



OFFICIAL

DECISION RECORD

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| AGENT | Chao Liu |
| COMPLAINT NUMBER/S | CMP-39192 and CMP-55140 |
| DECISION | Caution |
| DATE OF DECISION | 27 June 2024 |
| TERMS USED FOR REFERENCE | Refer Appendix A |

JURISDICTION

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

Relevant Legislation

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

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- the agent has not complied with the Code prescribed under subsection 314(1) of the Act (paragraph 303(1)(h)).
5. Subsection 314(2) of the Act provides that a registered migration agent must conduct himself or herself in accordance with the Code. The *Migration (Migration Agents Code of Conduct) Regulations 2021* made under the Act prescribes the Code.
 6. The Code of Conduct for registered migration agents in force at the time of the conduct that is the subject of this decision was the Code of Conduct current from 18 April 2017 (former Code) (**Attachment A**).

AGENT BACKGROUND

Agent Registration

7. The Agent was first registered as a migration agent on 20 October 2009 and was allocated MARN 0959913. The Agent's registration had been renewed annually to date, with the most recent registration application having been deemed on 18 August 2023.
8. The Register lists the Agent's current business name as Real Expert Pty Ltd with the ABN 26169626939. The Agent lists a secondary business as VTS International Pty Ltd with the ABN 58646966510.

Prior disciplinary action

9. No disciplinary action has previously been taken against the Agent.

ALLEGATIONS – THE AUTHORITY'S INVESTIGATION

10. The Authority received two complaints about the Agent's conduct as a migration agent:
 - On 31 August 2018, from Mr HA - CMP-39192 and
 - On 26 July 2018 and 24 June 2020, from the Department of Home Affairs (the Department) - CMP-55140.

Complaint from Mr HA (CMP-39192)

11. In late 2015, Mr HA alleged he sought assistance from Mr CK who presented himself as a migration agent with the necessary contacts to assist Mr HA in securing a Temporary Work (skilled) (subclass 457) visa.
12. On 18 September 2015, Mr HA signed a contract with the Intermediary Business of Mr CK for migration services. All correspondence with Mr CK was conducted through Mr HA's sister, Ms KK.
13. On 12 November 2015, Mr HA understood that Mr CK lodged a subclass 457 visa application on his behalf with the Sponsor Business as the prospective employer.
14. On 16 February 2016, the Department notified Mr HA, through Mr CK, that his prospective employer did not have an approved subclass 457 nomination for him. On 10 March 2016, the nomination application was lodged, nominating Mr HA as the nominee for an Accountant (General) (ANSCO Code 221111) position.

15. Around May 2016, Mr HA was informed by Mr CK that his visa application was partially processed however, he could not commence work until the sponsorship was finalised. Mr HA was advised to transfer a monthly sum of \$5018 to Mr CK through a Commonwealth bank account to enable the Sponsor Business to deduct superannuation and taxation payments. The remainder (\$3708) was to be reverted back to him as monthly wages. Mr HA paid the monthly instalments to the nominated account for nineteen months awaiting confirmation of the commencement of his employment with the Sponsor Business.
16. On 27 May 2016, both the nomination and subclass 457 applications were approved.
17. On 27 February 2018, the Department received information from the Sponsor Business that they were not aware, and had not authorised, the nomination application for Mr HA.
18. On 18 July 2018, Mr HA received a Notice of Intention to Consider Cancellation in relation to his subclass 457 visa. On 28 August 2018, Mr HA received the Department's cancellation decision.
19. Mr HA alleged he was a victim of deceptive and fraudulent behaviour in his contractual arrangements with Mr CK and the Intermediary Business. Mr HA obtained a copy of the 'Appointment of a registered migration agent, legal practitioner or exempt person' (956 form) submitted with his application through a Freedom of Information (FOI) request. The 956 form identified the Agent as the appointed migration agent for his application. Mr HA was unaware of this.
20. Mr HA alleged the Agent through his business Real Expert Pty Ltd, appeared to be complicit in the deceptive and fraudulent conduct of Mr CK and the Intermediary Business that resulted in the cancellation of his subclass 457 visa.

Complaint from the Department (CMP-55140)

21. On 26 July 2018 and 24 June 2020, the Department received separate allegations that the Agent had engaged in conduct that sought to procure visa outcomes by using networks to facilitate fraudulent documentation and non-genuine employment sponsorships. The details raised in these allegations appeared to be consistent with the conduct in respect of Mr HA's complaint.
22. The details provided in the allegations were specific enough to identify some entities and contacts which reduced the likelihood that the allegations were random and generic. Further some of the detail would only have been available to persons with an intimate knowledge of the Agent's caseload and business relations.
23. Following an investigation into the Agent's conduct, it was alleged that the Agent:
 - Failed to act in accordance with the law and the legitimate interests of his clients and to deal with his clients competently, diligently and fairly contrary to **clause 2.1** of the former Code.
 - Failed to confirm and act on his clients' instructions, keep his clients informed on the progress and outcome of their applications contrary to **clause 2.8** of the former Code.
 - Failed to preserve the confidentiality of his clients and allowed confidential information to be disclosed without clients' written consents contrary to **clause 3.1** and **3.2** of the former Code.

- Failed to provide his clients with Agreements for Services and Fees contrary to **clause 5.2** of the former Code.

Notice under section 308 of the Act

24. On 4 June 2019, the Authority sent the Agent a notice pursuant to section 308 of the Act (section 308 notice), requiring him to answer questions relevant to the allegations made in CMP-39192, to provide copies of his client file and of his clients' account. The due date for response was 2 July 2019.
25. On 20 June 2019, the Agent's legal representative requested an extension in which to provide a response which was granted until 18 July 2019.
26. On 18 and 19 July 2019, the Agent's legal representative provided submissions to the Authority in response to the section 308 Notice.

Notices under section 309 and 305C of the Act

27. On 25 May 2023, the Authority sent the Agent a notice pursuant to section 309(2) of the Act (section 309 notice), advising the Agent that it was considering cautioning him, or suspending or cancelling the Agent's registration under section 303(1) of the Act. A notice under section 305C of the Act (section 305C notice) was attached to the section 309 notice. The due date for response to both notices was 23 June 2023.
28. The Agent was notified that having regard to the information before the Authority, it was open to the delegate to be satisfied that the Agent:
 - (a) had engaged in conduct that breached the Agent's obligations under **2.1, 2.4, 2.8, 2.9, 2.23, 3.1, 3.2, 5.1 and 5.2** of the former Code; and
 - (b) was not a person of integrity and not a fit and proper person to provide immigration assistance.
29. On 5 June 2023, the Agent's legal representative advised the Authority that he continued to act for the Agent and the section 309 notice was forwarded to him on 6 June 2023.
30. On 9 June 2023, the Agent's legal representative requested an extension in which to provide a response which was granted until 4 July 2023.
31. On 4 July 2023, the Agent's legal representative provided submissions to the Authority in response to the section 309 notice and requested an extension in which to provide a response to the section 305C notice. On 6 July 2023, the extension was granted until 1 August 2023.
32. On 6 July 2023, the Agent advised that his office had been burglarised on 25 November 2020 and that he no longer held client files prior to this date. Based on this information, the Authority put further questions to the Agent by way of email.
33. On 1 August 2023, the Agent's legal representative provided submissions to the Authority in response to the section 305C notice and the additional questions raised on 6 July 2023.

The Agent's response

34. In summary, the Agent made the following responses to the section 309 and 305C notices:

35. The Agent did not give written Agreements for Services and Fees to his clients. The Agent believed that the lodgement of the 956 forms with the Department on behalf of his clients were sufficient confirmation of his engagement.
36. The Agent did not confirm his client instructions in writing. He accepted client instructions through intermediaries whom he believed were authorised to represent his clients' immigration matters.
37. The Agent provided the Department's decision notices to the intermediaries to pass on to his clients. The Agent accepts in working through the intermediaries he failed to give proper notification of visa and nomination application decisions to his clients.
38. The Agent also accepted that in working through intermediaries he failed to preserve his clients' confidentiality. He disclosed confidential and private information to the intermediaries without his clients' written consent.
39. The Agent did not accept that he failed to work in the legitimate interests of his clients or that he encouraged the making of statements aimed at securing unwarranted outcomes for them. The Agent stated he did not knowingly facilitate or create opportunities for the lodgement of fraudulent documents, nor did he knowingly undermine the migration program.
40. The Agent claimed he was an unknowing party in the complex fraud perpetrated by the intermediaries. The Agent was never an accomplice or an enabler of the fraud, rather he too was a victim of the fraud.
41. The Agent accepted that in relation to CMP-39192 he had breached **clauses 2.8, 3.1, 3.2 and 5.2** of the former Code however, has always acted with honesty and integrity and is a fit and proper person to provide immigration assistance.
42. The Agent refuted the assertion that the allegations raised by Mr HA are consistent with the anonymous allegations raised in the Department's complaint, as there was no evidence of clients coming forward to substantiate the allegations in the departmental complaint.
43. In response to the section 305C notice, the Agent advised his migration agency was broken into around midnight on 25 November 2020 and laptops containing his client files were taken. The Agent claimed he lost many of his client files held prior to the burglary, a circumstance beyond his control. The Agent believes his clients' information was not compromised due to the unique login and passwords attached to each laptop and the client folders within the laptops.
44. The burglary was reported to the Victorian police and building management. Other building tenants were also affected. A copy of the notice to the victim filed with the Victorian police was attached to the Agent's response.
45. The Agent declared that the victim report incorrectly noted that the stolen and damaged property values were both \$0. In reality, they were approximately \$1000 and \$2000 respectively. The Agent has copies of the CCTV recording of the burglary should the Authority require it as evidence. The Agent did not hold business insurance and could not make any claim for loss and damages.
46. The Agent stated he had submitted as many of the documents requested in the section 305C notice as possible.

DECISION: FINDINGS ON MATERIAL QUESTIONS OF FACT

47. In reaching the findings of fact discussed in this decision record, the Authority considered the following evidence:
- Documentation contained in the Authority's complaint files (CMP-39192 and CMP-55140);
 - Information held by the Authority in relation to the Agent;
 - Records held by the Department; and
 - The Agent's submission and supporting documents provided to the Authority in response to the section 308, 309 and 305C notices.
48. Having considered the information before me, I am satisfied the Agent engaged in conduct that breached his obligations under **2.1, 2.8, 3.1, 3.2, and 5.2** of the former Code.
49. I have not made any findings about the Agent's integrity or fitness and propriety to provide immigration assistance.
50. My findings and full reasons for the decision are set out below:

FINDINGS IN RELATION TO COMPLAINT FROM MR HA (CMP-39192)

Agent-client relationship

51. Immigration assistance is defined in section 276 of the Act. A person is considered to be providing immigration assistance if they use, or purport to use, knowledge of, or experience in, migration procedure to assist another person. The meaning of 'client' is set out in section 306C of the Act to refer to a person to whom the agent has given, or has agreed to give (whether or not in writing) immigration assistance.
52. The Agent accepted that both Mr HA and the Sponsor Business were his clients as he provided immigration assistance deemed by section 276(1) and 276(2) of the Act respectively.

Instructions from intermediaries

53. According to the Agent, his business associate Ms AU first raised the immigration matters of Mr HA and the Sponsor Business with him in 2015. The Agent claimed he met with three purported employees of the Sponsor Business, Mr LA, Ms BG and Mr NY and Ms AU at a coffee shop in late 2015. At that meeting, the Agent was handed a USB that contained the sponsor's business information. The Agent understood that all parties present at the meeting wished for him to proceed with the subclass 457 application for Mr HA and the nomination application for the Sponsor Business.
54. The Agent stated he understood he was formally engaged by Mr HA and the Sponsor Business by way of 956 forms he received from Ms AU by email on 30 October and 5 November 2015 respectively.
55. The Agent admitted he did not sign service agreements with Mr HA or the Sponsor Business. The Agent explained he had established his migration business that same year and wanted to build his client base believing that if he offered his services free of charge, Ms AU would refer

further clients to his agency. As he did not charge either client a professional fee he believed agreements were not required.

56. The Agent stated this was an inadvertent breach that he has rectified in his practice. He now fully understands that written Agreements of Services and Fees must be entered into with all clients irrespective of whether a fee is charged.
57. The Agent acknowledged that he did not have a direct relationship with either of his clients. Ms AU acted as the point of contact between the Agent and Mr HA and the Agent and what he believed were the employees of the Sponsor Business in the preparation of the visa and nomination applications.
58. The Agent admitted that he had no direct communication with Mr HA or any representatives of the Sponsor Business (beyond the meeting in late 2015). The Agent did not directly advise his clients of the outcomes of their immigration applications but rather passed the notifications on to Ms AU for her to advise his clients. While the Agent received all client instructions through Ms AU he was aware that Ms AU was not in direct contact with his clients.
59. The Agent declared in his response to the section 309 notice that 'I recall Ms AU receiving supporting documents from a person named Mr WT and believed he was employed by the Sponsor Business as well. I personally have never been in contact with the person.' 'Mr WT' was identified as a business associate of Ms AU.
60. The Agent has accepted that he breached his clients' confidentiality by disclosing their personal and confidential information to the intermediaries without their written consent. The Agent stated he did not deliberately breach his clients' confidentiality. He was of the misunderstanding that the oral consent provided by the purported employees of the Sponsor Business during the coffee shop meeting to contact Ms AU for any further information in relation to his clients' immigration matters was sufficient consent to disclose the information. The Agent claimed he now understands that he must obtain written consent from his clients before disclosing their confidential information.
61. The Agent stated it is important to note that he did not conceal the involvement of any of the intermediaries. He was honest in describing Ms AU's involvement and in providing the names of the three purported employees of the Sponsor Business (at all times believing they were employees of the Sponsor Business) from his initial response to the section 308 notice about Mr HA's complaint.

Findings in relation to instructions from intermediaries

62. The Agent in his response to the section 309 notice conceded that the arrangements he entered into with the various intermediaries resulted in the breach of a number of his obligations under the former Code. There is no evidence of an agency arrangement between representatives of the Sponsor Business and Ms AU or between Mr HA and Ms AU, which would authorise her to represent them, correspond on their behalf, or have access to their information.
63. By his own admission the Agent did not understand his basic obligations to provide his clients an agreement or confirm their instructions in writing. Such lack of diligence facilitated the fraudulent activities of the intermediaries even if the Agent was an unwitting player. I am satisfied that if the Agent had been more diligent he would not have breached his clients' confidentiality by disclosing their personal information to the unauthorised intermediaries. The Agent claimed his breaches were inadvertent and he has since rectified his practices, however,

the Agent had been registered since 2009 and I do not accept he would have been unaware of these fundamental obligations under the former Code.

64. I therefore find the Agent in breach of **clauses 2.1, 2.8, 3.1, 3.2 and 5.2** of the former Code.

Payments made by Mr HA

Payment for sponsorship

65. Mr HA entered into an agreement with the Intermediary Business on 18 September 2015. According to Mr HA the contract was given to him by Mr CK. The contract was for services related to assistance with visa applications (subclasses 457/186) and providing *'real employment'*.
66. The total cost for the services was \$97,000 AUD with payments to be made in instalments:
- \$5000 upon signing the agreement
 - \$77,000 on grant of the subclass 457 visa
 - \$15,000 on grant of the subclass 186 visa

Payment for Salary

67. Around May 2016, Mr CK requested Mr HA transfer a monthly sum (\$5018) to a Commonwealth Bank of Australia (CBA) account. He was advised that the Sponsor Business would deduct superannuation and taxation payments and the remainder would be paid to him as a monthly wage (\$3708). Having no knowledge of Australian laws, Mr HA complied with this request for nineteen months.
68. In late January 2018, Mr HA contacted the Australian Tax Office where he was informed that the Sponsor Business had not made tax payments on his behalf.
69. Mr HA provided copies of bank transaction receipts for the CBA payments and the payslips sent to him by email from MsBG@xxx.com. Departmental records confirmed this email belonged to Ms BG of the Recruitment Business in Melbourne.
70. Mr HA stated that on 22 September 2015 he attended an interview at the Recruitment Business's premises. In attendance was the director of the Sponsor Business, Mr US, Mr HA's sister, Mr CK and a person named Ms BG (who presented herself as a business partner of the Sponsor Business).

Findings in relation to payments made by Mr HA

71. The Agent declared that he was not aware of the agreement between Mr HA and the Intermediary Business, having only been alerted to it by the Authority in its section 308 notice. The Agent claimed he had no business association with the Intermediary Business and had no knowledge of Mr CK. The Agent further asserted that the Authority had no evidence to the contrary. There is not enough evidence for me to be satisfied that the Agent was aware of the arrangement between the Intermediary Business and Mr HA and I therefore make no finding in this regard.
72. The Agent accepted that the 'Ms BG' he met at the coffee shop in late 2015 is likely to be Ms BG of the Recruitment Business. The Agent also accepted that Ms BG of the Recruitment Business was the likely recipient of Mr HA's salary payments. Given the payments were more than likely deposited into Ms BG's CBA account and she issued the payslips from her business

email I am satisfied an arrangement existed between her and Mr CK designed to obtain a fraudulent benefit from Mr HA.

73. However, the Agent denied any knowledge of or involvement in the fraud and asserted that there was no evidence to suggest he was engaged or associated with the purported employees of the Sponsor Business for any other immigration matter.
74. Given the evidence before me only links Ms BG to this fraudulent activity, I accept the Agent's assertions about the payments made by Mr HA to Ms BG's CBA account.
75. It is arguable that as Mr HA agreed to pay for his own wages, superannuation and taxation payments that he should have known the payslips he received were fraudulent, particularly as he was not working for the Sponsor Business. According to Mr HA, he agreed to make the payments as Mr CK had advised that if the payments were to stop, his employment and nomination would be terminated. Regardless, I am satisfied that any action on the part of Mr HA does not remove the obligations the Agent owed to his client and which he failed to meet. It is clear that Mr HA was misled on his visa status, the conditions attached to his visa and his obligations as a visa holder.
76. While the Agent asked Ms AU via email on 29 October 2015 to have both Mr HA and Mr US sign 956 forms in order for him to declare himself as their migration agent, he has admitted that he did not attempt to verify this engagement with his clients. Had he done so he would have been alerted to the above misrepresentation and fraudulent activity. There is no plausible reason why the Agent either did not know or disregarded the obligations he had under the former Code to his clients. At the time of engagement with Mr HA, the Agent had been registered for six years and these obligations were and are fundamental requirements of registered migration agents.
77. Had the Agent complied with his obligations under the former Code to enter into agreements directly with his clients, he would have been in a position to remove himself from the fraudulent arrangements of the other parties and Mr US could have been alerted to the fraud. The Agent's failure to comply with this duty under the former Code had serious consequences for Mr HA. Mr HA was charged exorbitant fees, requested to make unlawful payments and had his subclass 457 visa cancelled. Had the Agent acted in the legitimate interests of his client and undertaken his due diligence in his visa application process he could have prevented such harm to Mr HA.
78. For this reason, I am satisfied that the Agent failed to afford both Mr HA and the Sponsor Business the protections they were owed from their respective agent-client relationships. I am therefore satisfied that the Agent did not act in the legitimate interests of his clients and failed to deal with them, competently, diligently and fairly.
79. Accordingly, I find the Agent has breached **clause 2.1** of the former Code.

Non-genuine documents in support of applications

Reference and internship agreements

80. Submitted with Mr HA's visa application was a reference from Mr US and an internship agreement on the Recruitment Business's letterhead. An examination of the properties of these documents showed inconsistencies which suggested they were not genuine:

- The reference was purportedly signed by Mr US on 4 November 2015, however was not created until 5 November 2015 and was originally a document for another business entity.
 - The Internship agreement was purportedly signed by Evan Bishop from the Recruitment Business on 28 September 2015, however was created by Ms BG on 5 November 2015.
81. The Agent declared that he does not know how to look up the metadata of documents. From his review of the two documents there was no indication of any inconsistencies. He believed the reference and the internship agreement were genuine and he held no suspicion to the contrary.
82. While I accept the Agent's argument that he does not know how to check document metadata as a means to verify a document, the email exchanges between the Agent and Ms AU in relation to the reference should have alerted him to the possibility it may not have been genuine.
- On 29 October 2015, the Agent advised Ms AU by email that it was better to indicate in the reference that Mr HA worked with the Sponsor Business for one or two months and that he would send her the reference later. On 2 November 2015, the Agent provided Ms AU the reference for signing.
 - On 6 November 2015, Ms AU sent the Agent a further email in response to his advice on what should be included in the reference. The Agent had advised that Mr HA *'should have been working an average of 40 hours fortnightly as a part-time intern accountant.'* Ms AU responded that that was *'not correct'* and that the internship should be regarded as non-paid work irrespective of the visa held by Mr HA. She went on to say *'we must say that Mr HA has been in internship as much as possible so the employer could test his skills in Accounting to offer him the job on offer. The more hours of Internship the better it is for Mr HA.'*
83. The Agent stated that his email to Ms AU on 29 October 2015, had been taken out of context and that he was highlighting to Ms AU the outstanding documents required to lodge the nomination and visa applications. From his recollection of the coffee shop meeting the Agent stated he had advised that while work experience was not a requirement of the visa at that time, some work experience in the occupation would help the application. He simply provided his advice that it is better that an applicant has around one to two months' work experience and was not telling Ms AU or his client to declare as such.
84. I do not accept the Agent's arguments on this as I question why he did not advise Ms AU to record Mr HA's actual experience with the Sponsor Business in the reference letter.
85. The email exchanges between the Agent and Ms AU show the Agent had some involvement in the preparation of the references' misleading content. I suspect that Ms AU's comments in her email to the Agent that the reference *'must say'* Mr HA interned for as long as possible to allow the employer to test his skills and offer him the position would have alerted the Agent that something was amiss with the employment arrangement.
86. In his communication with the Department on 27 February and 7 March 2018, Mr US stated he did not employ Mr HA and that he neither knew about the subclass 457 nomination nor had he approved it. According to Mr US, following a one week internship Mr HA was found unsuitable on account of his English and skill level. Mr US advised the Recruitment Business,

in October 2015, and again in August 2016, that his company would not proceed with Mr HA's sponsorship. The Recruitment Business were therefore aware that Mr HA would not be sponsored one month before the date of the reference.

87. The reference stated Mr HA had interned with the Sponsor Business from 28 September 2015 and remained with them in November 2015. Further that he was a 'great asset' to their company and able to fill their vacancy. Given Mr US's statements to the contrary, I am satisfied this reference was fabricated.
88. The Agent does not recall how he came into possession of the reference and internship agreements. He stated that it is possible they were included in the further documents dropped off at his office by a purported employee of the Sponsor Business following the coffee shop meeting. In his response to the section 309 notice, the Agent said he contacted a previous employee who explained that a male member of the Sponsor Business attended his office to drop off extra documents at his office after the first coffee shop meeting. His former employee was asked to copy the documents off the USB. I am sceptical that the Agent or his former employee would have such detailed recall of an ordinary office event that occurred some seven years prior to his enquiry.
89. I give a small amount of weight to the Agent's recollections but I cannot be satisfied he was complicit in the production of the non-genuine reference based solely on these emails. I am however satisfied that the Agent placed himself in a position to receive documents and information about his clients from a third party with no effort made to ensure their veracity.
90. I also note the Agent had to rely on his recollection of this matter because his laptops were stolen. The Agent should consider ensuring his clients' information is protected by having his records securely backed up.
91. Despite not making a finding that the Agent was involved with the production of the fraudulent reference letter, I am of the view he should have questioned Ms AU about her statements in relation to it. The Agent has provided no evidence that he did so. Consequently, the Agent lodged an application that contained misleading information that prevented the delegated decision maker from making a full assessment of all the facts against the relevant criteria.

Employment contract

92. On 4 November 2015, an employment contract was purportedly signed by Mr HA and Mr US. The contract was submitted in support of the Sponsor Business' first nomination application. As per the above, Mr US advised the Recruitment Business in October 2015 of his decision not to sponsor Mr HA and confirmed with the Department in early 2018 that he had no knowledge of the nomination application for Mr HA.
93. There is no evidence to show how the Agent acquired the employment contract and he does not recall how he came into possession of it. The only evidence before me shows that on 2 November 2015 the Agent emailed the employment contract to Ms AU for review and signature. On 6 November 2015, the Agent stated to Ms AU by email *'If Mr BX's salary is higher than Mr HA's, we need to amend Mr HA's contract.'*
94. The Agent stated he sent the employment contract to Ms AU so that all parties could review and sign it. According to the Agent, he realised when reviewing the contract that there was a permanent resident, Mr BX, performing the same work as Mr HA. The Agent requested copies of Mr BX's enterprise agreement or PAYG to ensure that Mr HA would be remunerated at the same level. The Agent claimed his advice to Ms AU was that if Mr BX and Mr HA were

performing the same work then Mr HA needed to be paid the same as Mr BX for his application to be successful. The Agent accepts his advice was '*poorly worded*' however, his intention was to enhance the prospects of success of his clients' application not encourage the creation of false information.

95. There is no question that the employment contract was not genuine. Mr US confirmed to the Department there was no intention by the Sponsor Business to offer Mr HA any employment. Despite this, the Agent stated he genuinely believed Mr HA and Mr US had signed the contract. He further stated that the emails between him and Ms AU do not support the implication that he was a willing participant in the preparation of the fraudulent employment contract. The Agent claimed he was simply providing his professional advice to enhance the prospect of success of his clients' applications, '*there was no element of falsity*'.
96. I have considered the evidence before me in this regard and while I am of the view that the Agent should have known that the contract may not have been genuine, I am not satisfied there is sufficient evidence to show he was a willing participant in the creation of the fraudulent claims it contained.

Genuine employment letter

97. A letter dated 8 March 2016, was submitted in support of the second nomination application. The letter, purportedly from the Sponsor Business, contends that the business had a genuine need to fill the accountant position. The letter stated;
- 'Mr HA is an initiative and diligent employee and we all satisfied with his professional job performance and he is familiar with our company's services and clients during his work. Moreover, he is an experienced Accountant, and he performed his duties in high standard. Many clients come to our company because of Mr HA's professional services. Based on his sound work performance during his work and long commitment with our company, we have signed a four years employment contract with base salary AUD55,000 to encourage him to work for our company on the long term basis.'*
98. Given the previous declarations by Mr US that Mr HA was never employed by the Sponsor Business it follows, that this is a further document that was not drafted, supported, or provided by the Sponsor Business and is therefore fraudulent.
99. The Agent does not recall how the employment letter from the Sponsor Business came into his possession, however believes it may have been part of a set of documents provided by 'Mr LA' after the refusal of the first nomination. Ms LA was one of the three purported employees of the Sponsor Business the Agent met at the coffee shop in late 2015.
100. In his response to the section 308 notice the Agent included emails from a Mr LA with the following email address; *Mr LA@xxx.com*. I accept it more likely than not that this is the same Mr LA referred to above. The email sent from this address to Ms AU on 5 November 2015, contained page 5 of a 956 form purportedly signed by Mr US and the contract of employment for Mr HA. A further email from this address was sent to Ms AU on 7 March 2016, which contained Tax Activity Statements and Profit and Loss statements for the Sponsor Business.
101. According to the Agent, Ms AU acted as an intermediary between him and his clients, yet the Agent has declared that he does not know how a number of key documents came into his possession. Specifically, the reference, the internship agreement, the employment contract and the genuine employment letter.

102. While the Agent speculated that the purported employees of the Sponsor Business who he first met at the coffee shop meeting more than likely delivered the documents to his office on two separate occasions, he is not certain of this. All these documents were completely fabricated, aimed at misleading the Departmental decision makers and procuring unwarranted visa and nomination outcomes. In the process, the Agent's involvement served to undermine the migration program and the migration advice industry.
103. The Agent failed to take reasonable steps to confirm the true circumstances of Mr HA's employment with the Sponsor Business. Further the Agent's agreement to provide immigration assistance and take instructions through intermediaries, rather than his clients, facilitated the lodgement of information that was fraudulent and resulted in the grant and subsequent cancellation of both the visa and nomination applications of his clients. The Agent entered into an arrangement which facilitated an environment where his clients were misled on the true circumstances of their applications.

Findings in relation to non-genuine documents

104. It is plausible that given the passage of time since 2015/2016 and lack of available records, the Agent cannot recall how these documents came into his possession. However there is also evidence before me that shows the Agent had some involvement in the drafting of at least two of the documents, the reference letter and the employment contract.
105. I am satisfied the Agent's agreement to provide immigration assistance and take instructions through intermediaries instead of written instructions from his clients facilitated the lodgement of non-genuine applications. I am also satisfied the Agent entered into an arrangement which facilitated an environment where both the Department and his clients were misled.
106. Despite this, I am not satisfied there is sufficient evidence to find that the agent knew the documents he submitted were not genuine. However, the Agent's lack of diligence and his failure to take written instructions from his clients created a circumstance in which non-genuine applications could be lodged with the Department. The consequence of which was a negative impact on his clients and the relevant migration program. I therefore find the Agent has failed to act in the legitimate interests of his clients by failing to obtain written confirmation of their instructions in breach of **clauses 2.1 and 2.8** of the former code.

FINDINGS IN RELATION TO COMPLAINT FROM THE DEPARTMENT (CMP-55140)

107. On 26 July 2018, the Department was sent information that alleged the Agent's company organised '*fake employer sponsorships*'...*behind a whole chain of network[s]*' which included '*fake ID fake English test and fake marriage*'. The Agent was alleged to have facilitated '*fake English tests and enrolment through NIBS*'. The Agent was also alleged to have acted as an intermediary who facilitated illegal activities in collaboration with numerous corporate entities and people attached to those entities.
108. On 24 June 2020, a similar allegation was received that asserted the Agent advertised employment opportunities on Chinese websites, promising visas which would ultimately lead to permanent residency for an associated cost. The fees were alleged to be between \$80,000 and \$150,000, dependent on the visa subclass and the volume of fraudulent documentation required. The conduct was alleged to have been ongoing since 2015.
109. The Agent was issued a section 305C notice that requested he provide the client and financial files of the identified entities/clients in these allegations.

110. The Agent stated the information given to the Department on 26 July 2018 and 24 June 2020 was malicious and more than likely provided by an ex-employee that was fired for reasons of underperformance. The Agent stated this would explain the level of detail given in relation to some of his clients. The Agent rejects all allegations.
111. The Agent confirmed that most of the identified entities are or were his clients. However, the Agent denied that he facilitated illegal activities in collaboration with them. He further rejected the allegation that he advertised on Chinese websites promising visas for a price.
112. The Agent argued this complaint is not similar to the complaint of Mr HA's, as there are no complainants to substantiate the allegations with evidence.
113. The Agent searched through his emails in an attempt to provide relevant documents as requested in the section 305C notice.

Findings

114. A review of departmental records showed the Agent was declared as providing immigration assistance with most of the identified entities and contacts named in the allegations before the Department.
115. The Agent was invited to comment on the allegations and requested under section 305C of the Act to provide complete copies of the client files including all correspondence, agreements, application documents and any file notes related to the respective matters. The Agent was also requested to provide copies of all client ledgers, client account documents, and any other financial documents which relate to moneys paid by or owed to the listed clients.
116. In his response, the Agent advised the Authority that he was not able to provide all the requested documents as his office had been broken into on 25 November 2020 and the laptops containing his client files were taken. The '*backup laptop*' was also stolen.
117. On 6 July 2023, the Agent was requested to provide further information in response to the notification of his office's burglary, in particular, he was asked if the laptops were the only storage repository for his client files and what other measures he had in place to protect his clients' private and confidential information.
118. The Agent submitted some relevant client records, including client financial information. However, the information provided did not include evidence of his agreements for services and fees, substantive communication with his clients and the financial aspects of his engagement with them.
119. On 1 August 2023, by way of a statutory declaration the Agent responded to the further questions put to him about the security of his records. The Agent explained that his building management had upgraded security systems post the burglary, however failed to advise what system he now had in place to securely back up his client records, beyond taking the laptops home at the end of each business day.
120. As noted previously in this decision, the Agent should consider ensuring his clients' information is protected by having his records securely backed up in order to comply with his duties under the *Migration (Migration Agents Code of Conduct) Regulations 2021* (the Code) which came into effect 1 March 2022. Section 53 of the Code states that a registered migration agent must ensure that any documents belonging, or relating, to a client or former client of the agent be kept securely. Further that registered migration agents should take reasonable practical steps

to adequately safeguard their client's personal information, including when that information is stored electronically.

121. A registered migration agent's compliance with their obligations is potentially at risk where the transmittal and storage of client information is not accompanied by adequate safeguards. The Agent should consider what means are available to him to ensure his clients' information is protected and his records are securely backed up.
122. The allegations are serious and are consistent with the complaint made by Mr HA. However, no evidence has been found to substantiate these allegations. Accordingly, I have not made any findings about the Agent's conduct in relation to this complaint.
123. While I have not made any findings in relation to this complaint, should any further allegations of this nature come to the attention of the Authority this matter will be taken into consideration.

CONSIDERATION OF APPROPRIATE DISCIPLINARY ACTION

124. 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:
 - Whether the Agent's behaviour is of a minor or serious nature. Conduct that the Authority considers to be adverse, extremely serious and therefore likely to result in discipline at the higher end of the scale includes but is not limited to:
 - criminal behaviour;
 - fraudulent behaviour;
 - behaviour that demonstrates fundamental lack of knowledge of the law; or
 - involves a blatant disregard for or a significant degree of indifference to the law;
 - repeated occurrences of the conduct described in subsection 303(1) (d)-(h) and/or;
 - agent behaviour that has resulted in significant harm or substantial loss to clients.
 - Any aggravating factors that increase the Agent's culpability including but not limited to previous conduct.
 - 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

125. 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 Agent's behaviour and any mitigating or aggravating circumstances which may exist. I have also considered:
 - whether the behaviour in question could be the subject of rehabilitation;
 - the level of impact, if any, that a sanction would have on the Agent's livelihood;
 - the circumstances of the clients, including any vulnerability; and

- any wider issues pertaining to consumer protection or the national interest.
126. It is not in dispute, that the intermediaries the Agent engaged with were involved in a scheme designed to undermine Australia's migration program. The complex network of intermediaries, as detailed by Mr HA, Mr US and the Agent himself, made arrangements for fraudulent sponsorship payments, produced fraudulent employer sponsorship documents and prepared extensive business information about the Sponsor Business. These measures were unlikely to have been established just for Mr HA and the Sponsor Business but for other visa and nomination applicants. The Agent in his response to the section 309 agreed this was the likely scenario.
127. The nature of the arrangements the Agent agreed to with the intermediaries enabled these fraudulent activities, all aimed at undermining Australia's migration program. The Agent denied receiving any financial benefit from these arrangements, having any involvement in the organised fraud committed against Mr HA or Mr US and denied entering into such arrangements for any other clients. There is no evidence before me to the contrary.
128. Regardless, the Agent's clients were both negatively impacted by the Agent's decision to deal with intermediaries rather than directly with them.

Aggravating factors

129. I consider the Agent's conduct falls short of the standard expected of a registered migration agent.
130. The Agent acknowledged his motivation for dealing with the intermediaries stemmed from his desire to secure future referrals from Ms AU. I am satisfied this took precedence over the legitimate interests of his clients and was the underlying reason for his failure to question any part of the arrangements. The Agent's willingness to enter into an arrangement where all the interactions were through third party intermediaries had a significant negative impact on his clients.
131. The Agent was registered for a period of six years before engaging in these arrangements and should have understood his actions were contrary to his obligations under the Code.

Mitigating Factors

132. In his response to the section 309 notice the Agent put forward the following mitigating factors:
- The Agent reiterated throughout his response that he was an unknowing party to fraud perpetrated by others. He was not an accomplice to the fraud, rather he was deceived into believing that the employees of the Sponsor Business were genuinely representing the business. The full extent of the fraud was only realised once the Authority provided its notices.
 - The Agent claimed any period away from the migration advice industry will significantly impact his family's livelihood. He has a young child and his partner only works two days per week. Their combined household income is around \$70,000 per annum.
 - The Agent accepted his behaviour breached numerous former Code clauses. The breaches were caused by his misunderstanding of his obligations as opposed to any deliberate intent to not act in accordance with the former Code. The Agent submitted this

conduct has high prospects of rehabilitation and he will undertake continuing education as part of this process.

- While the Agent submitted his behaviour is minor in nature, he accepted that such behaviour unfortunately assisted other parties in perpetrating complex fraud to facilitate visa outcomes.

133. I have considered the mitigating factors presented by the Agent. While I accept a period away from the migration advice industry would have an impact on his livelihood, it is not a pertinent consideration to the conduct in question. I do however accept the possibility that the Agent's poor practices made him an unknowing party to the endeavours by the intermediaries to undermine Australia's migration program mitigates the seriousness of his conduct.
134. I have also noted the Agent's acceptance that he breached the former Code and his expressed willingness to address the breaches.
135. In my consideration of any mitigating factors, I have given weight to the fact that the misconduct discussed in this decision occurred over eight years ago and there is no evidence before me that it has been repeated.

Consumer Protection

136. Consumers of professional services of registered migration agents are often vulnerable and place a high degree of trust in their registered migration agent and in return are entitled to a high level of professional service from them.
137. The Agent failed to provide this level of service to his clients which resulted in a significant negative impact on them. Such conduct falls short of the standards expected of registered migration agents.
138. However, I have given consideration to the eight year period in which there is no evidence this misconduct has been repeated. I do not therefore consider that the Agent poses a serious risk to consumers or to the integrity of the Department's visa programs.

DECISION

139. Following consideration of the information before me, I have decided to caution the Agent under paragraph 303(1)(c) of the Act. The caution is to remain on the Register for a period of **12 months** and until the Agent has met the following conditions:
- Evidence that the Agent has successfully completed six hours of private tuition with an Accredited Immigration Law Specialist on the Code of Conduct.
 - Evidence that the Agent has successfully completed three hours of private tuition with an Accredited Immigration Law Specialist on Ethics and Professional Practice.
 - Evidence by way of a report from the Accredited Immigration Law Specialist who provided the private tuition that:
 - They were provided with a copy of this decision before the sessions were conducted; and
 - The Agent has successfully completed the relevant sessions.

Katerina Rmeiti (Position No. 60043945)
Senior Investigations Officer
Office of the Migration Agents Registration Authority
Department of Home Affairs
Date of Decision: 27 June 2024

APPENDIX A: TERMS USED FOR REFERENCE

The following abbreviations may have been used in this decision:

| | |
|-----------------------|---|
| MARN | Migration Agent Registration Number |
| Section 308 notice | Notice issued by the Authority under section 308 of the Act |
| Section 309 notice | Notice issued by the Authority under section 309 of the Act |
| Section 305C notice | Notice issued by the Authority under section 309C of the Act |
| The Act | <i>The Migration Act 1958</i> |
| The Agent Regulations | <i>Migration Agents Regulations 1998</i> |
| The Agent | Chau Liu |
| The Authority | The Office of the Migration Agents Registration Authority |
| The Code | <i>The Migration (Migration Agents Code of Conduct) Regulations 2021</i> prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i> |
| The former Code | Code of Conduct prescribed for the purposes of subsection 314(1) of the <i>Migration Act 1958</i> by regulation 8 and Schedule 2 of the <i>Migration Agents Regulations 1998</i> – repealed on 1 March 2022 |
| The Department | The Department of Home Affairs |
| The Register | Register of migration agents kept under section 287 of the Act |