

RŌPŪ TAKE MANENE, TAKE WHAKAMARU
AOTEAROA

Appellant: ZN (Skilled Migrant)

Before: L Moor (Member)

Representative for the Appellant: W Delamere

Date of Decision: 23 March 2022

RESIDENCE DECISION

[1] The appellant is a 30-year-old citizen of India, whose application for residence under the Skilled Migrant category includes his 29-year-old wife and their four-year-old son.

THE ISSUE

[2] Immigration New Zealand declined the appellant's residence application because it found that his employment as the store manager of a Thirsty Liquor alcohol store was not a substantial match to the *Australian and New Zealand Standard Classification of Occupations* (ANZSCO) description, including core tasks, of a Retail Manager (General). Without points and bonus points for skilled employment the appellant's application did not meet the criteria of the Skilled Migrant category.

[3] The principal issue for the Tribunal is whether Immigration New Zealand fairly and properly assessed all the information and evidence it had received regarding the appellant's employment, in particular, regarding his responsibilities as store manager, the nature of the business, the involvement of the employer and the licence arrangement.

[4] For the reasons that follow, the Tribunal finds that Immigration New Zealand's decision to decline the application was not correct because it failed

to properly consider and weigh the evidence provided by the appellant in his interview, job description and documents, including the licence agreement. Further, it did not give appropriate reasons for its findings as to the licence model's limitations of the appellant's managerial responsibilities. As a result, Immigration New Zealand's overall assessment was not fairly conducted. The Tribunal therefore cancels the decision and refers the application back to Immigration New Zealand for a correct assessment.

BACKGROUND

[5] The appellant arrived in New Zealand in July 2014, as the holder of a student visa. He was subsequently granted a series of work visas. His current work visa expires on 1 June 2024.

[6] The appellant made an Expression of Interest (EOI) under the Skilled Migrant category on 26 October 2018. This was selected from the Pool on 5 November 2018, and he was invited to apply for residence.

Application for Residence

[7] On 25 February 2019, the appellant made his application for residence. He claimed points and bonus points for his skilled employment on the basis of his position of store manager for a Thirsty Liquor licenced store. Included in the documents he produced in support were a copy of his Individual Employment Agreement for his position of store manager at the Thirsty Liquor store (10 June 2016), with attached job description (10 June 2016), and letters notifying the appellant of pay increases (22 May 2018 and 29 October 2018).

[8] On 1 December 2020, Immigration New Zealand interviewed the appellant regarding his application and the nature of his employment. The appellant described his managerial responsibilities, including the autonomous manner in which he ran the store, due to the employer's absence. He also explained how the licence arrangement did not restrict his ability to perform his managerial tasks, including determining product mix, negotiating and introducing new suppliers, hiring and training staff, among other things.

[9] On 15 February 2021, Immigration New Zealand wrote to the appellant, setting out its concerns that his employment did not appear to substantially match the ANZSCO occupation of Retail Manager. It addressed each of the Unit Group

tasks, stating it was satisfied that the appellant performed task 4 (selling goods and services to customers and advising them on product use), task 5 (maintaining records of stock levels and financial transactions), task 6 (undertaking budgeting for the establishment) and task 8 (ensuring compliance with occupational health and safety regulations).

[10] However, Immigration New Zealand advised that these tasks also aligned with the ANZSCO occupation of Retail Supervisor. It found that the appellant was not performing the core tasks required of an ANZSCO Retail Manager, namely task 1 (determining product mix, stock levels and service standards), task 2 (formulating and implementing purchasing and marketing policies, and setting prices), task 3 (promoting and advertising the establishment's goods and services) or task 7 (controlling selection, training and supervision of staff). It also raised concerns in relation to the appellant's employment not substantially matching the description for an ANZSCO Retail Manager and the fact that the business operated under a licence agreement and the involvement of the appellant's employer.

[11] By letter dated 1 March 2021, the representative responded. He described the appellant's performance of relevant Unit Group tasks and occupation description requirements, and submitted that Immigration New Zealand's assessment was incorrect. The representative enclosed a bundle of supporting evidence, including letters from suppliers, products list, staff training records, business accounts, staff rosters, store policies and service standards, and sales agreements.

[12] The representative also provided a copy of the licence agreement under which the store operated. He identified that the agreement did not limit the appellant's ability to meet the ANZSCO Retail Manager occupation requirements, including by virtue of the fact that the majority of suppliers were independent of the licence agreement and the store retained full discretion over its participation in any collective purchasing arrangements. Further, the appellant's employer was not involved in the store's operations.

Immigration New Zealand Decision

[13] By letter dated 17 August 2021, the appellant's application was declined. Immigration New Zealand was not satisfied that the appellant was eligible for points, or bonus points, for his employment. It found his position as a store manager did not substantially match the ANZSCO occupation of Retail Manager. Immigration New Zealand was not satisfied that the appellant was performing unit

group task 1 (determining product mix and service standards), task 2 (formulating and implementing purchasing and marketing policies and setting prices), task 3 (promoting and advertising the establishment's goods and services) or task 7 (controlling selection, training and supervision of staff).

[14] Immigration New Zealand also found that notwithstanding the fact that the employer lived in another city and was not involved in organising and controlling the establishment's operations, the franchisor/licensor and other supplier agreements limited the appellant's ability to organise and control the operations of the store. The franchisor/licensor was significantly involved in business operations.

STATUTORY GROUNDS

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

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

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

THE APPELLANT'S CASE

[17] On 27 September 2021, the appellant lodged this appeal on the ground that the decision of Immigration New Zealand was not correct in terms of the applicable residence instructions.

[18] In support of the appellant's appeal, the representative makes written submissions (received 27 September 2021). In essence, he submits that Immigration New Zealand failed to follow a fair process in its assessment of whether the appellant's employment was a substantial match to the ANZSCO description and relevant unit group tasks of a Retail Manager. It failed to properly

consider and weigh the evidence provided, including with regards to the (impact of the terms of the) licence agreement. The representative submits that, as the Tribunal (differently constituted) has found when addressing the Thirsty Liquor licence model in *PD (Skilled Migrant)* [2021] NZIPT 205881, the licence agreement does not limit the ability of a store manager from substantially matching the ANZSCO occupation of Retail Manager.

[19] The representative encloses the documents already contained on the Immigration New Zealand file, including letters from suppliers, service standards and health and safety plans created by the appellant, employment agreement, staff rosters, and evidence of the appellant hiring and training staff.

ASSESSMENT

[20] 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.

[21] 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

[22] The application was made on 25 February 2019, the EOI having been selected from the Pool on 5 November 2018. The relevant criteria are those in residence instructions as at that time. Immigration New Zealand declined the application because the appellant's employment was not a substantial match to the ANZSCO description of a Retail Manager.

Relevant instructions

[23] The relevant instructions in this case concerning the assessment of skilled employment are SM6.10, SM6.10.5 and SM6.10.5.1 (all effective 21 May 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.

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

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:

- a. the occupation is described in the ANZSCO as:
 - i. a skill level 1, 2 or 3 occupation and the remuneration for that employment is \$24.29 per hour or above (or the equivalent annual salary); or
 - ii. a skill level 4 or 5 occupation and the remuneration for that employment is \$36.44 per hour or above (or the equivalent annual salary); and
- 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.

For Example: An applicant's employment in the occupation 'Disabilities service officer' (411712) is not required to include the task set out at the ANZSCO Unit Group (4-digit) classification level for 'Welfare support workers' of 'supervising offenders on probation and parole'. Other listed tasks that are relevant to the role of a 'Disabilities services officer' must comprise most of their role.

...

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).

Effective 21/05/2018

[24] When assessing the application, Immigration New Zealand was required to act fairly and according to the principles of natural justice. A1.5.a of instructions states:

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 the application is decided in a way that is consistent with other decisions;
 - whether appropriate reasons are given for declining an application;
 - whether only relevant information is considered;
 - whether all known relevant information is considered.

...

Effective 29/11/2010

ANZSCO requirements

[25] According to the ANZSCO, a Retail Manager (General) (code 142111) is a skill level 2 occupation. The description for the occupation states that a Retail Manager “organises and controls the operations of a retail trading establishment”.

[26] Unit Group 1421, under which the occupation of Retail Manager (General) is included, outlines eight core tasks (numbering added):

1. determining product mix, stock levels and service standards
2. formulating and implementing purchasing and marketing policies, and setting prices
3. promoting and advertising the establishment's goods and services
4. selling goods and services to customers and advising them on product use
5. maintaining records of stock levels and financial transactions
6. undertaking budgeting for the establishment
7. controlling selection, training and supervision of staff

8. ensuring compliance with occupational health and safety regulations.

[27] The Tribunal has consistently held that the assessment of a substantial match is a question of fact and degree in the context of an applicant's employment (see *Residence Appeal No 16270* (20 November 2009) at [48]). It has also held that the "scope and scale" of the employer's operation, as outlined in the Note to SM6.10.5.1, are important aspects of the context of an applicant's employment (see *YR (Skilled Migrant)* [2018] NZIPT 204965 at [36]). In a franchise or a licensed business operation, Immigration New Zealand will need to consider the degree of autonomy and control that is vested in the applicant compared with what is retained by the franchisor/licensor, when assessing whether the applicant's employment is a substantial match to the ANZSCO occupation of Retail Manager.

Skilled employment

[28] Immigration New Zealand stated that the appellant had not provided objective verifiable evidence that he was performing the unit group core tasks numbers 1, 2, 3 and 7, or met the position description. The Tribunal finds this to be incorrect for the following reasons.

Failure to adequately consider appellant's evidence

[29] First, the appellant provided Immigration New Zealand with a copy of his individual employment agreement and job description. His job description, signed by the director of the store, sets out his responsibilities for "running the store" which included, but was not limited to:

- (a) determining product mix stock levels and service standards
- (a) setting the price on stock, display and ticketing
- (b) advertising and marketing when required
- (c) business improvement changes
- (d) special promotions, displays and events
- (e) selection, hiring, supervision and training of permanent and casual staff
- (f) budgeting and monitoring costs to ensure shop profitability.

[30] Immigration New Zealand failed to recognise the job description as evidence and consider it properly. Further, this evidence was signed by the appellant's employer, meaning it was verified by the employer and could be considered objective, in that it was not from the appellant himself. Further, it identified the duties the appellant was responsible for, which reflected the Unit Group core tasks. Immigration New Zealand failed to properly consider and weigh this in its assessment.

Failure to verify employment with employer

[31] Second, Immigration New Zealand did not seek to verify the actual nature of the appellant's employment by obtaining any information by way of an interview or otherwise from the appellant's employer. This would have provided further evidence, from a different source, to address Immigration New Zealand's concerns regarding the actual operation of the store and the appellant's managerial responsibilities.

[32] While the appellant was responsible for establishing his claim (section 58(1) of the Act), the information he put forward in the 1 March 2021 response to Immigration New Zealand's concerns was largely dismissed by Immigration New Zealand in its decision which followed shortly thereafter. The Tribunal finds that in the circumstances of this case, and after the appellant had provided a large amount of documentary evidence demonstrating he was performing the relevant core tasks, and had managerial responsibilities not undermined by the involvement of his employer or the franchisor, Immigration New Zealand should have provided the appellant a further opportunity to respond. It could have invited him to provide further information and evidence if what he had provided was unsatisfactory. Alternatively, Immigration New Zealand could have undertaken verification through the appellant's employer. The Tribunal considers that such steps were necessary to ensure that a fair process was followed, and the appellant was given a proper opportunity to respond to Immigration New Zealand's concerns.

[33] Third, in its decision, Immigration New Zealand stated on multiple occasions that the appellant had not provided evidence of his performance of certain tasks. This included not mentioning responsibility for tasks in his interview. The Tribunal finds this to be unfair and incorrect. The appellant provided evidence of his duties in the form of his interview responses, documents such as service standard

policies, supplier letters and staff training records, as well as his job description. These were not properly considered and weighed.

[34] In addition, the appellant's interview responses should have been viewed in context with all other information including that which established the appellant held the requisite managerial responsibilities. The responses that the appellant did provide in the interview were not properly considered.

Inadequate consideration of the nature of the business and licence agreement

[35] Fourth, Immigration New Zealand did not properly consider the nature of the business, including the managerial hierarchy of the store in which the appellant had three staff reporting to him. The fact it was a small business, with few employees, did not automatically undermine the appellant's managerial responsibilities.

[36] As the third Note to SM6.10.5 provides, 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 must be considered.

[37] Further, Immigration New Zealand did not properly consider and give weight to the fact that the appellant's employer lived in another city and was not involved in the management or operation of the store. The appellant explained in his interview that he discussed profits with his employer only once per month, otherwise he did everything on his own.

[38] Fifth, Immigration New Zealand placed weight on the fact that the store operated in a licence agreement, without properly assessing or providing an explanation for how this impacted the appellant's responsibilities. The licence requirements do not appear to undermine his ability to fulfil the tasks and description of an ANZSCO Retail Manager. However, Immigration New Zealand failed to properly assess this.

[39] In relation to employment within a context of a licence or franchise arrangement, the Tribunal (differently constituted) in *UZ (Skilled Migrant)* [2021] NZIPT 206164 at [34] has previously stated:

Second, and relatedly, Immigration New Zealand cannot assume that the fact that a store or branch is part of a chain, or operating under a franchise arrangement, limits an applicant's ability to organise and control the operations of an establishment. The issue of whether a manager of a franchised or branded store can demonstrate organisation and control over the business, so as to substantially match a relevant ANZSCO description, has been addressed in many decisions of

the Tribunal (particularly in relation to the ANZSCO occupation of a Retail Manager). As has been stated by the Tribunal on many occasions, where a business is subject to a franchise/licence agreement or chain store arrangement, it is important for Immigration New Zealand to properly examine the nature of the business model. This is in order to ascertain the degree of autonomy that is vested in the store or branch, compared to the level of control that is retained by the company or head office, because this will directly affect the level of organisation and control held by a manager of the branch. Franchises and chain stores operate on a continuum: some will constrain branch operations more than others. It is not the legal label of a business model that is determinative but, rather, its detail and operation (see *BZ (Skilled Migrant)* [2018] NZIPT 205074 at [38]). In the appellant's case, Immigration New Zealand would have been able to obtain further information about the company's arrangements, better understand its operational system, and ascertain the company's involvement in the operations of the branches, had it interviewed the company director and/or area manager, and put such issues to the appellant for comment.

[40] As the representative submits on appeal, the Thirsty Liquor licence arrangement has previously been addressed by the Tribunal (differently constituted) which found in *PD (Skilled Migrant)* [2021] NZIPT 205881 at [52]:

On the basis of the information provided, the Tribunal considers that the terms and conditions of the licence agreement between [Thirsty Liquor] and its licensees, and the appellant's employer in particular, leave an individual licensee with sufficient discretion, and a store manager with sufficient scope to organise and control the store's operations, such that an applicant like the appellant may be able to show that their employment is a substantial match to that of an ANZSCO Retail Manager. Beyond that, however, each case must be assessed on its specific facts and must take into consideration the context and features of an applicant's employment.

[41] Despite being provided with the licence agreement, Immigration New Zealand did not identify how it limited the appellant's responsibilities so he could not meet the ANZSCO description and core tasks for a Retail Manager. The Tribunal has reviewed the licence agreement. It does not consider that it limits the licensee's responsibilities (which in this case have been delegated to the appellant as store manager), to such an extent so as to render the appellant as being able to be responsible for organising and controlling the operations of the establishment, or performing the relevant unit group tasks.

[42] Accordingly, the Tribunal finds that Immigration New Zealand failed to properly consider the actual nature of the business, as confirmed in the licence agreement, and assess the evidence provided by the appellant, his employer and representative as to the appellant's responsibilities.

Core task 1

[43] In terms of the appellant's responsibility for task 1, of determining product mix, stock levels and service standards, the Tribunal notes that the agreement

does not specify the product mix each licensee must have. It has approved suppliers, but also states other suppliers can be used. As the appellant advised, the approved suppliers bring with them financial advantages, as such that is why they are used. In any event, there was no examination by Immigration New Zealand of the extent to which the appellant chose suppliers or negotiated with them.

[44] As stated in the licence agreement, the section entitled “Products and Services” states only:

The Licensee shall at all times during the Term:

- a) Pay for all Products in accordance with the terms of supply applicable to those Products.
- b) Ensure that quality Products are sold to an end consumer in the ordinary and usual course of the Business.

[45] In the “Operation of the Business” section, the agreement relevantly stipulates that the licensee must “operate and maintain all Thirsty Liquor accounts with the Approved Suppliers as well as enter into any new account which may be required with additional suppliers from time to time.”

[46] In the section entitled “Restrictions on the Licensee”, the agreement restricts the sale or product or service which does not conform to, or which conflicts with, the standards associated with Thirsty Liquor’s intellectual property, and that the Licensee must not do anything which brings the Licensor into disrepute or engage in competitive business. While this does limit what can be sold, it is a general requirement that the Tribunal finds is focussed on broader issues of product type and brand image, as opposed to determining liquor products for a liquor store.

[47] Furthermore, the appellant’s job description clearly states he is responsible for product mix, stock levels and service standards. He also provided documentary evidence supporting his performance of these tasks. Further, in his interview, the appellant explained how he had introduced 10 to 12 additional suppliers since becoming manager, up from the original 7 to 8. He explained that he used licenced suppliers, as there were competitive buying advantages to these. Three to four suppliers were licenced suppliers. The appellant negotiated with both the Thirsty Liquor suppliers and independent suppliers to obtain better deals and pricing. The appellant was responsible for entering into the agreements with suppliers.

[48] Also, in his interview, the appellant provided evidence that he was responsible for setting prices and described the process by which he did this, including setting profit margins and considering other relevant factors.

Core task 2

[49] In terms of task 2, formulating and implementing purchasing and marketing policies, and setting prices, Immigration New Zealand again failed to properly assess the information in the licence agreement, and evaluate evidence provided by the appellant in the course of the application.

[50] The licence agreement stipulates two requirements for the Licensee in this regard, which the Tribunal does not consider necessarily limits the appellant's responsibility for task 2:

- a) Diligently and make every effort to increase the Business, including by advertising and marketing.
- b) Use or publish any advertisements, sign, directory entries or other forms of publicity whether or not relation in whole or in part to the Business or display the same anywhere whether on or at the Premises or elsewhere or in any form of media including electronic unless the same shall specify the name of the Licensee's store.

[51] Further, the appellant provided evidence, in his interview, that he was responsible for monthly and, at times, daily promotions. He explained how he made his decisions about which products should be promoted, and where he did this – Facebook. In addition, his job description is clear in stating that he is responsible for advertising and marketing, when required.

Core task 7

[52] With regards to task 7, the licence agreement states at clause 10.2 (b) that "if requested by the Licensee (or required by Thirsty Liquor) Thirsty Liquor will provide initial training in standards and procedures". The Tribunal does not interpret this as requiring or limiting the appellant's responsibility for staff training and supervision.

[53] In his interview, the appellant stated that he trained and supervised staff to ensure they followed health and safety regulations, customer standards and liquor laws. Further, he also explained in his interview that he was responsible for hiring staff. He explained the steps in his recruitment process and one staff member

was hired during his time as manager. The fact that the small store did not often hire staff does not take away his responsibility for this task.

Organisation and control

[54] Finally, the Operation of Business section of the licence agreement specifies general standards of operating with due care, good relations with customers, and promoting the business efficiently and effectively. It also states the employees must wear Thirsty Liquor uniforms, and take steps to ensure compliance with legal requirements. In this circumstance, the Tribunal finds that these requirements did not undermine the appellant's responsibilities for organising and controlling the operations of the liquor store so as to mean his position does not meet the requirements of the instructions. This is because the appellant provided evidence that he performed these managerial tasks, such as creating his own service standards.

[55] Further, Immigration New Zealand was incorrect to place undue weight on the fact that the appellant spent many hours serving customers, when he worked alone in the shop. When viewing the nature of this business, a small business, and the fact that he did so on days which were earlier in the week and less busy due to the nature of the product, it was possible that the appellant could undertake managerial duties at such times. Immigration New Zealand should have instead considered whether, in addition to serving customers, he performed the managerial functions required of an ANZSCO Retail Manager. In this assessment, it should have properly considered all of the evidence provided, including the evidence provided by the appellant in his interview, in which he gave examples of changes he had made to the store's physical appearance, deals he had negotiated, as well new products and service standards he had introduced.

Conclusion on Correctness

[56] For the reasons set out above, the Tribunal is not satisfied that Immigration New Zealand followed a fair process in its assessment of the appellant's application. It failed to properly consider and weigh the evidence provided by the appellant in his interview, documentary evidence and job description. It also did not properly consider the licence agreement and provide proper reasons for its decision that this limited his responsibilities. The Tribunal finds the decision is incorrect and returns it to Immigration New Zealand for a correct assessment.

DETERMINATION

[57] 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.

[58] 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

[59] 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 his application within a reasonable timeframe if he sees fit. The appellant is reminded that he is obliged to produce sufficient evidence to demonstrate to Immigration New Zealand's satisfaction that he meets instructions.
3. If the appellant is still in the same employment, Immigration New Zealand shall interview the appellant's employer with regards to the appellant's employment.
4. Immigration New Zealand proceed to assess all the evidence provided to it, including the employer's interview, and on appeal, and determine whether the appellant's employment is a substantial match to an ANZSCO Retail Manager, and whether the appellant is in

skilled employment according to instructions, taking into account the Tribunal's comments and findings above.

5. If the appellant is no longer in the same employment, Immigration New Zealand is to afford the appellant a reasonable opportunity to provide evidence of his current skilled employment, or an offer of skilled employment.
6. If Immigration New Zealand is satisfied the appellant is entitled to points for skilled employment, it is to proceed to assess the application against the remaining relevant instructions.
7. If, at any stage, Immigration New Zealand identifies any concerns or potentially prejudicial matters, these must be put to the appellant in clear and concise terms with reasons. The appellant is to be given a reasonable opportunity to respond.
8. Finally, it may be that the appellant is eligible to apply under the 2021 Resident Visa category. It will be for the appellant, his representative and Immigration New Zealand to consider that option.

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

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

Order as to Depersonalised Research Copy

[62] 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 child.

Certified to be the Research
Copy released for publication.

L Moor
Member

"L Moor"
L Moor
Member