



DECISION RECORD

AGENT Teng ZHAO
COMPLAINT NUMBER/S CMP-34831, CMP-50880 & CMP- 55212
DECISION **CANCELLATION**
DATE OF DECISION **30 June 2021**

Terms used for reference

1. The following abbreviations are used in this decision:

<i>ABN</i>	Australian Business Number
<i>AAT</i>	The Administrative Appeals Tribunal
<i>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>	Teng ZHAO
<i>The Authority</i>	The Office of the Migration Agents Registration Authority
<i>The Code</i>	The Migration Agents Code of Conduct prescribed under Regulation 8 and Schedule 2 to the Agents Regulations
<i>The Department</i>	The Department of Home Affairs
<i>The Register</i>	Register of migration agents kept under section 287 of the Act
<i>The Agents Regulations</i>	<i>Migration Agents Regulations 1998</i>
<i>VEVO</i>	Visa Entitlement Verification Online

STATEMENT OF REASONS

Background

2. The Agent was first registered as a migration agent on 23 November 2015 and was allocated MARN 1577086. The Agent's registration had been renewed annually to date. A registration application submitted on 5 November 2020 remains under consideration pending this decision.
3. The Register lists the Agent's business name as STG International Service Group Pty Ltd with the ABN 48 156 372 986.

Prior Disciplinary action

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

Summary of complaints

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

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6. On 16 December 2017, the Authority received a complaint about the Agent's conduct as a migration agent from Ms [YFG].
7. Ms [YFG] alleged that:
 - a. She approached STG International Service Group for a student visa. However, the Agent advised her that applying for a subclass 457 visa and then a subclass 186 (after two years) was the best pathway to permanent residence. The Agent had promised to obtain appropriate employment for her and attached a total service fee of \$80,000.
 - b. While she was initially hesitant to proceed, on account of the expense involved, on 12 September 2014 she signed a contract with the Agent as he had identified a good employment opportunity for her. She paid the Agent \$5000 the same day.
 - c. She had no further contact with the Agent after that point, as the Agent had delegated the work to his employees, Ms [DH] for the subclass 457 visa and Mr [CH] for the subclass 186 visa.
 - d. On 20 May 2015, Ms [YFG] was granted a subclass 457 visa, and Mr [CH] lodged her subclass 186 visa application between 23 and 29 June 2017.
 - e. On 16 November 2017 the employer nomination (for the subclass 186 visa) was refused however, Ms [YFG] was not informed of this until 4 December 2017.
 - f. Mr [CH] advised her it was refused on account of the banking and training records not corresponding, however the real reason was that no evidence of training expenditure was provided. Mr [CH] denied that evidence had not been provided but was not able to show her the bank statement to evidence this.

- . Mr [CH] urged her to apply to the Administrative Appeals Tribunal (**AAT**) promising a likely success rate of 95 per cent and even asserted that he could change the date of the invoice.
 - a. Her employer initially told her the training costs were not paid as they were misled by 'the agent' as he indicated that they only needed to appear on the books regardless of an actual payment. However, the following day the employer changed her story and stated that the money had been paid.
8. The relevant supporting documents provided by Ms [YFG] are detailed in **Attachment A**.

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9. On 15 March 2020 the Authority received a complaint about the Agent's conduct from Mr [QL].

10. Mr [QL] alleged that:

- a. He had signed a contract with STG at the end of September 2016. His consultant was Ms [PWS] who worked for STG in China and later went to work for them in Australia. She now works for another agency.
 - b. He wanted to apply for a subclass 457 visa, but STG 'lobbied' him to apply for a subclass 190 visa. While he did not meet the requirements for a subclass 190 visa, he was told by STG that as long as he received an Expression of Interest (EOI), the visa application would succeed. Following which, STG assisted him to forge his education and work information. He considered himself 'so easy to be cheated'.
 - c. In December 2016 he obtained a successful assessment for the occupation of *Cook* through Victoria University. In August 2017, following the submission of an EOI, he was invited by the Department¹ to apply for a subclass 190 visa and his visa application was lodged in October 2017. The Agent did not act according to the law, as there was no agent declared for his visa application. He requested his visa application be withdrawn 'around October 2019'.
 - d. Aside from him, there are more than 30 applicants (mostly from Northeast China) who applied for subclass 190 visas as cooks, however, none of them are qualified chefs.
 - e. STG also lodged numerous student visa applications for students who did not meet the requirements, using falsified information. If the applications fail (subclass 190 or student visas) they deduct a portion of the fees paid, so the company benefits irrespective of whether the application is successful. However for the applicant, the loss is not only about the money.
11. The relevant supporting documentation provided by Mr [QL] is detailed in **Attachment B**. These include a record of Mr [QL]'s communication with Ms [PWS], through WeChat, who is identified as 'Christina STG'.² Mr [QL] had confirmed that 'Christina' was Ms [PWS].

¹ Department of Home Affairs and its former manifestations.

² The messages are in Mandarin with selected English translations as provided by Mr [QL].

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12. A review of departmental records revealed that multiple STG email addresses were provided within visa applications, for the purpose of receiving correspondence from the Department, where no registered migration agent was declared. Consequently, the Authority instigated an investigation into the issues highlighted and undertook an analysis of visa applications submitted to the Department where there were associated links to STG (CMP-55212).
13. The identified visa applications were cross referenced with visa applications where an STG migration agent was declared to be acting for the visa applicant. This revealed approximately 650 visa applications where an STG email address had been provided for the purpose of communication but where no migration agent, STG or otherwise, was declared.
14. Two of the STG email addresses were considered in further detail:
 - clu@stgservice.com.au (the CLu email address)
 - sabrinama@stgservice.com.au (the Sabrinama email address)
15. The CLu email address was provided with 130 visa applications with no migration agent declared, of which 123 related to student visas. Two batches of student visa applications were scrutinised, as outlined below:
 - 10 applications lodged during January and February 2017 (the **CLu 2017** cases)
 - 10 applications lodged between April and July 2018 (the **CLu 2018** cases)
16. The Sabrinama email address was provided in 27 visa applications with no migration agent declared, of which 22 related to student visas. The student visa applications scrutinised comprised of:
 - 10 applications lodged in July or August 2018 (the **Sabrinama** cases)
17. For each of the three batches, the 10 applications selected were in consecutive order based on the date of lodgement. All 30 visa applications selected were lodged through ImmiAccount [DH] @stgservice.com.au which is linked to the Agent's MARN. In all 30 cases no migration agent or authorised recipient was declared.
18. An examination of the statements addressing the genuine temporary entrant requirement (the **GTE statements**) within each batch examined revealed:
 - Each visa applicant within a batch made one or more comments (including whole paragraphs) that were identical or almost identical to those provided by one or more visa applicants within the batch.
 - GTE statements for several student visa applications where the Agent was declared as the appointed agent had identical or near identical comments to those made in the GTE statements for the CLu 2017 and 2018 cases.
19. A list of the applicants comprising each batch as well as those where the Agent was appointed and declared on the application is provided at **Attachment C**,³ while further documentation which formed part of the investigation is outlined in **Attachment D**.

³ Where the Agent was not declared on the application, the applicant details were anonymised.

20. An English translation⁴ of notices posted by STG on the yeeyi.com website revealed that STG promoted a service to draft GTE statements for the purpose of student visa applications. A GTE statement was proclaimed to be 'necessary and critical' when applying for a student visa.
21. Other STG posts promoted 'convenient' courses with very cheap tuition fees for students who did not want to attend classes. The posts dated back to 2013 through to 2021. The contact details for a post in December 2013 listed a mobile phone number (0413535460) which is the same mobile number declared to the Authority as the primary contact number for the Agent.
22. Later posts contained contact details from an array of employees attached to STG. In a post during March 2017, 'massive job opportunities' and employer sponsored migration were advertised, stating that 'Foreigners are exempt from any conditions and guarantee a direct green card through the employer'.⁵
23. The Authority raised issues of conduct on part of the Agent, in respect of:
 - Providing immigration assistance, without declaring the assistance in contravention of section 312A of the Act, in relation to no less than 30 and possibly extending to hundreds of visa applications.
 - Drafting GTE statements for visa applications, thereby facilitating non-genuine student visa applications (either directly by the Agent or by STG staff under his direction).
 - Engaging in misleading advertising which guaranteed the success of an application.

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

24. On 31 January 2019, the Authority published the complaint from Ms [YFG] to the Agent, advising the Agent that it raised concerns regarding his compliance with clauses 2.1, 2.4, 2.8, 2.19 and 5.1 of the Code.
25. Pursuant to section 308 of the Act, the Authority requested the Agent to provide a response to the notice by 28 February 2019.
26. On 11 February 2019, a representative of [ER & A] contacted the Authority indicating they had been appointed to represent the Agent in relation to the complaint. On 25 February 2019, the Agent's legal representative requested an extension until 14 March 2019, to which the Authority agreed.

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

27. On 14 March 2019, the Authority received the Agent's response to the complaint by way of a submission from the legal representative, inclusive of a statutory declaration from the Agent (signed 14 March 2019). The below claims/submissions were provided.

⁴ Posts in Mandarin were translated utilising 'Google Translate'.

⁵ A copy of the YeeYi posts are provided with this decision at **Attachment E**.

28. **Summary of legal representative's submission** (excluding the summary of the Agent's statutory declaration):

1. In September 2014, the Agent advised Ms [YFG] that she may be able to apply for a subclass 457 visa and that it may later be an option for her to transition to permanent residence via a subclass 186 visa.
2. The Agent is unable to comment on conversations that Ms [YFG] allegedly had with Mr [CH] or her own employer, as related to the content of those conversations or how the information from her employer changed over time.
3. In regard to the delay in notifying Ms [YFG] of the refusal of the nomination, this was her employer's application and not Ms [YFG]'s. As such there was negligible a requirement to advise her of this decision. It appears the notification was sent to Ms [YFG]'s employer who could then have informed Ms [YFG].
4. Ms [YFG]'s employer had 21 days from 16 November 2017 to apply to the AAT to review that decision, that is, until 7 December 2017. Ms [YFG] was informed of the refusal decision before that date. Despite being told that the decision could be reviewed by the AAT, Ms [YFG] chose to withdraw her subclass 186 visa application.
5. The nomination was refused because of the failure to comply with training obligations. It was open to Ms [YFG]'s employer to pursue a review application as there was at all relevant times scope for such failure to be dispensed with via Regulation 5.19(f)(ii) of the *Migration Regulations 1994*.
6. While Ms [YFG] may have been justifiably disappointed by the refusal of the nomination, it is clear that the actions of STG and certainly of the Agent, did not cause her detriment in terms of her ability to pursue this matter through the AAT. As Ms [YFG] was not the applicant she was not in a position to complain about the handling of the nomination.
7. On 11 December 2017, Ms [YFG] emailed STG about the handling of her subclass 186 visa application requesting a response within seven days. Ms [YFG] was informed that a refund of some of the fees she had paid could be negotiated in accordance with the service agreement. However, Ms [YFG] proceeded to make her complaint with the Office of the MARA only five days later despite requesting a response within seven days.
8. The service agreement provides for a part-refund of fees where the client is unsuccessful in a subclass 186 visa application after having obtained a subclass 457 visa. In accordance with these terms, Ms [YFG] would be entitled to a refund of "Payment G" amounting to \$10,000. The Agent remains willing and able to provide Ms [YFG] with this refund.

29. **Summary of the Agent's statutory declaration**

Background

1. His business (STG) commenced trading in March 2012 providing education and migration services. He was registered as an education agent in August 2012 and also provided translation, accounting, tax and investment banking and other professional services.

2. He was first registered as a migration agent on 24 November 2015. Prior to this, all migration services provided by STG were undertaken by registered migration agents at [XX] Migration in [XX], Victoria.

Advice and assistance for Ms [YFG]

3. Ms [YFG] first approached STG in July 2014. At the time she was enrolled in a Bachelor of Interior Architecture course at Monash University and wanted to change courses. As education agents, STG assisted her to change courses to a Diploma of Business at Southern Cross Institute.
4. Around September 2014, he met with Ms [YFG] when she advised him that she wanted permanent residence in Australia. As Mr [YL] (registered migration agent for [XX] Migration) was 'registered to STG' at that time, he believed that this was sufficient for the business to provide migration services. He has since been advised that this was not necessarily the case.
5. Operating under this mistaken belief, he suggested to Ms [YFG] that she may be able to apply for a subclass 457 visa sponsored by an employer and may then be able to transition to the permanent, Employer Nomination Scheme (subclass 186) visa after two years with that employer on a subclass 457 visa. He now understands that providing this advice may have been beyond scope as he was not a registered migration agent at that time.
6. Ms [YFG] was unsure how she would find an employer willing to sponsor her. As he was made aware that [OP] was looking for staff, through Mr [CL] (the Director of [TR] who was co-located with STG), he suggested that STG may be able to arrange a job interview for her.
7. STG did not usually provide job-seeker services, however given they were in a position to potentially assist both Ms [YFG] and [OP], he offered to put her in contact with an [OP] representative. He was aware that Ms [YFG] had relevant qualifications and work experience that may have benefited [OP]. Subsequently, [OP] agreed to employ Ms [YFG] and sponsor her for a subclass 457 visa.
8. He met with Ms [YFG] on 12 September 2014 and discussed the service agreement to be entered into. Ms [YFG] was told that her immigration matters would be handled by a registered migration agent.
9. Mr [YL], of [XX] Migration, was to progress Ms [YFG]'s subclass 457 visa application and it was understood that he would also assist with any subclass 186 visa application that Ms [YFG] may require in the future. Mr [YL] was paid approximately \$10,000 in cash to undertake the work but the Agent was not provided with a receipt.
10. At the relevant time Ms [DH] was employed by STG as an administration manager. She undertook clerical work and passed on advice from Mr [YL] to Ms [YFG], including the required documentation.
11. He believes that Mr [YL] lodged Ms [YFG]'s subclass 457 visa application on 13 January 2015, and that the visa was granted on 22 May 2015. He did not declare himself as acting for Ms [YFG] as he was not registered as a migration agent at that time and as such did not provide immigration assistance to her. This was done by Mr [YL].

12. Around the beginning of June 2017, changes were announced by the Department of Home Affairs in relation to employer sponsored migration. Ms [YFG] contacted STG about this as she was concerned that she would not be able to meet the new English language requirements, and instructed that she wanted to apply for her subclass 186 visa before the changes were made.
13. At that time, Ms [DH] was on maternity leave and Mr [CH] (STG Business Development Manager) was asked to assist Ms [YFG] and Mr [YL] with the preparation of Ms [YFG]'s subclass 186 visa application.
14. He thought it was simpler to give Mr [YL] the subclass 186 visa application as he had handled Ms [YFG]'s subclass 457 visa application. Mr [CH] liaised between Ms [YFG] and Mr [YL] and assisted Ms [YFG] to collate the required documentation and information.
15. His details were not declared in Ms [YFG]'s subclass 186 visa application as this was processed by Mr [YL].
16. He understands that Ms [YFG]'s subclass 186 visa application was lodged on 29 June 2017, and that [OP]'s employer nomination was refused on 16 November 2017.

Subclass 186 nomination

17. He did not personally provide any advice or assistance to [OP] for the nomination application regarding Ms [YFG]'s role.
18. Instructions for the nomination application were provided by Ms [BW] of [OP]. She was advised by Mr [YL] (through Mr [CH]) that they would need to provide evidence that they had met their training obligations for the period that Ms [YFG] had been employed as the holder of her subclass 457 visa, otherwise there would be a negative outcome for the nomination. He understands that Ms [BW] gave instructions for the nomination to proceed irrespective of this warning.
19. The nomination was refused on 16 November 2017 as the training benchmarks were not met. It was refused without any request for information being made.
20. Mr [YL] forwarded the nomination refusal notice to Mr [CH] on 23 November 2017. He [the Agent] discussed Ms [YFG]'s circumstances at length with Mr [CH] and Mr [YL] to formulate a strategy to assist her. From previous experience he was aware that she demanded a high level of service and it was his view that he needed to provide her with concrete advice.
21. Ms [YFG]'s preferred method of communication with Mr [CH] was via WeChat and telephone calls. On 4 December 2017, Mr [CH] sent a text to Ms [YFG] in relation to the refusal of the nomination advising that [OP] could appeal the refusal with the AAT.
22. He has no knowledge of the conversations between Ms [YFG] and Mr [CH], nor of those between Ms [YFG] and [OP].

23. On 11 December 2017, Ms [YFG] complained about the services she had received and provided seven (7) days for a response. She also sent text messages to Mr [CH] about her intention to withdraw her subclass 186 visa application. She was again advised that [OP] could apply for review of the refusal of its nomination with the AAT, and that if she did not wish to proceed, a refund of some of the fees that she had paid could be negotiated in accordance with the terms of the service agreement.
24. Ms [YFG] did not want to negotiate a refund, and five (5) days into the seven (7) day period she had provided for a response, he received a receipt in relation to her complaint to the Office of the MARA.

Fees charged

25. It was clear from his initial interactions with Ms [YFG] when changing her course that she needed a higher level of attention than other clients in similar circumstances. She would often call and text message Mr [CH] upwards of 15 times per day, and would expect a response from him late at night and at other times outside of business hours. While STG was happy to provide Ms [YFG] with the level of service she demanded, it came at a price.
26. The fees charged were mutually agreed upon in advance of work being undertaken. For the money that Ms [YFG] agreed to pay, she received for her own benefit:
- i. A contact with a potential employer;
 - ii. Advice on requirements for a subclass 457 visa and assistance in preparing the application and collating documents;
 - iii. Application for a Standard Business Sponsor for [OP];
 - iv. Assistance in arranging Labour Market Testing for [OP];
 - v. Application for approval of a nominated position at [OP];
 - vi. Application for a subclass 457 visa;
 - vii. Assistance in arranging medical examinations;
 - viii. Assistance in having overseas qualifications recognised;
 - ix. Advice on requirements for a subclass 186 visa and assistance in preparing the application and collating documents;
 - x. Application for approval of her nominated position at [OP] for subclass 186 visa purposes;
 - xi. Application for a subclass 186 visa.
27. Paragraph 4 of the Service Agreement provides for the payment of fees for professional services to be staggered over time. This was to assist Ms [YFG] to pay professional fees at intervals, rather than requiring her to pay the entire agreed amount upfront.
30. The supporting documents provided with the Agent's response are in **Attachment F**.
- Notice under section 309 of the Act ("the section 309 notice")***
31. On 25 September 2020, the Authority sent to the Agent a notice pursuant to section 309(2) of the Act, advising the Agent that it was considering cautioning, or suspending or cancelling the Agent's registration under section 303(1) of the Act.

32. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent:
- had engaged in conduct that breached the Agent's obligations under clauses 2.1, 2.8, 2.9, 2.9A, 2.10, 2.23, 5.1, 5.5, 7.2, 7.4, 8.1, 8.2, 8.3 and 8.5 of the Code; and
 - was not a person of integrity or otherwise not a fit and proper person to provide immigration assistance.
33. 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 23 October 2020. The Agent was also advised that in addition to Ms [YFG]'s complaint (CMP-34831), two additional matters formed part of the section 309 notice (CMP-50880 and CMP-55212).

The Agent's response to the section 309 notice

34. On 22 October 2020, the Authority received the Agent's response by way of a submission prepared by his legal representative, relevantly noting that the Agent would also continue to rely on his statutory declaration of 14 March 2019. The response included translations of email correspondence between representatives of STG and that of [XX] Migration by a NAATI⁶ accredited translator. YeeYi advertisements were also included in the submission with copies to follow that were likewise translated by a NAATI accredited translator.
35. On 9 November 2020, NAATI accredited translations of the YeeYi advertisements were submitted to the Authority.
36. A summary of the submission from the legal representative which, according to the representative, was read and approved by the Agent, is outlined below.

CMP-34831 – Ms [YFG]'s complaint

37. The Agent refers to and continues to rely upon his Statutory Declaration dated 14 March 2019, and refutes the allegations made in the section 309 notice that his explanations in that regard were misleading, deceptive or represented an attempt to avoid accountability.

In relation to paragraph 40 of the section 309 notice

- a. The assertion that it was Ms [YFG]'s decision, rather than the sponsor's [OP], whether or not the business would pursue an application for review at the AAT of the refused ENS (subclass 186) nomination application cannot be sustained. This decision was ultimately for the sponsor to make as the applicant and the legal entity with standing to make an application for review.
- b. Ms [YFG] does not have standing to complain about the Agent on the decision taken by the employer not to apply for review or on her decision to withdraw her subclass 186 visa application.
- c. The nomination refusal notification appears to have been sent directly to an [OP] email address. Irrespective of the proximity of the time to the end of the review period, Ms [YFG] was made aware of the refusal by STG. It was not the Agent's actions or inaction which resulted in a detriment to Ms [YFG] in this regard. She had sufficient time to discuss the review application with her employer, who likewise had sufficient time to consider and ultimately apply for review should they have chosen to do so.

⁶ National Accreditation Authority of Translators and Interpreters

In relation to paragraph 43 of the section 309 notice

- d. The Authority is conflating the Agent personally with the business STG International Service Group, and asserting that his registration as a migration agent is referable to all business conducted and advertising undertaken by STG, both in Australia and in China (with reference to the complaint of Mr [QL] to be discussed below). It is unclear upon what basis the Agent is *personally* responsible and accountable for all such matters.
- e. Furthermore, it is incorrect to indicate that there is 'no dispute' in this regard. The Agent is obviously unable to comment upon what personal thoughts Ms [YFG] did or did not have, and cannot reasonably be expected to speculate in this regard.

In relation to paragraph 44 of the section 309 notice

- f. This finding is not in fact open to the Authority based upon the evidence to hand. Ms [YFG]'s unsubstantiated views in this regard cannot be regarded as decisive, nor indeed is her Service Agreement with STG. There is certainly no evidence provided to date to indicate that the Agent himself positively did anything substantive in relation to Ms [YFG]'s immigration matters, outside of telling her that she could potentially pursue employer-sponsored Australian visas.
- g. We enclose for your reference various emails between STG International Service Group and Mr [YL] and his colleagues at [XX] Migration which specifically relate to the immigration assistance that Mr [YL] was providing to Ms [YFG] and her employer, facilitated administratively by STG employees. Accredited English translations of this correspondence have been sought and will be provided to the Authority.

In relation to paragraph 47 of the section 309 notice

- h. It is unclear upon what basis it is asserted that the Agent personally did not act in Ms [YFG]'s legitimate interests in relation to her immigration matters. Should the Authority intend to pursue this allegation, we would appreciate receiving clarification.

In relation to paragraph 50 of the section 309 notice

- i. Various unsuccessful attempts have been made by STG to reach Ms [YFG] with a view to providing her with the refund of Payment G.
- j. In light of Ms [YFG]'s complaint – any contact by the Agent with Ms [YFG] might be viewed as attempting to unduly influence this matter.

In relation to paragraph 56 of the section 309 notice

- k. The provisions of sub-regulation 2.87(1) apply to a person who is or was an approved work sponsor. It is not an obligation of a migration agent. The Agent was not privy to whatever financial arrangements were or may have been in place between Ms [YFG] and [OP] in terms of the potential for [OP] to reimburse Ms [YFG] for relevant sponsorship related costs. Matters relating to Regulation 2.87 are within the purview of the Department and its dealings with the relevant (and/or former) approved work sponsor.

CMP-50880 – Mr [QL]'s complaint

38. There appears to be little to no evidence linking the substance of Mr [QL]'s complaint to the Agent's actions, inactions and/or conduct and advice. His complaint does not appear to indicate that Mr [QL] had any contact with the Agent, received any advice from or at the behest of the Agent, nor was he in any apparent way given the impression that the Agent was engaged in any way in relation to his immigration matters. Mr [QL]'s complaint discloses absolutely no evidence of any relevance in relation to the Agent and his integrity, fitness and propriety to be registered as a migration agent.
39. The screenshots that purport to be in relation to text message conversations between Mr [QL] and Ms [PWS] are problematic in terms of their evidentiary value on a number of bases:
 - a. The screenshots do not identify who the actual sender and/or recipient of the messages are;
 - b. The screenshots are only partially translated into English, and those parts are only completed by Mr [QL] who, as far as we are aware, has no credentials to provide accurate and reliable English translations;
 - c. The screenshots appear to be fragments of conversations allegedly between Mr [QL] and Ms [PWS], rather than constituting the entire conversation which is perhaps important in terms of contextualising the conversation and advice allegedly given;
 - d. It is possible that the conversations in the screenshots may have been altered and/or redacted by Mr [QL] for various reasons, including those which may be self-serving to Mr [QL] in relation to his allegations regarding fraud in which he appears to admit that he was complicit.
40. The screenshots support our contention that Mr [QL]'s complaint ultimately does not relate to any actions (or inaction), advice, nor services provided by the Agent – there is no reference to the Agent in the text messages, no reference to the Agent's Australian business, nor is there material which allows the inference that the Agent was involved in this matter in any way.
41. In relation to Mr [QL]'s assertion that Ms [PWS] had been employed by STG in Australia, Ms [PWS] commenced employment with STG in Australia in October 2019, however her employment was terminated by the business as of 31 January 2020 due to her poor performance, and various verbal complaints that were received by the business' customers in terms of her lack of communication with them. In this context Ms [PWS] was not employed by STG at any of the relevant times in relation to Mr [QL]'s complaint.
42. Furthermore, there is certainly nothing that suggests that the Agent participated in, encouraged, condoned nor indeed had knowledge of the alleged creation of a fraudulent SkillSelect invitation.
43. While it may be open to the Authority to find that the production of a purportedly fraudulent SkillSelect invitation constitutes an unlawful act, there is absolutely no evidence to suggest that the Agent had any knowledge or involvement in this regard, and certainly the burden of proving such knowledge or involvement where potentially criminal conduct is alleged lies with the Authority.

Relationship between the Agent and STG in China

44. STG International Service Group (in Australia) and STG Central Hope (in China) are two separate entities which are not related in overall operation, management and/or finances. The Agent's involvement in STG Central Hope is that of relatively small investment only, and he has no directorial, managerial or other role in that business. STG Central Hope uses part of the STG company name and logo with the Agent's consent, but the business in China is not owned or operated by him.
45. In or around 2015 The Agent was introduced to the owners of STG in China by mutual friends. Those individuals were at that stage operating an advertising business, and had a large office space that was subsidised by the Chinese Government. It was indicated to the Agent that the office space in its entirety was not required by the existing business operations, and it was suggested that the individuals in China would like to expand their business operations into providing Australian visa and other related services. It was further suggested to the Agent that it may be mutually beneficial if STG International Service Group's existing name and branding could be used in the Chinese market, as consumers are impressed by organisations that are seen to have an international presence. The Agent ultimately agreed that this may also be beneficial to STG in Australia, and agreed to invest in the Chinese business in a limited financial way. It was never intended that the Agent would have any form of ownership interest in the business beyond his investment, nor that he would have any relation to the business in a supervisory, managerial nor consultancy capacity. The arrangement was purely intended to be beneficial in terms of marketing. Indeed the Agent has had very limited contact with STG Central Hope in China.
46. In relation to the Service Agreement between Mr [QL] and STG Central Hope showing STG's Australian address, we note that the Authority does not appear to have had that document translated into English such that the document's overall context and probative value may be ascertained. Indeed the Service Agreement, when translated into English, is between Mr [QL] and [QZSCC] Co. Ltd trading as/referred to as STG Central Hope. Furthermore, account details in relation to an account at China Merchants Bank Qingdao Branch appear on page 3 of the Service Agreement for domestic remittance of fees by Mr [QL].
47. Prior to this matter, the Agent had not experienced any appreciable difficulties with STG Central Hope in China linking itself to STG in Australia in what he believed to be this superficial way. He was aware that STG's logo was used by the business in China, and that template documents were used by the business in China. His view is that references to STG and/or its address and bank account in Australia in STG Central Hope's Service Agreement were likely retained by that business as a way to impress Chinese customers, but he speculates only in this regard.
48. STG in Australia has never received any payment from clients of STG Central Hope in China, and all payments made by Mr [QL], including the refund in relation to the same, was dealt with by STG Central Hope in China. The Agent believes that STG Central Hope may have left STG's bank account details in the Service Agreement as a further means of impressing upon customers that the organisation had an international presence, but he surmises that payment to an Australian bank account would not ever have been an attractive option to Chinese customers in China, given that the Service Agreement (erroneously) indicated that 10% GST would be incurred, and that such payments would be subject to various currency conversion and international transfer fees. Again, the Agent is not able to state categorically why STG Central Hope in China operated in the way that it did, but he speculates in this regard to attempt to assist the Authority to understand the circumstances of this matter.

Mr [QL]'s Complaint Generally

49. Many of the allegations made in Mr [QL]'s complaint in general are unsubstantiated by any of the documentary evidence provided. Mr [QL] has provided no evidence to suggest that he was 'lobbied' to apply for a subclass 190 visa instead of a subclass 457 visa as he alleges, nor that STG Central Hope assisted him to "fake" his education and work information. Notably Mr [QL]'s allegations that there are other applicants that STG has assisted to apply for subclass 190 visas where they are not qualified (noting that it is not a requirement in order to be nominated as a Cook that the individual is qualified in the alternative occupation of Chef in any event), nor "*fake information*" being used to assist "*many students who do not meet the requirements*" are likewise unsubstantiated.
50. Most importantly, Mr [QL]'s complaint does not refer to the Agent personally nor his involvement in any way.
51. Given that the service agreement was stated as being between Mr [QL] and [QZSCC] Co. Ltd trading/known as STG Central Hope, the assertion at paragraph 78 of the section 309 notice that it "*... would have been reasonable for Mr [QL], or anyone else, to believe that his agreement was with STG in Australia*" cannot be sustained. In this regard, it is our submission that it was quite clear to Mr [QL], or anyone else, in relation to which organisation he was entering into agreement for the provision of services, and that was clearly not STG in Australia nor indeed the Agent.
52. In relation to paragraph 78 of the section 309 notice, it is unclear as to how Ms [PWS] purportedly indicated to Mr [QL] that he could meet her "boss" in any way insinuated, led Mr [QL] to infer, or "confirmed for him" in March 2019 that he was in any way engaged with the Agent as his representative or in any capacity.
53. The Authority's indication that in Ms [PWS]'s "own matter with the Department" she indicated that she was the business manager of the STG office in Qingdao, and referred to her bosses (plural) as being in Melbourne. Putting aside issues surrounding the potential breach of Ms [PWS]'s privacy that the provision of this information may constitute, this is not evidence that the Agent had anything whatsoever to do with Mr [QL]'s immigration matters in any capacity.
54. In relation to Mr [QL]'s purportedly non-genuine cooking qualification, we note that paragraph 82 of the section 309 notice indicates that the Authority has not verified this claim. In this regard, irrespective of the Authority's view as to the unlikelihood of Mr [QL] making this admission if it were not true, it is submitted that his unsubstantiated account ought not to be relied upon exclusively. Furthermore, the English translations at paragraph 83 of the section 309 notice of text messages purportedly from Ms [PWS] have been provided by Mr [QL] who, as noted above, has no apparent translation credentials.

The Agent's relationship with Ms [PWS]

55. The Agent had no role in the management and/or supervision of Ms [PWS], nor did Ms [PWS] have any express or implied authority to take any action and/or provide any advice on behalf of nor in conjunction with the Agent nor STG in Australia at all relevant times.
56. With regard to Ms [PWS]'s alleged lodgement of 25 visa applications between January and September 2017 in the Agent's name with her own email address for correspondence, she was not authorised to do so, nor had the Agent in fact provided immigration assistance in relation to such matters.

57. Common law agency principles support the contention that the Agent is not responsible for Ms [PWS]'s alleged actions in this context. The basic idea of agency is that an agent is someone who acts on behalf of, or represents, another person, known as the principal. An agency between two parties is a relationship:

*“involving authority or capacity in one person (the agent) to create or affect legal relations between another person (the principal) and third parties.”*⁷

58. There are several different ways in which the legal relationship of agency can come about:

- Through express or implied agreement between two parties that one will act for the other;
- A principal approving of or ‘ratifying’ an act done on his or her behalf, after the fact;
- Operation of law, such as legislation;
- Where one person leads a second person to consider some third person an authorised agent, and the second person *relies* on this, the first person is ‘estopped’ from denying that that third person is their agent.⁸

59. A relationship of agency is not created simply by two individuals *claiming* that an agency relationship exists (whether in writing or otherwise). It depends on the nature of the underlying relationship.

60. Through the agency relationship, the principal provides an agent with the *authority* to do certain things, however this is never an unlimited authority. For example, no one can authorise their agent to do unlawful acts.⁹ This authority can be actual (such as through a written agreement) or apparent (such as in the case of ‘estoppel’, noted above). In turn, actual authority could come from what is explicit (such as written into an agreement), or implicit (such as is customary in a particular industry¹⁰).

61. The relationship between an agent and their principal is a fiduciary relationship. In the agency relationship, the agent owes a fiduciary duty to the principal, which compels the agent to act only in the best interests of the principal. The fiduciary duty prevents the agent from acting in a manner that:

- conflicts with the interests of the principal; and
- causes the agent to gain an undisclosed, personal benefit by virtue of their position as agent.

62. Outside of the fiduciary duty an agent owes their principal, an agent also has other duties, including but not limited to:

- complying with the terms of the agency agreement;
- acting only within the scope of their authority; and
- acting personally, in that they must not subcontract their duties to another party.

⁷ *Pirie Street Stage 1 P/L v Trotman & Anor and Stewart & Ors* [2015] SADC 123.

⁸ *Rama Corp Ltd v Proved Tin and General Investments Ltd* [1952] 2 QB 147.

⁹ *Collins v Blantern* (1767) 2 Wils 341; [1558-1774] All ER Rep 33; (1767) 95 ER 847.

¹⁰ *Lienard v Dresslar* (1862) 3 F & F 212; 176 ER 95.

63. Even if there were an implicit agency relationship between the Agent and Ms [PWS] – which again, the Agent contends that there was not – then the scope of Ms [PWS]’s agency was exceptionally limited at best and did not authorise her to do any unlawful acts. Therefore any allegedly unlawful acts undertaken by Ms [PWS] as the agent in this context, constitute a breach of the fiduciary duty that she owed to the Agent as the principal, and are beyond the scope of the Agent’s personal accountability in this context.
64. In relation to paragraphs 80 and 86 of the section 309 notice, there is nothing in Mr [QL]’s complaint or the section 309 notice which suggests that Ms [PWS] acted under the Agent’s “direct supervision” such that the Agent could possibly be ultimately responsible for Mr [QL]’s case, nor for the creation and provision to Mr [QL] of a purportedly non-genuine SkillSelect invitation, nor the procurement of non-genuine qualifications. There is certainly no evidentiary basis for the Authority’s assertion in this regard at paragraph 86 of the section 309 notice that the Agent “may even have given [his] approval” for Ms [PWS] to obtain fraudulent documents.
65. It is unclear how the creation of a non-genuine SkillSelect invitation could possibly have had the result of “deceiving Mr [QL] into believing that a visa application was in progress for him, when it was not” as alleged in the section 309 notice. A SkillSelect invitation invites the person to apply for the visa, and is not on any interpretation of it evidence of a visa application being “in progress”.
66. In relation to paragraph 81 of the section 309 notice, it is certainly not open to the Authority to find that the Agent had directly or indirectly failed to lodge Mr [QL]’s subclass 190 visa for him. Putting aside that the Agent was in no way representing Mr [QL] in relation to his Australian immigration matters, if it is the case that no SkillSelect invitation was in fact issued to Mr [QL] as indicated in the section 309 notice, then even if he were engaged as Mr [QL]’s representative the Agent could not possibly have lodged a subclass 190 visa application for the very fact that the issuance of an invitation is a precursor to the ability to lodge a subclass 190 visa application.
67. In relation to paragraph 87 of the section 309 notice, given that the Agent was not involved with STG Central Hope in China in any supervisory or managerial capacity, and given that no one within that Chinese business had any express or implicit authority to act on the Agent’s behalf, the Agent was thus not obliged to exercise effective control of Ms [PWS], to supervise her work, nor ensure that she was of good character.

CM P-55212

Visa Applications

68. As an Education Agent the Agent is of the view that he is able to provide administrative or clerical assistance to Student visa applicants in accordance with section 276(3) of the Act.
69. In relation to this point the role of Education Agents regarding Student visa applications is a difficult one to define. Education Agents are governed/covered in some way by the *Education Services for Overseas Students Act 2000* (“the ESOS Act”), and under the ESOS Act, there is the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* which commenced on 1 October 2018. This is a legislative instrument made under the ESOS Act and sets nationally consistent standards that govern the protection of international students and delivery of courses to those students by providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

70. Standard 4 of the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* makes clear that the onus is on Educational Institutions/Providers to moderate the behaviour of Education Agents with which they have written agreements.
71. Education Agents deal with education providers via a commission-based agreement with the providers, and are effectively the frontline marketing and sales partners of institutions in attracting students to Australia and aligning the right student with the right course. As well as assisting students to choose and enrol in a course, there is a universal expectation from students and providers that Education Agents will aid in lodging the student visa application.
72. There is then tension in this expectation versus section 276 of the Act, and the prohibition on the provision of immigration assistance other than by registered migration agents and/or exempt persons.
73. The role of Education Agents was considered in the *Report of the inquiry into efficacy of current regulation of Australian migration and education agents* which was tabled in Parliament on 21 February 2019 by the Joint Standing Committee on Migration. In this regard, the many conflicting views of various industry stakeholders in relation to what the role of Education Agents actually is or should be was outlined, as well as the confusion regarding the scope of what immigration-related assistance Education Agents can actually provide to their clients.¹¹ It was noted in that document that the Austrade website indicated that:

*“Remember, education agents cannot guarantee a permanent visa or work placement in Australia after you graduate. **Their job is to help with applications**, so if it sounds too good to be true, keep looking. A reputable agent will be honest about the application process.*

If you need migration advice use a migration agent who is registered in Australia. Some Registered Migration Agents are located overseas or have representatives in international markets. If an education agent is based in Australia, it is against the law for them to provide you with migration advice, unless they are also a Registered Migration Agent”. [emphasis added]

74. We note that the Australian Government’s Study in Australia website to date notes:

*“An education agent can give you information about your options for studying and living in Australia, **and help you with your study and visa applications**.”¹² [emphasis added]*

75. While these Government-endorsed sources of information appear to indicate that an Education Agent does or can have a role in a student’s Australian visa application, a Fact Sheet dated November 2019 that appeared on the Department’s website stated:

“Education agents are not exempt and cannot provide immigration assistance in Australia unless they are also registered as a migration agent.”¹³

¹¹ Parliament of Australia – available at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/Migrationagentregulation/Report/session?id=committees%2Freportjnt%2F024186%2F26178 [accessed 20 October 2020]

¹² Australian Government, Study in Australia, Education Agents – available at <https://www.studyinaustralia.gov.au/English/How-to-apply/Education-agents> [accessed 20 October 2020]

¹³ Department of Home Affairs, ‘Giving immigration assistance in Australia’ (November 2019) – available at https://www.migration.tas.gov.au/_data/assets/pdf_file/0011/214103/HA_Factsheet_-_Giving_immigration_assistance_in_Australia_-_Nov_2019.pdf [accessed 20 October 2020]

76. The Department's website then perpetuates this confusion even further, stating that immigration assistance is given when a person (including a registered migration agent) undertakes to "... *help to prepare a visa application*".¹⁴ This could equally describe clerical assistance in accordance with section 276(3) of the Act.
77. The Department of Education, Skills and Employment (DESE) undertakes Education Agent *performance* monitoring by the using key metrics of agent performance, with two parameters being 'Visa Refusal' and 'Visa Cancellation'. The irony in this situation is that the DESE publishes data on student visa refusal rates from education agencies, despite education agents not legally being able to participate in the visa application/cancellation processes.
78. This situation is reportedly further confused by education providers who apparently now expect and require education agents to screen students for compliance with Genuine Temporary Entrant (GTE) requirements. This screening regarding GTE includes background profiling students and determining their future intentions with regards to post-graduate work and migration opportunities.
79. The Agent's views as to the role that he is able to play as an Education Agent in terms of student visa applications, and whether or not this constitutes 'immigration assistance' as defined by section 276 of the Act, can be regarded as well-founded based on the information outlined above and the apparent lack of clarity in relation to this matter. To be clear, the Agent provides this response by way of explanation only, and this explanation is not an attempt, nor should it be regarded as an attempt, to negate any due and/or reasonable accountability on his part as has been alleged in relation to matters that he has previously attempted to explain to the Authority.
80. By the provision of an STG email address in such applications, it was clearly not intended that the Department would not know who was representing the applicants such that it could be said that there was an attempt on behalf of the Agent or his colleagues to avoid accountability contrary to the purpose of the regulatory framework.
81. Finally, with reference to the GTE statements referred in the section 309 notice, it could reasonably be expected that a business such as STG would have precedent/template documents that are tailored to meet individual client circumstances.

YeeYi Advertising

82. The Authority has relied upon English translations of advertisements purportedly from STG that have been completed by 'Google Translate'. It goes without saying that Google Translate should not be relied upon in this context.
83. Google Translate software analyses data and, based on previous translations, tries to deliver accurate results. Clearly however, the software is unable to see the intent behind messages, and so can only provide standard solutions regardless of the source text. Google Translate can at best provide an approximate idea of the meaning of the source text and is not capable of delivering an accurate translation nor one which can be relied upon for present purposes.

¹⁴ Department of Home Affairs, 'Who can help you with your application?' (17 March 2020) – available at <https://immi.homeaffairs.gov.au/help-support/w-ho-can-help-w-ith-your-application/using-a-migration-agent> [accessed 20 October 2020]

84. Certified Translations of several of STG's YeeYi advertisements completed by a NAATI accredited translator have been enclosed. These translations include, for comparative purposes, copies of the translations generated by Google Translate, as well as accredited English translations, with errors in the Google Translate translation which differ between both versions highlighted. The highlighted errors corroborate Google Translate's shortcomings.
85. Based upon the enclosed accredited English translations, STG's advertising appears innocuous and does not mislead or promote non-genuine visa applications as alleged in the section 309 notice. Furthermore, it is our submission that nothing in STG's advertising suggests that anybody at STG, nor the Agent specifically, in any way "*facilitated non-genuine student visa applications*".
86. STG's role as Education Agents means not only that they market and sell appropriate courses in Australia to international students, but also that certain discounted course fees/rates are available such that the business may logically then advertise such discounts or lower costs in its marketing. Furthermore, the Agent did not become registered as a migration agent until November 2015, being solely an Education Agent prior to that time. Any advertising undertaken by STG prior to his registration is not within the purview of the Authority.

Factors Relevant

87. We note in this regard that section 311(b) of the Act indicates that in considering possible disciplinary action under section 303 of the Act, the Authority must act according to substantial justice and the merits of the case. This requires the Authority to take a fair and open-minded approach to complaints made in relation to migration agents, and not to uncritically accept the content of complaints made, in the same way that the Authority applies an investigative approach to migration agent responses.
88. A decision by the Authority to suspend or cancel the Agent's migration agent's registration would have a detrimental impact upon his livelihood and Australian business.
89. The Agent and STG rely, at least in part, upon the income that the Agent's services as a migration agent generate, and a reduction in the income that the Agent generates for STG may have a detrimental impact upon the business' capacity to continue to retain all of its staff in its employ. STG presently employs seven (7) Australian permanent residents (in an overall workforce of thirteen (13)), and has gone to some lengths to retain its staff in light of the severely damaging impacts of the COVID-19 coronavirus pandemic on Australia's migration services industry, particularly with regard to international students.
90. The suspension or cancellation of the Agent's registration as a migration agent will likely damage not only his personal reputation, but of course the reputation of STG and the goodwill associated with the business which again, may negatively impact upon the viability of the business and the security of its employee's positions.

JURISDICTION

91. The Authority performs the functions prescribed under section 316 of the Act.
92. 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

93. 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)).
94. 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)).
95. 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.
96. 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

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

- Departmental records for the persons and businesses discussed throughout this decision.
- The Agent's responses to the section 308 and 309 notices.
- Supporting documentation provided by the Agent in response to the section 308 and section 309 notices.

DECISION AND REASONS

Breaches of the Code

98. 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 given in **Attachment G**.

Standard and burden of proof

99. 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 on part of the Agent, the Agent's legal representative argued that the burden of proving such knowledge and involvement lay with the Authority. 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.

100. I accept that the rule in *Briginshaw* provides 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 standard established in the rule of evidence derived from the *Briginshaw* court proceedings, an administrative decision is not, however, bound by technicalities, legal forms or rules of evidence.¹⁵

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

FINDINGS ON MATERIAL QUESTIONS OF FACT

CMP-34831 – Ms [YFG]

Provision of immigration assistance to Ms [YFG]

102. The meaning of 'client' is set out in the *Migration Agents Regulations 1998* (Cth) (the **Agent Regulations**) as relevant:

'3(1) "client", of a registered migration agent, means a person to whom the agent agrees (whether or not in writing) to provide immigration assistance.'

103. The Agent's legal representative argued that the Authority is conflating the Agent personally with his business, STG, and asserting that his registration as a migration agent is referable to all business conducted and advertising undertaken by STG. They also argued that it is unclear upon what basis the Agent is *personally* responsible and accountable for all such matters.

104. In Australia, immigration assistance can only be provided by those legally permitted to do so, such as registered migration agents. This serves to ensure that the advice and assistance is only provided by persons who have the requisite skills and qualifications to provide it. These standards and requirements provide clients with a level of assurance that their applications are being handled with an appropriate level of expertise and competence. Moreover, registered migration agents are issued with a unique numerical identifier (their MARN) which enables clients to identify and distinguish operators who are lawfully able to provide immigration assistance, from those who are not. Therefore, there is a value attached to the MARN, as it can be relied on to assist clients in making an informed choice as to whom they enter into contract with.

105. A client is defined in regulation 3(1) to the *Agents Regulations* as a person to whom the agent agrees (whether or not in writing) to provide immigration assistance. Further, in the matter of *Kazacos*¹⁶ the agent submitted that because client funds were paid into a company trust account (and not to the agent personally), he did not have to comply with specific clauses of the Code. However, relevantly at [50] the AAT stated that:

Although this is not the case in which to define the relationship between a Migration Agent and an incorporated practice, suffice it to say that the Applicant was the mind and controlling body of Parris & Shah Pty Ltd. [my emphasis]

¹⁵ Refer to section 311 of the Act.

¹⁶ *Kazacos and Migration Agents Registration Authority* [2007] AATA 1034 (31 January 2007)

106. Therefore, it is significant that the Agent is the Director of STG; is registered to provide immigration assistance; and is the person who exerts control over the corporate entity providing the service. Further, he has entered into contract with clients, be it in writing or otherwise, for the provision of immigration services irrespective of the manner in which he then proceeded to deliver them.
107. The Agent's legal representative contended that paragraph 43 of the section 309 notice was incorrect when asserting that there 'was no dispute' that Ms [YFG] thought she was represented by an registered migration agent and that any immigration assistance provided to her, and possibly to [OP], was through STG. It was argued that the Agent could not possibly comment on what Ms [YFG]'s personal thoughts may or may not have been. However, as Ms [YFG] had entered into an agreement with STG for the provision of immigration assistance, it is not clear why this would be in dispute. Any reasonable person, entering into an agreement with STG for the provision of immigration assistance, and where they are advised that the applications would be handled by a registered migration agent (as disclosed by the Agent), would likely have formed the very same view.
108. The Agent contended that Mr [YL] provided immigration assistance to Ms [YFG] in relation to her subclass 457 and subclass 186 visa applications and had provided evidence of the extensive exchange in correspondence between his staff at STG and staff from [XX] Migration, including Mr [YL]. According to the Agent, Mr [YL] also provided immigration assistance to [OP] in relation to the subclass 186 visa nomination. However, according to departmental records no migration agent was declared for any of these applications, even though the Agent was clearly aware of the involvement of Mr [YL]. Furthermore, it was the Agent who engaged Mr [YL]'s services in exchange for a fee, in order to ensure that the service he was contracted to provide was in fact delivered. While a failure to declare immigration assistance is in contravention of the Act,¹⁷ so too is being party to knowingly engaging in conduct that serves to deceive and mislead the Department.
109. Entering into arrangements with third parties which are designed for the purpose of deliberately distancing the Agent from the service, does not abrogate the Agent from his obligations under the law, the Code, or from the obligations he owes to his clients. Such an arrangement is highlighted with an email communication exchange which transpired on 19 June 2017, when Mr [CH] (from STG) sends documentation to Mr [YL] in relation to Ms [YFG]'s subclass 186 visa application and carbon copies the Agent into the email. Mr [YL] acknowledges receipt of the communication and requests that the communication only be sent to him in future. Given that the Agent entered into contract with Ms [YFG], is the owner and director of STG, and who, according to his own account, engaged and paid Mr [YL] for his services, there appears no reasonable basis for not including him in the email exchange, if not to conceal his involvement and knowledge of the activities. At the relevant time, the Agent was already a registered migration agent for over an 18 month period.
110. While the Agent is seeking to distance himself from Ms [YFG]'s matter and his involvement in the immigration assistance provided in order to deflect the responsibility from what transpired, I am satisfied that the Agent played a significant role in enticing Ms [YFG] into the arrangement which likely would not have proceeded had it not been for the Agent.

¹⁷ Section 312A

111. In addition to the above, and the fact that the Agent knew all the relevant dates associated with the application lodgements and the respective outcomes, which he provided in his response to the Authority, I am satisfied that he was privy to the applications and consequently aware that no immigration assistance was disclosed on the applications. Not only would he be aware that such conduct was in breach of the Act, it would be difficult to argue that such conduct would be in the interest of the client he had entered into an agreement with for the provision of immigration services.
112. The purpose and intent of the migration agents' regulatory scheme is to protect consumers of migration assistance as well as the integrity and proper use of the Australian visa system. A failure to comply with the law and the Code, serves to undermine the purpose of the regulatory scheme and demonstrates contempt for its consumer protection and integrity function. As such, and in the absence of evidence to the contrary, I am satisfied that the Agent had acted in breach of clauses 2.1, 2.9, and 2.23 of the Code.

Subclass 457 visa application

113. In her complaint Ms [YFG] stated that between June and September 2014 she approached STG for a student visa, which is when she met the Agent for the first time. According to her account, the Agent discussed migration options extensively and suggested that the best pathway to permanent residence for her was to apply for a subclass 457 visa and then a subclass 186, after a two year period. Ms [YFG] maintains that the Agent promised that he would identify a 'real' job opportunity for her.
114. The Agent concurs that Ms [YFG] approached STG on 16 July 2014, after she read an advertisement on the YeeYi platform and had sought assistance with changing her course of study. While Ms [YFG] stated that the Agent had flagged the migration pathway at the initial meeting, the Agent asserted that she approached him in September 2014 to seek assistance with permanent residency in Australia.
115. According to Ms [YFG], she was initially hesitant in proceeding with the arrangement on account of the \$80,000 fee, which she considered too expensive. However, she agreed to it only after the Agent had secured a good employment opportunity for her and she signed the contract with STG on 12 September 2014. Following the signing, Ms [YFG] claims that she had no further contact with the Agent as the work for her subclass 457 visa was delegated to Ms [DH], an employee with STG.
116. The Agent maintains that Ms [YFG] approached the agency again in September 2014 seeking permanent residence and that he had advised her on the 457 and 186 visa options at that time. The Agent was allegedly of the view that he could provide immigration assistance in light of the fact Mr [YL] was 'registered' to STG at the time and he wrongly assumed this to be a sufficient basis for him to provide migration services.
117. The Agent concurred with Ms [YFG] that he had secured an employment opportunity for her. The Agent indicated while STG did not usually provide job-seeker services, he was aware that [OP] were in search of staff and given Ms [YFG] had the relevant qualifications and work experience, he arranged an interview for her. The parties agree that [OP] agreed to employ and sponsor Ms [YFG] for a subclass 457 visa. According to the Agent, he was made aware of the vacancy through [CL] (Director of [TR] and co-located with STG). It is not clear whether this is the same [CL] who is a co-director of STG, and the co-signatory on the contract Ms [YFG] entered into with STG on 12 September 2014.

118. In consideration that Ms [YFG] entered into a contract for immigration assistance with STG on 12 September 2014, for a significant sum of \$80,000 to which both parties agree, and only after an employment opportunity was secured through the services of the Agent, I am of the view that the matter of permanent migration was first raised by the Agent in July 2014, as asserted by Ms [YFG]. I do not find it plausible that the parties met in September at Ms [YFG]'s instigation, and that there was sufficient time to discuss migration options, identify employment opportunities and commit to such a significant financial outlay all before entering into contract on 12 September 2014. I therefore accept that the first interaction with STG did occur in July 2014 and that the services Ms [YFG] had sought assistance with were related to her student visa and not permanent residence as claimed.
119. It follows, that I also accept that it was the Agent who raised the pathways to residence with Ms [YFG] in July, in order to entice her to enter into a contractual arrangement which was lucrative for STG, and that she agreed to the arrangement in September only when the employment was identified and secured through the agency. Had Ms [YFG] wanted to seek out migration opportunities, as asserted by the Agent, she would most likely have raised them at the July meeting, and would not have proceeded with one visa option only to decide to change pathways less than two months later.
120. The Agent agreed that he met with Ms [YFG] on 12 September 2014 to discuss and sign the contract and advised her at that time that the immigration matters would be handled by a registered migration agent. While the Agent stated that Ms [YFG]'s subclass 457 visa application was referred to Mr [YL], and that it was understood that he would also assist with her subclass 186 visa application, there is no evidence that this was conveyed to Ms [YFG]. While I do not doubt the claim that the Agent had advised Ms [YFG] her visa applications would be handled by a registered migration agent, there is no evidence before the Authority that Ms [YFG] was advised or made aware at any stage of the visa process that her details would be passed onto a person who was not in the employ of STG. Nor would it have been known or transparent to Ms [YFG] that her visa applications, once submitted to the Department, would not have disclosed that she had received assistance and was represented by a registered migration agent.
121. Moreover, the arrangement between STG and [XX] Migration, and more so between the Agent and Mr [YL], appears unconventional at best. Particularly given the Agent's statement that he paid Mr [YL] \$10,000 in cash for his services, in respect of the immigration assistance provided in association with Ms [YFG]'s matter, albeit was not provided with a receipt for this cash transaction. Most diligent professionals would question the nature of such transactions. From the Agent's own account, Mr [YL] had no interaction or engagement with Ms [YFG] for any application and STG employees served as intermediaries between Mr [YL] to Ms [YFG]. As such, Ms [YFG] would always have been under the impression that her migration matter was handled exclusively by STG and would hold them to account for the services.

Subclass 186 visa application

122. According to the Agent, Ms [YFG] contacted STG following an announcement in June 2017 on changes to the English language requirements impacting employer sponsored migration. The Agent asserts she wanted to apply for a subclass 186 visa before the changes were in effect as she was concerned on her ability to satisfy the new standard.

123. The Agent contends that he thought it simpler to give Mr [YL] the subclass 186 visa application, even though the Agent was now registered to provide immigration assistance, as Mr [YL] had assisted with Ms [YFG]'s subclass 457 visa application. However, given the Agent's statement that it was understood Mr [YL] would assist with the subclass 457 and any subsequent 186 visa application, for which he was paid \$10,000 from the outset in 2014, this may have been more of an impetus to delegate the work to Mr [YL]. As with the first application, an STG employee was an intermediary between Ms [YFG] and Mr [YL], albeit it was Mr [CH] as opposed to Ms [DH].¹⁸ According to the Agent, his details were not declared in the subclass 186 visa application as the immigration assistance was again provided by Mr [YL].
124. I note that the Agent has not considered the validity and appropriateness of the arrangement he had entered into with a third party migration agent which, on the evidence before me, has not been reflected in any written agreement. Moreover, where the visa clients have no knowledge of the third party arrangement nor of the disclosure and dissemination of their personal information to a number of people who have no lawful basis for receiving the information. As a registered migration agent, the Agent would have been aware of the associated responsibilities and obligations to clients with whom he had entered into a contractual agreement for the provision of immigration services.
125. According to the Agent, Mr [YL] advised Ms [BW] of [OP], through an STG intermediary (Mr [CH]) that they would need to provide evidence they had met their training obligations while Ms [YFG] was in their employ, as the holder of a subclass 457 visa, for the nomination to succeed. However, despite this advice Ms [BW] gave instructions to proceed with the nomination. According to departmental records, the nomination was refused on 16 November 2017 on the basis that the training benchmarks were not met. The notification was sent to the sponsor at [OP]@hotmail.com as no representative was disclosed on the application.
126. The Agent stated that Mr [YL] forwarded the refusal notification to Mr [CH] on 23 November 2017. According to the Agent's statutory declaration, following the refusal of the nomination for [OP], he discussed Ms [YFG]'s circumstances at length with Mr [YL] and Mr [CH] to formulate 'some kind of strategy to assist her'. This would indicate that they all had access to the notification, and therefore supports the proposition that immigration assistance was provided but not disclosed to the Department and that all who were party to the discussion were relevantly aware of this fact. I also note that there was no evidence of any involvement of the employer, as the applicant for the nomination, while they were purportedly discussing Ms [YFG]'s circumstances at length from at least 23 Dec 2017. Moreover, Ms [YFG] was only contacted by Mr [CH] on 4 December 2017, when she was sent a text message in relation to the refusal of the nomination. Therefore, persons most significantly impacted by these decisions had no role in the discussion.
127. It is not in contention that Ms [YFG] was sent a text message by Mr [CH] on 4 December 2017, wherein he advised her on the nomination refusal. There is however a dispute about proceeding with an appeal to the AAT. Ms [YFG] claims that Mr [CH] urged her to apply to the AAT promising a 95 percent likelihood of success and that he could change the invoice date to assist with this. The Agent is silent on the matter in respect of the engagement between Ms [YFG] and Mr [CH] as well as her employer. This is despite stating that he had discussed her matter at great length with Mr [CH] and Mr [YL].

¹⁸ Ms [DH] was the STG intermediary for the subclass 457 application.

128. Had they discussed the matter at length to 'formulate some kind of strategy to assist her' it would be reasonable to expect the Agent to be aware of the 'strategy' which his employee was to convey to his client. In all the transactions and interactions in respect of Ms [YFG], STG appears to be the primary control point and conduit through which all the engagements transpire. I reject the notion that the Agent, as the principal of STG and given his statements that he had discussed Ms [YFG]'s matter with Mr [YL] and Mr [CH], was oblivious as to the decisions taken on how best to manage Ms [YFG]'s circumstances.
129. In countering the point made at paragraph forty of the section 309 notice, the Agent's legal representative argued that the sponsor was the legal entity with standing to submit a review of the outcome on the nomination application at the AAT. I note that this is consistent with the position of the Authority. Paragraph forty highlighted that both the Agent and Ms [YFG] appeared to be of the view that it was Ms [YFG]'s prerogative to seek a review on the nomination outcome, as opposed to the sponsor. Further, that if that was the view held by the Agent at the time, then the three day period from the time Ms [YFG] was advised of the adverse outcome by STG to when the review period was to expire, was a very finite timeframe for her to discuss and consider her options.
130. In light of the above discussed, I am satisfied that the Agent had acted in breach of clauses 2.9A, 3.1 and 3.2 of the Code.

Fees paid

131. Ms [YFG]'s contract was to cover a subclass 457 and subclass 186 visa application. She was to be charged 'approximately' \$80,000 for these services. This was to be paid in multiple instalments with the final payment of \$10,000 to be paid when applying for a subclass 186 visa, after she had held a subclass 457 visa for two years (Payment G).
132. Ms [YFG] had considered the \$80,000 fee to be excessive, but after she was advised that the Agent had secured a good employment opportunity for her she signed the contract and made the first payment of \$5000. She provided five receipts issued by STG for a total amount of \$45,612. This is well short of the \$80,000 she claims to have paid however, the Agent has not disputed that she had paid the full contract price of \$80,000, and had offered a refund from that amount.
133. The Agent's legal representative stated that in accordance with the service agreement, Ms [YFG] would be 'entitled' to a refund of Payment G amounting to \$10,000 as she had not been successful in her subclass 186 visa application. However, despite Ms [YFG]'s entitlement there is no indication that this money has been refunded to her, nearly three years after she withdrew that application. The Agent's representative has indicated that various unsuccessful attempts have been made by STG to reach Ms [YFG] with a view to providing her with the refund of Payment G. Further, that in light of Ms [YFG]'s complaint – any contact by the Agent with Ms [YFG] might be viewed as attempting to unduly influence this matter. I am of the view that had the Agent intended to refund any amount owing to the client, he could have exercised any number of available options to discharge this obligation without undue difficulty, such as through a mediator or legal representative.
134. In responding to the question on the level of fees charged, the Agent stated Ms [YFG] was charged such a substantial fee as it was clear from his initial interactions with her when changing her course that she required a higher level of attention than other clients in like circumstances. Ms [YFG] purportedly called or texted Mr [CH] upwards of 15 times a day expecting a response, often outside of business hours including late at night. The Agent claimed that while happy to provide this level of service, it came at a price.

135. However, up to the time Ms [YFG] signed the contract, she only mentioned her contact with the Agent. Her interactions with Mr [CH], in relation to her subclass 186 visa application, transpired some two years later. Given such, the Agent would not have been in a position to know that Mr [CH] would field upwards on 15 interactions daily. According to the Agent's account, he met with Ms [YFG] in July and again once or possibly twice in September 2014. The Agent made no mention of having any personal experience of Ms [YFG] being an exceptionally demanding client and has provided no evidence of the high level contact with Mr [CH] or anyone else at STG as claimed. As such, I do not accept that this was the reason for the excessive service fee imposed on Ms [YFG].

136. Even if I were to accept that Ms [YFG] demanded significant attention, there appears no reference in the contract or elsewhere that the high costs were attributed to Ms [YFG]'s level of engagement. Had Ms [YFG] been made aware of this cost she may have tempered her need to contact the Agent or his office. Furthermore, I reject the notion that any anticipated level of service would amount to a cost which equated to tens of thousands of dollars.

137. While Ms [YFG]'s contract did not provide a cost breakdown and only indicated that the \$80,000 fee was associated with a subclass 457 and subclass 186 visa application, the Agent provided a further breakdown of the cost to the Authority. Amongst the listed services, some of the items included clearly related to the sponsor and should not have formed part of Ms [YFG]'s contract. The services included:

- Application for a Standard Business Sponsor for [OP]
- Assistance in arranging Labour Market Testing for [OP]
- Application for approval of a nomination position at [OP]

138. In consideration of my above discussion, I find that the fee that Ms [YFG] was charged was excessive and well beyond a reasonable fee in the circumstance as required under clause 5.1 of the Code and find the Agent in breach of this clause.

Financial responsibilities

139. As already discussed earlier in this decision, the Agent stated that he paid Mr [YL] \$10,000 in cash to assist with Ms [YFG]'s application. This appears to be an irregular payment, which was substantial, paid in cash, and for which no receipt was provided or received. The payment was supposedly a transaction between two independent businesses for which the Agent and Mr [YL] were the respective directors. Discharging payment obligations by way of large cash transactions, appears to be contrary to good financial, recordkeeping, and accountancy practices, as they would prove difficult to identify and account for, thereby presenting issues with compliance against associated legislative provisions.

140. By the Agent's own account, during that time, all migration services provided by STG were undertaken with the assistance of Mr [YL] and [XX] Migration. It follows that many such referrals would likely have transpired and it would have been prudent to establish best practice payment mechanisms which were transparent and compliant with established record keeping practices. Conversely, contrary to what might be expected with business transactions, there were no records of the payment.

141. The Agent was requested to provide statements of services, invoices or receipts issued to Ms [YFG], pursuant to section 308(1)(c) of the Act. However, in response to the request the Agent only submitted copies of what the Authority had sent through with the section 308 notice. More specifically, documents which were provided by Ms [YFG] and not records held by the Agent.

142. Where a statement of services has not been issued, the Agent would not be entitled to the monies, and the payments made by Ms [YFG] should still be held in the clients' account, which in all likelihood is no longer the case. As the Agent has failed to provide any receipts or invoices from his own records, and in the absence of evidence to the contrary, I find the Agent in breach of clause 5.5, 7.2 and 7.4 of the Code.

CM P-50880 – Mr [QL]

Mr [QL]'s contentions

143. According to Mr [QL], he wanted to apply for a subclass 457 visa but was persuaded by STG to apply for a subclass 190 visa even though he did not meet the requirements for that visa. Mr [QL] asserted that he was advised that as long as he received an EOI the visa application would be easy to obtain.

144. Moreover, Mr [QL] alleged that STG assisted him to forge his education and work credentials and provided evidence to the Authority that he had obtained a successful skills assessment in December 2016, through Victoria University, for the occupation of *Cook*. A copy of a letter dated 14 August 2017, purportedly from the Department, inviting him to apply for a subclass 190 visa (SkillSelect Invitation) was also provided and appeared to be associated with the EOI submitted (ID: E0009339645) for the nominated occupation.¹⁹

145. The Agent's representative argued that there was little to no evidence linking the substance of Mr [QL]'s complaint to the Agent's actions, conduct, or advice. Furthermore, that the complainant did not indicate that he had any contact with the Agent or received any advice from him or on his behalf and that he was not given the impression that the Agent was engaged in relation to his immigration matters.

146. Further, the representative contended that the screenshots provided to evidence the interaction between Ms [PWS], do not identify the parties, were partially translated by Mr [QL] who is not accredited, appeared to be fragments of conversations, and may have been altered for the benefit of the complainant. For the reasons outlined, the legal representatives argued the evidentiary value of the messages was problematic. Conversely however, they nevertheless gave weight to the screenshots to support their contention that Mr [QL]'s complaint does not relate to any action on part of the Agent as there is no reference to him or his business in the text messages, nor that there is any material which infers the Agent's involvement in the matter.

Relationship between the Agent and STG in China

147. According to the Agent's legal representative, STG International Service Group (in Australia) and STG Central Hope (in China) are two separate entities which are not related in operations, management and/or finances. They contended that the Agent's involvement in STG Central Hope is that of a relatively small investment and that he has no other role in that business. Further, that while STG Central Hope uses part of the STG company name and logo with the Agent's consent, the business in China is neither owned nor operated by him.

¹⁹ Nominated as a *Cook*.

148. To address the above points, which seek to distance the Agent from the STG operations in China, it is necessary to consider the relationship between STG operating in Australia to STG operating in China. I note that the legal representative argued the two entities are separate and not related in operations, management, or finances, while simultaneously conceding that the Agent has 'a relatively small investment' in the company in China. While the form and level of the Agent's investment was not disclosed, any level of investment on part of the Agent would necessarily imply an interest and involvement in the offshore business.
149. According to the submission put to the Authority, the Agent was introduced to the owners of STG in China, in or around 2015, as they had some spare office space subsidised by the Chinese government and had expressed an interest in expanding their advertising business to providing Australian visa and other related services. The submission did not elaborate on the expertise of the advertising business to deliver services associated with the Australian visa system. It was however argued that it would be mutually beneficial if they were to use the Agent's existing STG business branding for the Chinese market.
150. The Agent agreed to the arrangement and also decided to invest in the business in China. While the Agent argued that he had no involvement in the overseas business, and only viewed it as beneficial from a marketing perspective, he nevertheless proceeded to make a financial investment and agreed to what can be described as unfettered use of his logo, trademarks, letterhead as well as contact and bank account details which ultimately form part of the STG operations in China. Given the value of trademarks, and the business goodwill that is generally attached to such, I am of the view that the business in China has a significant and direct relationship to the Australian based STG business through the Agent. I am satisfied that the Agent would not have invested in the Chinese business, nor agreed to an arrangement which would have a direct impact upon, and pose a significant risk to, his established Australian operation; unless he was in a position to exert some form of control on the manner in which the business operates.
151. Even if I were to accept the assertion that the Chinese business only used the trademarks and contact details to impress the Chinese market, the assertion would support the premise that significant value is attached to trademarks and business credibility, which a business establishes over time and then guards to protect. Conversely, according to the Agent, he simply agreed to the arrangement as he was of the view that the marketing would also benefit STG in Australia. If the businesses were as separate as the Agent is seeking to portray, it is difficult to ascertain exactly how the Australian business would benefit from such an arrangement.
152. However, in terms of immigration assistance, use of the Australian details would serve to provide future clients of STG, both in Australia and China, with some level of assurance that the company has a registered migration agent attached to it. As such, I reject the Agent's argument that the business operation in China is linked to the Australian one in only a superficial way. Moreover, I am of the view that the arrangement entered into was undertaken in a considered and deliberate manner to serve a two-fold purpose. That is, to entice a greater volume of the Chinese market share of visa applicants, while simultaneously portraying the Agent as having an arms-length relationship with the offshore business in an endeavour to distance him from the conduct and dubious business model which was applied. More specifically, that he sought to enter into an arrangement so as to circumvent his obligations as a registered migration agent, whilst maintaining a significant and controlling role in both businesses.

Two branches of STG – Melbourne and Qingdao

153. Documentation submitted to the Department in June 2015, included an application for STG International Service Group Pty Ltd to sponsor an employee through the employer nomination pathway.²⁰ The application revealed that the company trades (or did at the relevant time) as *STG Central Hope*. Supporting evidence submitted with this application provided further insight. The business transaction account was a Commonwealth Bank account containing bank account details which corresponded exactly with those outlined within Mr [QL]'s agreement.²¹ Moreover, the lease agreement for the premises located at Suite 5, 899 Whitehorse Road, Box Hill VIC 3128²² entered into by the Agent on 18 August 2014,²³ specifies the tenant as *STG Central Hope*. In addition, a number of pro-forma service agreements,²⁴ signed by the Agent on 8 July 2015 and 28 October 2015, use an identical letterhead as that forming part of Mr [QL]'s agreement.

154. Information before the Authority, indicates that STG in Melbourne, which was registered in Australia in March 2012, is the STG Head Office,²⁵ whereas the STG Qingdao Branch was registered in China some three years later, on 24 June 2015. As already discussed above, *STG Central Hope* was the trading name for the Australian operation before the branch in China was even established. Further, in October 2017, STG International Services Group was awarded a prize from the Victorian Department of Education in recognition of the highest increase of number of students recruited for Victoria. Ms [PWS] accepted the award, on behalf of the company, which was presented in China by Mr [JB]. A photograph taken during the award presentation clearly displays *STG International Services Group* as the award recipient on the large screen backdrop.

155. Therefore, contrary to the Agent's claims that the businesses were separate and not linked in operations, they not only appear to be linked, they appear to be intrinsically linked, were one is indistinguishable from the other when it comes to public facing recognition and corporate representation. Consequently, it appears that Ms [PWS], who accepted the award on behalf of *STG International Services Group*, was an entrusted STG staff member of some years (2016-2019) and not a short term²⁶ poor performing employee as portrayed by the Agent. Moreover, where the clients engaged in China were recognised as clients of *STG International Services Group*, as part of their role in driving up significant student recruitment of students for Victoria.

156. It follows that I accept that the STG Melbourne office, headed by the Agent, and the STG Qingdao Branch are inextricably linked and that Ms [PWS] was the company representative for the branch in China for the three year period when she had engaged with Mr [QL].

Mr [QL]'s contractual agreement

157. Despite the fact that Ms [PWS] was the STG representative in China during her period of engagement with Mr [QL], Mr [QL]'s contractual agreement with STG reflects the Australian address and contact details throughout the document, including featuring STG Central Hope at the top and bottom of each page. Further, an STG Commonwealth Bank of Australia bank account (BSB XXXXXX; account number XXXXXXXX) was prominently displayed within the contract.

²⁰ TRN: EG08KFZ8ZY.

²¹ BSB XXXXXX; account number XXXXXXXX.

²² The Agent's migration office premises.

²³ The signature within closely resembles that contained in documentation signed by the Agent.

²⁴ Clients: XX (CLDXXX) and XX (CLDXXX).

²⁵ CLD2019/379901 08.

²⁶ October 2019 - 31 January 2020.

158. The Agent's legal representative argues that the Authority has not translated the service agreement entered into with Mr [QL]. However, no translation is necessary to ascertain that the Australian contact details, bank details, and logos are utilised by the offshore entity, which, much like the Australian business, trades as STG Central Hope. I accept that the agreement also contains an optional bank account based in China, however it remains the prerogative of the client to decide which bank account they ultimately deposit the money into. I also acknowledge that the online payments for the Australian bank account is subject to ten per cent GST,²⁷ which would make it less attractive for many offshore clients. However, the choice and option is nevertheless one that is open for them to exercise at their discretion.

159. It follows, that there was no discernible difference where the money was deposited, the service and agreement would proceed regardless. Where a client elected to deposit the money in the Australian bank account, it is indisputable that the funds would be at the direct disposition of the Agent. Such an arrangement would be at odds with two entirely separate business entities unless they were related in overall operations. Given the above, and as already discussed, I reject the Agent's claim the businesses were not linked in overall operation, management and/or finances and find that the Melbourne Head Office had principal control and oversight of all the activities associated with STG, with the Agent in the primary leadership position of the organisation which he had established.

160. A review of departmental records revealed that Ms [PWS] had provided email address christina@stgservice.com.cn (the Christina email address) as her contact email for communicating with the Department in relation to her own matter. Significantly, Ms [PWS] had provided the same email address to Mr [QL] soon after his agreement was signed in September 2016 (5.jpg). As such, I am satisfied that this is one and the same person. According to Mr [QL], he only had contact with Ms [PWS], who is not a registered migration agent. At the time Mr [QL] signed his agreement with STG in China, in late September 2016, the Agent was the only person at STG who was registered as a migration agent and was also a Director of STG. Mr [QL] was clearly under every impression that he had engaged, and was receiving immigration assistance from, a person with the requisite skillset to provide such, whom he referred to as an 'immigration lawyer' and who was not Ms [PWS].

161. Moreover, the Agent also had a direct connection with other clients who had engaged with Ms [PWS]. More specifically, departmental records show that the Agent was the declared migration agent for no less than 24 visa applications,²⁸ lodged between January and September 2017, where the email address provided as the contact address for departmental communication was christina@stgservice.com.cn. Importantly, this period encapsulates the time during which Mr [QL] had engaged with Ms [PWS] and the time the SkillSelect Invitation was provided to him.²⁹

The Agent's relationship with Ms [PWS]

162. With regard to the 25 visa applications lodged between January and September 2017, where the Agent was the declared representative and the Christina email address was used for communication, the Agent's legal representatives contends that Ms [PWS] was not authorised to use the Agent's details and that the Agent did not provide immigration assistance in the matters.

²⁷ Goods and Services Tax.

²⁸ ADD2021/3610798.

²⁹ The SkillSelect Invitation was sent to Mr [QL] by Ms [PWS] on 14 August 2017.

163. The Agent's representatives outlined the principles of common law agency to support their contention that the Agent is not responsible for the conduct purportedly undertaken by Ms [PWS], which she did independently of the Agent. They argue that even if an agency agreement and/or relationship was in place, the conduct on part of Ms [PWS] went beyond what is lawfully permissible and that it would be in conflict with the fiduciary duty that an agent owes the principal.
164. The argument addressing the duties attached to agency which arise when a legal relationship of agency is formed between the parties, relevantly relies on the premise that the parties have regard for, operate under, and comply with the law. Noting that much of the conduct discussed within this decision relates to serious adverse conduct in breach of the law, which serves to undermine Australia's visa regime, it would be discordant for persons engaging in such conduct to uphold or have any regard for other obligations, be they fiduciary or not. The Authority is not contending that the operating model which served as a basis for securing visa outcomes, to which applicants may not have genuinely been eligible for, had complied with Australian law or any 'legal relationship of agency' as discussed by the legal representative.
165. Quite the contrary, it appears that the arrangements entered into which served as a vehicle to procure the visa outcomes was undertaken in manner where STG's corporate branding, operating model, contact and account details, and immigration know how were used for the benefit STG, but the parties went to great lengths to portray a separation from the Agent. I am of the view that there would be little or no utility in the Agent entering into an arrangement, including a financial investment, which enabled third party operatives' unlimited access to his corporate trademarks and business details without receiving a benefit in return.
166. Parties generally elect to enter into contractual agreements in writing, be they agency or otherwise, as they provide for clarity and transparency over the nature of the agreement as well as the terms and conditions attached to it. The legal representative discussed at considerable length an agency relationship in respect of Ms [PWS] but is relevantly silent on the form of relationship the Agent may or may not have had with third parties such as Mr [YL]. Notably, the Agent elected to enter into written agreements with his clients, yet no such written agreement appears to be available in respect of persons with whom he has standing arrangements for the provision of services.
167. It appears that where the Agent seeks to conceal an arrangement he may have entered into, such an arrangement, much like the standing agreement with Mr [YL], is unlikely to take the form of an express contractual arrangement in written form. As with his arrangement with Mr [YL], it is more likely to be one that is an implied agreement entered into verbally. This would ensure that no evidence or audit trail is established and would serve to distance the Agent from practices considered inconsistent with his obligations.
168. Entering into agreement, verbally or otherwise, such as common law agency and using it as a vehicle to avoid, else subvert, obligations which are specified in statute and specifically introduced to meet the policy intent of regulating conduct, and enforcing obligations upon RMAs, is rejected. I am of the opinion that the Agent entered into third party business arrangements in order to deflect his responsibility and undermine the regulatory regime, and by extension put at risk the migration program more broadly. Moreover, the Agent's attempt to disguise his involvement through third party operatives in what could be interpreted as a form of arm's length arrangement, is inconsistent with the principles for the regulation of the migration advice industry.

Fraudulent SkillSelect Invitation

169. Mr [QL] has provided evidence that the SkillSelect Invitation was sent to him by Ms [PWS] as a pdf document through WeChat on 14 August 2017, the same day that the invitation was purportedly issued. The title of the pdf document contained two Chinese characters followed by 'C0046283076.pdf' (**15.jpg**). This was the same document title as the SkillSelect Invitation Mr [QL] had submitted to the Authority (**16.jpg**).
170. According to departmental records, an EOI was submitted for Mr [QL] on 1 April 2017 with the same identifier (EOI ID) as that listed on the SkillSelect Invitation provided to him. However, the Department did not send a letter to Mr [QL] inviting him to apply for a subclass 190 visa. As such, the SkillSelect Invitation which was provided to Mr [QL] is considered not to be a genuine document issued by the Department, and is therefore a **false Commonwealth document**, as defined in section 143 of the *Criminal Code Act 1995* (Cth) ('Criminal Code'). The creation, presentation, and transfer of false documents constitutes an offence under the Act and the Criminal Code. For these reasons, I am satisfied that the production of the fraudulent SkillSelect Invitation constitutes an unlawful act.
171. The SkillSelect Invitation specified that it was valid for 60 days and that Mr [QL] needed to apply for a visa on or before 13 October 2017. According to Mr [QL], a visa application was lodged on his behalf in October 2017. A review of departmental holdings does not evidence that a subclass 190 visa application had been lodged for Mr [QL]. There is however a record that he underwent health examinations in November 2017, with the relevant details consistent with those contained in the e-Medical Referral Letter provided by Mr [QL]. Moreover, the medical examinations were undertaken to a permanent standard, more specifically, in association with a subclass 190 visa.
172. Undertaking medical assessments to a permanent standard, within a month when Mr [QL] thought a subclass 190 visa application had been lodged on his behalf, supports the premise that he was genuinely of the view that an application was before the Department. This would have been further reinforced by the communication he received from Ms [PWS]. On 17 November 2017, Ms [PWS] confirmed that an application was lodged under his name, in response to Mr [QL]'s question on whether the visa application was applied under his own name or under the 'immigration lawyer'.
173. That same month³⁰ Mr [QL] was provided with a summary status report. The summary contained Mr [QL]'s personal details and appeared to be associated with a points-based migration visa (subclass 189, 190 or 489), albeit the reference number was obscured. As Mr [QL] had undertaken health examinations, prior to any application being submitted to the Department, and where the last update is reflected as 13 November 2017,³¹ the summary likely relates to Mr [QL]'s health examination; facilitated through the *My Health Declaration* platform. Therefore, throughout a significant period of time Mr [QL] was under a genuine belief that he had been invited to apply for a subclass 190 visa, on account of the SkillSelect Invitation he was provided by the STG representative, and that an application was submitted on his behalf.
174. Further communication reveals that in mid-July 2018, eight months later, Mr [QL] expressed concern that he had not heard anything for quite some time. This was followed by a further exchange, some two weeks later, when he enquired about the likelihood of his visa application being successful. In reply, Ms [PWS] stated that he must be hopeful and that the 'immigration process' takes a long time.

³⁰ November 2017.

³¹ The same date the eMedical letter was generated for the medical examinations.

175. On 4 January 2019,³² Mr [QL] requested he be provided with the 'immigration account and password', presumably to enable tracking on the progress of his application. His request was denied on the basis that it would grant him access to details for all the clients represented by the company. On 18 October 2019, Mr [QL] was provided with an STG Refund Application Form by Ms [PWS]. The form indicated that the refund request was related to a subclass 190 visa. According to Mr [QL], STG retained 50,000 of the 450,000 Yuan he had paid them.
176. In light of the above discussed, it would have been reasonable for Mr [QL], or anyone else, to form the view that the agreement he had entered into with *STG Central Hope*, was a business operated and controlled by the Head office, based in Australia. There is nothing before the Authority which appears to indicate that Mr [QL] was ever under the impression that Ms [PWS] held any relevant control or decision making authority in the operation, other than being the conduit through whom the transactions were facilitated on account of her physical location. This would have been further reinforced when, in March 2019, by which time Mr [QL] had significant concerns about his application, Ms [PWS] refers to her employer in the communication exchange with Mr [QL]. In Mr [QL]'s words: *'If you want to meet my boss, you decide'*.
177. For the reasons discussed, I am satisfied that that Ms [PWS] was acting under the control, direction and supervision of the Agent, and that he was ultimately responsible for the immigration assistance provided to Mr [QL], including the SkillSelect Invitation, which constitutes a *false Commonwealth document*. Moreover, that the purpose of the document was to mislead and deceive Mr [QL] into believing that a visa application was in progress for him, when this was not the case.

Fraudulent cookery qualification

178. The Authority has not sought to verify Mr [QL]'s cookery qualification, issued in China, as it would appear implausible that Mr [QL] would make an admission that the qualification is not genuine, if it were not true. Mr [QL] has nothing to gain by putting forward a claim that the qualification used as a basis to obtain a positive skills assessment in association with an Australian visa, was in fact fraudulent. According to Mr [QL], messages from Ms [PWS] indicate she was responsible for organising the documentation, and I have no reason to doubt that this was in fact the case.
179. Accepting Mr [QL]'s translation of the communication exchange, on 28 September 2016, the day after Mr [QL] signed his agreement, Ms [PWS] advised him that *'Career assessment is divided into three parts: practice, interview, Q&A and written examination'*. She goes on to say *'I send you interview questions and answers later'*. Two weeks later, on 10 October 2016, she advised *'Don't worry about the written test. There's a way to pass it for you'*. (7.jpg). Ms [PWS] goes on to state *'The assessment is not based on your real education background, because the assessment requires that you have studied relevant majors'*. (9.jpg). Finally, on 14 December 2016 Ms [PWS] sends Mr [QL] a picture of the cover of his passport along with a second document issued in China. Mr [QL] annotated this message as: *'There are my passport and fake cook qualification certificate'*.

³² A subsequent request was made on 8 October 2019.

180. I accept the version of events as presented by Mr [QL], particularly given that he has nothing to gain by disclosing the information to the Authority. Based on the above, I am of the view that Ms [PWS] was directly involved with obtaining a fraudulent cookery qualification, for the purpose of obtaining a successful skills assessment in Australia. This subsequently served as supporting evidence for the EOI with the aim of being invited to apply for a subclass 190 visa. As discussed earlier in this decision, I am satisfied that Ms [PWS] was acting under the control, direction, and supervision of the Agent, and that he was aware of and party to the immigration assistance provided to Mr [QL], including the fraudulent supporting documentation, in breach of his obligations under the Act and Code.

Other allegations made by Mr [QL]

181. In addition to his own case Mr [QL] alleged that STG was involved with more than 30 other subclass 190 visa applications where the visa applicants were not cooks or chefs as claimed. STG is also alleged to have lodged many student visa applications based on fraudulent information. According to Mr [QL], where an application is unsuccessful a portion of the fee is nevertheless withheld and STG turns a profit regardless of the outcome. Mr [QL] has not provided any evidence to support these particular allegations, and the Authority has made no findings in respect of them, aside from noting that they appear consistent with his own case. The Authority's investigation in relation to student visa applications, discussed below, do however provide credibility to his claims.

182. Having regard to the findings I have made, I am satisfied that the Agent has engaged in conduct in breach of the Agents obligations under clauses 2.1, 2.9, 2.9A, 2.23, 3.1, 3.2, 5.1, 5.5, 7.2 and 7.4 of the Code.

Integrity, fitness and propriety

183. 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.

184. 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'.³³

185. 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.

186. 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".³⁴

³³ See *Re Peng and Department of Immigration and Multicultural Affairs* [1998] AATA 12 at paragraph [26].

³⁴ See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750.

187. 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.

188. 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.³⁵

189. 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.

190. 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.

191. 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.

192. 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".³⁶

³⁵ See *Cunliffe v Commonwealth* (1994) 182 CLR 272

³⁶ *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

Assistance with student visa applications without declaring involvement

193. The cross referencing of visa applications referred to earlier in this decision identified approximately 650 visa applications where an STG email address had been provided to receive communication from the Department, although no migration agent, STG or otherwise, was declared on the application.

194. Of the 30 student visa applications selected as part of the investigation for analysis, all were lodged through ImmiAccount DH @stgservice.com.au which is linked to the Agent's MARN. The 30 cases comprised of:

- 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)

195. In all the cases no migration agent or authorised recipient was declared. However, despite the apparent lack of involvement with the applications on part of the Agent, or anyone else at STG, in each case an STG email address was provided for communicating with the Department.

196. An applicant for a student visa must satisfy the Genuine Temporary Entrant requirement, and is required to provide a personal statement (GTE statement) to support their application. The Department will refuse an application if it is not satisfied that an applicant's intentions are genuine. As a GTE statement is to address a specific requirement for a student visa, any advice or assistance in its preparation amounts to the provision of immigration assistance. STG acknowledged the importance of a GTE statement in the promotion of their GTE statement writing service, describing it as necessary and critical for applying for a student visa.

197. A comparison of the GTE statements within each of the three batches identified noticeable similarities, including identical paragraphs. This applied to every statement within each batch, that is, no statement was without a matching comment or paragraph. It is therefore reasonably likely that this extended to most, if not all student visa applications where the CLu and Sabrinama email addresses were disclosed, totalling 123 and 22 respectively. Matches were also found between these cases and the GTE statements for applications for which the Agent was declared as representing the visa applicant. As this exercise was not exhaustive, there may have been further commonalities between statements.

198. Some of the more significant matches for each batch, and with applications where the Agent was declared on the application, are detailed below. The identities of the visa applicants in the CLu and Sabrinama batches have been anonymised.

CLu 2017 cases

199. In relation to where they would prefer to study, six of the ten applicants stated:

I prefer to study in Australia rather than in my home country because Australia has high level of teaching and education background. And also there are different people from various countries, the university in Australia can help me build up the 'sprite' of cooperation and learn different cultures. [CQ, HTK, HYC, LCM, SYS, TWC]

200. Seven of the applicants where the Agent was declared as the representative agent expressed exactly the same view including the apparently incorrectly stated 'sprite' rather than spirit 'of cooperation'. [CY, LYH, HKL, LRJ, LJT, TPL, XDF]

201. Three members of the batch and two applicants the Agent represented stated that:

Compare to studying in my own country, Australia is a well-developed country where I can learn large range of knowledge and skills. I can gain more opportunities and meet people from different countries, it helps me to 'border'[broaden] my horizon and 'richen ' [enrich] my experience. [HTK, HYC, SYS] also [CY, LJT]

202. In relation to their limited English language ability two applicants stated:

Due to my English skill does not very good. So, agent asked me to improve my English first. Because all the courses are taught in English in Australia, so if my English is not good, I can't study any other course. She/he suggested me to do EAL III and IV courses first, I feel justified, to learn advanced lesson that should be studied after learning the fundamental basics of English. That's why I have the COEs of Certificate III in EAL, Certificate IV in EAL, Diploma of ... / Certificate III in ... [HTK, LCM]

203. In relation to their living arrangements five members of the batch and five applicants the Agent represented stated, with very minor or no variation, that:

Talking about the planned living arrangements in Australia, my [friend or spouse] and I are renting a place together. I plan to stay until I graduate and I will go back to [home country] ... I find it is value to rent a room because it is easier for me to go back to my hometown when I finish my study and also I don't want to put too much pressure on my parents. [HXT, HYC, TWC, SYS, HTK] also: [CY, GB, HKL with minor variations for LRJ and XDF]

CLu 2018 cases

204. In discussing the education in their home country five members of this batch stated:

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]

205. In relation to studying in Australia, four of the five and one other stated:

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 between us and our partners and clients in overseas. There are many companies from different countries operating here. I can learn how they run their business and obtain latest marketing strategy, and brain storm some new ideas. Most importantly, the business world is changing from time to time, so we must keep abreast with the world ... [CY, CYC, KWJ, LPY, XLP]

206. To increase their competitiveness three stated that:

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]

207. Five gave their reasons for choosing to study at Melbourne Advanced Commerce Institute (MACI) as:

Among all education providers, I chose Melbourne Advanced Commerce Institute (MACI) for three reasons. Firstly, courses in MACI are practical in nature which provides only the quintessential skills required by the industry. Its tight connection with industry trends ensures that students will learn the latest and most useful knowledge and skills. Secondly, teachers and staff conducting all training and assessment are highly qualified and experienced, which guarantees the education quality. Thirdly, MACI conveniently locates in CBD Melbourne, which has easy access to public transport, shopping centers, restaurants and entertainment centers. [HTK, KWJ, KB, LS, LPY]

208. While seven (including four who selected MACI) were advised to choose TAFE because:

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, tafe institute also provides business related course. Thirdly, I should pay more attention on true abilities and practical skills to increase my competitiveness. 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)]

209. In relation to complying with visa conditions, five members stated:

My friend [agent] told me that there are so laws and rules I should pay attention to as being an international student in Australia. I must comply with my visa conditions while studying and living in Australia. [LPY, CY, HTK, TX, CYC]

Sabrinama cases

210. Nine members of this batch introduced themselves as:

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]

211. In explaining their motivation for further study three stated that:

I failed to compete [win] for the promotion [LSE, LY, LSZ], and were told by their manager that: both my qualification the knowledge was insufficient to handle the tasks of [sales/office manager] [LSE, LY, LSZ, QY] and that: The responsibilities of an office manager are quite different from that of [me/sales manager]. [LSE, LSZ]

212. In regard to study options, three members of the batch stated: *I have thought about university study at first [or similar] as it is more systematic and comprehensive*

213. However they considered that:

- *generally takes a longer period* [LSE]
- *generally takes at least four years ...* [LY]
- *the university study cost at least four years' time* [QY]

214. Six stated their obligations as:

In terms of the visa I am applying, I understand I should meet several academic requirements including full attendance and achieving academic progress. Besides, I should also make scheduled payments for my study. [LSE, LY, LSZ, LDQ, QY and NCK with a minor variation]

215. Three considered MACI because:

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 MACI. [QY, LSZ, NCK]

216. Three (including two who preferred MACI) also commented on course materials and trainers stating that they 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]

217. In regard to plans when their studies conclude, five stated:

After I accomplish my study, I will go back to [home country] and first try to find prospective job opportunity in my company [or chase my career progress]. Besides, I will also try to find [other job opportunities]. I believe this proposed education will help me become competitive and successfully to chase my career progress [or compete for a better job]. [QY, LY, LSZ, LSE, LDQ]

218. A specific comparison was made between the GTE statements of JQQ and NYL.

Significant portions of their respective statements do appear to be relevant to their own circumstances. However, there are also significant parts which are identical or nearly identical, some of which are highlighted below.

219. They both described Australian graduates as being:

welcomed and competitive since they cannot only speak English at proficiency level but also have experienced and fully understand cultural diversity during their study.

220. In explaining why they had failed particular units, they both stated that students had to:

apply what they have learned in previous units comprehensively and use different technical methods and the theoretical underpinning of these methods in the preparation of accounting information and financial statements. I should have had my own critical thinking and carry out research independently.

221.They also *found it hard and a little confused to interpret data properly to get an optimal decision*

222.However, they appreciated the support they received from the teachers and students from their respective universities

The help regarding both academic performance and daily life I received from [International Student Advisors / other students] really ease my concerns and frustration. The course I enrolled in [respective University] is practical and the teachers, most of whom are experienced professionals, are very supportive. Instead of criticizing my failure, the teachers gave me a lot of suggestions regarding how to adjust my learning habits and how to review the knowledge delivered in class in order to finish my assignments.

223.A copy of the GTE statements of JQQ NYL with the common parts highlighted are provided with this decision at **Attachment H**.

224.To varying degrees all of the GTE statements examined were found to have similar comments to other GTE statements. As with the statements of JQQ and NYL some of these similarities can amount to whole paragraphs. Even when just considering JQQ and NYL, it is highly unlikely that the similarities in their statements came about by chance. When this is extended to all of the cases examined, it becomes improbable that the similarities came about by chance. As such, I am satisfied that each of these visa applicants received assistance in preparing their respective GTE statements.

225.As similarities were identified in every GTE statement examined, it is reasonably likely that this would extend to most, if not all, student visa applications where the CLu and Sabrinama email addresses were disclosed. It also potentially applies to any student visa application that provided other STG email addresses for their correspondence with the Department.

226.I note that a significant volume of STG advertising promotes assistance with drafting GTE statements for student visa applicants. Any advice or assistance in the preparation of a GTE statement for a student visa, amounts to the provision of immigration assistance. Given the above discussed, I am of the view that the Agent had provided immigration assistance in all of the matters examined and that such likely extended to a far greater number of cases. Significantly, all of the applications examined were lodged through an ImmiAccount linked to the Agent's MARN and provided an STG email address for correspondence, however no migration agent or authorised recipient was declared.

227.In responding to the matters put forward by the Authority on the concerns surrounding the GTE statements, and more significantly, the failure on part of the Agent to declare his involvement in providing immigration assistance in association with a significant number of visa applications, the Agent's legal representative directed focus of the role of Education Agents.

228.The representative also put forward arguments that it could reasonably be expected that a business such as STG would have precedent/template documents tailored to meet individual client circumstances. I reject his assertion, in that a template document by its very nature would not be individual and specific to a client's circumstances. Even if I were to accept that a standardised document could be used as a base document addressing the core criteria necessary to address the requirements, this would not extend to the detail forming the response which is, or should be, specific to the visa applicant.

229. According to the Agent's representative, there is a universal expectation from students and providers that Education Agents will aid in lodging student visa applications. However, even if this was an expectation as argued by the representative, this does not make it mandatory and certainly not lawful, unless the Education Agent was permitted by law to provide immigration assistance. Contrary to the argument put forward, that there is tension on this expectation and the application of section 276 of the Act, the Authority contends that the section provides explicit clarity on what constitutes immigration assistance, while the restrictions on who can provide such are likewise clearly specified in section 280.

230. While significant arguments were discussed in relation to the nature of the work of Education Agents and associated online information sources, some of which are government sites, it remains unclear as to the precise purpose these arguments were put forward. The law is clear on who can lawfully provide immigration assistance in Australia and no information describing assistance from a potentially related field changes this fact. Notably, a significant proportion of Education Agents operate in the offshore environment and the government platforms do provide clarity on who can lawfully provide immigration assistance and advice in Australia.

231. Given the Agent was registered as an Education Agent in 2012 and then subsequently registered as a migration agent, he would be well aware of the duties, expectations, restrictions and obligations as well as the differences which apply to each occupation. Had he not, it appears unlikely that he would have undertaken a post graduate qualification in order to register as a migration agent. Any argument by a registered migration agent alluding to confusion or a blurring of the lines on the basic distinction on who can lawfully provide immigration assistance in any jurisdiction would bring into question the agent's knowledge and capabilities as well as their fitness to practise in the migration advice industry.

232. However, for the sake of completeness, the Authority has reviewed further cases that did not relate to student visa applications in order to ascertain whether the features discussed above were also present in other applications. Specifically, whether there appeared to be immigration assistance provided through STG where the assistance was likewise not declared. The review identified that the conduct did extend to other visa subclasses, where an STG email address was used although no immigration assistance was declared on part of the Agent. Some such applications, with the applicant identities anonymised, are listed below:

Subclass 187 [JXM] – Lodged 2/3/2018

- ImmiAccount: [DH]@stgservice.com.au

- No agent/authorised recipient

- Email for correspondence: [CL]@stgservice.com.au

Subclass 485 [SJX] – Lodged 30/8/2017

Subclass 485 [YXZ] – Lodged 24/8/2017

Subclass 485 [MJS] – Lodged 10/1/2017

Subclass 485 [YZ] – Lodged 20/12/2016

Subclass 485 [YTC] – Lodged 25/8/2016

- No agent/authorised recipient

- Email for correspondence: [CL]@stgservice.com.au

- All submitted from the same IP address

Subclass 820/801 [HMZ] – Lodged 17/3/2016

Subclass 820/801 [GW] – Lodged 17/3/2016

- ImmiAccount: [DH]@stgservice.com.au

- No agent/authorised recipient

- Email for correspondence: [CK]@stgservice.com.au

- Submitted from the same IP address as the five listed subclass 485 applications

Subclass 820/801 [SWC] – Lodged 7/3/2018

- ImmiAccount: [DH]@stgservice.com.au

- No agent/authorised recipient

- Email for correspondence: summer@stgservice.com.au

- Submitted from the same IP address as the five listed subclass 485 applications

Subclass 155 [SL] – Lodged 15/3/2019

- ImmiAccount: [DH]@stgservice.com.au

- No agent/authorised recipient

- Email for correspondence: sabrinama@stgservice.com.au

Subclass 485 [CH] – Lodged 30/7/2018

- No agent/authorised recipient

- Email for correspondence: sabrinama@stgservice.com.au

- Submitted from the same IP address as the five listed subclass 485 applications

Subclass 489 [SY] – Lodged 18/8/2017

- ImmiAccount: [DH]@stgservice.com.au

- No agent/authorised recipient

- Email for correspondence: summer@stgservice.com.au

- Submitted from the same IP address as the five listed subclass 485 applications

Visitor visas – all lodged through: DH [@stgservice.com.au](mailto:stgservice.com.au) and from the same IP address.

Lodged	Name	email
12/1/2016	[MYL]	eric@stg ...
29/8/2017	[BC]	susan@stg ...
4/5/2018	[YZ]	summer@stg ...
5/7/2018	[SM]	sabrinama@stg ...
21/2/2019	[XZ]	sabrinama@stg ...

233. As discussed earlier in this decision, the regulatory framework of the migration advice industry was put in place to provide consumer protection for the clients seeking assistance to lodge their applications. The registration requirements for migration agents establishes a minimum level of competence. An agent's MARN allows a client to independently verify that the person assisting them with their application is registered and therefore appropriately qualified to perform those duties. Importantly, section 312A of the Act obligates an agent to notify the Department when they provide immigration assistance.

234. The recognised involvement of an agent by both a client and the Department ensures that the agent is accountable for their advice and actions, giving some level of consumer protection for the client. 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.

227. On the basis of the available evidence, I am satisfied that the Agent had repeatedly attempted to avoid accountability by not declaring his involvement in a large number of visa applications, and had acted in contravention of the Act and contrary to the purpose of the regulatory framework. Furthermore, I reject the argument put forward by his legal representative, that by providing an STG email address in such applications, it was clearly not intended that the Department would not know who was representing the applicants such that it could be said that there was an attempt on behalf of the Agent or his colleagues to avoid accountability contrary to the purpose of the regulatory framework. There is no reasonable explanation as to why a registered migration agent would not declare their involvement in a visa application, other than to deliberately seek to conceal his or her involvement from the Department.

YeeYi Advertising and product promotion

228. In response to the Authority's contention that STG's advertising on the YeeYi website appears to be guaranteeing a pathway to permanent residence, the Agent's legal representative put forward arguments that translations completed by Google Translate should not be relied upon. Specifically, that Google Translate software analyses data and, based on previous translations, tries to deliver accurate results. Further, that it can at best provide an approximate idea of the meaning of the source text and is not capable of delivering an accurate translation. While it would be the Authority's view that accuracy is the most critical aspect of any translation, the representative argued the software was unable ascertain the intent behind messages, thereby providing standard solutions irrespective of the source text. Regardless, the Authority has made no findings against this conduct.

235. I note that Mr [QL] and Ms [YFG] had both put forward their accounts of what had transpired when they initially approached STG for immigration assistance. Each had indicated that they sought assistance with visa subclasses which were different to those which were ultimately pursued with the assistance of STG. Both applicants argue that they were persuaded that the pathway put forward by STG would see them attain permanent residence and that it was in their best interest to progress visa outcomes as advised by STG, despite the significant financial outlay that was required to progress the matters.

236. The visa applicants do not appear to be known to each, had entered into contract with STG two years apart,³⁷ and were located in different countries when receiving the assistance and advice. In consideration of such, I accept that the parties were not in collusion and likely presented an accurate account on their experience with STG and the manner in which visa clients were persuaded into entering agreements which not only attracted exorbitant fees, but also relied on visa pathways for which the visa applicants do not appear to be eligible. Such conduct involves a blatant disregard for, or a significant degree of indifference to, the law and the Australian immigration programs and poses a serious risk not only to migration consumers, but significantly to the integrity of the Department's visa programs.

237. Having regard to the totality of the Agent's conduct in relation to the complaints 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'.

³⁷ ~~September 2014 (Ms YFG) and September 2016 (Mr QL).~~

238. Based on the evidence before me, 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 his conduct.
- iii. Acted in a dishonest and deceitful manner and has not taken responsibility for his actions.
- iv. Not declared immigration assistance in a significant number of visa and nomination applications to avoid scrutiny and investigation.
- v. Failed to exercise or deliberately disregarded his professional obligations as a registered migration agent to his clients, the Department and the Authority;
- vi. Breached the Code with respect to multiple counts of serious conduct where the behaviour involves an element of fraud; and
- vii. Failed to consider the reputational damage to the profession and brought the migration agent profession into disrepute.

Consideration of Appropriate Disciplinary Action

239. 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

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 complainant or client, including the complainant's or client's vulnerability; and
- d. any wider issues pertaining to consumer protection or the national interest.

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 demonstrates serious repeated breaches of the Code of Conduct, and dishonest or reckless behaviour.
- ii. There is evidence that Agent has attempted to conceal his culpability, and mislead the Authority during the investigation.
- iii. Multiple clients have been affected. The conduct has had serious and adverse consequences for the impacted clients, including lost visa opportunities, stress and financial loss;
- iv. Continued registration of the agent is not in the public interest;
- v. It involves a blatant disregard for, or a significant degree of indifference, to the law and the visa programs in general;
- vi. The Agent acted without any concern as to whether his 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
- vii. I have found that the Agent is not a person of integrity, or a fit and proper person to provide immigration assistance.

Aggravating factors

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

241. The Agent has consistently attempted to distance himself from his 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.

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

243. 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

244. The Agent's legal representative has put forward a submission that a decision by the Authority to suspend or cancel the Agent's migration agent's registration would have a detrimental impact upon his livelihood and Australian business.

245. The representative contends that the Agent and STG rely, at least in part, upon the income that the Agent's services as a migration agent generate, and a reduction in the income that the Agent generates for STG may have a detrimental impact upon the business' capacity to continue to retain all of its staff in its employ. STG purportedly employs seven (7) Australian permanent residents (in an overall workforce of thirteen (13)), and has gone to some lengths to retain its staff in light of the severely damaging impacts of the COVID-19 coronavirus pandemic on Australia's migration services industry, particularly with regard to international students.

246. Further, it is argued that any suspension or cancellation of the Agent's registration as a migration agent will likely damage not only his personal reputation, but the reputation of STG and the goodwill associated with the business which may negatively impact upon the viability of the business and the security of its employee's positions. I note however, that any goodwill associated with the business is already impacted by the nature of the agreements the Agent himself has elected to enter into, such as that with the offshore entity.

247. While I accept that the disciplinary decision will have an impact on his livelihood, I am of the view that this 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 immigration advice profession.

Consumer Protection

248. 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.

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

250. 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 profession is maintained.

DECISION

251. 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.

252. 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 his conduct, which occurred over a period of no less than 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.

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

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

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

255. 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.

256. 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: 30 June 2021