

RŌPŪ TAKE MANENE, TAKE WHAKAMARU
AOTEAROA

Appellant: PJ (Skilled Migrant)

Before: Z N Pearson (Member)

Counsel for the Appellant: S Shamia

Date of Decision: 9 March 2021

RESIDENCE DECISION

[1] The appellant is a 30-year-old citizen of India, whose application for residence under the Skilled Migrant category was declined by Immigration New Zealand.

THE ISSUE

[2] Immigration New Zealand declined the appellant's application because it was not satisfied that his employment substantially matched the *Australian and New Zealand Standard Classification of Occupations* (ANZSCO) description, including core tasks, of an Insurance Agent. It also was not satisfied that he qualified for points for skilled work experience. Without points for skilled employment or skilled work experience, the application did not have enough points to be approved under the Skilled Migrant category.

[3] The principal issue for the Tribunal is whether Immigration New Zealand was correct to find that the appellant's role was not a substantial match to the core tasks and description of an Insurance Agent. For the reasons that follow, the Tribunal finds that Immigration New Zealand's decision was incorrect. The Tribunal cancels the decision and refers it back to Immigration New Zealand for a correct assessment in terms of the applicable residence instructions and the Tribunal's directions.

BACKGROUND

Application for Residence

[4] The appellant made his application for residence under the Skilled Migrant category on 20 June 2019 based on his employment as a business insurance consultant with a multinational insurance company with branches in New Zealand and overseas (“the company” or “the employer”). He began working for the company in July 2017 as a customer service consultant and had subsequently began a new role as a business insurance consultant in May 2019. He claimed that his role was a substantial match to the description, including core tasks, of an ANZSCO Insurance Agent, and claimed 50 points for skilled employment.

[5] With his application, the appellant provided copies of his individual employment agreement, job descriptions for his present and past positions and a completed Employer Supplementary Form. Details of the appellant’s qualification, a Graduate Diploma in International Business (Level 7) were also provided.

[6] The job description for the business insurance consultant position recorded that the appellant was responsible for responding to inbound calls and making outbound calls to provide “excellent quality service” to new and existing customers. The key responsibilities of the role were listed as sales revenue growth (45 per cent), customer satisfaction (25 per cent), underwriting compliance (20 per cent) and operational efficiency (10 per cent). The role required experience in the industry, customer service and sales, small business experience, and other generic skills. The job description noted that the appellant would be required to complete the Underwriting Academy Level 1 qualification within six months of commencing the role, and study towards or completion of the Australian and New Zealand Institute of Insurance and Finance (ANZIIF) qualification was preferred.

Immigration New Zealand’s Verification of the Role

[7] Immigration New Zealand sought further information from the appellant’s employer about the tasks that the appellant completed. This information was provided on 21 October 2019.

[8] As part of its verification of a number of applications under the Skilled Migrant category from applicants who all worked for the employer, Immigration New Zealand undertook a three-hour site visit to one of the employer’s contact

(call) centres on 12 November 2019. No details of the site visit appear on the appellant's file, although it appears that his then-counsel was later given a copy of the site visit report, and a copy has been provided by counsel on appeal.

[9] The site visit report recorded that the purpose of the site visit was to obtain "candid" information about the business operation and recent restructure, as well as understanding the nature of the contact centre and the work undertaken there. The report recorded that the positions in the contact centre (business insurance consultant and personal insurance consultant) were "quite a high level" because of the different brands the company operated under, the number of different systems and insurance products that the company had, and the complexities of the different partners for whom the company undertook underwriting. The report noted that the business insurance consultant team did not use the same system to calculate premiums as the personal insurance consultant team. The business insurance consultant team's work involved considerable "note-taking" as the team undertook their own underwriting based on their own experience and assessment of risks. Most cases in both teams were reasonably "straightforward" and were able to be processed from beginning to end by the consultant. Only a few cases involved higher risk, which had to be referred to the underwriting team for approval of premiums. The delegation levels were explained; most consultants held a "Level 1" delegation after training but could proceed to "Level 2" after completion of further training, when they would have the discretion to change premiums generated by the system. Higher delegation levels involved more technical or higher risk cases. The Immigration New Zealand officers also observed a number of calls, which involved both personal and business insurance, and spoke very briefly with one of the consultants (it is not clear in what team this person worked).

[10] On 13 November 2019, Immigration New Zealand telephoned the appellant to interview him about his role and key tasks. As a business insurance consultant, his work involved underwriting for small to medium businesses as well as having delegated work from other insurance companies and banks. He provided a clear description of the sort of work he undertook, the different tasks he completed and the way in which he used the company's protocols, as well as his own experience, to undertake the underwriting. He outlined the extent of the discretion he had for underwriting (which was at "Level 1") and explained when he had to request approval from a more senior underwriter.

Immigration New Zealand's Concerns

[11] On 14 November 2019, Immigration New Zealand advised the appellant that it was not satisfied his employment substantially matched the ANZSCO description or core tasks of an Insurance Agent. It recorded its assessment was based on information from his employer, his job description, the telephone interview that had been conducted with him, and its site visit to his employer.

[12] Immigration New Zealand was satisfied that the appellant was performing four of the ANZSCO core tasks, namely interviewing clients to identify their insurance needs, explaining to clients details of insurance and conditions, risk coverage, premiums and benefits, assisting clients to determine the type and level of coverage required, and recording information about clients and their policies. However, it was not satisfied that he was performing the five remaining core tasks. It was also not satisfied that the ANZSCO core tasks comprised most of his role. Immigration New Zealand characterised his work as limited to working at the frontline of a call centre, receiving phone calls from the queue, and using pre-set calculations and company policies to provide underwriting up to a certain level, beyond which he needed to seek approval from more senior members of the underwriting team. It appeared that the nature of the appellant's role limited his performance of the tasks because his underwriting authority and responsibility was constrained by the underwriting delegation level he held. Immigration New Zealand considered he would have to have higher underwriting delegations that did not limit his authority to underwrite insurance claims and approve them, in order for his role to be considered equivalent to an ANZSCO Insurance Agent.

[13] Further, Immigration New Zealand considered that the appellant's role did not demonstrate any specialist, technical or management expertise or the level of skills and expertise required of an Insurance Agent. His qualification did not give him any insurance knowledge or expertise, nor was any insurance knowledge, qualification or training required by his job description. It considered his role was a combination of the ANZSCO occupations of Insurance Consultant and Call or Contact Centre Operator as it appeared he undertook some of the core tasks of those occupations. However, they were skill level 4 occupations, requiring an hourly rate of \$37.50 or more to meet instructions, which his role did not meet. As a result, his current employment did not appear to be a substantial match to the ANZSCO description and core tasks for an Insurance Agent and his current remuneration did not meet the requirement for a skill level 4 or 5 occupation. It was therefore not satisfied he was eligible for 50 points for skilled employment.

[14] Immigration New Zealand also noted that the appellant had claimed 20 points for work experience in his current and previous roles. The concerns it had about the limitations of his present role also applied to his prior roles (given the similarities between the roles), so it would not recognise any of his work experience as skilled. He was not entitled to points for work experience or bonus points for New Zealand work experience. Without points for skilled employment, or points for skilled work experience, he was entitled to only 80 points, which was not sufficient for his application to be approved under the Skilled Migrant category.

Appellant's Response

[15] The appellant appointed counsel (different to counsel on appeal), who responded to Immigration New Zealand's concerns on 24 January 2020. Counsel provided background about the company, a major insurer with a customer base of approximately 1.7 million in New Zealand and 750 staff working in the main contact centre. Counsel explained the company's operating model of responding to inbound calls rather than cold-calling clients with unsolicited offers of insurance.

[16] Counsel also explained the company's underwriting approach, at the heart of which was a system of delegations (Levels 1–4) that dictated a maximum level of cover that individual employees were able to underwrite. This approach was necessary for the regulation of the industry and to ensure that risks were minimised to the company. Most employees held a Level 1 delegation, which they gained by undertaking training and acquiring understanding of underwriting policies, premium calculation, insurance and finance in several different insurance categories. It would take up to 18 months to obtain all Level 1 delegations in the business insurance categories. Staff with Level 1 delegations still had the ability to approve cover for start-up businesses, vehicles up to \$100,000 and businesses that they assessed as being lower risk, namely small owner-operated businesses; these clients formed a substantial number of the company's customers. Counsel submitted that the appellant, who held a Level 1 delegation, was not limited by his delegation in any way in his ability to perform the role of an Insurance Agent. Counsel provided detailed submissions on each of the core tasks and relevant documents as evidence.

[17] Counsel explained that, because of a company restructure, the appellant's role had recently changed slightly and provided a revised copy of the appellant's job description, which did not have percentages (of time) associated with each responsibility. Counsel submitted that Immigration New Zealand was required to

assess the application holistically and in the context of the appellant's employment, namely the scope and scale of the employer's organisation. It appeared to have formed the view that the appellant did not meet the level of expertise required from an ANZSCO Insurance Agent because he worked in a call centre environment and his authority was limited by his delegation level. However, that view misinterpreted the appellant's role and incorrectly imported a level of autonomy and responsibility that was not appropriate and that the ANZSCO did not require. The employer was a large organisation, and it would be impractical to suggest that the appellant worked with complete autonomy and no internal controls. Despite the call centre environment, the appellant still performed the duties and responsibilities of an Insurance Agent as per the ANZSCO.

[18] A letter from the appellant's employer (24 January 2020) detailed the tasks the appellant completed, the different things he had accomplished, and gave examples of how the appellant completed his day-to-day work in the context of the company's processes. The employer had reviewed Immigration New Zealand's letter and its conclusion that the appellant was working in the position of an ANZSCO Insurance Consultant or Call or Contact Centre Operator. Given these occupations assumed no level of autonomy or responsibility, the employer did not consider that they were appropriate comparators for the appellant's role. The employer pointed out that selling insurance was far more regulated and controlled than in the past and the company had a strong system of training, quality checking and promoting its employees based on their skill level and delegations. Checks and balances were put in place to minimise risk to the company and in line with industry regulation. Those employees who held higher delegation powers were more senior and experienced in their role.

[19] Counsel also raised concerns about Immigration New Zealand's verification processes, noting that its site visit to one of the company's call centres had observed only a very limited number of calls. These calls did not accurately represent the particular role that the appellant had and therefore Immigration New Zealand could not have obtained a sufficiently detailed understanding of the appellant's role from the site visit. It appeared to have applied a blanket assessment and its subsequent assumptions about the appellant's role were therefore incorrect; it had not properly considered the appellant's role.

[20] Further, counsel noted that there were a number of company employees whose current residence applications had been affected by Immigration New Zealand's assessment of their employment. All the letters sent to those

applicants were similar and Immigration New Zealand had used the same information obtained through the site visit in its letters to every applicant. This did not demonstrate that Immigration New Zealand had conducted a holistic assessment of each applicant's specific circumstances. It did not appear that Immigration New Zealand's assessment of the appellant's application was fair.

[21] Counsel also asserted that the appellant's previous work experience was skilled and provided detailed reasoning why. Counsel noted that Immigration New Zealand had not undertaken a detailed assessment of the work experience; it was required to do that and assess that experience on its merits.

Immigration New Zealand's Decision

[22] On 27 July 2020, Immigration New Zealand declined the appellant's application. It was not satisfied that his employment substantially matched the ANZSCO description and core tasks of an Insurance Agent. It was also not satisfied that he was entitled to points for skilled work experience.

[23] Immigration New Zealand set out the information that the appellant, his counsel and employer had provided and the explanations of the context of the company and the work he performed in relation to the ANZSCO core tasks. Immigration New Zealand was satisfied that the appellant completed the first three tasks listed in the ANZSCO Unit Group, the seventh task, and (after considering the information provided), the ninth task. However, it was not satisfied that the appellant completed the remaining four core tasks or that the ANZSCO core tasks comprised most of his role. This led Immigration New Zealand to conclude that the role did not have the "necessary scope" required of an Insurance Agent. In relation to the core tasks, Immigration New Zealand considered that it was evident that the ANZSCO occupation did not envisage that the occupation would be performed by a person working in a call centre environment but rather a person who maintained an ongoing relationship with clients and provided a wide variety of services that covered all aspects of insurance undertaking. Further, it considered that an Insurance Agent would be expected to have some qualifications and expertise in the insurance industry. Given the appellant's role did not require any specific knowledge or prior training and that the focus of the role was on sales and customer service, it was not satisfied that he had demonstrated the required specialist, technical or management expertise of an Insurance Agent.

[24] Immigration New Zealand stated that none of its concerns about the appellant's application related to the findings from its site visit to his employer. Its concerns were solely based on assessments of the employer questionnaire, job description and telephone interview it had undertaken with the appellant. It acknowledged that the site visit was only conducted at one location for a short period of time and that it would be unfair to apply the same context or concerns to every applicant. It had assessed every application according to its own circumstances, based on the information that each applicant had provided.

[25] Immigration New Zealand restated that the appellant's role appeared to be a closer match to either an ANZSCO Insurance Consultant or a Call or Contact Centre Operator. These two occupations focused on the tasks of answering incoming calls and assisting customers with their inquiries, identifying their requirements and recording information, monitoring calls, upselling, processing insurance applications and adjusting insurance cover, identifying potential risk, and working in a call centre environment. These appeared to be the tasks that comprised most of his role. Further, comparing the descriptions of Insurance Agent with Insurance Consultant, it noted that the Insurance Agent role was not designed to operate in a call centre environment but Insurance Consultant clearly listed tasks relevant to a call centre environment. The Insurance Consultant and Call or Contact Centre Operator were skill level 4 occupations that required an hourly rate of \$37.50 or above, which the appellant did not meet. Therefore, Immigration New Zealand was not satisfied that he met the requirements of instructions to be awarded points for skilled employment.

[26] Because Immigration New Zealand was not satisfied that the appellant had skilled employment, it did not award him points for skilled work experience, either in his present role or his past role (which appeared to be substantially similar to his present role). With a total of 80 points, he did not have sufficient points to meet the requirements of the Skilled Migrant category.

STATUTORY GROUNDS

[27] The appellant's right of appeal arises from section 187(1) of the Immigration Act 2009 (the Act). Section 187(4) of the Act provides:

- (4) The grounds for an appeal under this section are that—
 - (a) the relevant decision was not correct in terms of the residence instructions applicable at the time the relevant application for the visa was made; or

- (b) the special circumstances of the appellant are such that consideration of an exception to those residence instructions should be recommended.

[28] The residence instructions referred to in section 187(4) are the government residence instructions contained in Immigration New Zealand's Operational Manual (see www.immigration.govt.nz).

THE APPELLANT'S CASE

[29] On 21 August 2020, the appellant lodged this appeal on both grounds in section 187(4) of the Act.

[30] Counsel for the appellant who is acting on appeal is also acting for eight other appellants in a similar situation to the appellant, and provides: submissions in relation to all appellants (23 October 2020); a spreadsheet summarising the details of all appellants represented by counsel; and a table analysing the differences between the Immigration New Zealand letters of concern and decision letters for all appellants.

[31] In addition to a number of documents regarding the appellant's employment that appear on the Immigration New Zealand file, counsel provides other documents relevant to particular appellants. Of those relevant to the appellant, these include:

- (a) a copy of the appellant's curriculum vitae;
- (b) a copy of the site visit report recording Immigration New Zealand's visit to the appellant's employer; and
- (c) selected pages from the Report of the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (February 2019) ("Royal Commission report").

[32] The Tribunal's ability to consider new information and evidence on appeal is constrained by section 189(1) of the Act. The Tribunal is unable to consider new information or evidence when assessing the correctness of Immigration New Zealand's decision to decline unless it falls within the exception at section 189(3)(a). This exception requires that the new information or evidence have been in existence at the time of the decision to decline, that it would have been relevant to the making of that decision, and that the appellant could not, by

the exercise of reasonable diligence, have placed that information or evidence before Immigration New Zealand.

[33] While the site visit report and the Royal Commission report do not appear on the appellant's file, reference was made to both reports by counsel and Immigration New Zealand during the assessment of the appellant's application. Therefore, these reports were clearly before Immigration New Zealand, and can be taken into account by the Tribunal. However, no reason is advanced as to why the appellant's curriculum vitae, to the extent it is relevant, could not have been provided to Immigration New Zealand prior to making its decision on the application. The curriculum vitae is therefore inadmissible for the purposes of determining the correctness of Immigration New Zealand's decision. However, given the outcome of the appeal, this can be considered by Immigration New Zealand, as relevant, in the reassessment of the appellant's application.

ASSESSMENT

[34] The Tribunal has considered the submissions and documents provided on appeal, and the files in relation to the appellant's residence application that have been provided by Immigration New Zealand.

[35] An assessment as to whether the Immigration New Zealand decision to decline the appellant's application was correct in terms of the applicable residence instructions is set out below.

Whether the Decision is Correct

[36] The application was made on 20 June 2019 and the relevant criteria are those in residence instructions as at that time. Immigration New Zealand declined the application because it was not satisfied that the appellant's employment as a business insurance consultant for an insurance company substantially matched the description and core tasks of an ANZSCO Insurance Agent.

Relevant instructions

[37] When deciding an application, instructions require that Immigration New Zealand must act in accordance with the principles of fairness and natural justice (A1.1.c, effective 29 August 2012). Instruction A1.5.a sets out the relevant

factors relating to fairness, including whether an application is given proper consideration, and whether all known relevant information is considered:

A1.5 Fairness

- a. Whether a decision is fair or not depends on such factors as:
- whether an application is given proper consideration;
 - whether the applicant is informed of information that might harm their case (often referred to as potentially prejudicial information);
 - whether the applicant is given a reasonable opportunity to respond to harmful information;
 - whether the application is decided in a way that is consistent with other decisions;
 - whether appropriate reasons are given for declining an application;
 - whether only relevant information is considered;
 - whether all known relevant information is considered.

...

Effective 29/11/2010

[38] The principles of fairness and natural justice also include avoiding actual and apparent bias, which includes predetermining the application without considering all of the facts and evidence, as per A1.10:

A1.10 Bias

- a. Whether or not a decision is biased depends on such factors as:
- i. whether the officer is personally prejudiced against the applicant on grounds such as sex, race, religion, socio-economic status, sexuality etc;
 - ii. whether the officer has a direct financial or personal interest in the outcome of a decision;
 - iii. whether the officer has a relationship with any of the people involved in the application;
 - iv. whether the officer has predetermined the decision, without considering all of the facts and evidence.
- b. It is important to avoid not only actual bias, but also the appearance or suspicion of bias.

Effective 29/11/2010

[39] The other relevant instructions in this case concern the assessment of skilled employment. The residence instructions relevant to the assessment of skilled employment are SM6.10, SM6.10.5 and SM6.10.5.1 (all effective 26 November 2018).

[40] Instruction SM6.10 defines skilled employment and how it is to be assessed. The assessment of whether employment is skilled is primarily based on the ANZSCO and the level of remuneration for the employment:

SM6.10 Skilled Employment

- a. Skilled employment is employment that meets a minimum remuneration threshold and requires specialist, technical or management expertise obtained through:
 - i. the completion of recognised relevant qualifications; or
 - ii. relevant work experience; or
 - iii. the completion of recognised relevant qualifications and/or work experience.
- b. Assessment of whether employment is skilled for the purposes of the Skilled Migrant Category is primarily based on the Australian and New Zealand Standard Classification of Occupations (ANZSCO) which associates skill levels with each occupation, and the level of remuneration for the employment.

Note: The ANZSCO is available at www.immigration.govt.nz/ANZSCO

[41] Instruction SM6.10.5 sets out the requirements for employment to be assessed as skilled. Relevantly, it provides as follows:

SM6.10.5 Skilled employment in an occupation included in the ANZSCO

Current employment in New Zealand or an offer of employment in New Zealand will be assessed as skilled if:

- a. the occupation is described in the ANZSCO as:
 - i. a skill level 1, 2 or 3 occupation and the remuneration for that employment is \$25.00 per hour or above (or the equivalent annual salary); or
 - ii. ...; and
- b. the principal applicant can demonstrate that their employment substantially matches the description for that occupation as set out in the ANZSCO (see SM6.10.5.1); and

...

[42] Instruction SM6.10.5.1 outlines how a substantial match assessment is to be undertaken. An assessment of a substantial match requires Immigration New Zealand to determine whether the appellant's employment is substantially consistent with the description and core tasks of the relevant ANZSCO occupation:

SM6.10.5.1 Assessment of 'substantial match'

- a. For the purpose of SM6.10.5 (b) above, assessment of 'substantial match' involves a determination of whether the applicant's employment is substantially consistent with the ANZSCO 'Occupation' (6-digit) level

description for that occupation and with the tasks listed at the ANZSCO 'Unit Group' (4-digit) level description for that occupational group, excluding any tasks which are not relevant to the 'Occupation' description.

- b. To be considered a substantial match to an occupation, the tasks that are relevant to the applicant's employment role must comprise most of that role.

...

Note: Determining whether an applicant's employment substantially matches an ANZSCO occupation description may require consideration of the scope and scale of the employer's organisation and operation (the size of the operation, the number of staff and managers, and whether management functions are centralised at a head office or undertaken by other managers).

[43] The Tribunal has consistently found that a substantial match should be determined on a holistic basis, taking into account the core tasks and specific characteristics of an applicant's particular employment (see *Residence Appeal No 16221* (29 September 2009) at [47]). A substantial match is a question of fact and degree in the context of an applicant's employment (see *Residence Appeal No 16270* (20 November 2009) at [48]).

The ANZSCO occupation of Insurance Agent

[44] The ANZSCO occupation of Insurance Agent (ANZSCO code 611211) is included in the ANZSCO Unit Group 6112 – Insurance Agents. It is a skill level 3 occupation. An Insurance Agent is described in the ANZSCO as someone who "represents insurance companies in selling insurance to clients. Registration or licensing is required".

[45] The core tasks set out in the ANZSCO for the Unit Group of Insurance Agents are (numbering added):

1. interviewing clients to identify their insurance needs
2. explaining to clients details of insurance and conditions, risk coverage, premiums and benefits
3. assisting clients to determine the type and level of coverage required
4. calculating premiums and establishing method of payment
5. reviewing clients' circumstances to ensure that the level and coverage of insurance is still appropriate
6. settling and monitoring insurance claims to ensure that both client and insurer are satisfied with the outcome
7. recording information about clients and their policies
8. identifying and drawing up lists of potential clients from a variety of sources and contacting them to arrange interviews
9. keeping up-to-date with changes in the insurance industry and informing clients of new developments

Multiple appeals

[46] The Tribunal notes that this appeal is one of nine nearly identical appeals that relate to appellants who work for the same employer in New Zealand. All these appellants had their applications for residence declined by Immigration New Zealand. The concerns expressed by Immigration New Zealand in relation to each application were largely uniform, as were Immigration New Zealand's eventual decisions. The appellants are represented on appeal by the same counsel, who has made common submissions for all of the appeals. Unavoidably, given the common factual and legal matrix shared by these appeals, the other decisions will, where appropriate, repeat elements of this decision.

The appellant's employment

[47] The appellant worked as a business insurance consultant for a multinational insurance company. He was responsible for responding to inbound calls and making outbound calls to business clients regarding their insurance needs. He had been working for the company for several years at the date of his application, and had completed sufficient training to have a "Level 1 delegation" within the company. This meant he was able to approve risk for start-up businesses, vehicles up to \$100,000, and businesses that he assessed as being lower risk, namely small owner-operated businesses; such clients made up a substantial part of the company's client base.

Immigration New Zealand's decision

[48] Immigration New Zealand declined the appellant's application because it was not satisfied that his employment substantially matched the ANZSCO description and core tasks of an Insurance Agent.

[49] Immigration New Zealand was satisfied that the appellant completed the first three tasks listed in the ANZSCO Unit Group, the seventh task, and (after consideration of the evidence provided by the appellant in response to its concerns) the ninth task. On the information provided, the Tribunal finds that the assessment of these core tasks was correct.

[50] However, Immigration New Zealand was not satisfied that the appellant completed the four remaining core tasks listed in the Unit Group. It was also not satisfied that his role had the "necessary scope" required of an Insurance Agent as envisaged by ANZSCO, as it did not appear that the ANZSCO core tasks

comprised most of his role and given that he worked in a call centre. Further, given that the role did not require any specific knowledge or prior training and that the focus of the role was on sales and customer service, it was not satisfied that the role demonstrated the specialist, technical or management expertise required of an Insurance Agent.

[51] For the reasons that follow, the Tribunal finds that Immigration New Zealand's decision that the appellant's employment did not substantially match the ANZSCO description and core tasks of an Insurance Agent was incorrect. Immigration New Zealand made assumptions about what the occupation of an Insurance Agent involved and failed to take into account relevant evidence about the appellant's circumstances. It accordingly failed to properly take into account the context of the appellant's employment in its substantial match assessment. Further, it incorrectly imported a skill level into its assessment.

[52] The Tribunal also finds that while Immigration New Zealand's processing of the appellant's application fell short of predetermination, its limited site visit report was not a proper basis to justify its concerns about the appellant's employment. Reasons for each of the above findings are given below.

Assumptions about role and tasks – failure to consider the context of employment

[53] It is apparent from Immigration New Zealand's assessment that it made assumptions about the characteristics of the occupation of Insurance Agent, including as to the nature of the work environment of the occupation and the main focus of such a person's work.

[54] Immigration New Zealand assumed that the appellant could not be working as an Insurance Agent because he worked for a large company, which had its own processes and systems that he was required to use, and because he worked in a call centre. These assumptions were not based in the ANZSCO description or list of core tasks for the Insurance Agent occupation, but nevertheless influenced its interpretation of whether the appellant completed the ANZSCO core tasks. Because it made these assumptions, Immigration New Zealand failed to properly consider the information put forward by the appellant about how he completed the core tasks and failed to properly consider the context of the appellant's employment in determining whether he was undertaking the core tasks (A1.5).

[55] For example, Immigration New Zealand was not satisfied that the appellant undertook task four, calculating premiums and establishing method of payment, as it considered that his role was limited to inserting data into the company's pre-set calculation system and tables, which calculated the premiums for him.

[56] In reaching that finding, Immigration New Zealand did not properly consider the information provided by the appellant and his employer of the appellant's knowledge of premium calculations and knowledge of the relevant underwriting policies and processes that were required to understand and apply the company's calculation system and tables. All statements made by the appellant and his employers emphasised that the appellant needed to understand and ask the right questions necessary to determine a client's insurance needs and risk profile, collate and input the relevant data, and, once the baseline premium calculation was provided, to apply premium discounts or premium loadings depending on the circumstances. Relevant documents were provided to support these statements.

[57] Further, Immigration New Zealand's own site visit report had noted the complex nature of the work, given the number of different brands, insurance products and systems that business insurance consultants were required to use, as well as the fact that this position relied to a significant extent on a consultant's own experience, skill and assessment of risks.

[58] In *JC (Skilled Migrant)* [2017] NZIPT 204151, the Tribunal addressed Immigration New Zealand's concerns that an applicant's performance of the relevant core tasks is inevitably limited by the use of a company's systems and technologies. The Tribunal in that case found that a company's utilisation of a knowledge management or similar in-house system formed part of the employment context within which the relevant core tasks should have been interpreted, and that Immigration New Zealand was incorrect to conclude that that appellant's reliance on the company's knowledge management system meant that he did not undertake some of the relevant core tasks or rely on his own skill and expertise. The Tribunal made two key points on this issue (see *JC (Skilled Migrant)* at [73] and [74]). First, it is unrealistic to suggest that any employee will not be constrained to a greater or lesser extent by the technology choices of their employer. Second, company-specific knowledge management or similar systems are often inextricably intertwined with companies' everyday operations and their employees' roles. The Tribunal recognised that while in-house company systems might provide some assistance, such a situation should not necessarily mean that an applicant's ability to perform the relevant core tasks is constrained because it is

still necessary for an applicant to utilise his or her own skills and expertise to use such systems.

[59] The Tribunal finds that Immigration New Zealand was incorrect to find the appellant was not completing task four of calculating premiums and establishing the method of payment. In coming to its conclusion, Immigration New Zealand did not properly consider the context of the appellant's employment and, specifically, the existence of the company's premium calculation systems as part of that context, within which to assess his performance of the core tasks. Instead, Immigration New Zealand assumed, without properly considering the evidence, that the appellant simply inputted information into the system and that the appellant did not exercise any control over calculating the premiums.

[60] Further, in relation to whether Immigration New Zealand's assumptions about the appellant's role influenced its assessment, the Tribunal observes that Immigration New Zealand's telephone interview with the appellant on 13 November 2019 was relatively brief, at only 23 minutes long. The appellant was not asked to explain or to give examples of how he performed each of the ANZSCO core tasks, but instead was asked very general questions about his role. Immigration New Zealand's questioning did not seek to 'drill down' to further clarify how or to what extent the appellant was performing any of the core tasks. As such, Immigration New Zealand failed to inquire into further detail about the context of the appellant's employment and to clarify the extent to which the appellant was, in fact, performing the core tasks in question.

Assumptions about structure of business operations – call centre

[61] Another aspect of the appellant's role about which Immigration New Zealand had concerns arose in relation to the way in which the business structured its operations and responded to the incoming workload through a call centre environment. Immigration New Zealand considered that the ANZSCO occupation of Insurance Agent did not envisage that the occupation would be performed by a person working in a call centre environment, but rather a person who maintained an ongoing relationship with clients and provided a wide variety of services that covered all aspects of insurance undertaking. It stated that an Insurance Agent was "required to reach out to new and existing customers and proactively identify opportunities for selling insurance products".

[62] Therefore, Immigration New Zealand was not satisfied that the appellant was performing task five, reviewing clients' circumstances to ensure that the level and coverage of insurance is still appropriate, because he attended to clients as part of the queue that had rung into the contact centre or had inquired online. He did not review specific clients' circumstances on an ongoing basis. However, Immigration New Zealand wrongly assumed that "reviewing" a client's circumstances meant that the appellant should have an ongoing relationship with a portfolio of clients and review their circumstances on a regular basis. This finding failed to understand the context of the appellant's employment, and further, was not required by the ANZSCO description. The Tribunal notes that the appellant and the employer all made consistent statements about the process that the appellant had to follow in every interaction with every client, which always included a review of the client's existing policies and insurance needs, and this was confirmed by the process set out in the internal company documentation provided.

[63] In relation to task eight, identifying and drawing up lists of potential clients from a variety of sources and contacting them to arrange interviews, Immigration New Zealand acknowledged the work that the appellant did to make calls to potential clients, referred internally or from previous clients. However, as his role did not require him to identify and draw up lists of potential clients, it was not satisfied he was performing the task.

[64] As with the other core tasks discussed above, the wider context of the appellant's employment was highly relevant to the completion of core task eight. The evidence presented by the appellant and his employer outlined the ways in which the appellant identified potential clients from a variety of sources and contacted them, within the limitations of his company's business practice not to cold-call customers. It was explained that this approach arose out of the Royal Commission report, which highlighted that the "hawking" (unsolicited offer or sale) of insurance products should be prohibited. While this report applied only in the Australian context, the company had adopted the approach in its operating methods and had stopped the practice of "cold-calling". Nevertheless, there were a number of different ways in which the appellant was able to target customers by upselling, or by calling potential clients back who had been referred to him from a variety of sources.

[65] While Immigration New Zealand stated it was taking a holistic view of the appellant's performance of the core tasks, it failed to properly consider, in the context of the ANZSCO occupation description, the actual nature of the operations

of the company. It became overly focused on the underwriting delegation levels structure that the company operated, and the fact that the appellant held a Level 1 delegation, which it believed indicated that he did not have sufficient technical expertise. It failed to understand the context of the employer, and how the company operated to manage its own risk, including the regulatory environment of the insurance industry in which it operated, despite these factors being clearly explained to it by counsel and the employer. Further, the Tribunal notes that Immigration New Zealand also incorrectly interpreted the ANZSCO description of an Insurance Agent by incorporating an additional gloss, reading in a requirement to “reach out to new and existing customers and proactively identify opportunities for selling insurance products”. This is not a requirement set out in ANZSCO and Immigration New Zealand was incorrect to read this into the description.

[66] The Tribunal finds that Immigration New Zealand was wrong to determine that, because the appellant worked in a call centre environment, his work could not possibly involve the necessary level of skill required of an Insurance Agent. Immigration New Zealand’s decision failed to take into account the context of the appellant’s employment, and showed assumptions being made about the nature of a call centre environment that were against the weight of evidence provided by the appellant and the company. Call centre environments are a reality of the modern business environment for large companies; there was no evidence that the work required of the appellant was any less skilled simply because his company chose to structure its operations around a call centre model. Indeed, the employer clearly explained the nature of the modern insurance industry, which was far more regulated and controlled than in the past and the way in which the employer conducted its operation in line with such regulation.

[67] The Tribunal finds that Immigration New Zealand’s assessment of core tasks four, five and eight was incorrect, as it made assumptions about how the tasks should be performed, failed to properly consider the information provided, and it failed to consider the context of the appellant’s employment, particularly the structure of the business operations.

Incorrect interpretation of job description

[68] Another way in which Immigration New Zealand failed to properly consider the evidence provided and the context of the appellant’s employment is in relation to its consideration of his job description.

[69] Immigration New Zealand calculated that, according to the job description he had provided, the appellant spent 10 per cent of his time on underwriting and the majority of his time (90 per cent) was spent attending to inbound calls and needs-based selling. It considered this meant that the ANZSCO core tasks did not comprise most of the appellant's role (as required by SM6.10.5.1.b). Also, it was concerned that his underwriting authority was restricted by the company delegation levels. Together, these concerns led Immigration New Zealand to conclude that the role did not have the necessary scope required of an Insurance Agent as envisaged by ANZSCO.

[70] The Tribunal considers that Immigration New Zealand incorrectly assessed the appellant's job description, for two reasons. First, it appears that Immigration New Zealand consulted the wrong job description. The job description for the appellant's first role with the company, as a customer service consultant, set out the responsibilities of the role and associated a percentage of time that the employee would spend on each task. For this role, customer service made up 60 per cent, with customer revenue growth (needs-based selling, reviewing customer policies and so forth) at 20 per cent, achieving team and personal goals at 10 per cent, and continuous improvement, particularly developing his underwriting and risk management skills at 10 per cent. This appears to be where Immigration New Zealand arrived at the figure that the appellant was spending 90 per cent of his time on activities other than underwriting.

[71] However, that was not the job description of the appellant's subsequent role as a business insurance consultant; the role on which he relied for his residence application. In the first job description for that role, key responsibilities were identified as sales revenue growth (needs-based selling, reviewing customer policies and so forth) at 45 per cent, customer satisfaction at 25 per cent, underwriting compliance (developing technical knowledge of underwriting to achieve higher delegations) at 20 per cent, and operational efficiency at 10 per cent. A revised job description for that role was subsequently provided by the appellant, which largely involved the same responsibilities but removed the percentage associated with each task. The employer confirmed that the role of business insurance consultant had not changed. Regardless, it was the latter job description that Immigration New Zealand needed to properly assess. Given in its decline letter, it adhered to its assessment that the appellant spent only 10 per cent of his time on underwriting, it appears that Immigration New Zealand relied on the job description for the role of customer service consultant and therefore it did not properly assess the correct job description for the appellant. In

addition, it gave undue weight to its analysis of the job descriptions, when there was other evidence provided by the appellant and the employer about the appellant's tasks. In particular, the employer provided a detailed statement that discussed the appellant's tasks, and the appellant's counsel provided a number of relevant documents as examples.

[72] Further, even if Immigration New Zealand had come to a correct calculation of the time the appellant spent underwriting based on his job description, it was incorrect to characterise underwriting as the only feature of his role that met the ANZSCO description. Immigration New Zealand's focus on underwriting as being the necessary key component of an ANZSCO Insurance Agent role is puzzling, given the number of different core tasks listed in the occupation, and given the ANZSCO description for the occupation. It was required to properly consider the evidence against the occupation description of an Insurance Agent, which is described in the ANZSCO as someone who "represents insurance companies in selling insurance to clients".

[73] Immigration New Zealand failed to appreciate that the entire focus of the appellant's role fundamentally met the ANZSCO description for an Insurance Agent. In all of his tasks as a business insurance consultant, whether during his engagement with clients about their needs, in his underwriting assessment and calculation of their premiums and their risk, in his review of clients' existing policies and insurance needs, or in his own personal and professional development, the appellant was focused on representing the company and selling insurance to clients.

Incorrect focus on skill level

[74] Another feature of Immigration New Zealand's assessment was its incorrect focus on the skill level required of an ANZSCO Insurance Agent. In its letter of concerns, Immigration New Zealand considered that it did not appear that the appellant's role demonstrated "the level of expertise required" from an ANZSCO Insurance Agent because his underwriting authority and responsibility was constrained by the underwriting delegation level he held. Further, Immigration New Zealand did not consider that the type of work the appellant did "demonstrate[d] any specialist, technical or management expertise or the level of skills or expertise required of an Insurance Agent". It considered that his qualification did not give him any insurance knowledge or expertise, nor did it appear, from his job description, that any specific insurance knowledge,

qualification or training was required for the position. It appeared that his role was a closer match to a Call or Contact Centre Operator (ANZSCO code 541112) or an Insurance Consultant (ANZSCO code 552312) as opposed to an Insurance Agent, who would be expected to have some qualifications and expertise in the insurance industry. These concerns were repeated in its letter of decline, although Immigration New Zealand denied imposing a skill level to the ANZSCO occupation.

[75] The Tribunal finds that Immigration New Zealand imported a skill level requirement into its substantial match inquiry that it was not entitled to do. The instructions at SM6.10.5 set out the five discrete requirements that an applicant must satisfy for their employment to be assessed as skilled and therefore eligible for points, including that an applicant demonstrate they meet the remuneration for that employment, that the employment substantially matches the ANZSCO description for the relevant occupation, and that the applicant is suitably qualified by training and/or experience for that occupation. However, none of the requirements state that an applicant must be undertaking work of at least a certain difficulty or with a minimum level of skill. Nowhere in the instructions does it specify that an applicant must be solely responsible for undertaking a task, without limitations, or have a certain level of seniority or responsibility to be considered to be undertaking the tasks.

[76] The Tribunal notes that while the instructions do include a reference to “skill level”, this relates to the minimum level of remuneration required (SM6.10.5.a) by reference to the skill level of the occupation specified in the ANZSCO (where each occupation is classified by a “Skill Level” from 1 to 5). Similarly, although SM6.10.5.b and SM6.10.5.1 require applicants to demonstrate that their employment is substantially consistent with the ANZSCO occupation description and relevant core tasks, the instructions do not specify a skill level in undertaking the tasks, just that an applicant is undertaking them: see for example, *WB (Skilled Migrant)* [2015] NZIPT 202536 at [23]; *MP (Skilled Migrant)* [2018] NZIPT 204409 at [47]; *JC (Skilled Migrant)* at [64] (as above).

[77] Further, the Tribunal finds that Immigration New Zealand was incorrect to focus on whether the work the appellant undertook required “highly technical or specialist training” based on the entry requirement of the role as determinative of the skill level of the role, rather than considering the appellant’s qualifications and/or work experience. It was incorrect to conclude that the appellant’s work was unskilled because, irrespective of his own qualification, the business did not

require its employees to hold insurance-related qualifications. The entry criteria for a role is not determinative of the skill level of all those undertaking the role: *GY (Skilled Migrant)* [2017] NZIPT 204100 at [67].

Procedural concerns

[78] As noted above, this appeal is one of a tranche of very similar appeals lodged by appellants who are represented by the same counsel, and which relate to appellants who work for the same employer in New Zealand and whose applications were declined by Immigration New Zealand. In the appellant's case, counsel identifies significant similarities in the letters of concern and decline that were sent to each appellant. While acknowledging Immigration New Zealand's consistency obligations, counsel submits on appeal that Immigration New Zealand, in sending templated letters, demonstrated an underlying intention to predetermine the outcomes of the residence applications and to downgrade the skilled nature of the employment in this industry.

[79] Under A1.5.a, Immigration New Zealand has a general obligation to ensure that it makes decisions that are consistent with other relevant decisions. Under A1.10.a.iv, bias includes predetermining the outcome of a decision on an application without considering all of the facts and evidence. The Tribunal agrees with counsel that, *prima facie*, Immigration New Zealand's processing of the appellant's application, given the similarities with other applications, did little to avoid the appearance of predetermination, notwithstanding the general requirement to be consistent. The similarities in Immigration New Zealand's assessment of the applications include letters of concern (and decline), some of which were issued on the same day, with identical issues raised using similar or identical wording.

[80] However, in this regard, the Tribunal also observes that all the applicants were employed in more or less the same position, with the same employer. Crucially, they were for the most part represented by the same counsel during the assessment of their applications, who provided more or less identical submissions and documentation in response to the concerns raised by Immigration New Zealand in each application. Because of the similarities in the applications, the efficiencies both counsel and Immigration New Zealand appear to have utilised would appear to be reasonable. Importantly, the Tribunal notes that even though Immigration New Zealand's letters do appear to have elements of templating, each letter does draw to a limited extent upon specific examples mentioned by the

relevant applicant during their interview or their employer's written responses (which was where the only variation in information presented came from). Therefore, even though it would have been preferable for Immigration New Zealand to ask each applicant to provide examples of work that applicant had completed, as a way of individualising the assessment of whether they completed the core tasks, the Tribunal concludes that it cannot find that Immigration New Zealand predetermined the outcome of the appellant's application.

[81] However, the Tribunal has concerns about the generic nature of the site visit that Immigration New Zealand conducted. In its letter to the appellant raising concerns, Immigration New Zealand stated that its concerns had, in part, arisen from the site visit that it had conducted at one of the employer's call centres. After obtaining the notes of the site visit, the appellant's then-counsel objected to that site visit being used in the assessment of the appellant's application. Counsel pointed out a number of limitations of the site visit, including the very limited number of calls that Immigration New Zealand had observed, and the fact that the calls did not accurately represent the particular role that the appellant had. It appeared Immigration New Zealand had arrived at its assessment based on a small sample of generic telephone calls.

[82] In its letter declining the application, Immigration New Zealand stated that none of its concerns about the appellant's application related to the particular findings from the site visit. Its concerns were solely based on assessments of the employer questionnaire, job description and telephone interview it had undertaken with him. It acknowledged that the site visit was only conducted at one location for a short period of time and that it would be unfair to apply the same context or concerns to every applicant. It stated it had assessed every application on its own individual circumstances.

[83] The Tribunal notes this explicit statement in the letter declining the appellant's application, and that no details of the site visit appear on the appellant's file. However, the Tribunal observes that in the letter of decline, Immigration New Zealand stated that it had already identified concerns with the appellant's application during the telephone interview with him, the employer questionnaire and the job description. It goes on to state that "the site visit report has only validate[d] these concerns" and that accordingly, a telephone interview with the employer "was not deemed necessary". These statements seem to imply that the site visit took place after the interview with the appellant, which was not the case (the site visit took place the day before the interview). This also suggests

that, contrary to its statements, Immigration New Zealand took the site visit report into account in the assessment of the appellant's application.

[84] The Tribunal also observes that some of the site visit report's findings, that the employment undertaken by the appellant was at a "quite a high level" because of the complex nature of the work, did not appear to have been factored into the assessment by Immigration New Zealand. The Tribunal shares the former counsel's concerns that Immigration New Zealand's site visit in this instance had significant limitations and it would not be fair to use the site visit report to justify assumptions made about the appellant's role. As noted above at [60], a more detailed interview with the appellant about his role would be a more appropriate basis on which to assess his application.

Work experience points

[85] The appellant claimed 20 points for four years' skilled work experience with two different employers, including his previous employment with his employer. Immigration New Zealand was not satisfied that the appellant was entitled to points for skilled work experience because that work experience was substantially similar to his present role, which it did not consider skilled. It did not consider that he had provided any evidence to demonstrate that his previous work experience was skilled. For the same reason, it did not award him the 10 bonus points for work experience in New Zealand that he had claimed.

[86] Given the assessment above, Immigration New Zealand's findings regarding the appellant's entitlement to points for skilled work experience or work experience in New Zealand cannot stand and will need to be reassessed as part of a correct assessment of his application.

Conclusion on correctness

[87] The Tribunal finds that Immigration New Zealand's decision to decline the application was not correct. It failed to consider relevant evidence about the appellant's circumstances that he provided, failed to correctly interpret the core tasks for the occupation in the context of either the ANZSCO occupation description or the appellant's employment, and incorrectly imported a skill level into its assessment. Therefore, the Tribunal is not satisfied that Immigration New Zealand gave fair and proper consideration to whether the appellant's role was a substantial match to the ANZSCO description and core tasks of an Insurance Agent.

[88] Further, the Tribunal also finds that while Immigration New Zealand's processing of the appellant's application fell short of predetermination, its limited site visit report was not a proper basis to justify its concerns about the appellant's employment. It follows therefore that the decision to decline the application was not correct and the application must be returned to Immigration New Zealand.

DETERMINATION

[89] This appeal is determined pursuant to section 188(1)(e) of the Immigration Act 2009. The Tribunal considers that the decision to refuse the visa was made on the basis of an incorrect assessment in terms of the applicable residence instructions. However, the Tribunal is not satisfied the appellant would, but for that incorrect assessment, have been entitled in terms of those instructions to the immediate grant of a visa.

[90] The Tribunal therefore cancels the decision of Immigration New Zealand. The appellant's application is referred back to the chief executive of the Ministry of Business, Innovation and Employment for a correct assessment by Immigration New Zealand in terms of the applicable residence instructions, in accordance with the directions set out below.

Directions

[91] It should be noted that while these directions must be followed by Immigration New Zealand, they are not intended to be exhaustive and there may be other aspects of the application that require further investigation, remain to be completed or require updating.

1. The application is to be reassessed by an Immigration New Zealand officer not previously associated with the application, in accordance with the instructions in existence at the date the residence application was made. No further lodgement fee is payable.
2. The appellant is to be provided with an opportunity to update his application and submit any further evidence. Immigration New Zealand is to properly and fairly consider all evidence and information contained on the file, submitted on appeal, and any new information submitted to it by the appellant.

3. If the appellant remains employed in the same or similar role with the same employer, Immigration New Zealand must consider whether his employment is a substantial match to the ANZSCO occupation of Insurance Agent.
4. To assist with its reassessment of the application, Immigration New Zealand may wish to consider re-interviewing the appellant or to undertake a site visit to his workplace, to enable it to fully investigate the nature of his role, day-to-day tasks and responsibilities (see [60] and [81]–[84] above).
5. When considering whether the appellant's employment is a substantial match to the ANZSCO occupation of Insurance Agent, Immigration New Zealand:
 - (a) shall interpret the relevant core tasks in the context of the appellant's employment and the ANZSCO description for the occupation of Insurance Agent (see [53]–[73] above);
 - (b) shall not import a skill level requirement into its assessment of whether the appellant undertakes the relevant core tasks (see [74]–[77] above); and
 - (c) shall ensure it keeps an open mind to assessing the evidence put forward by the appellant about his role (see [78]–[80] above).
6. If the appellant is no longer employed in the same or similar role with the same employer, he is to be given a reasonable opportunity to produce evidence of his current (or an offer of) skilled employment, which Immigration New Zealand shall assess accordingly.
7. Should any information arise that is potentially prejudicial to the appellant, Immigration New Zealand must clearly put this information to him and allow him a reasonable opportunity to respond.

[92] The appellant is to understand that the success of this appeal does not guarantee that his application will be successful, only that it will be subject to reassessment by Immigration New Zealand.

[93] The appeal is successful in the above terms.

Order as to Depersonalised Research Copy

[94] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant.

"Z N Pearson"
Z N Pearson
Member

Certified to be the Research
Copy released for publication.

Z N Pearson
Member