

RŌPŪ TAKE MANENE, TAKE WHAKAMARU  
AOTEAROA

**Appellant:** UW (Skilled Migrant)

**Before:** M Avia (Member)

**Representative for the Appellant:** W Delamere

**Date of Decision:** 16 September 2021

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**RESIDENCE DECISION**

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[1] The appellant is a 32-year-old citizen of India whose application for residence under the Skilled Migrant category, which includes her 32-year-old husband and 5-year-old son, was declined by Immigration New Zealand.

**THE ISSUE**

[2] Immigration New Zealand declined the appellant's residence application because it was not satisfied that her role as an ICT support technician was a substantial match for the *Australian and New Zealand Standard Classification of Occupations* (ANZSCO) description, including core tasks, of an ICT Customer Support Officer.

[3] The principal issue for the Tribunal is whether Immigration New Zealand's decision was correct and whether it conducted a fair assessment of whether the appellant's employment was a substantial match to the ANZSCO description, including core tasks, of an ICT Customer Support Officer.

[4] For the reasons set out below, the Tribunal finds that Immigration New Zealand's decision to decline the application was not fair or correct. It failed to inform the appellant of information that might harm her case and, as such, did not give the appellant a reasonable opportunity to respond to harmful information. In doing so it failed to properly consider whether the appellant's employment was a

substantial match for the occupation description, including core tasks, of an ICT Customer Support Officer and incorrectly imported a skill level into its analysis. Further, appropriate reasons for the decision were not given. 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.

## **BACKGROUND**

[5] This is the appellant's second appeal. On 23 March 2017, she made her residence application under the Skilled Migrant category. She claimed her employment as the ICT customer support officer with a mortgage broking business substantially matched the ANZSCO occupation of ICT Customer Support Officer and claimed points for skilled employment.

### **First Appeal**

[6] Immigration New Zealand declined the application on 28 August 2017. On appeal, the Tribunal, differently constituted, found that Immigration New Zealand's decision that the appellant's employment was not a substantial match to the ANZSCO occupation, including core tasks, of an ICT Customer Support Officer was not correct. Immigration New Zealand had misdirected itself by incorrectly importing a required skill level into its substantial match enquiry and had failed to give the appellant's application proper consideration. The application was returned to Immigration New Zealand for reassessment: see *OW (Skilled Migrant)* [2018] NZIPT 204432.

### **Reassessment of Application**

[7] On 7 May 2018, Immigration New Zealand emailed the former representative advising that the application had been allocated for assessment and shortly afterwards, emailed the appellant's employer seeking information about the appellant's employment, to which the employer responded. In August 2018, Immigration New Zealand interviewed the appellant about her employment.

[8] On 10 December 2019, Immigration New Zealand advised the appellant that it appeared that her role was not a substantial match to the ANZSCO occupation of ICT Customer Support Officer (313112) (incorrectly referred to as ICT Customer Service Officer). Immigration New Zealand was concerned about

the time the appellant spent on duties not relevant to the work of an ICT Customer Support Officer such as liaising with banks and clients about loan applications.

### *New employment*

[9] In January 2020, Immigration New Zealand was advised that the appellant had a new representative. On 23 March 2020 and on 21 July 2020, the new representative emailed Immigration New Zealand attaching evidence of the appellant's new offer of employment. The appellant began her new employment on 27 July 2020 as an ICT support technician for a business that repaired electronic devices for consumers and businesses.

[10] On 4 August 2020, Immigration New Zealand emailed the appellant's employer seeking further information, including information about the terms of the appellant's employment agreement and the appellant's involvement in the core tasks in the ANZSCO Unit Group 3131 – ICT Support Technicians.

[11] A director of the employing company replied on 10 August 2020. He explained the appellant's role was to provide IT support to the customers of the business in relation to devices such as computers, laptops, mobiles, iPads, tablets, gaming consoles and printers. Her duties included hardware repair or replacement as necessary, installing or downloading software, keeping all tools and software updated, searching out more IT products on the market, preparing technical reports, updating related applications, fixing or replacing printers and other hardware, and taking care of any IT-related work in the business as required.

[12] The director outlined how the appellant completed each of the relevant core tasks in the ICT Support Technicians Unit Group (ANZSCO 3131). If a customer was experiencing difficulties with the installation of computer hardware or software, the appellant would, as required, assist or undertake the installation, install peripheral devices, and repair or replace central processing units. She would determine whether devices required hardware repairs or software fixes and undertake the work accordingly. She responded to all IT-related inquiries in relation to hardware and software problems and would adapt existing programmes to meet users' needs, by updating her knowledge to fix new devices and to learn new ways to "flash" (change settings to) software. She would install and download software for customers; for example, she would turn a device on and off and install or download software if needed. The repairs undertaken by the appellant aimed to ensure the efficient use of applications and equipment, and she would implement computer networks. She also maintained the company's website.

[13] On 24 September 2020, Immigration New Zealand interviewed the appellant by telephone. According to the appellant, she worked in a kiosk in a mall as in ICT support technician. Describing a typical workday, the appellant undertook repairs of mobile phones, and resolved hardware or software issues. Examples of assessments she undertook were to determine whether the device was water damaged, or whether the software was faulty. Her job was not to serve customers but to undertake repairs. She would place orders for parts required for the repairs, such as screens, batteries, chargers, and camera reflexes.

[14] The appellant also gave examples of her involvement in the core tasks of Unit Group 3131. For example, she checked customers' phones to ensure that the hardware (phone or charge) was not faulty and, if not, proceeded to install updated software. When determining whether a fault was a hardware or software issue, the appellant checked for damage when a screen was smashed, checked a battery's functioning, or determined whether temporary files required cleaning or antivirus software required installation.

[15] Regarding software inquiries, the appellant stated that customers would seek assistance after forgetting their device's password or experiencing battery problems, noting that sometimes battery problems were software-related. Most hardware problems involved screens, charging and audio issues. Usually screen repairs involved screen replacement, although sometimes more difficult repairs were required such as replacement of the liquid crystal display.

[16] The appellant adapted existing programmes to meet user requirements following training, such as annual training in relation to updated software requirements for iPhones. She also installed software including the new version of iTunes that she downloaded from Google. She implemented computer networks, as she had resolved a customer's internet connection difficulties by changing the laptop's settings from home to public. She did not design the company's website, although she maintained it.

[17] On 28 September 2020, Immigration New Zealand requested the following information: examples of repair work completed by the appellant, including those referred to in her interview, and invoices for that repair work from July 2020 onwards; orders placed by the appellant; her communication with customers over repairs; and the iPhone 12 training she had undertaken. The information was provided on 2 October 2020.

### **Immigration New Zealand's Concerns**

[18] On 23 November 2020, Immigration New Zealand advised the appellant that it did not consider her role to be a substantial match to the ANZSCO description, including core tasks, of an ICT Customer Support Officer (incorrectly referred to as an ICT Customer Service Officer).

[19] Immigration New Zealand set out the occupation including core tasks in its letter. It then noted the appellant's description of a typical workday, during which she repaired mobile devices such as iPhones and Samsung phones and would resolve the relevant hardware and software issues. She created job sheets and reports, on which basis advice would be given to the client. New devices were assessed and repaired at the workplace, and customers would be advised regarding any extra time and costs involved. Immigration New Zealand set out the director's description of the appellant's duties, which was to carry out repairs to a variety of customers' devices, the repair or replacement of hardware, and any IT support required by the business.

[20] Based on the evidence provided, it appeared that the appellant provided support in the diagnosis and resolution of basic problems such as screen replacement, case replacement, LCD replacement, phone audio issues, and installation of software. Further, the appellant worked through a quality control checklist for the repair jobs received. Therefore, it did not appear that the diagnosis of problems was of a technical nature and the appellant did not appear to qualify for points for skilled employment.

### **Appellant's Response**

[21] On 15 January 2021, the appellant's representative replied to Immigration New Zealand's concerns. He submitted that Immigration New Zealand's sole concern was whether the appellant diagnosed problems of a technical nature. No specific concerns were raised as to whether the appellant's employment was a substantial match to the core tasks and occupation description of an ICT Customer Support Officer, although the representative also referred to "IT Technician" and "ICT Support Technician" in his submissions.

[22] The representative submitted that the appellant undertook technical work and set out the appellant's responsibilities: the repair of a wide range of mobile phones, tablets, gaming consoles, laptops, computers and peripherals, all of which required the resolution of a variety of software and hardware problems. In a

written document, the appellant set out examples of hardware and software problems and set out five scenarios that she might encounter with faulty devices, and the process she used to diagnose and resolve each problem.

[23] The representative submitted that just because the appellant worked through a quality control checklist with each repair, Immigration New Zealand wrongly characterised the appellant's work as resolving basic not technical problems. Such checklists did not detract from the technical nature of the appellant's work, as the Tribunal had found to be the case in previous decisions, for example *KJ (Skilled Migrant)* [2017] NZIPT 204265 at [68]. Instead the checklists served to ensure a high standard of repair.

[24] The representative enclosed service reports, invoices, repair tracking pages, and parts orders relating to IT repairs (various dates from September 2020 to January 2021), including inspections and diagnosis of audio issues, damaged devices, a faulty connector board, faulty batteries and charging connectors, charging ports issue, as well as updating software, installation of antivirus software, and managing data transfer. Also enclosed were copies of the quality checklists for mobiles and for laptops and computers.

### **Immigration New Zealand's Decision**

[25] By letter dated 9 February 2021, Immigration New Zealand declined the appellant's application. Immigration New Zealand was not satisfied that the appellant's occupation was a substantial match to the occupation of ICT Customer Support Officer, pursuant to SM6.10.5 of instructions (effective date not given). The occupation description of an ICT Customer Support officer required more than replacing screens, diagnosing audio issues, installing and updating anti-virus software, and dealing with charging issues and other basic problems. The tasks undertaken by the appellant did not amount to diagnosing problems of a technical nature.

[26] Immigration New Zealand awarded the appellant a total of 90 points. Without points for skilled employment, her application could not succeed.

### **STATUTORY GROUNDS**

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

- (4) The grounds for an appeal under this section are that—
- (a) the relevant decision was not correct in terms of the residence instructions applicable at the time the relevant application for the visa was made; or
  - (b) the special circumstances of the appellant are such that consideration of an exception to those residence instructions should be recommended.

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

### **THE APPELLANT'S CASE**

[29] On 27 May 2021, the appellant, through another newly-appointed representative, lodged this appeal on both grounds in section 187(4) of the Act. Submissions dated 1 July 2020 were provided as well as a copy of *OW (Skilled Migrant)*. On appeal, the representative submits that Immigration New Zealand's decision was decided unfairly on a number of grounds, including that Immigration New Zealand:

- (a) failed to identify the ANZSCO core tasks relevant to the appellant's employment and failed to properly assess the appellant's role against the core tasks as required under instructions;
- (b) impliedly imported a skill level into the performance of the core tasks and incorrectly found some tasks performed by the appellant not to be technical in nature;
- (c) failed to assess the application against the correct immigration instructions; and
- (d) took an unreasonably long time to determine the application.

[30] In addition to material already before Immigration New Zealand, a large quantity of service reports and invoices relating to IT repairs (various dates in August and September 2020) and repair tracking pages (September 2020) were produced.

[31] Section 189(1) of the Act constrains the ability of the Tribunal to consider new evidence if it was not provided to Immigration New Zealand at the time the decision was made. While the evidence was in existence at the time of the

decision, no explanation was provided as to why the appellant could not, by the exercise of reasonable diligence, have placed that information before Immigration New Zealand prior to its decision. Therefore, the new information does not fall within the exception to section 189(1) contained at section 189(3)(a) of the Act and cannot be considered in the Tribunal's assessment of the correctness of Immigration New Zealand's decision. Given the outcome of this appeal, this evidence can be taken into account by Immigration New Zealand, as permitted by instructions, in its reassessment of the application.

## **ASSESSMENT**

[32] The Tribunal has considered the submissions provided on appeal, along with the files provided by Immigration New Zealand in relation to the appellant's current residence application and the previously-determined residence application.

[33] 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**

[34] The application was made on 23 March 2017 and the relevant criteria are those in residence instructions as at that time. Immigration New Zealand declined the application because it was not satisfied that the appellant's role involved diagnosing problems of a technical nature. As a result, Immigration New Zealand did not consider that the appellant's employment met the occupation description of an ICT Customer Support Officer.

#### *The relevant instructions*

[35] 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.

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**Note:** The ANZSCO is available at [www.immigration.govt.nz/ANZSCO](http://www.immigration.govt.nz/ANZSCO)

*Effective 14/05/2013*

[36] For an applicant to be awarded points for his or her skilled employment, SM7.10.1.a provides that an applicant must have 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*

[37] When deciding an application, Immigration New Zealand must act in accordance with the principles of fairness and natural justice (A1.1.c, effective 29 August 2012). Factors relevant to fairness are set out at A1.5 of instructions and include:

**A1.5 Fairness**

- a. Whether a decision is fair or not depends on such factors as:
  - whether an application is given proper consideration;
  - whether the applicant is informed of information that might harm their case (often referred to as potentially prejudicial information);
  - whether the applicant is given a reasonable opportunity to respond to harmful information;

...

- whether appropriate reasons are given for declining an application;

...

*Effective 29/10/2010*

[38] A1.15 of instructions (effective 29 November 2010) sets out the practical steps towards achieving fairness and natural justice, which includes applying the relevant immigration instructions (A1.15.d).

### *ICT Customer Support Officer*

[39] 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.

[40] 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 at least three years of relevant experience and/or relevant vendor certification.

[41] 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.

[42] 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.

[43] 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.

[44] The Tribunal accepts, in this case, 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. Therefore, as set out set out by the Tribunal in *OW (Skilled Migrant)* at [39], the work is most closely linked to core task 2. Further core tasks 1, 3, 4, 5 and 6 are also relevant:

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. Instead, the task requires 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*

[45] The appellant was employed as an ICT support technician in a repair shop that was part of a business that operated a chain of repair shops in Z location. Originally set up to repair mobile phones, the business expanded to include the repair of tablets, computers and gaming consoles. The repair chain's customers consisted of walk-ins, and also worked with businesses, including insurance companies by undertaking IT repairs arising out of insurance claims.

[46] The appellant repaired a variety of devices including mobile phones, tablets, iPads, laptops and gaming consoles, by diagnosing and resolving various software and hardware issues that arose. She would check customers' devices to ascertain whether the hardware or software was faulty and, depending on the outcome, would resolve the software problem for example, by flashing (updating) software, cleaning temporary files, installing updated software or repairing the hardware problem where she might order parts for repairs such as screens, batteries, and chargers. During the course of her work, she was required to make notes about the nature of the repair, which were then passed to customers. She also maintained the company website and according to the director, she took care of any IT-related work in the business.

[47] Immigration New Zealand declined the application because there was insufficient evidence that the appellant was diagnosing problems of a technical nature. Because of her limited role, it considered that she was diagnosing only basic problems. The ICT Customer Support Officer occupation description (support, education and guidance in the deployment and maintenance of computer infrastructure and the diagnosis and resolution of technical problems and issues) made it clear that the responsibilities of an ICT Customer Support Officer extended beyond replacing screens, diagnosing audio issues, installing and updating anti-virus software, and dealing with charging issues and other basic problems.

*Failure to undertake a proper substantial match assessment*

[48] The Tribunal finds that Immigration New Zealand's assessment was incorrect because it failed to properly consider the appellant's employment against the description. This meant that relevant concerns were not put to the appellant for comment and therefore she was not given a reasonable opportunity to respond to the concerns. Reasons for these findings are given below.

[49] Immigration New Zealand raised concerns in its letter of 23 November 2020 about whether the appellant's employment was a substantial match to the occupation description, including core tasks. After setting out this information, it set out its understanding of the appellant's work. Then, in three brief sentences, it set out its concerns: that the appellant provided support in the diagnosis and resolution of basic problems, that she worked through a quality control check list and therefore, that she did not appear to be diagnosing problems of a technical nature. It did not, for example, explain what the occupation description required an ICT Customer Support Officer to do, and how the appellant's employment fell short.

[50] The occupation description of an ICT Customer Support Officer consists of two components; first, the support, education and guidance in the deployment and maintenance of computer infrastructure; and secondly, the diagnosis and resolution of technical issues. An analysis of aspects of the core tasks could indicate that the appellant performs the second component of the occupation description "the diagnosis and resolution of technical issues". As an example, during the course of her work repairing mobile phones, laptops, gaming consoles and other devices, she may be "determining software and hardware requirements" when investigating the causes of screen and battery failure in mobile phones, or when coming up with the solution to software issues by deciding that temporary

files require cleaning or antivirus software required installation. Further, when providing repair reports, she could be “responding to inquiries about software and hardware problems”.

[51] However, evidence produced as to whether the appellant undertook the core tasks in the context of providing “support, guidance and education in the deployment and maintenance of computer infrastructure” was scant. While the director stated that the appellant took care of any IT-related work in the business as required, no examples pertinent to the deployment or maintenance of computer infrastructure were provided. The appellant’s example of how she performed core task 6 (implementing computer networks), the core task most closely related to the deployment and maintenance of computer infrastructure, was that she changed the settings on a customer’s computer to enable her to connect to a computer network. However, this example does not appear to show how she supported the deployment or maintenance of computer infrastructure, but focused on the individual device.

[52] Nevertheless, Immigration New Zealand failed to properly consider the occupation description and whether the appellant’s employment met that description. As such, it failed to undertake a fundamental step of the substantial match analysis, and accordingly, failed to properly put issues to the appellant for comment such as the issue of whether she performed the first component of the occupation description. Instead the concerns focused, somewhat simplistically, on whether the appellant’s work was of a technical nature (on this point, see the discussion below). In failing to adequately identify the relevant concerns and put them to the appellant, the appellant was not given a proper opportunity to respond. Had she been given that opportunity, she may have responded with evidence that may (or may not) have allayed Immigration New Zealand’s concerns. Therefore, contrary to its obligations under A1.5, Immigration New Zealand failed to inform the appellant of information that might harm her case and did not give her a reasonable opportunity to respond to harmful information.

[53] It is unsurprising then, that the appellant’s response to Immigration New Zealand’s concerns focused on providing more detail about what was involved in the repair of the individual devices and the process she went through when diagnosing faults and determining the nature of the repair. Further, the representative only briefly addressed the occupation description, saying that the tasks in which the appellant was involved also constituted diagnosis and resolution

of technical problems and issues, and repair of computer infrastructure and hardware.

[54] It is true that the onus is on the appellant to satisfy Immigration New Zealand that she met instructions, which in this case was to demonstrate that she was in skilled employment (see section 58 of the Act and R5.10.a of instructions (effective 22 August 2016)). However, this onus must be seen in light of Immigration New Zealand's obligation to give an appellant a reasonable opportunity to provide relevant information. Part of that opportunity necessarily involves Immigration New Zealand identifying the correct concerns and informing the appellant of those concerns, which was not done here.

*Meaning of "computer infrastructure"*

[55] It is apparent to the Tribunal that when considering whether the appellant provided support, education and guidance in the deployment and maintenance of computer infrastructure, that it may be helpful to understand what is meant by "computer infrastructure" and how an applicant might work within such an infrastructure.

[56] While the meaning of the term "computer infrastructure" has not been directly addressed by the Tribunal, there are a number of decisions that discuss what it means for an appellant to work with a computer infrastructure and in doing so, suggest that computer infrastructure comprises several elements, including the necessary hardware, software and network requirements that enable an IT system to operate. For example, in *OR (Skilled Migrant)* [2020] NZIPT 205888 at [41], the Tribunal recorded that the appellant worked as a service desk analyst for a nationwide telecommunications company and was:

part of the organisation's information technology team who was responsible for providing support to many government departments by managing the function of servers, routers, switches, computers and mobile telephones.

[57] Similarly, in *NR (Skilled Migrant)* [2020] NZIPT 205846 the appellant was employed as an analyst – customer support in a multinational insurance company, where she:

[54]...responded to calls from the company's employees, external providers and suppliers, troubleshooting technical difficulties they had with the company-supported software and hardware. She was required to resolve a broad range of technical problems with hardware and software.

[58] The Tribunal has also differentiated between computer infrastructure and the use of infrastructure to connect to the internet, see *BO (Skilled Migrant)* [2017] NZIPT 204011:

[22] 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 it 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. ...

[59] Nevertheless, although *BO (Skilled Migrant)* suggests otherwise, it may well be that an ICT Customer Support Officer will be required to resolve problems and diagnose and resolve technical issues with individual devices, but with the aim that the devices are capable of working within the customers' associated computer infrastructure. In *NR (Skilled Migrant)*, the appellant could "remotely access customers' hardware to diagnose and resolve problems, be they software or hardware related" (at [54]).

[60] Finally, there is nothing to suggest that a computer network or ICT infrastructure must always be part of a large business.

[61] In summary, the appellant provided little information about whether she provided support, education and guidance in the deployment and maintenance of computer infrastructure, but Immigration New Zealand did not raise the concern with her or provide her with an opportunity to respond to such a concern, but instead incorrectly focussed on a skill level. The issue of whether the appellant's employment is a substantial match to the occupation description of an ICT Customer Support Officer can be considered in Immigration New Zealand's reassessment of the application.

#### *Incorrect importation of a skill level*

[62] In its decision, Immigration New Zealand found that, when taking the occupation description into account, there was insufficient evidence that beyond a limited role that the appellant diagnosed problems of a technical nature (such as screen replacement, case replacement, charging issues, phone audio issues and

installation of software), it remained concerned that the appellant diagnosed only non-technical issues.

[63] By finding that the appellant was not “diagnosing problems of a technical nature” and “only diagnosing problems of a basic nature”, Immigration New Zealand repeated its earlier mistake of wrongly importing a skill level into what little assessment it undertook of whether the appellant’s employment was a substantial match to the occupation description and core tasks of an ICT Customer Support Officer. *OW (Skilled Migrant)* makes it clear that this approach is incorrect (see [47] and [48]). In doing so, it failed to give appropriate reasons for its decision to decline the application, contrary to A1.5.

#### *Incorrect instructions*

[64] The appellant’s application was made on 23 March 2017; therefore, the applicable instructions were SM7.10.1 (effective 14 May 2013). However, counter to the requirements of A1.15 of instructions, Immigration New Zealand assessed the appellant’s employment against SM6.10.5.1 (effective 28 August 2017). Nevertheless, this error had little bearing on the decision, because a proper assessment of substantial match, which should have been undertaken regardless of which instructions were applicable, was not undertaken.

#### *Delay*

[65] It took three years for Immigration New Zealand to conduct its second assessment of the appellant’s application. In the 17 months preceding the determination of the application in May 2021, COVID-19 lockdowns as well as a change of immigration officer no doubt contributed to delays that were unavoidable. Further, during this time, the appellant had changed employment, lodged a work visa application and made requests for information under the Official Information Act 1982 in respect of both applications.

[66] However, there seems little in the Immigration New Zealand files to explain why it took 19 months for concerns to be raised about the application. No doubt the delay was frustrating for the appellant, although the Tribunal finds that this did not result in prejudice to the appellant. Legitimate concerns about substantial match were raised in respect of the appellant’s previous employment, which resulted in her obtaining an offer of new employment shortly afterwards.



### *Conclusion as to correctness*

[67] The Tribunal finds that Immigration New Zealand's decision to decline the application was incorrect. It failed to properly consider whether the appellant's employment was a substantial match for the occupation description, including core tasks, of an ICT Customer Support Officer. Further, it incorrectly imported a skill level requirement into its analysis. Immigration New Zealand also acted unfairly as it failed to inform the appellant of information that might harm her case and, as such, did not give the appellant a reasonable opportunity to respond to harmful information (A1.5). As a result, appropriate reasons for the decision were not given. Accordingly, the application must be returned to Immigration New Zealand for correct assessment.

### *Tribunal's order*

[68] The representative submits that in the event that the appellant's appeal is successful, it would be unfair to require her to undergo yet another assessment of her employment, taking into account the delay in determining the application and Immigration New Zealand's repeated mistakes. The representative also submits that the appellant had clearly demonstrated that her employment was a substantial match to the occupation description, including core tasks of an ICT Customer Support Officer. Therefore, the Tribunal's order should reflect these concerns.

[69] The Tribunal does not consider that there are grounds on which to reverse the decision as incorrect in terms of the applicable instructions and grant the appellant a resident visa (section 188(1)(b) and 188(2) of the Act). Because of the deficiencies in Immigration New Zealand's process as set out above, it is not yet clear to the Tribunal that the appellant's occupation is a substantial match to the occupation description, including core tasks, of an ICT Customer Support Officer. The issue of substantial match requires further assessment. The correct option is to return the application to Immigration New Zealand for a correct assessment as the Tribunal is not satisfied that, but for the incorrect assessment, the appellant would have been entitled to a visa (section 188(1)(e) of the Act).

## **DETERMINATION**

[70] 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.

[71] 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**

[72] 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 properly and fairly consider all evidence and information contained on the file, submitted on appeal, and any new information submitted to it by the appellant.
3. If the appellant remains employed in the same or similar role with the same employer, Immigration New Zealand shall assess whether the appellant's employment is a substantial match to the ANZSCO occupation of ICT Customer Support Officer. In doing so, Immigration New Zealand shall consider the involvement she may have in the core tasks in the context of the occupation description, including whether she provides support, education and guidance in the deployment and maintenance of computer infrastructure. This may involve consideration of what it means for an appellant to work with a computer infrastructure and the meaning of the term "computer infrastructure". In assessing these issues, Immigration New Zealand should take into account [55] to [61] of this decision.

4. Immigration New Zealand shall not import a skill level requirement into its assessment of substantial match (as set out in [62] to [63]).
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. Immigration New Zealand shall conduct its assessment of substantial match in accordance with the correct instructions, SM7.10.1 of instructions (effective date 14 May 2013) (see [64]).
7. Should any issue arise that is potentially prejudicial to the appellant, Immigration New Zealand must clearly put this to her, and allow her a reasonable opportunity to respond. In doing so, it shall have particular regard to [48] to [54] of this decision.

[73] 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.

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

#### **Order as to Depersonalised Research Copy**

[75] 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 family.

"M. Avia"  
M Avia  
Member

Certified to be the Research  
Copy released for publication.

M Avia  
Member