 118 IP) no registered migration agent was declared as having provided assistance with the visa application.
217. This second Hotmail email address also appears to be one that STG was managing and not the visa holder. This correspondence was again forwarded to the Agent on 30 June 2021, informing her that Mr [ZFJ]'s *'visa is about to expire as a reminder.'* This was Mr [ZFJ]'s second student visa. The first student visa application was submitted on 13 March 2019 and granted 27 May 2019. As with the second student visa application, it too was submitted through the [DH] ImmiAccount (via the 220 IP) and no agent was declared. It follows, that Mr [ZFJ] had two student visa applications submitted through an ImmiAccount (and IP address) attached to STG. These applications were submitted after the Agent was already registered and there appears a clear link to the Agent, given the expiry reminder was forwarded to her by the staff member for her information and presumably further action.
218. Moreover, the subsequent visa application⁶⁶ submitted for Mr [ZFJ] on 12 July 2021, was submitted through the [STG] ImmiAccount (118 IP) where the Agent was declared as assisting with the visa application. Of the three applications submitted to the Department, where STG was clearly a conduit, only one of the three applications had declared the Agent's assistance. Significantly, the third application was submitted after the Authority had taken a decision on 30 June 2021 to cancel the registration of Mr Zhao, wherein issues of non-disclosure of immigration assistance provided by RMAs attached to STG were discussed. Consequently, I am satisfied that the Agent had provided immigration assistance in the two student visa applications that preceded the subclass 408 application, but failed to disclose her assistance.
219. Further still, attachment D1.3 also contains a departmental automated message which appears to be addressed to the visa holder, Ms [SLJ], sent to email address Kathy@STG on 30 September 2020. As with the two cases already discussed, this email was likewise subsequently forwarded to the Agent (by Kathy) on the same day it was received. This student visa application was submitted to the Department on 8 June 2018, through the [DH] ImmiAccount (220 IP). Email address Kathy@STG was provided for correspondence, and again, no registered migration agent was declared. The visa was granted on 26 June 2018 and was valid until 14 October 2020. While no translation was provided on the text Kathy had included in her message to the Agent, when forwarding the departmental reminder, the digits 14 and 10 are clearly visible, which would align to the expiry date of the visa. It follows, that I am satisfied that Kathy was highlighting to the Agent when the visa was due to expire. Notably, on 12 October 2020 a visitor visa application was submitted for the applicant, soon followed by a partner visa application,⁶⁷ where the Agent was declared as assisting with both applications.

⁶⁵ RID XXXXXXXX489

⁶⁶ Subclass 408 – RID XXXXXXXX463

⁶⁷ Submitted on 8 February 2021 – RID XXXXXXXX911

220. In each of the three matters discussed above, the applicants had one or more applications submitted to the Department, where no agent was declared. However, the email addresses provided for the applicants were clearly managed by STG staff and the messages were acted upon and forwarded to the Agent in all three matters. Similarly, all three applicants had subsequent applications submitted to the Department, where the Agent was declared as assisting with the applications. Given my discussion above, I am satisfied that the Agent had provided immigration assistance to clients, in association with their visa applications, but failed to disclose her assistance to the Department. Additional matters raised in respect of this conduct is also discussed below.

Provision of immigration assistance without declaring involvement

Applications associated with the Summer email address

221. An analysis of the visa applications submitted to the Department where the Agent was declared to be the representative migration agent, and where her MARN was listed, have included applications where summer@stgservice.com.au (**Summer email address**) was provided as the Agent's contact address. One application where the Summer email address was provided was in association with a Permanent Protection visa subclass 866⁶⁸ submitted on 27 July 2018. The associated Form 956 listing the Agent as the appointed migration agent for the Permanent Protection visa and specifying the Summer email address is provided at **Annexure L**. Other visa applications where the Agent had disclosed her immigration assistance in association with the Summer email address are listed below.

MARN	E-mail address	Lodgement	Request ID (RID)
1801056	summer@stgservice.com.au	13 Sep 2018	XXXXXX397 (220)
1801056	summer@stgservice.com.au	3 Oct 2018	XXXXXX480
1801056	summer@stgservice.com.au	2 Oct 2019	XXXXXX250 (118)
1801056	summer@stgservice.com.au	6 Dec 2019	XXXXXXX316 (118)

222. Of the above four applications, the two applications submitted in 2019 (RIDs XXXXXX250 and XXXXXX316) were lodged through the 118 IP address, while the one submitted on 13 September 2018 was done so through the 220 IP address. These IP addresses correspond to those used with the applications submitted in association with both the Huang email address and the Vicky email address, mentioned earlier in this decision.

223. Given the above discussed, I am satisfied that during the course of the Agent's registration with the Authority, she has had access to, had actively used, and has presented the Summer email address as her contact email for corresponding with the Department in no less than five applications.

224. A review of the applications submitted to the Department from 9 February 2018, when the Agent was first registered, until 11 March 2021 revealed a further 80 applications against which the Summer email address was disclosed, yet no migration agent was declared as having provided immigration assistance. The relevant dates from when the Summer email address was effective, in respect of the 80 applications, are provided at **Annexure M**.

⁶⁸ RID XXXXXX728

225. In her response to the Authority, the Agent stated that the Summer email address was a working email which belonged to a support staff member who provided assistance to her and other employees at STG. Attachments C1 and C2 were submitted in support of this statement. The Agent claimed that she was *'not clear about how this email address was used by this staff in her work.'*⁶⁹ Furthermore, that the staff member *'was not under [her] management, and neither does any other support staffs, [she does] not know her responsibilities as well as her daily tasks. Support staffs in STG provide supports to any employee in the company randomly based on their workload. Therefore [she does] not know details of other applications associated with her email address.'*⁷⁰
226. The Agent's intimate knowledge on the inner operations within STG, including the duties undertaken by the support staff, was highlighted earlier.⁷¹ The Agent was employed by Central Hope since January 2015, with the principal place of business located at Suite 5, 895-899 Whitehorse Road, Box Hill and immediately thereafter by STG operating from the very same business premises. Commencing as an internal accountant and progressing to immigration assistance, the Agent has spent almost seven years in a senior role within the business wherein migration services had expanded. Consequently, I am satisfied that the Agent would have been aware on the role of each employee, and the duties they had performed throughout that time, irrespective of whether or not they reported to her.
227. In her response to the Notice, the Agent submitted attachment C1 to evidence her interactions with Summer and attachment C2 containing interactions between Summer and other STG employees. The 23 page PDF compilation of interactions, which formed attachment C1, primarily related to five matters where the Agent had declared her assistance to the Department. Significantly, two of the migration matters comprising C1, included clients Mr [LQ]⁷² and Ms [DXM]⁷³ where STG support staff had purported to be the Agent when communicating with the Department, discussed earlier in this decision record.⁷⁴
228. From the documentation submitted by the Agent in attachment C2, there is email correspondence from Summer dated in October 2017 and June 2021. This would indicate that Summer was employed at STG from at least October 2017 (and possibly earlier) through to June 2021. However, despite the fact that Summer, like the Agent, was a long term employee of the company, the Agent maintains that she only received clerical support from Summer in a few cases and had declared her assistance and provided a 956 form for those cases. In consideration of the evidence before me, and my discussion throughout this decision, I do not find the Agent's statement in this regard to be credible.
229. As with C1, attachment C2 was a compilation of correspondence in a single PDF file involving staff member Summer, some of which was translated. The 43 page document consisted of selective excerpts of communication exchanges relating to translations, employment applications, course enrolments and attendance, as well as visa application processing. The correspondence was to highlight that Summer provided support to others in the company and not just the Agent. I have no reason to doubt such and accept that this was likely the case.

⁶⁹ Paragraph 28 of the Agent's statutory declaration

⁷⁰ Paragraph 30 of the Agent's statutory declaration

⁷¹ See section *MARN 1801056 and STG* on page 25 of this decision [156]

⁷² RID XXXXXXXX663

⁷³ RID XXXXXX397

⁷⁴ The Agent was subsequently removed from RID XXXXXXXX663 in May 2021

230. However, that is not to say that Summer did not provide support to the Agent over and above that claimed by the Agent, nor does it absolve the Agent from her role and conduct during her employ with STG. To the contrary, it is indicative that most, if not all, employees at STG were involved in duties that were not clearly defined and where tasks attached to migration clients became fluid between staff members. Consequently, this would result in tasks being undertaken by persons who were not lawfully permitted to provide the services, namely immigration assistance, which would have been known to the employees and most notably the Agent.

231. Furthermore, the evidence put forward was not a comprehensive account of correspondence which would have formed a complete client file, but rather a select number of emails of the Agent's choosing. Therefore, the correspondence provided in attachments C1 and C2 would in all likelihood be that which was most advantageous to the Agent's case and unlikely to include exchanges which would advance the Authority's argument.

232. The Authority has reviewed a random number of applications forming part of the 80 matters where no registered migration agent was declared, and directed focus around the period when the five applications where the Agent had declared her assistance had transpired. Most applications were submitted during 2018. From the applications analysed, the majority were lodged through the 220 IP address, albeit the 118 IP address was likewise evident within this cohort. The cases examined and lodgement details are provided below.

Email address	Lodgement	Submission
summer@stgservice.com.au	2-Mar-18	[DH] @ stgservice.com.au IP 220
summer@stgservice.com.au	7-Mar-18	[DH] @ stgservice.com.au IP 220
summer@stgservice.com.au	17-Apr-18	[DH] @ stgservice.com.au IP 220
summer@stgservice.com.au	4-May-18	[DH] @ stgservice.com.au IP 220
summer@stgservice.com.au	1-Jun-18	[DH] @ stgservice.com.au IP 220
summer@stgservice.com.au	25-Jun-18	[DH] @ stgservice.com.au IP 220
summer@stgservice.com.au	3-Aug-18	[DH] @ stgservice.com.au IP 220
summer@stgservice.com.au	6-Aug-18	[DH] @ stgservice.com.au IP 220
summer@stgservice.com.au	7-Aug-18	[DH] @ stgservice.com.au IP 220
summer@stgservice.com.au	13-Aug-18	[DH] @ stgservice.com.au IP 220
summer@stgservice.com.au	15-Aug-18	[DH] @ stgservice.com.au IP 220
summer@stgservice.com.au	11-Mar-21	STG - IP 118

233. In reviewing the caseload, it was not insignificant that while the Agent was declared as the representative migration agent for an application submitted on the 27 July 2018,⁷⁵ and likewise for the one submitted on the 13 September 2018,⁷⁶ associated with the Summer email address, the five (5) visa applications submitted to the Department between those two lodgement dates (grey highlight), did not have a representative migration agent declared. This is despite the fact that the five applications also had the Summer email address listed for correspondence with the Department and were submitted from the same 220 IP address and [DH] ImmiAccount as the applications submitted on the 27 July 2018 and 13 September 2018.

234. Given my above discussion, it appears reasonable for the Authority to be satisfied that the Agent was not only the representative agent for the five cases where she had declared her immigration assistance, in association with the Summer email address, but that she had also provided immigration assistance to numerous other applicants where her assistance was not declared.

235. It follows, that I am satisfied that the Agent has provided immigration assistance to visa applicants and submitted applications to the Department, without declaring her involvement, in contravention of section 312A of the Act and in breach of her obligations in respect of clauses 2.1 and 2.9 of the Code. This conduct was likewise highlighted with other applications already discussed within this decision in the preceding section.

236. Moreover, I am of the view that this conduct not only applied to the five cases which were submitted during the period ranging from 3 to 15 August 2018, but that it likely extended to a significant number of applications submitted during the course of the Agent's registration period and where the Summer email address was declared.

ImmiAccount [VK]@gmail.com

237. A more detailed examination of departmental records was undertaken in relation to any associated activities or holdings which contained personal particulars reflecting the name **Vicky Huang**. According to departmental records, a private user ImmiAccount was registered on 11 September 2018 under the Username [VK]@gmail.com (the **[VK] ImmiAccount**). The associated email address contained the exact same detail as the Username, that being [VK]@gmail.com (the **[VK] email address**). The registered account holder for this ImmiAccount is recorded as Vicky Huang, refer to **Annexure N**.

238. As part of the investigation into the [VK] ImmiAccount, information before the Authority reveals that 81 separate cases were submitted to the Department through the [VK] ImmiAccount and no registered migration agent (RMA) was declared in association with those applications. The applications were submitted for the period between 11 September 2018 and 26 July 2019 through two IP addresses. Departmental records indicate that 'Vicky Huang' was also the person identified as the Payer for the 81 applications which were lodged through this private user account (**Annexure O**). The Visa Application Charge (**VAC**) associated with the applications and used by the Payer (Vicky Huang) was paid with a credit card ending in 7742 for 74 of the 81 cases, with the cardholder listed as the Agent's at the time, Mr Teng Zhao.

⁷⁵ RID XXXXXXXX728

⁷⁶ RID XXXXXX397

239. The 81 applications submitted through the [VK] ImmiAccount ([VK] cohort) were done so through the 220 IP address (76 applications) and the 118 IP address (5 applications) both of which were used by the Agent in respect of applications submitted where she was the appointed migration agent. More specifically, with applications associated with the Huang, Vicky, and Summer email addresses discussed earlier in this decision.

240. In summary, the [VK] ImmiAccount:

- a. was created under a name by which the Agent is known (Vicky Huang);
- b. the Payer of the application fees was identified by the same name (Vicky Huang);
- c. the card used for the VAC payments is one that the Agent had access to through her employment at STG;
- d. the card used for the VAC payments is one that the Agent had used where where she declared her assistance (RID XXXXXX316 – Annexure A); and
- e. all the applications were submitted from IP addresses which were used in association with applications where the Agent was the declared registered migration agent.

241. In her response to the Notice, the Agent stated that she was not aware of this ImmiAccount or the applications lodged through it and *'no one in the company admitted the acknowledgement of this account.....[She has] also communicated this issue with STG however [she] was informed is that "there exists some misunderstanding".'* The Agent maintained that while the Payer name and the Account holder name are the same as her details, she is not the holder of the account and did not make the payment. The Agent argued that the card used for the visa charge payments was paid *'from Mr Teng Zhao's credit card'* and in terms of the IP address *'anyone who use the internet in the company or connected to the company's VPN, would have a same IP address.'*

242. I accept that the credit card used for the visa charge payments was Mr Zhao's credit card and not that of the Agent. I also accept that all STG staff would have access to the company IP address. That said, the Agent has used Mr Zhao's credit card for visa charge payments in cases where she was declared as the representative agent. Moreover, the vast majority of application charges were paid using Mr Zhao's credit card and that of the General Manager. There is no information before me to indicate that the Agent had used her own card for making visa charge payments for the company clients, unless the applications were for her family and friends. As for the IP address, while all employees would have access to the company IP address, this would also extend to the Agent, which has already been established. The difference being that other employees did not have their details attached to the ImmiAccount.

243. The Agent stated that she wanted to provide more comment regarding this matter but no further details were known to her. She also argued that STG withheld Mr Zhao's registration cancellation from her and had used her details in the [DH] ImmiAccount, both of which could serve to prove her submission in relation to the [VK] ImmiAccount. Disciplinary decisions taken by the Authority are publically available on the Authority's website, and noted on a number of Home Affairs' social media platforms, of which the Agent should be aware. As such, they are readily available to all and it cannot be said that such a decision was withheld from her or anyone else for that matter. The [DH] ImmiAccount changes and the action, or lack thereof, on part of the Agent were already addressed.

244. Given the above points, I consider it reasonable to conclude that the Agent had registered and operated the [VK] ImmiAccount, through which 81 visa applications were submitted to the Department, without declaring her involvement with the immigration assistance, in contravention of the Act. It follows, that in the absence of evidence to the contrary, the activities and conduct associated with the 81 applications are likewise attributed to the Agent.

245. From the 81 visa applications comprising the [VK] cohort, 15 were subclass 600 visitor visas, two were for a student guardian visa (subclass 590) and the remaining 64 applications were student visas (subclass 500). Of the 81 cases, a significant proportion of the cases resulted in a refusal of the visa (highlighted in the table below). When excluding two applications that were withdrawn before a decision was taken on the applications, 75 percent of all matters submitted through the [VK] ImmiAccount were refused.

Visa subclass	Refused	Percentage refused of subclass lodged
590	2 of 2	100%
600	10 of 15	67%
500	47 of 62*	73%
Combined	59 of 79*	75%

*NB: two subclass 500 visa applications were withdrawn following invitations from the Department to respond to adverse information

246. The two applications that were withdrawn before a decision was made, were withdrawn only after receiving notices from the Department inviting the applicants to respond to adverse information. More specifically, in both matters documents submitted to the Department on 21 September 2018, in support of the applications, were found to be non-genuine (bogus documents) after enquiries were made with the Australian Consulate General in Shanghai. One additional application was refused on account of providing misleading information as part of the declaration, in failing to disclose the refusal of a prior visa application.

247. Given that all the applications were submitted through one ImmiAccount, two IP addresses, a single Payer, and where most were paid by the same credit card, it appears improbable that the individual visa applicants would have had much engagement with the visa application process. Rather, it appears reasonable to find that the applications were facilitated on a large scale, through a single contact point and with little or no involvement on part of the visa applicants. Moreover, that it involved considerable knowledge of migration processes and procedures in order to navigate the system with relative ease. Consequently, and in the absence of evidence to prove otherwise, I am of the view that the Agent was responsible for, or at least a significant party to, a process where visa applications were submitted to the Department with a view to secure visa outcomes for applicants who were unlikely to meet the visa requirements. Furthermore, that the process was deliberately orchestrated to conceal the Agent's involvement, as she was aware that it involved fraud and deception to which she was a party, and the consequences which would ensue should the conduct be identified.

248. In consideration of the exceptionally high refusal rate and evidence before the Authority that fraudulent and misleading documentation and information was presented to the Department, in no less than three applications, I find it reasonable to conclude that the impetus for creating this ImmiAccount was to distance the Agent from the dishonest conduct. Moreover, that the process was designed as a deliberate attempt to secure visa outcomes for applicants who would not otherwise qualify or be entitled to the respective visas and consequently serve to significantly undermine the integrity of the visa program.

Genuine Temporary Entrant (GTE) statements

249. All student visa applicants are required to satisfy the Genuine Temporary Entrant requirement which is considered against the statement (**GTE statement**) they provide in support of their application. Where it is established that an applicant's intentions are not genuine, the application will be refused. Consequently, the GTE statement is a critical component of the student visa application process and the statement should reflect the unique and personal circumstances of each student.

250. An analysis was undertaken of the GTE statements submitted in support of a number of subclass 500 visa applications forming part of the [VK] ImmiAccount cohort. Eight (8) GTE statements submitted through the [VK] ImmiAccount were compared to GTE statements submitted in support of student visa applications where an STG email address was provided to receive communication from the Department. An additional two (2) GTE statements were compared to a GTE statement submitted for a student visa applicant where the Agent was the declared representative agent for the application.⁷⁷

251. The comparison of the GTE statements identified noticeable similarities, including identical sentences and paragraphs, from statements that were submitted as part of the [VK] ImmiAccount cohort to those submitted through the [DH] ImmiAccount. More specifically, the GTE statements where the Sabrinama and Crystal Lu emails addresses were provided for communicating with the Department. Relevantly, the Sabrinama email address is one that was provided in association with an application submitted where the Agent was the declared representative migration agent (RID XXXXXX213). Likewise, the two additional GTE statements from the [VK] ImmiAccount which were compared to a GTE statement from a student where the Agent was declared as the representative agent also contained identical or near identical statements. A number of the similarities which were identified in the analysis are presented below with the identity of the applicants anonymised.

Ms [GJJ] from [VK] cohort and Sabrinama cohort

252. The GTE statement provided by Ms [GJJ] the applicant in line entry 57,⁷⁸ reveals identical detail to that contained in GTE statements provided in support of applications which were lodged through the [DH] ImmiAccount with an STG email address listed as sabrinama@stgservice.com.au (the **Sabrinama email address**). This extended to typographical and/or grammatical errors as well as syntax which were common across the GTE statements within the visa applications containing the Sabrinama email address (the **Sabrinama cohort**). The initials of the visa applicants are denoted in the square brackets.

⁷⁷ RID XXXXX712 [LWP] BCC2019/XXXXX95

⁷⁸ In Annexure O

253. Ms [GJJ]'s GTE contained identical phrases as replicated in sections a-f to the phrases contained within the GTE statements from the Sabrinama⁷⁹ visa applications which are denoted with the respective applicant initials where the phrase was also identified.

a. Introduction

My name is [-], born on [-]. My passport number is [-]. I'm writing this letter to state the reason for and the plan of my future study in support of my Australian student visa application [extension]. [LY, LSZ, LSE, LDQ, NCK, QY] - [YSB, JQQ, NYL]

b. Description of study options

...university education [study] ... more systematic and comprehensive [LSE, LY, QY] ... generally takes a longer [study] period [LSE]

c. Preference of XXXX (XXXX)

...most of the teachers ... have proficient teaching skills and are all industry professional being selected under strict criterion. ... In addition, a positive and nurturing learning environment are provided in MACI. [QY, LSZ, NCK]

d. Course materials and trainers

Course material and trainers are adaptable to suit different student needs ... which eases my concerns regarding studying in a foreign country that hard [ly] to get used to. With the help from the school, I believe I can concentrate on my study and achieve academic progress. [QY, LY, LSZ]

e. Self-description

As I attained the sense of achievement from [job/work]... gradually changed [shifted] from earning bread ...to chasing career progress. [QY]

f. Benefit

...English proficiency will be improved... can [will] be a great add-on when I try to develop marketing channel with the international companies who come to China for manufacturing businesses. [QY]

Mr [ZDY] from [VK] cohort and Sabrinama cohort

254. The GTE statement provided by Mr [ZDY], the visa applicant in line entry 56⁸⁰ from the [VK] cohort, was also reviewed and the below similarities were identified with the Sabrinama cohort. The extracts from the respective GTE statements are replicated below with each applicant referenced by way of their initials.

⁷⁹ Case list available in Annexure B

⁸⁰ In Annexure O

a. Vocational training

... unique education system in Australia that distinct from that in China, among which the vocational education is an independent and important part, which can ensure the teaching quality of vocational training and provide students with practical and qualified knowledge [ZDY]

... unique education system in Australia. I found that the vocational training is one of the important parts in the system and the teaching activities of which are under the governance of relevant government departments, which can ensure the teaching quality of vocational training and provide students with practical and qualified knowledge [QY]

...unique education system in Australia, in which the vocational training plays an important role [NCK]

b. Education provider

I learned that most of the teachers there have proficient teaching skills and are all industry professional being selected under strict criterion. In addition, a positive and nurturing learning environment are provided in XXXX. [ZDY]

I learned that most of the teachers there have proficient teaching skills and are all industry professional being selected under strict criterion. In addition, a positive and nurturing learning environment are provided in XXXX. [QY, LSZ, NCK]

c. Course materials

Course materials and trainers are adaptable to suit different student needs and student supports are provided regarding both academic and daily life, which eases my concerns regarding studying in a foreign country that I can hardly get used to. With the help from the school, I believe I can concentrate on my study and achieve academic progress. [ZDY]

Course materials and trainers are adaptable to suit different student needs and student supports are provided regarding both academic and daily life, which eases my concerns regarding studying in a foreign country that I can hardly get used to. With the help from the school, I believe I can concentrate on my study and achieve academic progress. [QY, LY, LSZ]

Ms [ZY] and Ms [HD] from [VK] cohort and Crystal Lu 2018 cohort

255. The GTE statements provided by Ms [ZY] the visa applicant in line entry 34⁸¹ and Ms [HD] (line entry 10) from the [VK] cohort were reviewed and the below similarities were identified with phrases which also formed part of the GTE statements submitted with the Crystal Lu 2018 cohort.

⁸¹ In Annexure O

a. Management levels in home country

Many of employees in the management level of the company are coming from traditional Chinese education background and the education in China is more focus on the theoretical and political ethic education than practical training. The managers of the company have encountered many difficulties to learn and absorb practical experience from years of work and they believe this is kind of outdated form the present business world. [ZY]

Many of employees in the [senior] management level ... are coming from traditional [home country] education background and the education in [home country] is more focus on the theoretical and political ethic education than practical training. The managers of our company have encountered many difficulties to learn and absorb practical experience from years of work and they believe this is kind of outdated form the present business world. [CYC, CY, KWJ, XLP, ZW]

b. TAFE preference

Firstly, my education background is hard for me to apply University of Australia; however the entrant requirements of tafe institute is lower than university, and more suitable for my current level. Secondly, tafe institute also provides Business Management course. Thirdly, unlike the other young person who do not have working experience, thus they need highly educated, however, I have many years ' works experience, and for me the purposes of going abroad to study is to gain the advanced business and management skills to ensure to get higher level job. I should pay more attention on true abilities and practical skills. Tafe institute is more focus on cultivation of student's practical abilities and will save time for me. [ZY and HD]

Firstly, my [English] skill are not good. It's hard for me to apply University of Australia, however the entrant requirements of tafe institute is lower than university, and more suitable for my current level. Secondly, ta fe institute also provides business [related] course. Thirdly, I should pay more attention on true abilities and practical skills... Tafe institute is more focus on cultivation of student's practical abilities and will save time for me. [HTK, CYC, KWJ, LS, LPY, XLP, CY (minor variation)]

c. Benefit of studying in Australia

At the beginning, I am afraid that if I study abroad, my general manager will fire me and find someone to replace my position. However, for the future, considering myself improvement, through a period of consideration, I finally got the nerve and made the decision to discuss with my manager. To my surprise, my manager supported me much after heard of my study plan. [ZY] and [HD] – both from [VK] cohort.

AND

I believe the Australian studies can not only benefit us with modern and advanced business management knowledge but also a more opened mind in daily business operating and enhance the understanding of the clients who are in overseas...Most importantly, the business world is changing from time to time, so we must keep abreast with the world. [ZY]

I believe the Australian studies can not only benefit us with modern and advanced business management knowledge but also a more opened mind in daily business operating and enhance the understanding ...clients in overseas... Most importantly, the business world is changing from time to time, so we must keep abreast with the world ... [CY, CYC, KWJ, LPY and XLP]

AND

I planned to go abroad for further studies. I told this idea to my other friends; they thought that I was acting purely on impulse, with an impractical idea. They thought that just have a stable job with solid wages is the best life, I know that many people have learned to accept a waiver to pursue the dream of life, only the status quo in today's society. Thus they cannot understand my pursuits and effort I always hope to have chance to be promoted to higher position. I am not afraid to Challenge myself, and always depend on my own strength. Through the communication with my family, I am very thanks they were very supporting me. [ZY and HD]

I planned to take further studies in Australia. I told this idea to my other friends; they thought that I was acting purely on impulse, with an impractical idea. They thought that just have a stable job with solid wages is the best life, I know that many people have learned to accept a waiver to pursue the dream of life, only the status quo in today's society. Thus they cannot understand my pursuits and effort I always hope to have chance to find my idea job and to be promoted to higher position. I am not afraid to challenge myself, and always depend on my own strength. Through the communication with my husband, I am very thanks he was very supporting me. [LPY, XLP, ZW]

Mr [CHZ], Mr [SB], Mr [ZYW], Mr [MLH] and Ms [ZY] from the [VK] cohort⁸²

256.A comparison was then undertaken between the GTE statements submitted by five visa applicants within the [VK] cohort [CHZ, SB, ZYW, MLH and ZY] with identical or near identical sentences and paragraphs shared between the applicants replicated below:

a. Work recommencement

...and the university study will take at least 4 years based on the education system in my country, which doesn't suit my plan of returning to work as soon as possible [CHZ]

...and the university will take at least 4 years in my country, which doesn't suit my plan of returning to work soon [SB]

... the undergraduate study will take more than 4 years, which doesn't suit my plan of returning to work soon [ZYW]

⁸² Respective line entries in Annexure O are Mr [CHZ] 36; Mr [SB] 33; Mr [ZYW] 55; Mr [MLH] 39 and Ms [ZY] 34.

b. Vocational training

Then I was given an alternative choice which is the vocational training that takes less time with flexible schedules [CHZ]

...then I was advised an alternative choice, which was the vocational training that has less strict prerequisite and costs less time [SB]

AND

The vocational education in Australia aims to not only deliver the comprehensive knowledge in the textbook, but also real case analysis conducted and simulated during the workshop. Students are guided to track a realistic problem which a company is suffering from and how the company is dealing with it. [MLH]

...the vocational study in Australia equip him not only the comprehensive knowledge in the textbook, but also more about real case analysis conducted and simulated during the workshop where students are guided to track a realistic problem a company is suffering from and how the company is dealing with it. [CHZ]

AND

The curriculum of the Diploma of Business mainly concentrates on the management skills and strategies covering units like managing effective workplace relationships, managing team effectiveness, managing risk, managing budgets, managing people performance, managing meeting and managing workforce planning, and all of these will qualify me to do the daily management. [CHZ]

...the curriculum of the Diploma of Business mainly concentrates on the management skills and strategies covering units like managing effective workplace relationships, managing team effectiveness, managing risk, managing budgets, managing people performance, managing meeting and managing workforce planning, and all of these will qualify me to do the daily management. [SB]

AND

Diploma of Business mainly concentrates on management skills... All of these will qualify me to do the daily management. [MLH]

Diploma of Business mainly concentrates on the management skills and strategies... all of these will qualify me to do the daily management [CHZ]

c. Vocational teaching in home country

...the teacher never explained things to student, but simply read teaching notes [CHZ]

...the teacher simply read the teaching notes to students without explanations [SB]

AND

...even few students show up in the class, which raised a serious concern about the teaching quality [CHZ]

...even few students show up in the class, which raises a serious doubt that the vocational teaching [SB]

d. Benefit in undertaking course in Dalton College

...Dalton College stands out for specializing in Business programs.... the teachers in Dalton College are experts who work closely within their teaching field, who will give not only the academic knowledge, but also the real insight into the industry [CHZ].

...Dalton College specializes in training of Business Management with Business teachers used to be successful businessmen so they can provide real business experience and give me the insight into the industry [SB].

AND

All the courses offered in XXX college is reviewed by industry experts and academics, to make sure they remain up-to-date. All the teachers in XXX College are experts who work closely within their teaching field, who will give not only the academic knowledge, but also the real insight into the industry. [MLH]

...all the courses offered in XXX college is reviewed by industry experts and academics, to make sure they remain up-to-date. ... all the teachers in XXX College are experts who work closely within their teaching field, who will give not only the academic knowledge, but also the real insight into the industry. [CHZ]

AND

The Advanced Diploma of Business provide students with substantial business experience and further develop their skills across a wide range of business functions...According to the course description, it will focus on business concepts, business plan and business practice, which means this school will emphasize on the balance of theoretical depth and strategic practice, which will get me ready for promotion after graduation. [MLH]

The Advanced Diploma of Business provide students with substantial business experience and further develop their skills across a wide range of business functions. According to the course description, it will focus on business concepts, business plan and business practice, which means this school will emphasize on the balance of theoretical depth and strategic practice, which will get me ready for work after graduation. Also, it has management courses inside its curriculum including operation management, human resource management and enterprise strategic management, finance management, which will equip me expertise in every business function, preparing me to balance and facilitate each department as a whole. After finishing the placement test of English, I was also advised to supply 10 months of English before the Business courses. [CHZ]

The Advanced Diploma of Business provide students with substantial business experience and further develop their skills across a wide range of business functions. According to the course description, it will focus on business concepts, business plan and business practice, which means this school will emphasize on the balance of theoretical depth and strategic practice, which will get me ready for work after graduation. Also, it has management courses inside its curriculum including operation management, human resource management and enterprise strategic management, finance management, which will equip me expertise in every business function, preparing me to balance and facilitate each department as a whole. After finishing the placement test of English, I was also advised to supply 10 months of English before the Business courses. [SB]

- 257.Ms [ZY] who was to study at XXX Institute, as opposed to XXX College, reflected the same detail as [CHZ] and [SB] albeit in relation to an Advanced Diploma of Leadership and Management:

The Advanced Diploma of [Leadership and Management] provide students with substantial business experience and further develop their skills across a wide range of business functions. According to the course description, it will focus on business concepts, business plan and business practice, which means this school will emphasize on the balance of theoretical depth and strategic practice, which will get me ready for work after graduation. Also, it has management courses inside its curriculum including operation management, human resource management and enterprise strategic management, finance management, which will equip me expertise in every business function, preparing me to balance and facilitate each department as a whole. [ZY]

e. Accommodation arrangements

Speaking of the accommodation arrangement, I will rent a shared house within walking distance to XXX college. The shared house will be more cost-efficient and enable me to make more friends after first arrival in Australia and get familiar with the environment in Australia. [MLH]

Speaking of the accommodation arrangement, I will rent a shared house within walking distance to [my school]. The shared house will be more cost-efficient and enable me to make more friends after first arrival in Australia and get familiar with the environment in Australia. [CHZ]

Speaking of the accommodation arrangement, I will rent a shared house within walking distance to school. [SB]

Speaking of the living arrangement [ZYW]

f. Aspiration

I will attend the school as scheduled and try my best to make academic progress [CHZ]

I will attend the school as scheduled, try my best to make academic progress...[SB]

...try my best to make academic progress [ZYW]

g. Work condition

I know I will have work limit... but considering that I need to fully concentrate on study and I can support myself financially, I don't think I will find a part-time job... [CHZ]

I know I will have work limit, but considering that I will have to fully concentrate on study and I can support myself, I don't think I will find a part-time job. [SB]

258. In addition to the above, the word 'comparation' was used within the GTE statements for visa applicant [SB] – who was to attend XXX College and applicant [ZYW] who had nominated to attend XXXX. Both GTE statements used the word in the context of discussing the comparisons they had undertaken between Business courses/programs.

259. A comparison of the GTE statement provided by Mr [CHZ] from the [VK] cohort to the Sabrinama cohort likewise revealed striking similarities:

I finally decided on Australia because the vocational training in Australia is the major component within Australian education system, under serious supervision of government, so that the quality is always guaranteed and constantly enhanced [CHZ]

...in Australia I found that the vocational training is one of the important parts in the system and the teaching activities of which are under the governance of relevant government departments, which can ensure the teaching quality [QY]

Mr [LWP]⁸³ represented by the Agent and Mr [SJH] and Mr [ZZ] in [VK] cohort⁸⁴

260. As mentioned earlier in this notice, two GTE statements from the [VK] cohort were also compared to a GTE statement from a visa application which forms part of the Agent's caseload. That is, she had represented the student visa applicant in respect of the application submitted to the Department. This comparison also revealed identical or near identical sentences and paragraphs which are replicated below. The visa applicant which declared the Agent's representation is identified as Mr [LWP] while the two applicants forming part of the [VK] cohort are identified as Mr [SJH] and Mr [ZZ] and only their statements are italicised in order to distinguish them from the client where the Agent was the declared agent on file. This was not an exhaustive exercise and there may be further commonalities between statements which form part of the Agent's current and former caseload.

a. Benefit of studying in Australia

Therefore, in order to obtain the knowledge from the advanced education system as well as an improvement of my English skills, I would like to study in the developed western countries. [LWP]

In order to obtain the knowledge from the advanced education system as well as an improvement of my English skills, I would like to study in the developed western countries. [SJH]

⁸³ RID XXXXX712 [LWP] BCC2019/XXXXX95.

⁸⁴ Respective line entries in Annexure O are Mr [SJH] 66; Mr [ZZ] 38.

In order to obtain the knowledge from the advanced education system as well as an improvement of my English skills, I would like to study in the developed western countries. [ZZ]

AND

Australia is relatively safe to study where is a developed country with cutting-edge economy and education, providing me a better platform in studying business. In addition, Australia can also provide predominant education and authentic English. [LWP]

... Australia is relatively safe to study where is a developed country with the cutting-edge economy and education, providing me a better platform in studying business. In addition, Australia can also provide predominant education and authentic English. [ZZ]

Australia is a developed country with cutting-edge economy, providing me a safety place for study, authentic English as well as a better platform in studying business. [SJH]

AND

Australian education is more focusing on balance of theory and practice and teachers in Australia normally have rich experience of giving lessons to the students with different education background. The Australian education system can develop my critical thinking, analysis and research skills. I deeply interested in it and believed that Australia is the best choice for me. [LWP]

Australian education is more focusing on balance of theory and practice and teachers in Australia normally have rich experience of giving lessons to the students with different education background. The Australian education system can develop my critical thinking, analysis and research skills and at the same time provide innovative ideas. I deeply interested in it and believed that Australia is the best choice for me. . [SJH]

Australian education is more focusing on the balance of theory and practice and teachers in Australia normally have rich experience of giving lessons to the students with the different educational background. The Australian education system can develop my critical thinking, analysis and research skills. I deeply interested in it and believed that Australia is the best choice for me. [ZZ]

AND

From my research, I found that Australia has a world reputation in education, along with decent academic atmosphere and friendly social environment. [LWP]

From my research...I found that Australia has a world reputation in education... advanced education system, decent academic atmosphere and friendly social environment. [ZZ]

b. Education provider

In addition, there would be real cases simulated in classes of [XXX] International College with guidance from the company real managers, which is a precious opportunity for me to gain the practical comprehensive business skills. [LWP]

...real cases simulated in classes of [XXX] with guidance from the experienced teachers who were previously real managers in their industry, which is a precious opportunity for me to gain the practical comprehensive business skills. [SJH]

...in addition, there would be real cases simulated in classes of [XXX] with guidance from the company real managers, which is a precious opportunity for me to gain the practical comprehensive business skills. [ZZ]

AND

...pictures of the teaching environment and short videos of the class, I felt satisfied with the higher teaching quality and excellent study atmosphere. [LWP]

...pictures of the teaching environment and short videos of the class, I felt satisfied with the higher teaching quality and excellent study atmosphere. [ZZ]

AND

[XXX XXX College] is well-known for the English studies and business courses, it can provide me with the specialised knowledge as well as some innovative ideas of business. That's why I believe XXX XXX College is higher qualified and very suitable for me. [LWP]

[XXX] is well-known for business courses, it can provide the students with the specialised knowledge as well as some innovative ideas of business operation. That's why I believe XXX is higher qualified and very suitable for me. [SJH]

...is well-known for business courses, it can provide the students with the specialised knowledge as well as some innovative ideas of business operation. That's why I believe XXX is higher qualified and very suitable for me. [ZZ]

AND

...asked one of my friend who is currently studying in XXX. Fortunately, I received a lot of positive feedbacks. [SJH]

I asked one of my friends who is currently studying in XXX and I received a lot of positive feedbacks. [ZZ]

c. Australia

Although I never came to Australia before, I heard of Australia from my friends, classmates and some TV shows introducing Australia. And I have done a particularly large number of investigation and research. [LWP]

Although I never come to Australia before, I heard of Australia from my friends, classmates and some TV shows introducing Australia. And I have done a particularly large number of investigation and research. [SJH]

d. Visa

I do alert about the main visa conditions such as completing the course on time, achieving satisfactory academic progress, paying tuition fee on time, notifying the education provider of any change in my address, maintaining health cover, 40 working hours permit while the course is in session. [LWP]

I do alert about the main visa conditions such as completing the course on time, achieving satisfactory academic progress, paying tuition fee on time, notifying the education provider of any change in my address, maintaining health cover, 40 working hours permit while the course is in session. [SJH]

261. The above comparisons in relation to sentences and paragraphs contained within the GTE statements, where an STG address is provided (Sabrinama and Crystal Lu) and those forming part of the [VK] cohort, are so closely aligned that it would appear highly unlikely, if not impossible, that they were prepared and drafted independently by the individual student visa applicants. The same can be said for the comparison between the visa applicant where the Agent was declared and the two applicants where no agent was declared and which were submitted through the [VK] ImmiAccount. This is the same ImmiAccount which contained the Agent's details, through which 81 applications were submitted with no registered migration agent declared, and the ImmiAccount that the Agent maintains she has no knowledge of.
262. In the Agent's response to the Notice, she argued that the structure and aspects of the GTE statement are publically available on the Department's website and prescribed by Direction 69 under section 499 of the Act. Additionally, that there are *'many websites helping students who "DIY" their Australian student visa write GTE. Similar information as well as specific ideas of the GTE statement are publically available on these websites.'* The Agent submitted attachment G to support her assertion. The eight page document comprises a compilation of excerpts from websites with guidance on how a GTE statement can be drafted to meet the requirements. The information discusses what will be taken into account by the delegates, what should form part of the statement and provides sample paragraphs and GTE examples from various websites, including 'myaccessaustralia' and 'Essaysmith'. While the Agent mentioned Direction 69, this primarily serves to guide decision makers on what to consider when assessing the genuine temporary entrant criterion.
263. The Agent contends that students are generally confused on the information they need to provide and how they should organise the information. Therefore, STG has *'template structure of the GTE statement, as well as samples and links to those open source mentioned above, provided to clients as a guide in assist with their GTE writing because most students are from China and they have very similar backgrounds as well as their ideal university.'* According to the Agent, she has also *'informed [her] clients not to replicate the contents of the template. Upon the completing of their GTE statements, [she] has always ensured that students write their own GTE statements reflecting their genuine intention to study in Australia. One of [her] client's statutory declaration can support [her] claim.'*

264. Notwithstanding that the applicants attached to the GTE statements which were reviewed by the Authority were primarily seeking entry into vocational institutions, and not universities, I accept that guidance on structure and relevant content inclusion can be beneficial. However, guidance documents on what should form part of a GTE statement, and what the Department takes into account when considering them, are different to GTE's which contain identical content. The essential part of any GTE statement is that they are, or should be, reflective of the individual circumstances of each applicant. Consequently, while it is reasonable to consider guidance on layout, structure, and relevant content which should form part of a GTE statement, the information and particulars should be applicant specific. If this were the case, it is highly unlikely that complete sentences and paragraphs would be identical across a significant number of applications which have links to STG and more specifically, the Agent.
265. The Agent maintains that she advised her clients not to replicate the contents of the template and that she has always ensured that students write their own GTE statements reflecting their genuine intention. Furthermore, has tried her best *'in screening and examining the eligibility of [her] clients.'* Furthermore, she *'act[s] on behalf of them in accordance with their instructions and in accordance with the law.'* If, as claimed by the Agent, she advised the students not to replicate the GTE content and had examined the applications thereafter, the common aspects of the statements should have been identified during her review process. Conversely, this does not appear to have transpired. The identical content identified in the GTE statements⁸⁵ and the Agent's statement that she can *'guarantee that [her] clients are genuine students and their documents are credible'* are incongruous and reflect adversely on the Agent's honesty. Consequently, the statements she has made to the Authority do not appear to be credible or reliable.
266. Moreover, while the Agent may have been acting on her clients instructions in respect of the GTE statements,⁸⁶ she would not have been acting in accordance with the law, as claimed in her statutory declaration. While the Agent has stated that *'...in the future, [she] will be more careful when examining the clients' documents and will [advise] clients who apply for student visas to tailor their GTE statements to be more personalized'* this process should already have been in place during her years of practicing as an RMA.
267. Furthermore, attachment H containing the statutory declarations from her clients was examined, given the Agent's statement that one of the declarations can support her claim in this regard.⁸⁷ The 27 page document contained seven statutory declarations from clients speaking to the Agent's services. The statutory declaration of only one client, Ms [GGM],⁸⁸ talks of assistance in association with a student visa which was received from the Agent during 2019-20. She described the services she received from the Agent as including course information, tuition, assistance with submitting the visa application, and the GTE template which assisted her in expressing herself based on her 'real situation'. The statement concludes by stating that in her opinion the Agent's service was 'very patient and professional'.

⁸⁵ Replicated in this decision

⁸⁶ Paragraph 40 of the Agent's statutory declaration

⁸⁷ Paragraph 38 of the Agent's statutory declaration

⁸⁸ Annexure P

268. A review of departmental records revealed that a subclass 500 student visa application for this client was submitted on 4 December 2019, through the [DH] ImmiAccount and IP 118, and approved on 28 January 2020. However, despite the immigration services provided by the Agent, as articulated in the client's statutory declaration, no registered migration agent was declared as assisting with the application.⁸⁹
269. Consequently, and in consideration of the matters already discussed within this decision record, I am satisfied that all the GTE statements were prepared and drafted in an orchestrated fashion by a person, with or without support and assistance from others, who had the access and knowledge to draft and cross utilise the information. In light of the connections which were highlighted earlier, including but not limited to, ImmiAccounts, e-mail addresses, credit facilities, IP addresses, visa applications, GTE statements, and the Agent's employment with STG, I am satisfied that such conduct can be attributed to the Agent as the common link between them.
270. More importantly, the detail contained within the statements is replicated across a substantial number of applications, and across different cohorts, where a registered migration agent is declared in some instances and not declared in significantly more. Given the identical detail contained in the GTE statements, submitted in support of the visa applications, they could not present an accurate representation of the applicant's individual circumstances and were thereby misleading. It follows, that I am satisfied that the Agent knowingly submitted applications to the Department which she knew were misleading and inaccurate and thereby facilitated non-genuine visa applications which served to undermine the integrity of the visa program.
271. Furthermore, section 312A of the Act obligates a registered migration agent to notify the Department when they provide immigration assistance to a visa applicant. The recognised involvement of an agent by both a client and the Department ensures that the agent is accountable for their advice and actions. An agent who fails to declare their involvement may be considered to be attempting to avoid accountability, and acting contrary to purpose of the regulatory framework. As highlighted in this decision, a number of instances were identified where the Agent had provided immigration assistance to clients yet failed to declare such in the applications submitted to the Department. Ironically, this included the visa application of a student visa applicant which was meant to support the Agent's contention in respect of her arguments.
272. On the basis of the available evidence, I am satisfied that the Agent has repeatedly attempted to avoid accountability and liability, for a significant number of visa applications submitted to the Department, by deliberately concealing her involvement and failing to declare the immigration assistance provided. In doing so, I am satisfied that the Agent has acted in contravention of the Act and contrary to the purpose of the regulatory framework, in breach of clause 2.1 of the Code. Moreover, the conduct and statements made to the Authority are inconsistent with what is expected of a registered migration agent and has an adverse impact on the reputation and integrity of the migration advice profession. Consequently, I find the Agent in breach of clauses 2.9A and 2.23 of the Code.

⁸⁹ Annexure Q

Breaches of the Code

273. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agent's obligations under clauses 2.1, 2.3, 2.9, 2.9A, 2.23, 3.1 and 3.2 of the Code.

Employment relationship to a person who is not of integrity

274. Section 303(1)(g) of the Act provides that the Authority may take disciplinary action if it becomes satisfied that an individual related by employment to the agent is not a person of integrity. This provision has two aspects – whether an individual is related by employment to an agent, and whether or not that individual is a person of integrity.

275. This requires an assessment of whether the Agent is 'related by employment' to an individual, in this case being Mr Zhao, and whether or not Mr Zhao is a person of integrity.

Related by employment

276. The term "related by employment" is defined in section 278 of the Act.

Section 278 Relation by employment

(1) *For the purposes of this Part, an individual is **related by employment** to another individual if:*

- (a) one individual is an employee of the other; or*
- (b) they are executive officers of the same corporation; or*
- (c) they are members of the same partnership; or*
- (d) one individual is an employee of a corporation and the other is:*
 - (i) an employee of the corporation; or*
 - (ii) an executive officer of the corporation; or*
- (e) one individual is an employee of a partnership and the other is:*
 - (i) an employee of the partnership; or*
 - (ii) a member of the partnership.*

(2) *For the purposes of this Part, an individual is also **related by employment** to another individual in any other [prescribed circumstance](#).*

Expanded meaning of **employee**

(3) *In this section:*

employee *includes a person engaged as a consultant or as an independent contractor.*

277. Regulation 3U in Agents Regulations provides further clarification on relevant factors to be taken into account when considering a finding as to whether a person is '**related by employment**' to another individual.

Regulation 3U Relation by employment

- (1) For subsection 278(2) of the Act, an individual is **related by employment** to another individual if both of them are employed by a third individual.
- (2) For subsection 278(2) of the Act, an individual is **related by employment** to another individual if:
- (a) one of the individuals holds 25% or more of the shares issued by a corporation that provides immigration assistance, or services including immigration assistance; and
 - (b) the other individual is employed by the corporation.
- (3) For subsection 278(2) of the Act, an individual is **related by employment** to another individual if:
- (a) one of the individuals holds a charge (whether fixed or floating) or a mortgage or any other form of security over some or all of the assets of a business or corporation that provides immigration assistance, or services including immigration assistance; and
 - (b) the other individual is employed by the business or corporation.

278. Pursuant to section 278(1)(a) of the Act, an individual is **related by employment** to another individual if one individual is an employee of the other.

279. Evidence before the Authority indicates that the Agent was employed at STG, which is owned and directed by Mr Zhao. The Authority's historical Register of Migration Agents supports this proposition as do the visa applications submitted to the Department. According to the Authority's records the Agent was employed directly by STG from at least December 2017 and remained in their employment until her recent departure pending the birth of her child.

280. According to the ASIC historical company extract for STG, as at 22 November 2021:

- a. Mr Zhao was appointed Director of STG on 20 March 2012, and has held this role since that date.
- b. Mr Zhao holds all the shares in the company from at least 4 July 2019.

281. On the basis of the available evidence it is reasonable to form the view that the Agent is related by employment to Mr Zhao.

Individual not a person of integrity

282. Although 'person of integrity' is not defined in section 303, subsection 290(3) of the Act identifies matters that the Authority must consider relevant to the question whether an individual is not a person of integrity, as outlined below

Section 290 (3)

In considering whether it is satisfied that an individual to whom the applicant is related by employment is not a person of integrity, the Migration Agents Registration Authority must take into account each of the following matters, so far as the Authority considers it relevant to the question whether the individual is not a person of integrity:

- (a) any conviction of the individual of a criminal offence (except a conviction that is spent under Part VIIC of the Crimes Act 1914);
- (b) any criminal proceedings that the individual is the subject of;
- (c) any inquiry or investigation that the individual is or has been the subject of;
- (d) any disciplinary action that is being taken, or has been taken, against the individual;
- (e) any bankruptcy (present or past) of the individual.

283. Accordingly, pursuant to section 290(3)(d) of the Act, the disciplinary action taken in respect of Mr Zhao, must be taken into account by the Authority when considering whether it is satisfied that the Agent is related by employment to an individual who is not a person of integrity.

284. On 30 June 2021, the Authority made a decision to cancel the registration of Mr Zhao, which included a finding that he was not a person of integrity and not a fit and proper person to give immigration assistance. It follows that the Authority was satisfied that Mr Zhao is not a person of integrity.

Finding

285. In light of the discussion above, I consider the Agent to be related by employment to Mr Zhao over an extended period and that Mr Zhao was found not be a person of integrity.

286. The Agent has argued that she was not aware of the investigation into Mr Zhao's conduct or the cancellation of his registration before the 4 July 2021, when she received the anonymous email. However, the issue is not whether she was aware of the investigation, to which she would not have been privy, but her knowledge on the conduct and activities which were applied by Mr Zhao and STG employees more broadly. Furthermore, given that disciplinary decisions are publically available, reviewing the Authority's website might assist with this in the future.

287. Throughout her response, the Agent contends that she spoke to Mr Zhao about the termination of her employment on 5 July 2021 and that the only reason she did not leave STG as soon as the issues came to light was on account of her responsibility towards her clients and the handing over of her work. It is unclear, however, who the Agent would be handing cases over to, as according to Mr Zhao's correspondence to her on 18 August 2021, she was the last registered agent attached to the company and he would not be hiring any more RMAs. Consequently, it is difficult to see how transferring the cases to STG would be in her clients' interest even though her correspondence to her clients did include the STG contact details in the event that they sought to have another RMA appointed to their case.

288. According to the Agent, she had intended to terminate her employment with STG in October 2021, even before receiving the Notice from the Authority, along with a plan to take a career gap for the delivery and care of her newborn. However, she had put forward her plan and now terminated her employment and removed her details from STG, as highlighted by the correspondence from Claire.⁹⁰ The Agent also submitted a termination letter and email exchange with Mr Zhao (attachment F1). The Agent contends that since receiving the Notice, she has contacted her clients⁹¹ resulting in some clients withdrawing her appointment while others have retained her services. The 40 pages forming part of attachment F3, was submitted to evidence the Agent's effort in this regard. As she was in the process of communicating with her clients and handing over her work when she provided her response on 10 September, the Agent sent through an updated client list to the Authority on 17 September 2021.⁹² According to the list, only eleven clients retained her services.

⁹⁰ Attachment F2 indicates the Agent's photograph and personal details were removed from the STG website

⁹¹ Attachment F3

⁹² Attachment F3.1 of the section 309 response package

289. In considering the Agent's argument, I note that there is no evidence of the Agent's plan to cease her employment following the cancellation of the registration of Mr Zhao. While her email of 18 August 2021 mentions that this conversation transpired on 5 July 2021, the email was sent Mr Zhao two days after the Agent herself received a Notice issued pursuant to section 309 of the Act, advising her of the Authority's consideration in taking disciplinary action against her.
290. Prior to this time, the Agent may not have contemplated that the Authority was undertaking an investigation into her own conduct. The changes that transpired between the time Mr Zhao's registration was cancelled (30 June 2021) and her receipt of the section 309 Notice on 16 August 2021, such as transferring the existing ImmiAccounts into her name, is more consistent with assisting to progress changes enacted to facilitate the ongoing business operations of STG, in light of her registration status. The Agent herself indicated that she requested the creation of an account for 'stgshengtang' at the request of STG. This does not appear to be the action of a person with a grievance who was intending to depart the company, but a loyal employee seeking out other avenues for the company to continue operating, during the period of her maternity leave.
291. Moreover, the email exchange between the Agent and Mr Zhao, in what is described as the 'official resignation letter'⁹³ contains paragraphs which appear more focussed on establishing a separation of the Agent from any involvement in the creation of the [VK] ImmiAccount and speaks to her obligations under the Code as an RMA. The inclusion of these paragraphs, in a letter of resignation, appears to be more for the benefit of the Authority than Mr Zhao. The rest of email speaks positively of her appreciation on the opportunities for growth, development, and guidance for which she is appreciative and offers her help during the transition period. She extends her very best wishes to Mr Zhao and the company going forward. In reviewing the communication exchange, I am of the view that the approach is not consistent with a person who has been so aggrieved by the actions of a person (and company) which implicates her in conduct amounting to fraud for which she may be criminally liable.
292. Rather, I find that it was deliberately drafted with the Authority in mind, with a view to present it with her response, so as to support her argument that she was not party to the creation of the ImmiAccount through which a significant number of applications were submitted, where no RMA was declared, and where fraud was present. The email was drafted after 16 August 2021, with no indication of a strained relationship between the parties and where Mr Zhao likewise denies any knowledge of the [VK] ImmiAccount putting it down to 'miscommunication or negligence'. He goes on to thank the Agent for her hard work over the years and her help during 'this time' and wishing her 'the best future' all of which supports a finding that the relationship was a strong and amicable one.
293. In light of the honesty and credibility concerns surrounding both the Agent and Mr Zhao, where both were party to misrepresentation with respect to visa applications and a failure to disclose their involvement, the portrayal of the Agent's separation from STG and Mr Zhao is likewise questionable. Furthermore, it appears to be undertaken as a direct response to the action taken by the Authority and designed to serve the interests of the parties to argue their connection is severed, even though this may not be a true reflection of the circumstances.

⁹³ Attachment F1

294. Consequently, I have not afforded this argument significant weight and consider the relationship to be a strong and ongoing one, despite efforts to indicate otherwise, including the changes on the Agent's ImmiAccount and Legendcom subscription.⁹⁴ It follows, that on the basis of the Agent's relationship by employment to Mr Zhao, and in light of the disciplinary action taken against Mr Zhao by the Authority, I am of the view that the Agent is related by employment to an individual who is not a person of integrity giving rise to disciplinary action pursuant to section 303(1)(g) of the Act on the basis of this relationship.

Integrity, fitness and propriety

295. 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.

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

'Integrity' means 'soundness of moral principle and character, uprightness and honesty'.⁹⁵

297. 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.

298. 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".⁹⁶

299. 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.

⁹⁴ Attachment F4

⁹⁵ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

⁹⁶ See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750.

300. 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.⁹⁷

301. 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.

302. 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.

303. 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.

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

- that the Agent's past conduct can be an indicator of the likelihood of the improper conduct occurring in the future;
- the Agent's honesty and competency towards clients, the Department and the Authority;
- a consideration of the context in which the agent works, i.e. the provision of immigration assistance to migration clients;
- the Agent's knowledge and competency in immigration law and practice;
- the reputation of the Agent as a result of their conduct and the public perception of that conduct; and
- the perception of the conduct by the Agent's "professional colleagues of good repute and competency".⁹⁸

305. In her response to the Authority, that Agent argued that she believes *'that [she is] a person of integrity and [is] a fit and proper person to give immigration assistance in accordance with s303 (1) (f) of the Migration Act 1958 (Cth).'*' In light of the available information, the Authority does not share this view. Moreover, the statement highlights no real understanding of the Act on part of the Agent. Section 303 (1)(f) of the Act is the power of the Authority to take disciplinary action if it becomes satisfied that a registered migration agent is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance. It does not provide that a person is a person of integrity and a fit and proper person *'to give immigration assistance in accordance with s303 (1)(f).'*

⁹⁷ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

⁹⁸ *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

306. Moreover, the Agent maintains she has tried her best to 'comply with the law'⁹⁹ and respect the Australian visa programs and has acted in 'the best interest'¹⁰⁰ of her clients in providing immigration assistance in accordance with the Code. Further, she contends that she has '*declared [her] representation as [her] clients' registered migration agent... has kept a good reputation among her clients and [has] no previous complaints and breaches... evidenced from the Statutory Declarations provided by [her] clients.*'¹⁰¹ She should have '*been more careful and taken all possible steps to supervise the use of [her] personal information as well as [her] MARN.*'¹⁰²

307. Contrary to the Agent's claim that she has declared her representation in cases where she has provided immigration assistance, the evidence before the Authority, indicates otherwise. Similarly, acting in your client's 'best interest' does not mean that the Agent had acted in their 'legitimate interest' or in compliance with the law. Similarly, statutory declarations from the Agent's clients, professing to her competency and professionalism, does not evidence that she is a fit and proper person to provide immigration assistance, as the clients may not have been aware on the action taken by the Agent. Moreover, while arguing that she should have taken care with her personal information, as well as her MARN, I note that the Agent had the opportunity to do just that when she became aware of the cancellation of Mr Zhao's registration. Conversely, however, not only did she take no steps when she was alleged to have been informed on the use of her details in respect of the [DH] ImmiAccount, but she took proactive action by registering another ImmiAccount at the request of STG.

308. The statutory scheme for the registration of migration agents and the regulation of their conduct is intended to protect persons seeking assistance with immigration matters. As a registered migration, the Agent was entrusted to provide guidance to would be applicants on their eligibility for visas, criteria to be met, and the likelihood of being successful in their application. The Code sets out the duties of a registered migration agent to clients and the Commonwealth and its agencies. I am of the opinion that the Agent's conduct discussed within this decision indicates a clear divergence from the duties and obligations she was entrusted to perform and where such extends to proactively undermining the integrity of the programs the Department expressly seeks to uphold.

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

- i. Not acted in accordance with the law by being party to a fraud which resulted in the provision of false and misleading statements and documentation to the Department in relation to a number of applications;
- ii. Attempted to mislead the Authority during the course of its investigation into her conduct;
- iii. Acted with a blatant disregard for, or a significant degree of indifference to, the law and the visa programs in general;
- iv. Demonstrated serious dishonest and reckless behavior;

⁹⁹ Paragraph 52 of the Agent's statutory declaration

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Page 5 of the Agent's submission (point 8)

- v. Attempted to conceal her involvement in a significant number of visa applications with a view to avoiding culpability and misleading the Department by not declaring her immigration assistance in a significant number of applications;
- vi. Acted without regard for the adverse impact the conduct would have on the reputation of the migration advice profession;
- vii. Sought to jeopardise the integrity of the temporary and permanent visa programs by facilitating non-genuine and fraudulent visa applications;
- viii. Breached the Code with respect to multiple counts of serious conduct where the behaviour involves an element of fraud; and
- ix. Acted in a manner not consistent with the principles of integrity nor of a person who is fit and proper to provide immigration assistance.

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

Consideration of Appropriate Disciplinary Action

311. 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

312. In deciding to discipline the Agent under section 303 of the Act, I have taken into account all of the circumstances of the case, including the severity of the Agent's behaviour and any mitigating or aggravating circumstances which may exist. I have also considered:

- a. whether the behaviour in question could be the subject of rehabilitation;
- b. the level of impact, if any, that a sanction would have on the Agent's livelihood;
- c. the circumstances of the clients, including any vulnerability; and
- d. any wider issues pertaining to consumer protection or the national interest.

313. Having regard to the matters before me, I consider that the Agent's conduct falls within the Major classification for the following reasons:

- i. The conduct involves a blatant disregard for, or a significant degree of indifference, to the law and the visa programs in general;
- ii. The conduct demonstrates serious repeated breaches of the Code of Conduct, and dishonest or reckless behavior;
- iii. There is evidence that the Agent has attempted to conceal her culpability, and mislead the Authority during the investigation;
- iv. Continued registration of the Agent is not in the public interest;
- v. The Agent acted without any concern as to whether her conduct would adversely impact on or undermine the reputation of the migration advice profession, particularly conduct which had the potential to jeopardise the integrity of the temporary and permanent visa programs; and
- vi. I have found that the Agent is not a person of integrity, or a fit and proper person to provide immigration assistance.

Aggravating factors

314. I consider the Agents conduct falls short of the standard expected of a registered migration agent.

315. The Agent has consistently attempted to distance herself from her personal responsibilities as a registered migration agent and the obligations under the Code by diverting and apportioning blame onto others, with a view to avoiding potential disciplinary action.

316. I consider this indicates the Agent remains unwilling to accept direct responsibility for the fraudulent documentation and the associated breaches of her obligations under the Code. As a result, I am satisfied that the Agent would not rectify her conduct and therefore there remains a real likelihood that she will engage in similar conduct in the future.

317. I consider the Agent's failure to take reasonable steps in ensuring that the applications submitted to the Department were not false or misleading to be extremely serious. Such conduct has a direct and profound impact upon the integrity of Australia's visa and migration programs.

Mitigating Factors

318. The Agent has put forward a submission that a decision by the Authority to suspend or cancel her registration would have a detrimental impact upon her livelihood and that of her family. Further, that she needs to be a full time mother and only occasionally provide immigration assistance to relieve the financial burden, as the travel restrictions have impacted family members who were not able to travel to assist in caring for the baby. While noting the above, I do not consider this to be a unique situation as it is one faced by many families both within and outside of Australia.

319. The Agent indicated that given the cessation of her employment and in taking up parental leave, she has decided to slow down and use the opportunity to *'re-plan [her] career and develop [her] professional competence in order to improve [her] profession and make ethical decisions better.'* Specifically, by improving her knowledge of relevant legislation, enrolling in Migration Law units, and giving consideration to focussing on select visa types. Furthermore, she has studied the Practice Guide available from the Authority's website and will improve her conduct accordingly. Given some of the statements made in the Agent's response to the Authority, I concur that improving her knowledge of relevant legislation would be beneficial to the Agent, as would a separation from the migration advice industry.

320. The Agent has indicated that she needs to instigate continuous improvements *'not only about [her] professional knowledge but also when it comes to the integrity of [her] employment environment.'* I acknowledge that the Agent has accepted that changes to her conduct and practices are warranted, given her statement that she will exercise more care in order to maintain the reputation and integrity of the migration advice profession, which was considered against the risk posed of allowing the Agent's registration to continue.

321. In addition, the Agent contends that she has *'not conducted in a manner which has caused [her] clients to suffer any financial loss. Actually [she] has been always helping [her] clients in a positive way without receiving any complaints from [her] clients. [She does] not have any history of prior complaints or disciplinary decisions before the Authority and [she is] a person of good character in general. There are sufficient evidences above indicating that [she is] a person of integrity and fit and proper person to give immigration assistance.'* On this point, it is important to distinguish the Agent's fitness and propriety from her client's satisfaction or any financial loss they may have incurred. Much of the discussion in this decision has focused on the Agent's conduct in respect of undermining the temporary and permanent migration programs, failing to disclose her assistance, and engaging in conduct amounting to fraud and misrepresentation. I would not expect any complaint to arise from person who would seek to benefit from the Agent engaging in the conduct described. Consequently, the Agent's argument that her clients did not incur a financial loss, that she helped them in a positive way, and worked in their best interest, does not necessarily equate to being a fit and proper person or a person of integrity.

322. The Agent maintained that she has *'always declared [her] involvement in the visa applications in which [she] provided immigration assistance. [She has] never facilitated non-genuine visa applications which served to undermine the integrity of the visa programs. [She has] never submitted applications to the Department which [she] knew were misleading and inaccurate. Besides, no act of commission or omission has been undertaken by [her] to provide any misleading or bogus information to the Authority'*. Overall, she sincerely expects the Authority to consider her explanations to decide whether disciplinary action is needed.

323. I have given due consideration to the arguments made by the Agent in her response. I note that the Agent replicated much of the information put forward in the section 309 Notice as a means by which to profess that she either did not partake in the adverse conduct, had no knowledge of the adverse conduct, or asserted that she was a person of integrity and a fit and proper person to provide immigration assistance. Further, many of the considerations put forward by the Agent to improve her services are already existing and ongoing obligations of a registered migration agent in order to continue to be registered. They are not an afterthought at a time when the Agent elects to take a break from the industry or when notified that the Authority is considering cautioning, suspending or cancelling their registration as a migration agent.

324. While I accept that the disciplinary decision will have an impact on the Agent's future livelihood, according to her statutory declaration she was to take parental leave and commence a career gap to care for her child in any case, as family members are unable to travel to Australia to assist with these responsibilities. Consequently, this would have an impact on her earnings, irrespective of any decision taken by the Authority. I also note that the Agent was employed as an accountant prior to her registration, contrary to her statement that providing education and immigration assistance was her only working experience, which provides her with future employment options should this be required. More significantly, I am of the view that any loss in earnings from the provision of immigration assistance is significantly outweighed by the public interest given the seriousness of the Agent's conduct in relation to the applications and the information submitted to the Department. I consider that the serious nature of the conduct reflects adversely on the Agent's integrity and on the Agent's fitness to remain in the migration advice industry.

Consumer Protection

325. 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.

326. 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 not only to consumers but to the integrity of the Department's visa programs that are made available to visa product consumers. I am satisfied that if the Agent were to continue to practice as a 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 serious conduct the subject of this decision, in the interests of consumer protection, and in maintaining confidence on the integrity of the Australian migration program.

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

DECISION

328. I have turned my mind to the appropriate sanction action to impose on the Agent, and whether a caution or suspension with conditions imposed on the Agent would maintain the interests of consumer protection and the migration program in general.

329. However, the severe nature of the findings made, relating to the Agent's facilitation of extensive fraudulent conduct and its impact upon the integrity of Australia's Skilled Migration Program, reflect poorly on the Agent's integrity, judgement, knowledge and diligence. In light of the severity and extent of her conduct, which occurred over a period of three years and involved multiple complicit parties, I consider that the Agent requires a significant period of separation from the migration advice industry. I am therefore of the view that a decision to caution or suspend the Agent would not adequately address the seriousness of the misconduct made out in this decision.

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

331. 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), (g) 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
- is related by employment to a person who is not a person of integrity; and
- the Agent has not complied with clauses of the Code.

332. In accordance with section 292 of the Act, an agent who has had their registration cancelled must not be registered within 5 years of the cancellation.

333. Accordingly, this cancellation will be in effect for a period of 5 years from the date of this decision.

Professional Standards Officer
Professional Standards and Integrity Section
Office of the Migration Agents Registration Authority
Department of Home Affairs
Date of Decision: 22 November 2021