IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND **[2020] NZIPT 205769**

RŌPŪ TAKE MANENE, TAKE WHAKAMARU AOTEAROA

Appellant:	**AJ (Talent) Accredited Employers**
Before:	D Smallholme (Member)
Counsel for the Appellant:	J Turner
Date of Decision:	28 August 2020

RESIDENCE DECISION

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[1] The appellant is a 49-year-old citizen of China whose application for residence under the Residence from Work — Talent (Accredited Employers) category of instructions was declined by Immigration New Zealand. The application includes his wife, aged 46 years, and their 18-year-old son, who are also citizens of China.

THE ISSUE

[2] Immigration New Zealand declined the appellant's residence application because the appellant no longer held a current Work to Residence — Talent (Accredited Employer) work visa. For the reasons that follow, the Tribunal finds that Immigration New Zealand's decision was correct.

[3] The principal issue for the Tribunal is whether there are special circumstances, arising from the circumstances in which the appellant's Work to Residence — Talent (Accredited Employer) work visa application was declined, the family members' settlement in and contribution to New Zealand, and the interests of the appellant's son, such as to warrant a recommendation that the Minister of Immigration consider an exception to Government residence instructions.

[4] For the reasons set out below, the Tribunal finds that the appellant does not have special circumstances such as to warrant a recommendation that the Minister of Immigration consider an exception to Government residence instructions. While the allegations made against the husband (that he had worked in breach of his work visa conditions) were made in the context of a business dispute, there was sufficient evidence for Immigration New Zealand to hold concerns. It remains possible for the appellant's son to continue his study in New Zealand and (if necessary) he could study in China. The extent of the appellant's and his family's settlement in and contribution to New Zealand is not uncommon or out of the ordinary. Accordingly, the appeal is declined.

BACKGROUND

[5] The appellant and his son commenced living in New Zealand in August 2014. The son had been granted the first of a series of student visas, as a full fee-paying student. The appellant was granted a guardian visitor visa so that he could accompany his son.

[6] In May 2017, the appellant was granted a 30-month work visa under the Work to Residence — Talent (Accredited Employer) work instructions to work as a business development manager for a company providing fresh seafood products to local and overseas markets. In July 2017, the appellant's wife was granted a work visa as the partner of a worker. The appellant's wife visited New Zealand for brief periods in 2016, 2017 and 2018, and, in 2019, lived here for six months.

[7] In January 2019, Immigration New Zealand received a letter from a third party (who shall be called "AA" in this decision), alleging (among other things) that the appellant was working in breach of his work visa conditions, through his involvement in a restaurant owned by a company of which his wife was the sole shareholder. It commenced an investigation into these concerns.

Appellant's Residence Application

[8] On 16 September 2019, the appellant made an application for a resident visa under the Residence from Work — Talent (Accredited Employers) category relying on his employment as a business development manager.

Application for Further Work to Residence Visa Application

[9] Also on 16 September 2019, the appellant applied for a further Work to Residence — Talent (Accredited Employers) work visa.

[10] On 21 October 2019, Immigration New Zealand advised the appellant that it had received information that he had been working in breach of the conditions of his work visa and therefore might not meet the requirement to be a *bona fide* applicant (as set out in E5.1.b.ii of temporary entry instructions).

[11] On 25 October 2019, the appellant's former counsel, Mr Li, responded to Immigration New Zealand's concerns. The appellant was aware of allegations made by AA, who had provided a copy of her letter and supporting documents to the director of the wife's company. It was submitted that AA was motivated by purely financial reasons. AA held a management role in the restaurant and was aware that it made a healthy profit. Unbeknown to the wife, AA and her husband had purchased the restaurant premises in August 2018. They then sought to force the end of the wife's company's lease alleging numerous breaches. They commenced legal proceedings, which the company successfully defended. AA also caused difficulties in the operation of the restaurant. On a recent occasion, in early October 2019, AA and her husband and a representative of the franchisor had entered the premises and forcibly closed down trading from about 11 pm, aggressively telling patrons to leave without paying, they had helped themselves to beverages and would not let staff leave the premises, and had defaced business signage. The appellant's wife had stepped in to manage the restaurant briefly while trying to hire a new restaurant manager. The company was not in breach of the lease. The complaint to Immigration New Zealand was "just a part of the overall attack".

[12] Despite AA's "inflated allegations", it was submitted that she had only managed to produce some pictures of isolated incidents, one of which showed the appellant in the restaurant. He was not working when this photograph was taken. The other document was an organisation chart, which had been prepared by AA. Such evidence was poor and, when read in the context of the business dispute, should not be relied on by Immigration New Zealand. The appellant's wife had stepped in to manage for a brief period while trying to hire a new manager. The appellant had assisted his wife as she was unable to drive. Counsel did not consider that the appellant's actions could be considered as having been "undertaken for gain or reward", as required by the definition of work, as he was simply helping his wife.

Further Work to Residence Visa Application Declined

[13] On 5 November 2019, Immigration New Zealand declined the appellant's application for a further work visa under the Talent (Accredited Employer) work instructions because it was not satisfied that he was a *bona fide* applicant. Immigration New Zealand acknowledged the appellant's explanation that the information provided by AA showed only isolated incidents and that the appellant was only helping his wife. However, it was satisfied that the activities performed by the appellant at the restaurant could be considered "work" as the wife's company would benefit by increased productivity and through not paying money for alternative labour. It was also noted that the appellant had been a director of the wife's company during 2017. It considered this was further indication that he may have been directly involved with the operations of the company and (therefore) working outside his visa conditions. Immigration New Zealand added that it had visited the restaurant, on 21 June 2019, and found a person working outside of their visa conditions. It considered this supported its finding that the appellant was likely to have breached his work visa conditions by working at the restaurant.

Work to Residence work visa expires

[14] The appellant's work visa under the Work to Residence — Talent (Accredited Employer) work instructions expired on 22 November 2019. Shortly beforehand, the appellant applied for a further guardian visitor visa. He was granted an interim visa on 23 November 2019.

Immigration New Zealand's Concerns about Residence Application

[15] On 24 February 2020, Immigration New Zealand wrote to the appellant with its concerns that, as he did not hold a current work visa under the Talent (Accredited Employer) work instructions, he could not meet the requirement of the Residence from Work — Talent (Accredited Employers) category. Immigration New Zealand invited the appellant to provide further information. It appears from Immigration New Zealand's file that no further information was provided.

Immigration New Zealand Decision

[16] On 20 March 2020, Immigration New Zealand declined the appellant's residence application under the Residence from Work — Talent (Accredited Employers) instructions because he was not a current holder of a visa granted under the Work to Residence — Talent (Accredited Employers) work visa instructions.

STATUTORY GROUNDS

[17] 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.

[18] 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

[19] On 23 April 2020, the appellant lodged this appeal on the ground that his circumstances are special such that an exception to the residence instructions should be considered.

[20] On appeal, his current counsel, Mr Turner, accepts that the decision to decline the appellant's residence application was correct in terms of residence instructions. His submissions and the evidence provided in support of special circumstances are set out below, at [30]–[31].

ASSESSMENT

[21] The Tribunal has considered the submissions and documents provided on appeal and the Immigration New Zealand files for the appellant's residence application, and his work visa application made on 16 September 2019, which have been provided by Immigration New Zealand.

[22] Although not relied on as a ground of appeal, the Tribunal is first required to assess whether the Immigration New Zealand decision to decline the appellant's application was correct in terms of the applicable residence instructions. This assessment is set out below. It 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

[23] The application was made on 16 September 2019 and the relevant criteria are those in residence instructions as at that time. Immigration New Zealand declined the application because the appellant did not hold a valid work visa under the Work to Residence — Talent (Accredited Employers) instructions.

[24] The relevant instructions in this case are:

> **RW2 Residence Instructions for holders of work visas granted under the Talent (Accredited Employers) work instructions**
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> Holders of visas granted under the Talent (Accredited Employers) work instructions may be granted a residence class visa where:
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> a. they have held a work visa granted under the Talent (Accredited Employers) work instructions for a period of at least 24 months; and
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> b. during the currency of that visa they have been employed in New Zealand throughout a period of 24 months:
>
> i. by any accredited employer; or
>
> …
>
> c. they have employment in New Zealand with a minimum base salary of NZ$55,000 per annum if the associated work to Residence visa application (WR1) was made on or after 28 July 2008; and
>
> d. they hold full or provisional registration, if full or provisional registration is required to practice in the occupation in which they are employed; and
>
> e. they meet health and character requirements (see A4 and A5).
>
> ….
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> *Effective 13/05/2019*

[25] The appellant held a work visa under the Talent (Accredited Employers) work instructions when he applied for residence, on 16 September 2019 but no longer held such a work visa when his application was declined, as it had expired. However, the title and opening words of instruction RW2 which are, respectively, “Residence instructions for holders of work visas granted under the Talent (Accredited Employers) work instructions” and “Holders of visas granted under the Talent (Accredited Employers) work instructions may be granted a residence class visa where …” indicate that it is only “holders” of Talent (Accredited Employers) work visas who may be granted residence. There is no provision for individuals who have previously held a Talent (Accredited Employers) work visa but no longer do so.

[26] The Tribunal (differently constituted) has previously discussed the reasons which underpin the purpose of the Residence Instructions for holders of work visas granted under the Talent (Accredited Employers) work instructions in *AB (Residence from Work)* [2014] NZIPT 201794. Relevantly, the Tribunal stated as follows:

> [23] A sensible construction, reflecting the natural meaning of the language in the context of this section of the instructions, requires an applicant to establish that they have held such a work visa for a minimum of 24 months and, at the time the application is made and being assessed, still currently hold it. The representative's construction, that it would not matter how far in the past a person had held such a work visa because, having held it for at least 24 months, they were perpetually eligible to apply under the residence instructions at RW2, makes no sense. It leaves a potential employee, who has been identified as working in an area where their talents are required by New Zealand employers, in effect, to have a right in perpetuity to rely on RW2 to make a residence application. That would mean, of course, that having once been a person whose talents were needed by a New Zealand employer, an applicant might relinquish their particular skill-set, lose currency in it, become incompetent in it or unemployable in it for some other reason, yet still be eligible to undertake an application for residence.
>
> [24] In the context of the instructions, their wording and the intention behind them as set out in RW1, the Tribunal is satisfied that the appellant was required to still be holding a work visa granted under the Work to Residence, Talent (Accredited Employers) instructions at the time she made her residence application in November 2012. She did not. … The decision of Immigration New Zealand to decline her application was correct.

[27] It is acknowledged that, unlike in *AB (Residence from Work)*, the appellant did hold a work visa under the Talent (Accredited Employers) work instructions at the time he made his residence application. However, in *AB (Residence from Work)*, the Tribunal also observed that the sensible construction of RW2, reflecting the natural meaning of the language in the context of these instructions, and the policy reasons, requires an applicant to establish that they have held an Accredited Employers work visa for a minimum of 24 months "and, at the time the application is made *and being assessed*, still currently holds that visa" (emphasis added). The objective of the Residence from Work categories is to "enable the grant of residence class visas to people whose talents are *needed* by New Zealand employers" (RW1, effective 7 November 2011) (emphasis added). Further, as the Tribunal (differently constituted) observed in *AG (Accredited Employers)* [2019] NZIPT 205194, at [29]:

> An applicant's circumstances are not 'frozen' at the time an application is made, as is evidenced by every applicant's obligation to update Immigration New Zealand about any material change in their circumstances and Immigration New Zealand's mirror obligation to consider an applicant's circumstances as they are at the date of its assessment and final determination.

[28] Therefore, although the appellant had held a work visa granted under the Accredited Employers work visa instructions for a period of 30 months (between

May 2017 and November 2019), held such a visa when he made his application for residence, and his salary was over $55,000, as he was no longer a holder of a Talent (Accredited Employers) work visa when Immigration New Zealand determined his application, he did not satisfy the opening requirements of RW2 of instructions.

Conclusion on correctness

[29] For the reasons set out above, the Tribunal finds that Immigration New Zealand was correct to decline the appellant's residence application.

Submissions and Evidence in Support of Special Circumstances

[30] Counsel's submissions on special circumstances are advanced on two bases. Firstly, Immigration New Zealand relied on "weak evidence" when finding that the appellant had been working in breach of his work visa conditions. It did not take any steps to verify the claims made by AA and did not disclose any other evidence on which it relied when finding that the appellant was working in breach of his work visa conditions. Had the work visa been granted, the family members would have met the requirements for the grant of residence visas. Secondly, counsel asserts that the appellant and his wife and son have established a base in New Zealand, and now have a closer connection to New Zealand than their country of citizenship, China.

[31] The following new evidence is produced in support of the appellant's special circumstances:

(a) A written statement from the appellant (22 May 2020) with his response to AA's allegations and details of the family's settlement in New Zealand, including plans to establish several businesses here.

(b) Numerous achievement and leadership certificates and school reports from the son's school, XYZ School, which include his selection as Head Boy for 2020, and letters of support for the appellant and his son from the school's mathematics teacher, science faculty coordinator and accounts administrator.

(c) Two letters of support from the appellant's friends (May 2020).

(d) A letter from AA (dated 17 January 2019) addressed to "Employment New Zealand, Labour Inspector" together with an organisational chart

for the restaurant, job descriptions for various employees, a staff roster and eight photographs.

(e) A copy of the certificate of title showing AA and her husband's ownership of the restaurant premises.

Whether there are Special Circumstances

[32] 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 the residence instructions. 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.

[33] 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).

The family's immigration circumstances

[34] The appellant is a 49-year-old citizen of China who has been living in New Zealand with his son since July 2014. His son has been studying here while holding a student visa as a full fee-paying student.

[35] Initially, the appellant was granted a guardian visitor. In May 2017, he was granted work visa under the Talent (Accredited Employer) category, for 30 months, which allowed him to work as a business development manager for a New Zealand company which provides fresh seafood products to the local and overseas markets. In November 2019, the appellant's application for a further such work visa was declined and he ceased working. He applied for a further guardian visitor visa and was granted an interim visa on 23 November 2019. This interim visa has been extended to 25 September 2020 under the Epidemic Preparedness (COVID-19) Notice 2020 (24 March 2020).

[36] The appellant's son, who is now aged 18 years old, continues to study in New Zealand. He is in his final year of secondary school. The son's current student visa is valid to 31 March 2021.

[37] Over the past six years, the appellant and his son have made brief trips out of New Zealand, mostly to China.

[38] The appellant's wife visited here briefly in 2016, on two occasions, for several months in 2017, and then briefly in June 2018 and November 2018. She lived here from January to July 2019 before returning to China, where she remains. She held a work visa from July 2017 to November 2019.

[39] Immigration New Zealand was satisfied that the appellant, his wife and son met the health and character requirements of instructions. There were no English language requirements under the Residence from Work — Talent (Accredited Employers) category although, having worked for an accredited employer in business here and been actively engaged with his son's school community, the Tribunal expects that the appellant has some proficiency in the English language. The son met English language requirements. The appellant agreed to pre-purchase ESOL training for his wife.

Decision to decline Work to Residence — Talent (Accredited Employers) work visa

[40] On appeal, it is submitted that Immigration New Zealand was wrong to find that the appellant had breached his work visa conditions and it was therefore incorrect to decline the appellant's Work to Residence work visa application. Without a Work to Residence work visa, the appellant's residence application could not succeed. Counsel requests that the Tribunal treat Immigration New Zealand's incorrect and unfair decision as a special circumstance.

[41] In the letter dated 17 January 2019 addressed to "Employment New Zealand, Labour Inspector", a copy of which is produced on appeal, AA claimed that the appellant had been managing the restaurant. She also alleged that the company (of which the wife was the sole director) had not provided copies of employment agreements to employees and that some employees had been exploited, through being required to work additional hours while on a salary such that their remuneration fell below the minimum wage. These claims were reiterated in AA's claims to Immigration New Zealand in a letter dated 18 January 2019.

[42] The Tribunal accepts that it was possible that AA was motivated by financial reasons in making such claims. However, it is not in a position to conduct a robust investigation into AA's allegations or the parties' business dealings and wider circumstances. The determination of residence appeals occurs on the papers (sections 234(2) and 233 of the Act). There is no mandate to embark on a lengthy

investigation into the circumstances of the parties' business arrangements which have been contested. The Tribunal can only examine the evidence available to Immigration New Zealand at the time that it declined the appellant's work visa application and determine whether the decision was fair and reasonable. Where it cannot test one party's position against the claim of the other, it must take a cautious approach.

[43] For his part, the appellant states in his letter on appeal that the (undated) photographs produced by AA show him eating together with some friends and helping friends to order food. However, the Tribunal observes that the appellant appears to be waiting on tables. He is shown standing beside restaurant tables and writing on a notepad, and serving food to seated customers. There are also other photographs on Immigration New Zealand's file (which seem to be part of video recordings, dated 6 October and 3 November 2018). These show the appellant in the restaurant kitchen appearing to oversee the preparation of food. When given the opportunity to respond to Immigration New Zealand's concerns that he had been working in the restaurant in breach of the conditions of his work visa, the appellant did not provide convincing evidence to sufficiently counter the allegations. He did not provide a written statement or letters from his friends or employees as to the extent of his involvement in the restaurant to explain his statement that he was simply helping his wife. In such circumstances, the Tribunal considers that Immigration New Zealand's findings were fair and reasonable.

[44] Counsel also submits on appeal that, even if Immigration New Zealand was correct to find that the appellant was doing work at the premises (which he denies), there was no tangible evidence of the reward that the appellant might have received. The Tribunal notes that according to section 4 of the Act, 'work' "means any activity undertaken for gain or reward". This definition is reflected in W2.2.1.a of the relevant work visa instructions, effective 22 May 2017. It is added at W2.2.1.b that "'gain or reward' includes any payment or benefit that can be valued in terms of money, such as board and lodging, goods (e.g. food of clothing) and services (e.g. transport)". The Tribunal accepts that there was no direct evidence of any payment or benefit to the appellant. However, the appellant's wife was the sole shareholder of the company that owned the restaurant. Any profit or value in the shares in the company was relationship property, in terms of section 8 of the Property (Relationships) Act 1976 and as such, the appellant benefited in terms of instructions from the business's success.

Possible breaches of employment and immigration law by the wife's companies

[45] AA's letters also contained complaints against the company of which the appellant's wife was the sole shareholder. According to Immigration New Zealand's records, it also received a complaint from several ex-employees, in November 2019, concerning the incorrect payment of wages. In determining the appeal, the Tribunal has inquired into the progress and outcome of any investigation into these complaints. On 10 August 2020, Immigration New Zealand advised that there is an ongoing investigation by the Labour Inspectorate, upon which it is waiting before it writes a summary of findings and "closes" its verification records. No timeframe was given for the completion of the investigation, which appears to have been on foot for the past nine months. As the complaints against the wife's company have not yet been resolved, the Tribunal does not take them into account in determining whether the appellant has special circumstances.

The appellant's settlement in New Zealand

[46] In his written statement on appeal, the appellant explains that his business experience and skills are in exporting seafood to China. He worked as a business development manager selling fresh seafood products to local and overseas markets for two-and-a-half years receiving a salary of $78,000. While he had a good job in China, the appellant feels that it would be difficult to adjust to living there again and to find suitable employment. The Tribunal accepts that there is evidence to show that the appellant has adapted to life in New Zealand and that he has made friends here over the past six years.

Contribution to New Zealand

[47] The appellant states that he sought through his employment to develop the New Zealand/Chinese market for seafood products. He negotiated with many customers and arranged for his former employer to visit and meet customers in China. He had only ceased this work because he was not granted a further Work to Residence work visa. The appellant hopes to arrange future investments of approximately NZ$20 million (presumably through Chinese investors) to increase seafood production in New Zealand. His wife is an accountant. If granted residence, she will transfer her Chinese assets to New Zealand, invest "another" million New Zealand dollars here, start new companies and employ about 30 people. His wife has started a company specialising in exporting New Zealand seafood and honey products to China, and has another company that intends to produce health

products in New Zealand, to which there is an internet sales business. The wife is working on two e-commerce sites that will sell watches and spectacles in New Zealand. She also wants to invest NZ$800,000 to establish a 3-D printer manufacturing company. The appellant and his wife own a home in New Zealand. Earlier this year, the family donated 10,000 bottles of hand sanitiser to public organisations in Auckland.

[48] The Tribunal acknowledges the appellant and his wife's interest in, and enthusiasm for, investing in New Zealand. However, it is not uncommon for appellants who are not eligible for residence under instructions to wish to pursue their business interests here.

Interests of the appellant's 18-year-old son

[49] The appellant's son, BB, is now 18 years of age. As he is not "below the age of eighteen years", BB is not a "child" for the purposes of the *Convention on the Rights of the Child* (as set out in Article 1). Nevertheless, his interests remain an important consideration for the Tribunal.

[50] The appellant notes that BB has lived here from the age of 11 years. He considers that his son has grown up here and is "already a New Zealander".

[51] It is apparent from the information provided to Immigration New Zealand and on appeal that the appellant's son is a very intelligent, motivated and talented individual. He has routinely scored an 'A' average in his Cambridge Assessments and received A Grades or better in 2018, in computer science, mathematics, chemistry, physics and biology, and similar results in 2019. His school reports describe BB as a friendly, diligent, hard-working student who participates fully in class activities and as someone who actively takes on leadership responsibilities. He has been appointed as the Head Boy of his school for 2020. The faculty coordinator states that BB is an excellent student who intends to become a medical doctor. In her opinion, the next few years are crucial for him in achieving the goals he has set.

[52] Outside of his academic pursuits, the Tribunal notes the various certificates showing BB's involvement in international karate competitions and in voluntary service. His 2019 school report lists activities and responsibilities such as first XI cricket, under 19 basketball, college production, band and orchestra, chess club, football coaching, peer mentor and Duke of Edinburgh Award. According to the appellant, his son now plays an instrument for a large performance group.

[53] There is no doubt that BB has become settled in New Zealand. He has attended school here as a full fee-paying student for the past six years, and has been very successful in his studies. It therefore seems likely that he would be able to continue his study here on that same basis. His parents appear to be in a strong financial position and able to support his education here. This would include attending university in supported accommodation, such as a hall of residence. Alternatively, while not the desired outcome, BB could return to China and continue his education there. This could be difficult for him as it would involve a period of transition between two different education and social systems. The Tribunal also understands that, if he is unable to continue to study in New Zealand, BB will be deeply disappointed. If he is not granted residence, he will be denied the opportunity to make the future positive contribution that he is capable of making to New Zealand. However, he will be able to complete his secondary schooling in New Zealand and has already shown that he can successfully manage a transition between two educational systems. With his obvious intelligence, motivation and self-discipline, and the ongoing support of his parents, he is likely to continue to be successful.

Discussion of special circumstances

[54] The appellant appeared to have been on a pathway to residence, as the holder of a Work to Residence — Talent (Accredited Employer) work visa. However, AA alleged that he was working in breach of his work visa conditions through his involvement in a restaurant owned by a company of which his wife was the sole shareholder. The Tribunal accepts that AA's actions took place against a background of soured commercial and employment relations. There was allegation and counter-allegation, which apparently involved legal proceedings being brought against the wife's company by AA, which were ultimately withdrawn. The Tribunal accepts that if the appellant was not, in fact, working in the restaurant business, the consequences of AA's actions are far-reaching and unfortunate. However, the appellant's response to the concerns raised by Immigration New Zealand, that he was working in the restaurant in breach of the conditions of his work visa, did not adequately explain those concerns.

[55] The appellant and his son have now lived in New Zealand for six years and are both well-settled here. The appellant was employed for as a business development manager for a company that provides fresh seafood products to local and overseas markets, for 30 months. Their son has excelled at his studies and made a valuable and significant contribution to the academic and social life of his school. The appellant's wife has visited regularly and invested in businesses here.

However, while their hard work and desire to settle permanently in New Zealand is acknowledged, there are many individuals who come to New Zealand and do well, embracing the educational and business opportunities that they find here. Such circumstances do not warrant consideration of an exception to residence instructions.

[56] Accordingly, having considered all the circumstances of the appellant, his wife and their son, the Tribunal is not satisfied that there are special circumstances, such that warrant consideration of an exception to the instructions by the Minister of Immigration.

DETERMINATION

[57] This appeal is determined pursuant to section 188(1)(a) of the Immigration Act 2009. The Tribunal confirms the decision of Immigration New Zealand to decline the appellant's application for residence as correct in terms of the applicable residence instructions. The Tribunal does not consider that the appellant has special circumstances which warrant consideration by the Minister of Immigration as an exception to those instructions under section 188(1)(f) of the Immigration Act 2009.

[58] The appeal is unsuccessful.

Order as to Depersonalised Research Copy

[59] 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, his wife and their son.

"D Smallholme"
D Smallholme
Member

Certified to be the Research Copy released for publication

D Smallholme
Member