

AT AUCKLAND

Appellant: **JU (Skilled Migrant)**

Before: A Davidson

Counsel for the Appellant: S Laurent

Date of Decision: 19 December 2017

RESIDENCE DECISION

[1] The appellant is a 31-year-old citizen of India whose application for residence under the Skilled Migrant category, which includes her 29-year-old husband, was declined by Immigration New Zealand.

THE ISSUE

[2] Immigration New Zealand declined the appellant's application for residence because it was not satisfied that her employment substantially matched the *Australian and New Zealand Standard Classification of Occupations* (ANZSCO) description, including core tasks, of an ICT Customer Support Officer. Without points for skilled employment, the appellant did not meet the minimum selection criteria of the Skilled Migrant category.

[3] The principal issue for the Tribunal is whether Immigration New Zealand was correct in determining that the appellant's employment was not a substantial match to the ANZSCO description, including core tasks, of an ICT Customer Support Officer. The Tribunal finds that Immigration New Zealand's decision was not correct because, in the course of its assessment, it incorrectly imported a skill level requirement into its substantial match enquiry and failed to interpret the core tasks for the occupation in the context of either the occupation's description or the appellant's employment. The Tribunal therefore 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.

[4] The Tribunal notes that this appeal is one of a number of very similar appeals. The appeals relate to appellants undertaking the same role, for the same employer, whose applications were declined by Immigration New Zealand during a two-month period. The concerns expressed by Immigration New Zealand in relation to each application were largely uniform, as was the employer's response and Immigration New Zealand's eventual decision. The appellants are all represented by the same counsel. Counsel has made a single common submission for all appeals. Unavoidably, given the common factual and legal matrix shared by these appeals, the content of this decision repeats, where appropriate, elements of the other decisions.

BACKGROUND

Residence Application

[5] The appellant made her application for residence under the Skilled Migrant category on 22 March 2017. She claimed points for skilled employment as an ICT Customer Support Officer, relying on her employment as a technical support specialist with a large customer service call centre company (the business), a Post Graduate Certificate in Business (Information Systems) (Level 8) and a Bachelor of Technology (Electronics and Communication Engineering) (obtained from an Indian tertiary institution and not assessed by the New Zealand Qualifications Authority). She provided her offer of employment, terms and conditions, a position description and a letter of support from her employer (14 February 2017). The terms of her employment included remuneration of \$40,000 per annum.

[6] The appellant's position description summarised her role as providing:

... first level technical and customer service support to customers over the telephone. The Technical Support Specialist will resolve all enquiries, where possible in a single telephone call, escalate calls to other departments when required, whilst promoting support related products and services.

[7] Key tasks referred to in the position description included diagnosing and resolving customers' technical problems, maintaining the business' knowledge management system after resolving customers' technical problems, and keeping her knowledge of products, services, and operational procedures up to date.

Third party request for information under the Official Information Act 1982

[8] On 20 October 2016, a third party requested information from Immigration New Zealand regarding the number of residence visas granted in the preceding three years to applicants relying on employment, or an offer of employment, with the business. On 9 November 2016, Immigration New Zealand advised the third party that it had granted 117 residence visas during the three years ending 20 October 2016. Of the residence visas granted, 106 related to the occupation of ICT Customer Support Officer.

Immigration New Zealand Verification of the Role

Site visit

[9] On 20 February 2017, Immigration New Zealand conducted an unannounced site visit to the business' Auckland office. During the site visit, immigration officers spoke to the business' "Country Leader" about the overall business structure, the nature of the work undertaken by its employees and its clients' requirements.

[10] The country leader advised that the business had 1,100 employees in New Zealand. He stated that employees undertook one month's training after starting work at the business and typically specialised in providing support to just one of the business' clients. Immigration New Zealand's site visit report recorded the country leader as stating that "[e]mployees do various software fixes" and "[e]xternal recruitment of staff is always at Tier 1 level. [The business does] not recruit anyone with a qualification for Tier 1". He explained that it typically took six months for a tier 1 technical support specialist to qualify as a tier 2 senior technical support specialist. He said that the tier 1 and tier 2 roles were substantially the same, except for the expectation that tier 2 senior technical support specialists would resolve customer issues in a single call without escalation and had the authority to approve the repair or replacement of devices.

[11] The immigration officers also interviewed a tier 2 senior technical support specialist during the site visit. The senior technical support specialist said that his role entailed troubleshooting software and hardware problems and instructing customers as to how to fix their problems. He stated that he could view device screens remotely but could not work on the devices directly. He told the immigration officers that he could resolve most software-related issues. Issues that could not be resolved could be escalated to engineers based overseas.

Employer questionnaire

[12] On 12 April 2017, Immigration New Zealand emailed a questionnaire to the business in relation to the appellant's role. In his response to the questionnaire, the business' operations manager confirmed the appellant's position, salary, start date, the identity of the client whose customers the appellant provided support services to, and that no particular qualification was required to undertake the appellant's role.

Immigration New Zealand's Concerns*Immigration New Zealand's letter*

[13] On 28 April 2017, Immigration New Zealand wrote to the appellant with concerns as to whether she was in skilled employment. Immigration New Zealand had assessed her employment against the ANZSCO description and core tasks for the occupation of ICT Customer Support Officer and concluded that it was not a substantial match.

[14] Immigration New Zealand considered that six of the core tasks set out in the ANZSCO Unit Group for ICT Support Technicians (which includes the occupation of ICT Customer Support Officer) were relevant. While Immigration New Zealand accepted that the appellant worked in a call centre, it was not satisfied that she undertook the other five relevant core tasks, namely: determining software and hardware requirements to provide solutions to problems; responding to inquiries about software and hardware problems; adapting existing programs to meet users' requirements; installing and downloading appropriate software; and ensuring efficient use of applications and equipment. Immigration New Zealand noted that the remaining three core tasks were not relevant to the occupation of ICT Customer Support Officer (implementing computer networks; designing and maintaining websites; and repairing and replacing peripheral equipment such as terminals, printers and modems).

[15] Immigration New Zealand separately identified and addressed each of the core tasks that it considered relevant. Immigration New Zealand identified one or more of the following four concerns in relation to each of the five core tasks that it was not satisfied the appellant undertook:

- (a) The business did not require employees undertaking the appellant's role to hold any specialised information technology qualifications and/or work experience. Therefore, the appellant's involvement in the core

tasks did not require the specialist/technical expertise required by instructions.

- (b) Solutions to problems were prescribed for her because she relied on the business' knowledge management system rather than her own technical knowledge and skill. Immigration New Zealand stated that it would expect greater emphasis on troubleshooting using the appellant's own technical knowledge rather than relying on the knowledge management system;
- (c) [The technology company], whose customers the appellant provided support to, was well-known for operating its consumer electronics, computer software, and online services within a "walled garden". This appeared to diminish the appellant's ability to adapt software and determine software and hardware requirements, as she could use products only from within the "walled garden".
- (d) The appellant did not have full remote access to the devices she supported, as she was only able to "screen share" and instruct customers how to change settings, and install, modify, or download software.

[16] Immigration New Zealand concluded its letter with a summary of its concerns:

Although you may work in a call centre, we are not currently satisfied that you use your own technical skills to provide support and education to others regarding technical problems and computer infrastructure. You have limited scope to utilise technical knowledge. The fact that there is no requirement for you to hold experience, whether it be through a qualification or experience, feeds our concerns above.

Regardless of whether you hold relevant experience or a qualification, it is not a requirement to undertake your role. Although it may be beneficial, it is not essential based on the information provided by [the country leader], current vacancy advertisements and your job description. Although you may support customers in the sense that you talk to them, listen and lodge enquiries on their behalf, the majority of what you do appears to be relatively rudimentary and you diagnose issues through prescribed, internal documents [script/knowledgebase/database]. Your ICT technical skills are restricted by the "walled garden" operational environment that is unique to the specific [country] multinational technology company you work with. As per the nature of your role, there does not appear to be any resolution of technical issues on your behalf.

The business' response

[17] On 6 May 2017, the appellant appointed counsel. On 12 May 2017, counsel provided Immigration New Zealand with a letter from the business' country leader

(dated 23 March 2017) responding to Immigration New Zealand's concerns. In his letter, the country leader predominantly focused on the four concerns relied on by Immigration New Zealand in its letter.

[18] The country leader stated that it was very common for companies providing technical support to utilise a knowledge management system, and that this was a sensible way to operate the business because it meant that lessons could be learned, and that problems solved previously could be leveraged to resolve similar issues. He noted that simply having a knowledge management system did not remove the technical knowledge and skill required for the appellant's role as she was still required to: troubleshoot problems; identify, understand, and implement the appropriate solution from the knowledge management system; and attempt to personally resolve the problem if a solution was not available in the knowledge management system. The requirement for the appellant to utilise her own technical knowledge and skill was supported by the training the business provided in troubleshooting and running and interpreting hardware and software diagnostics.

[19] The country leader suggested that the reference to a walled garden in Immigration New Zealand's letter was ambiguous. However, he argued that it was an oversimplification to suggest that, because the appellant was required to use a particular suite of software, operated within a particular environment, or had access to an effective knowledge management system, she was unable or not required to use her technical skills. Whether or not the appellant was required to work within a walled garden, she was still required to understand what the particular technical issue was, operate and interpret hardware and software diagnostics, and provide customers with solutions to their issues.

[20] The country leader clarified that employees had remote access capabilities. He stated that the appellant could remotely view customers' desktops or devices. This enabled her to guide customers, via chat or telephone, to probe, analyse, isolate, and resolve their issues.

[21] The country leader acknowledged that the business did not require an individual to hold any particular qualification or experience to be employed as one of its technical support specialists. However, he noted that this was the case only for the business' entry-level position; the business' recruitment process contained technical testing to ensure technical aptitude at the point of hiring; and any successful applicant for a role with the business was required to pass mandatory internal courses and training before commencing work. If an employee wished to

progress to more senior roles, there were additional mandatory internal courses and training to complete.

[22] The country leader also specifically referred to three of the core tasks for the Unit Group of ICT Support Technicians. He argued that:

- (a) The appellant was responsible for ensuring the efficient use of applications and equipment (one of the five core tasks Immigration New Zealand was not satisfied the appellant undertook) through the use of hardware and software diagnostics built into devices as well as error reports and device behaviours utilised to probe and analyse technical issues.
- (b) Two of the three core tasks that Immigration New Zealand found were not applicable to the appellant's role, were applicable. Specifically, the country leader said that the appellant was responsible for implementing computer networks by assisting customers to troubleshoot home networking issues with routers, external hard drives, and Wi-Fi access points, and that more senior technical support roles were responsible for repairing and replacing peripherals by way of organising for their repair and replacement over the telephone.

[23] The country leader expressed concern that Immigration New Zealand had failed to have regard to his advice during the unannounced site visit that his role in the business meant that he was not the best-placed manager to provide specific information in relation to the appellant's role, or any similar roles. He said that Immigration New Zealand had not provided a list of further questions (as it had said it would do during the site visit), which could then be provided to the appropriate manager for a more detailed and accurate response.

Immigration New Zealand's Decision

[24] On 31 May 2017, Immigration New Zealand declined the appellant's application on the basis that her employment was not skilled. It found that her role did not substantially match the description, including core tasks, of the ANZSCO occupation of ICT Customer Support Officer.

[25] Immigration New Zealand was not satisfied that the specialist/technical expertise required for the appellant's role was commensurate with the requirements set out in the ANZSCO. It said that the ANZSCO indicated that the minimum

technical ability and aptitude required to undertake the relevant core tasks was a New Zealand Register Diploma or at least three years' relevant work experience. The work undertaken by the appellant did not require her to hold any specialised information technology qualifications and/or work experience because the necessary skills could be learned through on-the-job training. Immigration New Zealand did not accept that the business' training, testing and work experience was commensurate with the requirements set out in the ANZSCO. While the appellant may have held a relevant New Zealand Register Diploma, Immigration New Zealand concluded that it was not required for her role and therefore was not indicative of the technical expertise required to undertake the relevant core tasks.

[26] Immigration New Zealand acknowledged that it made operational sense for the business to make an effective knowledge management system available to the appellant and its other employees, but observed that such a system "... inherently limits the requirements for employees to utilise their own technical skills" and "... eliminates the requirements [for] employees to have a high level of technical knowledge and skills". Immigration New Zealand accepted that the appellant may occasionally have been required to resolve novel issues not addressed in the knowledge management system. However, it was not satisfied that this happened with sufficient regularity to demonstrate that the primary basis for her technical abilities was her own skill and knowledge rather than reliance on the business' knowledge management system.

[27] Immigration New Zealand also remained concerned that the appellant operated within a walled garden. It stated that, having a finite range of products to work with limited the scope of issues presented to the appellant and, in turn, the technical options available to her for assessing them. Immigration New Zealand also noted that limitations were placed on the appellant by the business' selection of certain tools that she was required to use.

[28] Immigration New Zealand acknowledged that the screen sharing functionality utilised by the appellant to assist in resolving problems with consumers' devices was a form of limited remote access. However, it did not accept that the appellant guiding customers through the steps necessary to resolve their problem was equivalent to her undertaking the applicable core tasks personally. Immigration New Zealand concluded that, without the ability to remotely access customers' devices, the appellant could not be "... considered to be physically undertaking the technical skills outlined under the ANZSCO".

[29] Immigration New Zealand assessed that the appellant was entitled to 85 points. Without points for skilled employment, the appellant did not meet the minimum selection criteria of the Skilled Migrant category.

STATUTORY GROUNDS

[30] 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.

[31] 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

[32] On 13 July 2017, the appellant lodged this appeal on the ground that the decision of Immigration New Zealand was not correct in terms of the applicable residence instructions.

[33] On appeal, the appellant appoints new counsel. New counsel makes submissions (19 September 2017) and provides new evidence, and copies of documents already on Immigration New Zealand's files.

New Evidence on Appeal

[34] The new evidence produced on appeal includes:

- (a) Correspondence relating to the third party's request for information (20 October 2016) under the Official Information Act 1982 and Immigration New Zealand's response (9 November 2017).

- (b) A copy of Immigration New Zealand's report in relation to its site visit of 20 February 2017 (report dated 7 March 2017).
- (c) A statement by the business' country leader disputing Immigration New Zealand's decision (statement dated 19 September 2017).
- (d) A statement by the business' site delivery manager providing additional information regarding the business' recruitment process, internal training programmes and requirements for employee promotion (statement dated 19 September 2017).
- (e) Printouts from Internet websites in relation to professional and vendor certification programmes, closed platforms, and walled gardens.
- (f) A table listing individuals, represented by counsel, who work at the business in the same or a similar role to the appellant and whose applications for residence have been declined by Immigration New Zealand for similar reasons around the same time as the appellant's application. The table also sets out variations in the letters sent and decisions made by Immigration New Zealand in relation to each of the individuals.
- (g) An example of Immigration New Zealand's letter of concerns (20 March 2017) to one of the other individuals represented by counsel and its decision (29 May 2017) in relation to that individual's application.

[35] While not on the appellant's file, the Official Information Act 1982 request and Immigration New Zealand's response to that request were known to Immigration New Zealand at the time it made its decision. Similarly, while Immigration New Zealand's site visit report was not on the appellant's file, the report was referred to by Immigration New Zealand in both the letter outlining its concerns and its decision. For these reasons, the Tribunal can consider these documents when considering the correctness of Immigration New Zealand's decision.

[36] The Tribunal can also consider the table of individuals and variations, and the letter of concern and decision relating to one of the other individuals represented by counsel, to the extent that they comprise part of counsel's submissions.

[37] The statements by the country leader and site delivery manager and the printouts from Internet websites were not before Immigration New Zealand when it made its decision. Therefore, pursuant to section 189(1) of the Act, the Tribunal

cannot consider them when determining whether Immigration New Zealand's decision was correct, unless the information meets the requirements of section 189(3)(a) or constitutes a particular event in terms of section 189(6) of the Act.

[38] The statements and printouts do not fall within section 189(3)(a) or 189(6) of the Act because, by the exercise of reasonable diligence, they could have been placed before Immigration New Zealand at the time it made its decision, and they do not constitute evidence of a particular event that materially affects the appellant's eligibility under instructions.

ASSESSMENT

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

[40] 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

[41] The application was made on 22 March 2017 and the relevant criteria are those in residence instructions as at that time.

[42] Immigration New Zealand declined the application because it was not satisfied that the appellant's role as a technical support specialist with the business substantially matched the ANZSCO description, including core tasks, of an ICT Customer Support Officer.

The relevant instructions

[43] Paragraph SM7.10 of instructions states that skilled employment requires specialist, technical or management expertise, and the assessment of whether an occupation is skilled is primarily based on the ANZSCO:

SM7.10 Skilled Employment

- a. Skilled employment is employment that requires specialist, technical or management expertise obtained through:

- i. the completion of recognised relevant qualifications; or
 - ii. recognised relevant work experience (see SM7.10.15 below); or
 - iii. the completion of recognised relevant qualifications and work experience.
- b. Assessment of whether an occupation is skilled for the purposes of the Skilled Migrant Category (SMC) is primarily based on the Australian and New Zealand Standard Classification of Occupations (ANZSCO) which associates skill levels with each occupation.

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

Effective 14/05/2013

[44] For an applicant to be awarded points for his or her skilled employment, SM7.10.1.a requires that an applicant have *both* employment that substantially matches the ANZSCO description, including core tasks, of an occupation included in Part A of the List of Skilled Occupations at Appendix 6 of instructions *and* either a relevant recognised qualification or relevant recognised work experience:

SM7.10.1 Assessment of whether employment is skilled

An offer of employment or current employment in New Zealand will be assessed as skilled if it meets the requirements of (a), (b) or (c) below.

- a. The occupation is included in part A of the List of Skilled Occupations held at Appendix 6 and the principal applicant can demonstrate that their offer of employment or current employment substantially matches the description for that occupation (including core tasks) as set out in the ANZSCO and:
 - i. the applicant holds a relevant recognised qualification which is at, or above, the qualification level on the NZQF (see SM14.5) that corresponds to the indicative skill level described for that occupation in the ANZSCO; or
 - ii. the applicant has the relevant recognised work experience that the ANZSCO indicates may substitute the required qualification; or
 - ...

Effective 14/05/2013

ICT Customer Support Officer

[45] The ANZSCO occupation of ICT Customer Support Officer (ANZSCO code 313112) is included in the ANZSCO Unit Group 3131 — ICT Support Technicians. The occupation is listed in Part A of the List of Skilled Occupations at Appendix 6 of residence instructions.

[46] The ANZSCO provides an indicative skill level for each Unit Group, specifying the requirements for competent performance of the occupations included in the Unit

Group. The indicative skill level for most occupations in the ICT Support Technicians Unit Group is stated to be commensurate with: a New Zealand Register Diploma, or three years of relevant experience and/or relevant vendor certification.

[47] An ICT Customer Support Officer is described in the ANZSCO as someone who:

Provides support, education and guidance in the deployment and maintenance of computer infrastructure and the diagnosis and resolution of technical problems and issues. May work in a call centre.

[48] The core tasks set out in the ANZSCO for the Unit Group of ICT Support Technicians are (numbering added):

1. determining software and hardware requirements to provide solutions to problems
2. responding to inquiries about software and hardware problems
3. adapting existing programs to meet users' requirements
4. installing and downloading appropriate software
5. ensuring efficient use of applications and equipment
6. implementing computer networks
7. designing and maintaining websites
8. repairing and replacing peripheral equipment such as terminals, printers and modems
9. may work in a call centre

[49] Where a Unit Group contains a number of occupations, only the core tasks (or parts of a core task) that are relevant to a specific occupation will be considered when assessing whether there is a substantial match. In this case, only those core tasks, or parts thereof, in the ICT Support Technicians Unit Group which relate to the occupation of ICT Customer Support Officer are relevant.

[50] Unit Group 3131 — ICT Support Technicians includes three occupations (in addition to a “not elsewhere classified/nec” alternative): Hardware Technician, ICT Customer Support Officer, and Web Administrator. The core tasks reflect the differences between these three occupations. The work of an ICT Customer Support Officer primarily relates to the provision of support, education and guidance and the diagnosis and resolution of technical problems and is therefore most closely linked to core task two. Core tasks seven and eight clearly relate only, or primarily, to the occupations of Web Administrator (core task seven) and Hardware Technician (core task eight).

[51] Core task nine is a location, not an activity. Its inclusion in both the core tasks and the occupation description of an ICT Customer Support Officer reinforces the point that an ICT Customer Support Officer may work from a centralised location,

remote from customers, and that his or her work may be conducted over a telephone or through similar means of communication.

[52] While core tasks one, three, four, five and six are also relevant to the occupation of ICT Customer Support Officer, they must be interpreted in the context of the occupation's description and an applicant's employment. Core task six, for example, which refers to implementing computer networks, does not necessarily require that an ICT Customer Support Officer be responsible for personally implementing computer networks but rather that he or she may provide support, education and guidance to people that are setting up a computer network (such as setting up an Internet router) or provide support, education and guidance to diagnose and resolve technical problems with an existing computer network (such as where an Internet router has stopped working).

The appellant's role

[53] The appellant made her application for residence under the Skilled Migrant category. In her application, she claimed 50 points for skilled employment of less than 12 months as an ICT Customer Support Officer, relying on her employment as a technical support specialist with the business. In support of her application she provided her offer of employment, terms and conditions, a position description and a letter of support from her employer. Additional information on the appellant's role was provided by her employer during Immigration New Zealand's assessment, through its response to Immigration New Zealand's questionnaire (12 April 2017).

[54] The picture that emerges of the appellant's role, on the evidence from both the appellant and her employer, is that she is one of many employees working at the business whose job it is to provide assistance over the telephone to [customers of a single large technology company]. She is required to help customers with a broad range of hardware and software related problems. In the course of her work, she relies on the tools provided to her by her employer, including diagnostic tools that enable her to view the screens on customers' devices and a comprehensive knowledge management system to assist her to identify and resolve problems. Because her role is focused on [the products of a single company], she needs to concern herself only with using software and hardware that is compatible with that company's devices and other products.

[55] During its assessment, Immigration New Zealand expressed concern in relation to the appellant's role. It accepted that she worked at a call centre but it was not satisfied that she undertook any of the five other core tasks that it

considered relevant to the occupation of ICT Customer Support Officer. In the letter setting out its concerns (and subsequently carried forward into its decision), four underlying issues emerged:

- (a) The business did not require employees undertaking the appellant's role to hold a particular qualification or experience. This suggested that the role did not require the technical skill or expertise required for the occupation of ICT Customer Support Officer.
- (b) Employees' reliance on a knowledge management system.
- (c) Employees' inability to remotely access customers' devices.
- (d) Employees supported just a single company's products and worked only with the software and hardware compatible with those products.

[56] The business primarily structured its response to Immigration New Zealand's concerns around the four underlying issues rather than on a core task-based approach. The business argued that the issues identified by Immigration New Zealand did not show that the appellant's employment was not skilled.

[57] Immigration New Zealand mirrored the structure of the business' response in its decision letter, largely focusing on the four underlying issues, instead of the task-by-task format it had previously utilised in its letter of concern. The change in focus from a core task-based format, to a broader issues-based format, complicates any direct comparison between Immigration New Zealand's letter of concern and its decision. Nevertheless, considering Immigration New Zealand's point-by-point rejection of the business' arguments regarding the underlying issues, the Tribunal presumes that it remained of the view that the appellant did not undertake the core tasks specified in its letter of concern. Additionally, it also appears to have concluded that two of the three core tasks that it had previously considered were not relevant, were in fact relevant, and that the appellant did not undertake them (namely, implementing computer networks; and repairing and replacing peripherals).

[58] On appeal, counsel says that Immigration New Zealand's decision was not correct because, while undertaking its assessment, it failed to interpret the core tasks for the occupation of ICT Customer Support Officer in the context of the occupation description set out in the ANZSCO. Additionally, counsel argues that the appellant's utilisation of the business' knowledge base; the limitations on the range of products the appellant provided support for and the tools, software and

hardware that she could use to resolve problems; and her inability to make changes to customers' devices personally, did not mean that she did not undertake the relevant core tasks for the occupation of ICT Customer Support Officer. The Tribunal agrees.

[59] The Tribunal finds that, in the course of its assessment, Immigration New Zealand misdirected itself in two critical respects: first, it incorrectly imported a skill level requirement into its substantial match enquiry, based on the ANZSCO indicative skill level for the occupation of ICT Customer Support Officer; and second, it failed to interpret the core tasks for the occupation in the context of both the ANZSCO occupation description and the appellant's employment.

Conflation of the skill level and substantial match enquiries

[60] The instructions at SM7.10.1 specify the circumstances in which an applicant's role will be assessed as skilled and therefore eligible for points. Instructions require two separate enquiries. The first enquiry (SM7.10.1.a) is to establish whether the applicant's offer of employment or current employment substantially matches the description for the relevant occupation (including core tasks) as set out in the ANZSCO. The instructions do not specify a skill level in undertaking the tasks, just that an applicant is undertaking them: *WB (Skilled Migrant)* [2015] NZIPT 202536 at [23]. The second, discrete, enquiry required by instructions (SM7.10.1.a.i and ii) is to establish whether the applicant has the skill and expertise required to competently perform the occupation. To determine this, Immigration New Zealand must assess whether the applicant has the required qualification or work experience.

[61] Instructions implicitly recognise that within any occupation there will be a broad range of skill levels. However, only those applicants able to demonstrate that they can competently perform the occupation, by way of relevant recognised work experience or a relevant recognised qualification, will be entitled to points for their employment.

[62] The Tribunal finds that Immigration New Zealand misdirected itself by essentially conflating the two separate enquiries. In its decision, it imported a skill level requirement into its substantial match enquiry, which it was not entitled to do. Immigration New Zealand assessed not only whether the appellant undertook each of the relevant core tasks, but also whether the work she undertook required a skill level commensurate with someone who held a New Zealand Register Diploma or had three years' relevant experience. This was incorrect.

[63] Immigration New Zealand was also incorrect to conclude that the appellant's work was unskilled because, irrespective of her own qualifications, the business did not require its employees to have either a relevant qualification or relevant work experience. Instructions anticipate that a relatively unskilled individual could begin working as an ICT Customer Support Officer and accumulate the necessary experience over time (three years) to become competent. Therefore, the entry criteria for a role is not determinative of the skill level of all those undertaking the role. In the appellant's case, her qualifications were clearly relevant because, if her role was a substantial match to the description (including core tasks) for the occupation of ICT Customer Support Officer, then her Post Graduate Certificate in Business (Information Systems) (Level 8) and Bachelor of Technology (Electronics and Communication Engineering) (although not assessed by the New Zealand Qualifications Authority) may potentially have satisfied the requirement of SM7.10.1.a.i of instructions.

[64] The Tribunal notes that, while it is not correct to import into or interpret the core tasks for an occupation in the context of the ANZSCO indicative skill level for the occupation, it is entirely appropriate, indeed obligatory, for the core tasks to be interpreted in the context of the applicable ANZSCO occupation description.

Interpretation of core tasks

[65] In the letter outlining its concerns, Immigration New Zealand correctly considered which of the core tasks for the Unit Group of ICT Support Technicians were relevant to the occupation of ICT Customer Support Officer in the context of the appellant's employment. It concluded that two of the core tasks were not relevant because they primarily related to the other occupations in the Unit Group, and another was not relevant because it fell outside the scope of the business' operations.

[66] Having identified the relevant core tasks, Immigration New Zealand proceeded to assess whether the appellant's employment was a substantial match to those core tasks. However, while undertaking its assessment, Immigration New Zealand incorrectly focused on the core tasks in isolation. It failed to consider the core tasks in the context of the ANZSCO occupation description, and the operations of the business, as it was required to do. The ANZSCO occupation description for ICT Customer Support Officer refers to them providing "... support, education and guidance ...", aspects of the occupation entirely ignored by Immigration New Zealand. The occupation description also specifically states that the role may be

undertaken in a call centre, and yet no regard was had as to what the implications of performing each core task from a call centre may be.

[67] Immigration New Zealand's failure to interpret the relevant core tasks in the context of the occupation description, and operation of the business, meant that it became overly focused on a number of issues that may not have held the same significance had the core tasks been properly understood.

[68] Immigration New Zealand was concerned that the appellant's remote access was limited to viewing customers' screens, and that this meant that she was reduced to "guiding" customers to the appropriate solution, which was not equivalent to resolving the customers' issues herself. However, the ANZSCO description, including core tasks, for the ICT Support Technicians Unit Group is entirely silent on the question of remote access. In the context of providing support, education and guidance from a call centre, there is no requirement for physical or direct electronic access to devices. The occupation description specifically states that "guidance" falls within the scope of the occupation.

[69] Immigration New Zealand was also concerned that the appellant's ability to undertake the core tasks was constrained by the tools and systems made available to her by her employer and the finite range of products she supported. Immigration New Zealand referred to these constraints as operating within a "walled garden". The Tribunal finds that Immigration New Zealand's concerns in relation to the constraints imposed by the "walled gardens" within which the appellant worked were unjustified in the context of her employment. 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. [The large technology firm whose products the appellant supported] may have had a finite product range, and exercised a degree of control over the software that could operate on its products, but that is not unusual. To suggest that this placed any form of meaningful constraint on the appellant was disingenuous: [the technology firm] is one of the largest companies in the world, its product range is reasonably extensive, and, to the extent it did limit the software that was permitted to operate on some of its devices, the software it did permit exceeded one million applications.

[70] Similarly, Immigration New Zealand was concerned that the appellant's use of a knowledge management system meant that she was relying on that system rather than her own skill and expertise. However, the obvious benefits of such systems to businesses providing support-related services means that their use is inextricably intertwined with such businesses' everyday operations and their

employees' roles. While a knowledge management system may provide assistance, it was still necessary for the appellant to utilise her own skill and expertise to identify the issue, locate relevant solutions in the knowledge management system, and to understand and apply such solutions. For this reason, the business' utilisation of a knowledge management system formed part of the context within which the relevant core tasks should have been interpreted. Immigration New Zealand was incorrect to conclude that the appellant's reliance on the business' knowledge management system meant that she did not undertake some of the relevant core tasks or rely on her own skill and expertise.

Vendor certification

[71] Counsel argues that Immigration New Zealand also failed to assess whether the training the business provided to the appellant amounted to vendor certification. Counsel proposed that such vendor certification might be substituted for relevant work experience to satisfy SM7.10.1.a.ii of instructions, on the basis that relevant work experience and vendor certification are both referred to in the same sentence in the ANZSCO as substitutes for a relevant qualification. While vendor certification is not specifically mentioned in instructions, counsel offered that it could be read into instructions "*ejusdem generis* with the number of years' experience".

[72] The Tribunal does not agree that vendor certification can be read into instructions at SM7.10.1.a.ii *ejusdem generis* with the number of years' experience. *Ejusdem generis* is a principle of interpretation that provides that the meaning of a general term or phrase that follows specific examples or a list of items, must be narrowed so as only to encompass other things similar to the specific examples or items in the list. In the ANZSCO, there are only two specific items that may substitute for a relevant qualification, of which holding a relevant vendor certification is one, and there is no general term or phrase to which the *ejusdem generis* principle may be applied. While the ANZSCO may permit the substitution of vendor certification for a formal qualification for the occupation of ICT Customer Support Officer, instructions do not.

Conclusion as to correctness

[73] For the reasons given above, the Tribunal finds that Immigration New Zealand's decision to decline the application was incorrect. Its assessment was not correct because it misdirected itself by incorrectly importing a required skill level into its substantial match enquiry. It also failed to interpret the core tasks for the

occupation in the context of either the ANZSCO occupation description or the appellant's employment. Accordingly, the application must be returned to Immigration New Zealand for correct assessment.

DETERMINATION

[74] 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.

[75] 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

[76] 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 which 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 her application and submit any further evidence. Immigration New Zealand is to consider properly and fairly 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 her

employment is a substantial match to the ANZSCO occupation of ICT Customer Support Officer.

4. When considering whether the appellant's employment is a substantial match to the ANZSCO occupation of ICT Customer Support Officer, Immigration New Zealand:
 - (a) shall assess the appellant's employment only against the ANZSCO core tasks of the ICT Support Technicians Unit Group that are relevant to both the occupation of ICT Customer Support Officer (see [50]–[52] above) and her employment;
 - (b) shall interpret the relevant core tasks in the context of the ANZSCO description for the occupation of ICT Customer Support Officer; and
 - (c) shall not import a skill level requirement into its assessment of whether the appellant undertakes the relevant core tasks (see [60]–[62] above).
5. If the appellant is no longer employed in the same or similar role with the same employer, she is to be given a reasonable opportunity to produce evidence of her current skilled employment or an offer of skilled employment, which Immigration New Zealand shall assess accordingly.
6. Should any information arise that is potentially prejudicial to the appellant, Immigration New Zealand must clearly put this information to her, and allow her a reasonable opportunity to respond to that information.

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

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

Order as to Depersonalised Research Copy

[79] 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 or her husband.

"A Davidson"
A Davidson
Member

Certified to be the Research
Copy released for publication.

A Davidson
Member