

RŌPŪ TAKE MANENE, TAKE WHAKAMARU  
AOTEAROA

**Appellant:** YD (Skilled Migrant)

**Before:** S Benson (Member)

**Representative for the Appellant:** T Delamere

**Date of Decision:** 7 December 2021

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**RESIDENCE DECISION**

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[1] The appellant is a 31-year-old citizen of India whose application for residence under the Skilled Migrant category was declined by Immigration New Zealand. The application includes the appellant's husband, aged 30, also a citizen of India.

**THE ISSUE**

[2] Immigration New Zealand declined the appellant's residence application because it determined that her employment as a restaurant manager was not a substantial match to the *Australian and New Zealand Standard Classification of Occupations* (ANZSCO) description for the occupation of Cafe or Restaurant Manager. Without points for skilled employment and bonus points for skilled employment outside the Auckland region, her application could not succeed.

[3] The principal issue for the Tribunal is whether Immigration New Zealand was correct that the appellant's role was not a substantial match to the ANZSCO occupation, given her work serving customers and her performance of the core task of planning menus in the context of an Indian restaurant.

[4] For the reasons set out below, the Tribunal finds that Immigration New Zealand was not correct in its assessment. The Tribunal therefore cancels

the decision and refers the application back to Immigration New Zealand for a correct assessment.

## **BACKGROUND**

[5] In June 2015, the appellant arrived in New Zealand as the holder of a student visa. She attended a tertiary educational institution in Z city and, in July 2016, obtained a Postgraduate Diploma in Applied Management.

[6] Since August 2016, the appellant has held a series of work visas. In May 2017, she started employment as operations manager of an Indian restaurant in Z city.

### **Application for Residence**

[7] Following the selection of the appellant's Expression of Interest from the Pool on 13 November 2018, she was invited to apply for residence. On 6 March 2019, the appellant made her application for residence based on her employment. She claimed 170 points, including 50 points for skilled employment and 30 points for employment outside the Auckland region. The appellant claimed that her employment was a substantial match for the ANZSCO occupation of Cafe or Restaurant Manager (code 141111), a Skill Level 2 occupation included under ANZSCO Unit Group 1411, Cafe and Restaurant Managers. The Tribunal sets out the ANZSCO occupation description and the core tasks of a Cafe or Restaurant Manager at [29]. In support of the application, she provided a copy of her employment agreement (27 October 2018), which included a job description, and an Employer Supplementary Form, completed by the director of her employer company.

### **Verification by Immigration New Zealand**

[8] On 3 November 2019, in reply to questions from Immigration New Zealand, the director of the appellant's employer company stated that:

- (a) The appellant was first employed in March 2017 as a team member and then manager for the employer's branch in Y town. She was promoted to the position of operations manager for the employer's branches at Y town, X town and Z city. In October 2017, when the

other two restaurants had been sold and the manager of the Z city restaurant resigned, she became manager of that restaurant.

- (b) The appellant's duties as restaurant manager included advertising, compliance with laws and regulations, ensuring that the restaurant was clean and tidy, booking and organising special functions (such as birthdays and weddings), meeting catering orders (such as a golf club's annual function), banking, mingling with customers, stock levels, weekly stocktakes, liaising with suppliers, ordering stock and handling customer complaints and social media for the restaurant. She helped in the kitchen with little things if the restaurant was busy (perhaps two or three per cent of her time). She spent 20 to 30 per cent of her time serving customers and taking orders.
- (c) The appellant planned the restaurant menu with the chef. The chef was responsible for food costing and the appellant for menu pricing and overall profitability. The appellant budgeted for the restaurant, with complete authority over costs, depending on sales, quality of stock, wages etc.
- (d) The appellant was responsible for staff recruitment, staff rosters, assessment of staff performance and staff training. The director had interests in six other companies and a trust. She therefore had little involvement in the restaurant, eating lunch or dinner there once or twice per month. The appellant notified her if she hired or fired a staff member.

[9] The director provided an organisational chart which showed that the appellant reported to the director and supervised three chefs and two other staff. The director provided financial records for the employer: financial statements for the 2020 financial year; GST returns; Inland Revenue Department monthly schedules; and time and wage records for the appellant.

[10] On 12 November 2019, in a telephone interview with an immigration officer, the appellant stated that:

- (a) She was first employed as an operations manager to oversee the employer's three businesses. When the owner sold two of the businesses, she became the restaurant manager.

- (b) The restaurant was open 65 hours per week: nine hours per day during the week; and ten hours per day on weekends. The appellant took Wednesday off and sometimes Monday evening. She used to work 50 hours per week, but now worked 40 hours per week.
- (c) The restaurant had three chefs and two front of house staff, that is, herself and a duty manager. At present, the front of house staff washed dishes until a new person was hired and the duty manager did food delivery. She was the only person who made the menu item “coconut rum mango lassi”.
- (d) When she was not at the restaurant, it was managed by the duty manager (who started about a year ago) or, if the appellant was on leave, by the director. The duty manager did not perform administrative tasks and left notes for the appellant to attend to them when she returned to work. The director did not work at the restaurant and seldom visited.
- (e) The appellant spent 50 to 60 per cent of her time with customers, taking orders in the morning and evening. She spoke to customers to assess their satisfaction with meals. Her administrative tasks included staff rosters, sales reports, handling complaints, staff training, stock reports, dealing with catering orders and payroll, which was 70 to 80 per cent of her work. At the end of the interview, the appellant stated that she spent an hour per day with customers.
- (f) The restaurant provided authentic northern Indian cuisine. She made the final decision on the menus and “combo” deals after discussion with the chefs and considering customer feedback, YouTube and books. New dishes could be trialled. The lunch menu changed every six months and it was unique and different from other restaurants. The dinner menu took longer to change than the lunch menu. Although the same meals appeared on the menus for the director’s three restaurants, the chefs and flavours were different at each place.
- (g) The restaurant had special functions, such as Christmas parties, Diwali, birthday parties and weddings. The appellant and the customer would agree on the menu (from the standard restaurant menu), price, decorations, settings, drinks and any dietary

requirements. The restaurant could have birthday buffets for up to 50 people, with the duty manager overseeing the buffet and the appellant operating the bar.

- (h) The appellant kept stock records and did all purchasing for the restaurant, based on factors such as the weekly stock report, sales and bookings. She checked supplies and returned anything that was poor quality. She set a weekly budget for expenses, based on monthly sales. She set menu prices and aimed to provide good quality, quantity and price.
- (i) The appellant maintained financial records for the store through the point of sale (POS) system, which took three to four hours per week. She produced Excel spreadsheets of sales and expenses, but the director maintained accounting records, such as GST, PAYE, accounts payable and receivable, and other tax records.
- (j) The appellant ensured that the restaurant was clean, functional and suitable in appearance by checking cleanliness at closing time. She arranged any necessary repairs. She had changed the appearance of the restaurant (with the director's approval) by putting up a map of India.
- (k) The appellant selected new staff, which included advertisements on Facebook and interviews. She checked the applicants' English language and driving skills. She trained and supervised new staff, resolved staff grievances and prepared staff rosters.
- (l) Finally, the appellant ensured that health regulations were enforced in respect of the COVID-19 tracer app, gloves, chef's uniforms, masks and contact-free delivery. She was responsible for the council food grade and was the contact person for any council audits.

[11] On 6 November 2020, the appellant's then representative provided various documents, such as:

- (a) Emails with suppliers (including as to the restaurant signage), delivery service providers and statements from suppliers confirming their dealings with the appellant as restaurant manager.

- (b) Examples of menus planned by the appellant and a table stating changes to menu prices.
- (c) Emails with customers to book large events and off-site catering.
- (d) Emails to the director, attaching sales and stock reports, and records of stock ordered by the appellant.
- (e) Emails to the restaurant website administrator and evidence of promotions and advertising by the appellant, including newspaper advertising, online advertising and sponsorships.
- (f) Evidence of hiring staff (including advertisements, CVs and emails to arrange interviews with applicants), emails communicating rosters to staff, a form stating the uniform to be used by staff at the restaurant and staff training records.
- (g) Emails with a health officer from the local council.

### **Immigration New Zealand Raises Concerns**

[12] On 9 March 2021, Immigration New Zealand stated its concerns that the appellant's employment was not a substantial match to the ANZSCO occupation of Cafe or Restaurant Manager for a number of reasons. It noted that the local authority had issued a manager's certificate to the duty manager, that menus for the appellant's restaurant in Z city were the same as menus at the employer's other restaurants at W town and X town and further, that functions organised by the appellant were, in fact, large bookings because the menus featured a banquet meal from the standard menu.

[13] Immigration New Zealand also noted that the appellant had not explained her managerial responsibilities or how she performed the duties of the occupation of Restaurant Manager, including the setting of prices. It also appeared that she spent more than one hour per day with customers as there was only the duty manager to serve customers, the appellant was stationed at the bar for functions and stated that she spent 50 to 60 per cent of her time with customers.

[14] Immigration New Zealand invited the appellant to make comments and to provide further information.

## The Appellant's Reply

[15] In reply (18 March 2021), the appellant's representative stated that the appellant's employment was a substantial match to the occupation of Cafe or Restaurant Manager. The appellant planned menus in consultation with the chef (a core task of the occupation), even if the items were the same as other restaurants, because Indian cuisine was similar throughout the world. The appellant had changed the menu, as demonstrated by the different menus since December 2018 as well as emails from the appellant to the website administrator setting out changes to be made to the menu on the restaurant website. The appellant planned and organised special functions (another core task) as shown by evidence of fundraisers and emails with customers. It was appropriate for the appellant to spend 20 to 30 per cent of her time serving customers as core tasks of the occupation required her to confer with, serve, greet and take orders from customers. Immigration New Zealand did not state any concerns as to the appellant's performance of any other core tasks. Further, it was not significant that the liquor licence was not issued to the appellant as it could be issued to any suitable person at the premises.

[16] In a written statement (date stamped 19 March 2021), the appellant added that she needed someone with a certificate to serve alcohol at the premises when she was not present and that a liquor licence could be issued to any person with the appropriate liquor licence certificate and six months' relevant experience, such as the duty manager. The appellant had planned menus, including items that were different from other Indian restaurants and for special functions. She stated that the restaurant usually had seven staff, including her, and that her involvement in serving customers was limited:

I mentioned in my interview that my staff usually serve customers and do the front of house work. I sometimes go to check the tables to get feedback from them about the food and service provided by my staff, but most of the time I do my admin work. I mentioned that I mostly do my managerial tasks in my day routine, making rosters, stock sheets, doing stock orders, counting stock, checking the payments etc. That is the reason I said "one hour a day" [serving customers]. Moreover, if there are no tables in the restaurant, I assign the job of cleaning or other tasks to my team members to keep them busy. I sometimes interact with my regular customers to get feedback about the food and service, as per my task. According to my role, I do serve customers if needed, but it is very rare. But I [am involved] in customer conversations because this is very important to develop and enhance the restaurant.

[17] The appellant stated that she was proud of positive reviews and awards for the restaurant (examples attached) while she had been manager. The appellant provided further documents, including: examples of reviews of the restaurant; several pages of notes of menu changes; emails to the website administrator to

change the menu; and a large quantity of correspondence, menus and flyers for special functions, catering orders, sponsorships and promotions.

[18] In a letter (18 March 2021), the director stated that the appellant's excellent performance in her role as manager was the "major factor" in the employer's decision to invest \$1.7 million to move to bigger premises.

### **Immigration New Zealand Decision**

[19] On 2 July 2021, Immigration New Zealand declined the application for residence on the ground that the appellant's employment was not a substantial match to the description of the ANZSCO occupation of Cafe or Restaurant Manager because, on its assessment of the evidence, she spent most of her time serving customers, and discussing and planning menus with chefs was not a substantial part of her role. Immigration New Zealand declined to award points for skilled employment or bonus points for skilled employment outside the Auckland region. Without these points, the appellant's residence application could not succeed.

### **STATUTORY GROUNDS**

[20] 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.

[21] 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**

[22] On 3 August 2021, the appellant lodged this appeal on that the ground that the decision of Immigration New Zealand was not correct in terms of the applicable residence instructions.



[23] The appellant's newly-appointed representative submits (3 August 2021), in summary, that: the appellant's employment was a substantial match to the description of the ANZSCO occupation of Cafe or Restaurant Manager because she organised and controlled the operations of the restaurant and performed all the core tasks of the occupation; and Immigration New Zealand did not properly assess the appellant's evidence as to her time in serving customers or her performance of the task of planning menus in consultation with chefs.

## **ASSESSMENT**

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

[25] 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**

[26] The application was made on 6 March 2019 and the relevant criteria are those in residence instructions as at that time. Immigration New Zealand declined the application because it was not satisfied that the appellant's role was a substantial match to the ANZSCO occupation of Cafe or Restaurant Manager.

[27] The relevant instructions in this case concern the assessment of skilled employment under SM6.10, SM6.10.5 and SM6.10.5.1 (all effective 26 November 2018):

#### **SM6.10 Skilled Employment**

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

associates skill levels with each occupation, and the level of remuneration for the employment.

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

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

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

...

- b. the principal applicant can demonstrate that their employment substantially matches the description for that occupation as set out in the ANZSCO (see SM6.10.5.1); and

...

#### **SM6.10.5.1 Assessment of 'substantial match'**

- a. For the purpose of SM6.10.5 (b) above, assessment of 'substantial match' involves a determination of whether the applicant's employment is substantially consistent with the ANZSCO 'Occupation' (6-digit) level description for that occupation and with the tasks listed at the ANZSCO 'Unit Group' (4-digit) level description for that occupational group, excluding any tasks which are not relevant to the 'Occupation' description.
- b. To be considered a substantial match to an occupation, the tasks that are relevant to the applicant's employment role must comprise most of that role.

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...

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

[28] 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). Relevant factors include whether: an application was given proper consideration; appropriate reasons were given for declining an application; and all known relevant information was considered (A1.5, effective 29 November 2010).

### *Cafe or Restaurant Manager*

[29] The appellant contends that her employment is a substantial match for Café or Restaurant Manager (ANZSCO code 141111), an ANZSCO Skill Level 2 occupation. The description for the occupation states that such a person

“organises and controls the operations of a cafe, restaurant or related establishment to provide dining and catering services”. Unit Group 1411 (Cafe and Restaurant Managers) states that the core tasks for the occupation include (numbering added):

1. planning menus in consultation with Chefs
2. planning and organising special functions
3. arranging the purchasing and pricing of goods according to budget
4. maintaining records of stock levels and financial transactions
5. ensuring dining facilities comply with health regulations and are clean, functional and of suitable appearance
6. conferring with customers to assess their satisfaction with meals and service
7. selecting, training and supervising waiting and kitchen staff
8. may take reservations, greet guests and assist in taking orders

[30] Immigration New Zealand declined the application because: she spent most of her time serving customers; and discussing and planning menus with chefs was not a substantial part of her role. The Tribunal finds that Immigration New Zealand did not properly consider whether the appellant’s role was a substantial match for the occupation.

*The appellant’s work serving customers*

[31] Immigration New Zealand found that the appellant’s role mostly involved serving customers. The decision noted the representative’s statement (18 March 2021) that the appellant’s time serving customers was 20 to 30 per cent of her role and the appellant’s statement (19 March 2021) that she spent “about one hour per day” dealing with customers, but concluded that the appellant had not “mitigated” its original concerns:

[You] have not mitigated our concern regarding time spent serving customers and spending [the] majority of your time at the bar. The organisational chart provided does not appear to be a true reflection of staff employed in the business. During the telephone interview conducted with you on 12 November 2020, confirmed there were five staff members employed in the business. However, the organisational chart provided reflects 14 staff employed in the restaurant. The organisational chart and explanation are not consistent with the interview and do not address the time spent serving at the bar and on the floor. The contracts for the extra staff are for part-time staff, the majority of whom are working as delivery drivers and kitchen hands/dishwashers. The exceptions are a couple who are team members. There is no evidence of who is currently employed and how many staff are available at present. ... Whilst it is noted you stated [that the duty manager] is now able to sell alcohol in your absence, this does not mitigate the concern that the majority of your time is spent serving customers. During the interview, you have also confirmed you make special drinks to customers which only you can make.

[32] It was implicit, although not directly stated, that Immigration New Zealand found that the appellant spent 50 to 60 per cent of her time serving customers, as

stated in her interview (12 November 2019). The context is that SM6.10.5.1.b requires an appellant to spend most of her time engaged in the relevant core tasks for the nominated ANZSCO occupation (SM6.10.5.1.b). As the Tribunal stated in *YR (Skilled Migrant)* [2018] NZIPT 204965 at [31]:

Instruction SM6.10.5.1.b provides that ‘the tasks that are relevant to the applicant’s employment role must *comprise most of that role*’ (emphasis added) and later, in discussing an example, SM6.10.5.1 states (verbatim):

Other listed tasks that are relevant to the role of a ‘Disabilities services officer’ must comprise most of their role.

‘Comprise’ in both of those expressions appears to be used in a manner that is not entirely standard English. A sensible interpretation of both expressions is that, to be a substantial match to an ANZSCO occupation, an applicant’s employment must mostly consist of the relevant ANZSCO core tasks (as opposed to other work unrelated to those tasks). The ‘most’, in ‘most of that role’, means that, at a minimum, the majority of the applicant’s time is spent undertaking ANZSCO core tasks.

[33] The Tribunal finds that Immigration New Zealand did not properly consider the appellant’s time spent serving customers as it misinterpreted the evidence. The organisational chart (in the appellant’s statement dated 19 March 2021) did not state, as found by Immigration New Zealand, that 14 persons worked at the restaurant. Rather, it stated that there was the appellant (restaurant manager), three chefs and, at various times from 2018 to 2021, 11 other staff (with one person in fact stated twice in different years). On the next page of her statement, the appellant explained that there were two other front of house staff, that is, a total of seven current staff. Contrary to Immigration New Zealand’s decision, this was consistent with the appellant’s statement in her interview (12 November 2019) that there were then five staff and that she was looking to fill a vacancy. Further, the evidence did not justify Immigration New Zealand’s finding that most of the other staff were delivery drivers and kitchen hands/dishwashers, implying that they were not front of house serving customers. The appellant stated that they all could work front of house “as per their duties stated in their contracts”.

[34] More importantly, Immigration New Zealand’s decision stated that its original concern (9 March 2021) that the appellant spent 50 to 60 per cent of her time serving customers (as stated in her interview) was not “mitigated” by the further evidence. However, the Tribunal notes the appellant’s correction, at the end of her interview, that serving customers was “about one hour per day” and the statement by the representative (18 March 2021) that it was 20 to 30 per cent of the appellant’s time. Immigration New Zealand gave no convincing reasons for finding, from this evidence, that 50 to 60 per cent of the appellant’s time was spent serving customers, in particular when this statement was followed by her

inconsistent statement that 70 to 80 per cent of her time was engaged in certain administrative tasks.

[35] Finally, the Tribunal notes that two of the eight core tasks of a Cafe or Restaurant Manager involve dealing with customers: conferring with them to assess their satisfaction with meals and service (task 6); and taking reservations, greeting guests and assisting in taking orders (task 8). Even if the appellant spent 50 to 60 per cent of her time dealing with customers, by implication 40 to 50 per cent of her role was spent on other core tasks of the occupation of Cafe or Restaurant Manager. It was therefore plausible that the core tasks of the occupation, including dealings with customers under tasks 6 and 8, comprised most of the appellant's role.

*Task 1 – planning menus in consultation with chefs*

[36] Immigration New Zealand stated that the appellant had not demonstrated that menu planning was a substantial part of her role. The decision stated:

You confirmed [that the] majority of menu items sold in [the restaurant were] offered by other Indian restaurants throughout New Zealand. Therefore, this reflects discussing and planning menus with the chefs is not a substantial part of your role.

[37] Menu planning relates to task 1. The Tribunal finds that Immigration New Zealand did not properly consider the appellant's performance of this task. She merely had to perform the task, not necessarily as a "substantial part" of her role. There was evidence that the task was performed, although infrequently and despite the concern as to a common Indian cuisine. She stated:

For an example, there is a dish mushroom lamb in most of the Indian restaurants. We call it shabnam lamb just to attract the customers so that by a unique name they will try to ask the staff about that and then staff get the opportunity to explain it a bit more to sell the dish. We have a few names in our menu which you cannot find in any other restaurant in [Z city]. Swad e azam, channa bathura thali, Amritsari kulcha thali, kathi roll, chef special roll ... which is very unique ...

[38] The appellant supported this with many examples of menus, notes as to new menus and instructions to the restaurant website administrator to change the content of the menu online.

*Conclusion as to correctness*

[39] The Tribunal finds that Immigration New Zealand's decision to decline the application was not correct. It did not properly consider the implications or evidence of the appellant serving customers or her performance of task 1 of the

occupation. The Tribunal notes that Immigration New Zealand, in deciding whether the appellant organised and controlled the operations of the restaurant and whether her employment was a substantial match for the occupation of Cafe or Restaurant Manager, did not raise any concerns as to the appellant's performance of other core tasks of the occupation and that the director had little involvement in the operations of the restaurant.

[40] 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.

## **DETERMINATION**

[41] This appeal is determined pursuant to section 188(1)(e) of the Immigration Act 2009. The Tribunal considers 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.

[42] 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**

[43] 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. Immigration New Zealand is to invite the appellant to update her application within a reasonable timeframe, if she sees fit.

3. Immigration New Zealand shall take into account any new evidence produced by the appellant, along with the relevant evidence submitted on appeal and that is already held on her residence application file.
4. If the appellant is still employed in the same role, Immigration New Zealand shall determine whether the appellant's employment is a substantial match to the occupation description and core tasks of Café or Restaurant Manager and whether she qualifies for points for skilled work experience and for bonus points for skilled work experience in New Zealand. In doing so, Immigration New Zealand shall take into account paragraphs [31]–[38] of this decision.
5. If the appellant is no longer employed as a Cafe or Restaurant Manager, she is to be given a reasonable opportunity to put forward evidence of being in skilled employment or having another offer of skilled employment.
6. If, at any stage, Immigration New Zealand finds potentially prejudicial matters which must be put to the appellant, it is to do so in clear and concise terms with reasons. The appellant is to be given a reasonable opportunity to respond.

[44] 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.

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

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

[46] 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 the director of her employer.

Certified to be the Research  
Copy released for publication.

S Benson  
Member

"S Benson"  
S Benson  
Member