IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND **[2017] NZIPT 204011**

AT AUCKLAND

Appellant:	**BO (Skilled Migrant)**
Before:	B L Burson (Member)
Counsel for the Appellant:	A McClymont
Date of Decision:	10 July 2017

RESIDENCE DECISION

---

[1] The appellant is a 42-year-old citizen of the United Kingdom whose application for residence under the Skilled Migrant category was declined by Immigration New Zealand (INZ).

THE ISSUE

[2] INZ declined the appellant's residence application on the ground that his employment did not substantially match the *Australian and New Zealand Standard Classification of Occupations* (ANZSCO) description, including core tasks, of an ICT Customer Support Officer. Accordingly, the appellant was not awarded points for skilled employment. His total of 50 points fell below the minimum selection criteria of the Skilled Migrant category and his application was required to be declined.

[3] The principal issues for the Tribunal are, first, whether the appellant's employment in the mobile telecommunications sector enabled his role to be a substantial match to the description of an ICT Customer Support Officer; and second, whether the appellant's circumstances are special such as to warrant a recommendation being made to the Minister of Immigration as an exception to Government residence instructions.

BACKGROUND

[4] The appellant made his application on 12 October 2016. He claimed that his employment was a substantial match to the ANZSCO description of an ICT Customer Support Officer (ANZSCO 313112). In support of his application, the appellant provided letters dated 18 May 2016 and 12 August 2016 from his employer, a large, nation-wide mobile telecommunications provider. These letters confirmed his employment as a Customer Care Specialist, for which he was paid $43,000 per annum by way of base salary plus a further $2,000 by way of incentive scheme and a $2,500.00 parking allowance.

[5] Also provided was a copy of his individual agreement (2 June 2011) which specified he was to be employed as a “Contact Centre Agent” and which contained a position description setting out his “Key Accountabilities”. These were to provide customer service and support to mobile phone customers, including on issues such as prepay, postpay, billing and data. He was expected to handle incoming and outgoing calls, engage in email correspondence and on-line chat with customers, engage in soft-selling of his employer’s products, amend customer records and resolve customer issues. His principal working relationships were with the customer operations team, technical support team, complaints management team and credit and collections.

INZ Investigates Application

[6] At INZ’s request, the appellant’s team manager completed a questionnaire (20 January 2017) providing further details of the appellant’s role on behalf of the employer. The team manager stated that the appellant’s primary role was to provide “inbound phone based support” for the network’s customers. His specific tasks were explaining accounts and payments, dealing with billing queries, explaining and up-selling his employer’s products, customer spend optimisation, troubleshooting and resolving issues regarding mobile phone devices and connectivity, resolving complaints and providing support to retail outlets and dealers on such issues. He provided technical support to mobile devices, through handset configuration and voice and data connectivity; to mobile systems through handset connection and coverage issues; and for mobile software through settings, installation and ensuring compatibility. The technical problems he dealt with related to voice or data issues arising from incorrect handset settings, coverage issues, service unavailability due to user error or inability to use data devices, roaming issues, and assistance with incorrect installation of software.

[7] By a further email dated 20 January 2017, the team manager stated that, while it varied daily, the appellant spent approximately a little over half of his time performing technical troubleshooting, with the next largest amount of time being spent on billing queries and only a small amount of time on up-selling.

INZ Outlines Concerns to Appellant

[8] By letter dated 17 February 2017, INZ outlined its concern that the appellant's employment was limited to the area of a mobile phone network. As such, while he may have undertaken some of the core tasks within the ANZSCO description of an ICT Customer Support Technician relating to resolving software and hardware problems, and installing software, these tasks were not undertaken in relation to computer infrastructure. Accordingly, it did not appear that his employment substantially matched the ANZSCO description, including core tasks, of an ICT Customer Support Officer. Other issues were raised relating to points he had claimed for his qualifications and work experience. The appellant was invited to comment.

The Appellant Responds

[9] The appellant replied by undated letter. He acknowledged he had mistakenly claimed points in respect of his United Kingdom qualification, work experience and employment in an area of absolute skill shortage.

[10] On the issue of a lack of substantial match, the appellant stated that his role related to the "support, education and guidance in the deployment and maintenance of computer infrastructure and the diagnosis and resolution of technical problems" by helping customers connect to the internet or network. While this included mobile phones, he also was responsible for "troubleshooting connection issues through the deployment of networks with computers". He provided a detailed breakdown of the tasks he performed and how they matched the core tasks contained within the ANZSCO description of an ICT Customer Support Officer.

[11] He also provided a further letter (2 March 2017) from the team manager producing more detailed information on the range of software that the appellant used to troubleshoot and to provide technical support. As for hardware, the team manager pointed out that the appellant was required to be very proficient with the workings of not just mobile devices, but also tablets and other devices, and across

a range of computers such as Windows-based systems and Apple, as well as a range of internet browsers, in order to resolve issues around connectivity, data, billing and password and account management. Details were given as to what steps the appellant would take to resolve particular issues for clients such as not being able to connect to the internet or to send and receive emails.

[12] The appellant provided a letter from his employer's "Director of Talent" (28 February 2017) asserting that the appellant was employed in an area of identified future growth, and included on the Long Term Skills Shortage List under the occupational group "ICT, electronics, and telecommunications". An updated position description (July 2016) was appended providing further details of his key accountabilities in providing customer service and technical support to consumers, as well as to business and "MVNO" customers. It now detailed that it was the appellant's responsibility to "manage inbound high complexity calls" and offer technical support for a variety of products including Apple, data dongles and wireless devices.

[13] Also provided were support letters from the appellant's family (2 March 2017), and from a friend (1 March 2017) who has been working in the ICT sector and who confirms the appellant's hardworking character and expertise in his field. The appellant also provided a copy of his curriculum vitae.

INZ Decision

[14] Notwithstanding these submissions, by letter dated 16 March 2017, INZ declined the application because it was not satisfied that the appellant's employment substantially matched the ANZSCO description, including core tasks, of an ICT Customer Support Officer. Accordingly, INZ awarded him no points for skilled employment. His total of 50 points fell below the minimum selection criteria of the Skilled Migrant category and his application was required to be declined.

STATUTORY GROUNDS

[15] 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.

[16] The residence instructions referred to in section 187(4) are the Government residence instructions contained in INZ's Operational Manual (see www.immigration.govt.nz).

THE APPELLANT'S CASE

[17] On 11 April 2017, the appellant lodged this appeal on the ground that the decision of INZ was not correct in terms of the applicable residence instructions. However, no documents or submissions have been received in support of this appeal.

ASSESSMENT

[18] The Tribunal has considered the file in relation to the appellant's residence application which has been provided by INZ. An assessment as to whether the INZ decision to decline the appellant's application was correct in terms of the applicable residence instructions is set out below. This is followed by an assessment of whether the appellant has special circumstances which warrant consideration of an exception by the Minister of Immigration.

Whether the Decision is Correct

[19] The application was made on 12 October 2016 and the relevant criteria are those in residence instructions as at that time. INZ declined the application because it was not satisfied that the appellant's employment substantially matched the ANZSCO description, including core tasks, of an ICT Customer Support Officer. The relevant instructions in this case are:

> **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

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:

…

Effective 14/05/2013

[20] The occupation of an ICT Customer Support Officer (ANZSCO 313112) appears in Part A of the List of Skilled Occupations at Appendix 6 of Residence instructions. The ANZSCO description of this role states that such an Officer:

> 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.

[21] The occupation of ICT Customer Support Officer is found in the ANZSCO Unit Group 3131 ICT Support Technicians. The ANZSCO core tasks for this unit group comprise the following:

- 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
- ensuring efficient use of applications and equipment
- implementing computer networks
- designing and maintaining websites
- repairing and replacing peripheral equipment such as terminals, printers and modems
- may work in a call centre.

[22] The Tribunal is satisfied that INZ's decision was correct. While, at a certain level, some of the work the appellant undertook required him to provide support, education and guidance on how to use computers and other devices to connect to his employer's network and access its various services, his role simply did not relate to computer infrastructure as required under the ANZSCO classification of

an ICT Customer Support Officer. Of course, many people and businesses use computers, tablets and smart-phones to connect to his employer's mobile network to make calls or obtain data, and its seems clear that the appellant is highly skilled in ensuring that, when problems arise, they are resolved irrespective of the operating system, device or the web browser used.

[23] Fundamentally, however, the appellant's application for residence is misconceived as the role he performs is not intended to be captured by the ANZSCO description of the role of an ICT Customer Support Officer which relates to the computing infrastructure itself, not a particular usage of that infrastructure as a means to connect to the internet. While the information before INZ established that the appellant is a skilled individual, it is important to bear in mind that it is not he*, but his role,* that is the subject of the inquiry, measured against the description and core tasks of the relevant ANZSCO occupation.

[24] By that metric, the appellant's role is not skilled for the purposes of instructions. Accordingly, INZ was correct to award him no points for skilled employment. His total of 50 points fell below the minimum selection criteria of the Skilled Migrant category. The decline of his application was correct.

Whether there are Special Circumstances

[25] The Tribunal has power pursuant to section 188(1)(f) of the Act to find, where it agrees with the decision of Immigration New Zealand, that there are special circumstances of an appellant that warrant consideration by the Minister of Immigration of an exception to residence instructions.

[26] Whether an appellant has special circumstances will depend on the particular facts of each case. The Tribunal balances all relevant factors in each case to determine whether the appellant's circumstances, when considered cumulatively, are special. Special circumstances are "circumstances that are uncommon, not commonplace, out of the ordinary, abnormal"; *Rajan v Minister of Immigration* [2004] NZAR 615 (CA) at [24] per Glazebrook J.

Personal and family circumstances

[27] The appellant is a citizen of the United Kingdom aged 42 years. He arrived in New Zealand in September 2010 as the holder of a work visa. Since that time

he has remained in New Zealand as the holder of work and interim visas. He holds a current visa valid until 17 September 2017.

[28] The appellant did not declare any family member on his application form. However, by email dated 12 January 2017, the appellant confirmed that his father, stepmother and four siblings remain living in the United Kingdom.

Health, English language and character requirements

[29] The appellant provided INZ with evidence that he met the generic health, English language and character requirements of instructions. He has a clear New Zealand police certificate as of 5 July 2017.

Qualification and work experience

[30] According to the curriculum vitae supplied by the appellant, he obtained a Bachelor of Arts degree from a United Kingdom University in 1999. Since that time until his departure for New Zealand in 2010, he worked for British Telecom in a number of positions, including senior technical roles which saw him provide bespoke hardware and software solutions to business customers and act as an IT specialist project administrator for the installation of large scale wireless hotspots at a national level.

[31] Since being in New Zealand he has continued to work in the mobile telecommunications sector and has been with his current employers since June 2011. The letters which have been supplied from his employer clearly indicate that the appellant possesses a wide array of technical skills and is a highly valued employee.

Settlement and potential contribution

[32] The appellant has been living in New Zealand for a period of seven years. The letters from his family and friend paint a picture of a man who has settled here, enjoys creative photography and has a circle of friends and acquaintances. The appellant's family nexus remains to the United Kingdom where his parents and siblings continue to live.

Discussion of special circumstances

[33] The appellant is a single man, aged in his early forties, who has lived in New Zealand for seven years. While his family nexus remains to the United Kingdom, he has a nexus to New Zealand through his employment with the same employer since 2011. He is skilled in his particular area of employment in a sector of the economy likely to be able to afford him ongoing employment. He is highly valued by his employer, for whom he is tasked with managing issues of "high complexity" including in relation to business customers. He is of an age where he will be able to contribute to New Zealand financially and through other means for many years.

[34] What stands out as unusual about the appellant's circumstances is the length of time that he has been working for the same employer in a highly technical role. While not in a sector which has enabled him to be awarded points for skilled employment, he nevertheless possesses a range of technical skills in the area of information and communication technology. When weighed alongside the length of time that the appellant has remained living in New Zealand, which it appears he regards as his home, the Tribunal is satisfied that his circumstances are sufficiently special to warrant a recommendation being made to the Minister of Immigration as an exception to residence instructions.

DETERMINATION

[35] This appeal is determined pursuant to section 188(1)(f) of the Act. The Tribunal confirms the decision of INZ as correct in terms of the applicable residence instructions but considers there are special circumstances of this appellant that warrant consideration by the Minister of Immigration as an exception to those instructions.

Order as to Depersonalised Research Copy

[36] Pursuant to clause 19 of Schedule 2 of the Act, 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.

"B L Burson"
B L Burson
Member

[On 15 August 2017, the Minister determined to grant residence to the appellant as an exception to instructions.]

Certified to be the Research Copy released for publication.

B L Burson
Member