

RŌPŪ TAKE MANENE, TAKE WHAKAMARU
AOTEAROA

Appellant:	EH (Skilled Migrant)
Respondent:	The Chief Executive of the Ministry of Business, Innovation and Employment
Before:	H Cochrane (Member)
Counsel for the Appellant:	A McClymont
Counsel for the Respondent:	No appearance
Date of Decision:	22 July 2025

RESIDENCE DECISION

[1] The appellant is a 29-year-old citizen of India whose application for residence under the Skilled Migrant category was declined by Immigration New Zealand.

THE ISSUE

[2] Immigration New Zealand declined the appellant's residence application because it determined that his employment as a technology support specialist did not substantially match the *Australian and New Zealand Standard Classification of Occupations* (ANZSCO) description of an ICT Customer Support Officer. Without points for skilled employment or bonus points for employment outside of Auckland, his application could not succeed.

[3] For the reasons that follow, the Tribunal finds that Immigration New Zealand's decision was not correct. Immigration New Zealand failed to assess the appellant's application in accordance with the principles of fairness and natural justice and as a result, the Tribunal cannot be confident that its decision

was correct. The application is returned to Immigration New Zealand for a correct assessment.

BACKGROUND

[4] The appellant arrived in New Zealand in January 2019 as the holder of a student visa and completed a diploma in network and system administration (Level 7) in May 2022. He was granted a post-study work visa.

[5] In June 2022 the appellant began working as a technical support specialist for ABC Ltd, an information technology (IT) communication company. As the only employee of the company, he was responsible for the two different aspects of the company's business: website design, maintenance, and marketing as well as hardware repairs and sales through an online shop.

[6] In August 2022, the appellant was granted a three-year essential skills work visa based on his employment at ABC Ltd.

[7] The appellant submitted his Expression of Interest (EOI) for residence under the Skilled Migrant category and his EOI was selected on 11 November 2022. This selection of EOIs required applicants to meet a minimum 160-point threshold. Immigration New Zealand issued the appellant with an invitation to apply for residence on 10 January 2023.

Residence Application

[8] On 9 May 2023, the appellant made his application for residence under the Skilled Migrant category. He claimed 160 points: 30 points for his age, 50 points for his Level 7 qualification, 50 points for his skilled employment and 30 bonus points for his employment outside of Auckland. The appellant claimed that his employment at ABC Ltd was a substantial match to the ANZSCO occupation of an ICT Customer Support Officer.

Immigration New Zealand's Verification Interviews

[9] On 23 August 2023, Immigration New Zealand conducted an interview with the appellant. He stated that his day-to-day work consisted of making websites, including sites for each of ABC Ltd's area of work: website maintenance and design work; and the hardware repair and online shop. Between the two aspects

of work, he estimated he handled four to five customers a day and provided weekly reports to one of the co-directors.

[10] On 1 December 2023, Immigration New Zealand conducted a verification interview with a co-director of the company who explained most of the website design and marketing business was generated by word of mouth and by his wife, the other co-director of the company. The appellant was also responsible for looking after the clients' online businesses which helped generate revenue. However, the director was only able to name one business for which the appellant had done work, a restaurant where the director was the co-owner. The co-director also noted that the business was slow, only generating revenue of approximately \$30,000 a year and the appellant was mostly fixing phones in the slow period.

Immigration New Zealand's Concerns

[11] By letter dated 22 December 2023 ("the first letter"), Immigration New Zealand advised the appellant of its concerns with his application, specifically that his employment was not a substantial match to the ANZSCO occupation of an ICT Customer Support Officer. Immigration New Zealand referenced the appellant's job position which stated he was responsible for designing, updating and maintaining websites and bringing traffic to the websites. However, in the verification interview, his employer stated that he was mainly fixing phones as business was slow.

Appellant's Response to Immigration New Zealand's Concerns

[12] By letter dated 22 January 2024, the appellant's then representative provided a response to Immigration New Zealand's concerns and further evidence. This included a letter from the other co-director of the company who was responsible for the overall management and operations, and documentary evidence of ongoing business: quotations, job sheets, contracts, invoices, reference letters from clients and evidence of search engine optimisation services. A future forecast of projected profits and cash flow analysis was provided from an external accountant.

Immigration New Zealand's Further Concerns

[13] By letter dated 18 April 2024, Immigration New Zealand advised the appellant that it was "redacting" the first letter. Its new letter (the second letter) provided an overview of all the concerns it had with the appellant's application,

based on the new information provided. Immigration New Zealand referenced the immigration instructions which it believed were engaged by its concerns.

[14] The first concern had five subparts related to the nature of the evidence provided:

- (a) Business contracts for the clients did not demonstrate what work was actually undertaken.
- (b) Invoices had spelling errors and failed to show what work was undertaken and two invoices did not provide final results or outcomes. Two websites of clients were not active.
- (c) The employer's website contradicted the information presented in the Employer Supplementary Form and stated that it was created by a firm in Delhi. It appeared that the company may be outsourcing its work, which the appellant was supposed to be undertaking, to a firm in India.
- (d) The "future forecast" provided by an accountant could not be considered as immigration instructions required its decisions be based solely on current evidence of the business and not assumptions about the future.
- (e) The evidence provided for the mobile and screen repairs did not demonstrate the issue, the job undertaken or the final outcome.

[15] The second concern was that, based on the interview with the employer, the overall scope of the business, its dynamics and operations, did not give Immigration New Zealand confidence there was a genuine requirement for the appellant's role, a possibility of business expansion or that more work would come through in the near future.

[16] The letter made no further mention of how these concerns indicated that the appellant may not meet immigration instructions.

Appellant's Response to Immigration New Zealand's Concerns

[17] By letter dated 9 May 2024, the representative responded to Immigration New Zealand's concerns. She resubmitted the same documentary evidence but grouped the documents according to the six different clients, to demonstrate the

chain of tasks completed and those in progress. She provided explanations from the appellant as to why the two websites were not working and that the two invoices which Immigration New Zealand had concerns with were for prospective clients who had not initiated the work (which explained why there was no contract signed). Further evidence of the employer's website only being updated and accessed from New Zealand was provided to refute the claim of the work being outsourced to India. Additional invoices were provided to demonstrate the appellant's mobile and screen repair activities.

[18] In response to the concerns about the future forecast and the sustainability of the business, a letter from the director with projected cashflows was provided. Further quotations for prospective clients were also provided to demonstrate the company was generating new business.

Immigration New Zealand's Decision

[19] On 23 August 2024, Immigration New Zealand declined the appellant's residence application. It was unable to determine whether the appellant's role was a substantial match to that of an ICT Customer Support Officer. It stated that it had relied on an interview, and a letter from the company in finding the appellant's residence application did not meet residence instructions (SM6.10, SM6.10.5 and SM6.30).

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.

THE APPELLANT'S CASE

[22] On 20 September 2024, 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.

[23] The appellant's newly appointed counsel makes submissions (17 October 2024) that Immigration New Zealand's decision was not correct. In summary, he submits that Immigration New Zealand failed to engage with all the evidence provided and unfairly rejected the appellant's explanations which were supported by evidence simply because they were provided only after the concern was brought to his attention. Further, Immigration New Zealand was incorrect to reject the forecast of projected growth as it is a type of evidence listed in immigration instruction SM6.30.10 which Immigration New Zealand may consider when determining whether employment is sustainable.

[24] In support of the appeal, counsel provides copies of the evidence already on Immigration New Zealand's file as well as the following new documents related to the company's profitability:

- (a) Six-month financial report until 30 September 2024.
- (b) Projected Profit and Cash Flow Statement for 12 months until 30 September 2025.

Further information provided on appeal

[25] The Tribunal cannot consider further information provided by an appellant that was not before Immigration New Zealand at the time that it made its decision to decline the application (section 189(1) of the Act). Therefore, the Tribunal is unable to consider the updated information as to the employer's profitability in the assessment of whether Immigration New Zealand was correct to decline the application. However, given the outcome of the appeal, the information can be considered by Immigration New Zealand in its reassessment of the application.

ASSESSMENT

[26] The Tribunal has considered the submissions and documents provided on appeal and the file provided by Immigration New Zealand in relation to the

appellant's residence application, and Immigration New Zealand's relevant electronic records.

[27] 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

[28] The application was made on 9 May 2023 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 an ICT Customer Support Officer. It cited instructions SM6.10, SM6.10.5. (both effective 30 October 2019) and SM6.30 (effective 19 February 2018) in support of its decline decision.

Relevant Instructions

[29] In order to be granted residence, an applicant's employment must be considered skilled employment. Under SM6.10.b, assessment of whether employment is skilled for the purposes of the Skilled Migrant category is primarily based on the ANZSCO. Current employment in New Zealand will be assessed as skilled if, among other requirements, 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.b):

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.

...

[30] The Tribunal has consistently found that an assessment of whether an applicant's employment is a substantial match to an ANZSCO occupation is not achieved by a simple tick box exercise, but must be determined on a holistic basis, taking into account the core tasks, the specific characteristics of the appellant's

employment and the overall nature of the organisation in which he or she is employed; see *DO (Skilled Migrant)* [2025] NZIPT 207112 at [31]. Therefore, all such information was relevant to Immigration New Zealand's assessment.

[31] Instructions also require Immigration New Zealand to act fairly and in accordance with natural justice principles:

A1.5 Fairness (29/11/2010)

- 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.
- b. How much fairness an immigration officer must bring to bear in deciding an application may depend on the consequences of the decision for the applicant.

Example: A person who applies for a temporary visa for the first time has less to lose from having the application declined than, for example, a person who has been legally resident in New Zealand for a number of years and is applying for a permanent resident visa.

Effective 29/11/2010

[32] For the reasons that follow, the Tribunal finds that Immigration New Zealand failed to act in accordance with the principles of fairness and natural justice in the assessment of the appellant's application when its decline decision relied on grounds not put to the appellant in the second letter of concern; when it failed to articulate its concerns relevant to the substantial match assessment; and when it did not correctly identify relevant instructions.

— *Reasons for decline not included in second letter of concern*

[33] The Tribunal finds that Immigration New Zealand undertook a procedurally unfair process. While its first letter of concern to the appellant clearly articulated genuine concerns with the appellant's application in relation to his role being a

substantial match to the ANZSCO occupation of an ICT Customer Support Officer, the second letter supplanted these valid concerns.

[34] In Immigration New Zealand's second letter dated 18 April 2024, it stated it was "now redacting the previous letter of concern that was sent out. This letter will have an overview of all the concerns" in relation to the appellant's application. The Tribunal assumes that Immigration New Zealand meant it was retracting, not "redacting" the previous letter. Redacting its letter would not make sense in the context. Therefore, in accordance with the principles of fairness and natural justice, the appellant was entitled to rely on this second letter to articulate the full extent of Immigration New Zealand's concerns with his application given that it had acknowledged and considered the information the appellant had provided in January 2024.

[35] However, Immigration New Zealand then declined the application because it could not determine whether the appellant's website design, development and maintenance comprised most of the role, in order to find that his employment substantially matched that of an ICT Customer Support Officer. In doing so, it stated that it had relied on the company's letter and the interview conducted. It did not state which letter it was relying on, as the company had provided multiple letters, nor did it identify which interview it was relying on as it had conducted interviews with both the appellant and the director of the company. Further, this reasoning mirrors the concern that was set out in the first letter which Immigration New Zealand had retracted and which the decline decision described as "void".

[36] The Tribunal is mindful that the onus was on the appellant to satisfy Immigration New Zealand that he met all residence instructions, which in this case included that he was in skilled employment which substantially matched an ANZSCO occupation. However, this onus must be considered in light of Immigration New Zealand's obligation to act fairly. The Tribunal notes that Immigration New Zealand initially identified legitimate concerns with the appellant's application in the first letter of concern. However, after it retracted that letter, it sent a second letter which specifically stated it covered all the concerns that it currently had. The appellant was entitled to rely on the premise that if he responded to the concerns in this second letter, no new (or rather retracted) concerns would be used in the Immigration New Zealand's decision to decline. The Tribunal finds that Immigration New Zealand undertook a procedurally unfair process when it declined the application on the basis of concerns it had set out in the retracted letter.

— *Failure to articulate relevant concerns*

[37] After assessing all the information provided by the appellant in January 2024, Immigration New Zealand set out its concerns with the evidence in the second letter.

[38] In its decline letter, Immigration New Zealand listed those five areas (business contracts, invoices, websites, future forecast and mobile and screen repairs) and then stated “the above information was assessed, and discrepancies were established”.

[39] Immigration New Zealand acknowledged that, in his response to those concerns, the appellant had provided invoices which corrected the spelling errors and typos. It rejected the appellant’s explanation as to the issues with the client’s and employer’s websites on the basis that an explanation was provided only after Immigration New Zealand raised it as a concern. It found that the evidence of images of mobile phone and laptops with sticky notes was not sufficient to justify the work undertaken. It concluded that it remained unsatisfied that the concerns raised in the second letter had been mitigated.

[40] However, the Tribunal cannot confidently identify how Immigration New Zealand’s concerns were linked to a substantial match assessment of the appellant’s employment, which was the stated reason for its decline. Immigration New Zealand did not state why the evidence of clients’ business contracts, work orders, invoices, websites and testimonials (the work evidence), when considered in conjunction with the appellant’s and his employer’s evidence, did not mitigate the concerns around whether the tasks undertaken in website design, development and maintenance comprised most of the role. Rather it focused on discrepancies related to typos, spelling errors, websites not being completed, or business not pursued.

[41] If the discrepancies established in the evidence raised concerns for Immigration New Zealand as to the genuine nature of the evidence or the employment, Immigration New Zealand was entitled to have those concerns and consider rejecting the evidence on those grounds. However, Immigration New Zealand failed to clearly put those concerns to the appellant. Instead, it highlighted instructions relevant to a substantial match and then focused on details in the work evidence not relevant to a substantial match assessment. As a result, the Tribunal cannot be confident that Immigration New Zealand properly engaged

with the totality of the evidence to assess whether the appellant's role was a substantial match to the identified ANZSCO occupation.

Failure to identify relevant instruction

[42] Adding to the confusion upon the grounds that Immigration New Zealand was relying, SM6.30 is recorded in the second letter and decline decision. However, this instruction appears to have no relevance to the concerns identified:

SM6.30 Additional requirements for skilled employment (to 26/07/2024)

Skilled employment only qualifies for points if the employment is:

- a. for a position that is paid by salary or wages or on a per activity basis (see SM6.20.5 above) or in terms of a contract for service (payment by commission and/or retainer are not acceptable); and
- b. accompanied by evidence of full or provisional registration, or evidence of eligibility for registration by the New Zealand Medical or Dental Council subject only to an interview with the relevant registration authority on arrival, if full or provisional registration is required by law to undertake the employment (see SM10).

Note: For medical practitioners, registration within a 'special purpose scope of practice' is not full or provisional registration for the purpose of a resident visa application.

[43] In neither the second letter nor the decline letter was any concern raised as to the appellant's salary or hourly wage. The Tribunal notes that SM6.30.10 does refer to ongoing and stable employment, the topic of the second concern identified by Immigration New Zealand, but that is a different instruction. If Immigration New Zealand intended to rely on that instruction, it needed to cite it properly. Alone, this error would not likely have been enough for the Tribunal to find that it prejudiced the appellant's application. However, considering it alongside the other identified errors, the Tribunal considers that it contributed to the unfair processing of the application.

[44] On appeal, counsel submits that Immigration New Zealand incorrectly rejected the "future forecast" evidence in considering the company's sustainability. He points to SM6.30.10.e which states that forecasts of projected growth may be considered by Immigration New Zealand when assessing whether employment is sustainable. The Tribunal rejects this submission. It recognises that instruction SM6.30.10.e does permit projected growth forecasts and that Immigration New Zealand incorrectly disregarded this evidence in its second letter of concern. However, in the decline decision, Immigration New Zealand considered the future forecast but found it had failed to ameliorate the concern as to whether the

business was sustainable. The Tribunal is satisfied that the information was taken into consideration in Immigration New Zealand's final assessment.

Conclusion on correctness

[45] The Tribunal finds that Immigration New Zealand's assessment was not correct because its decline decision relied on grounds that were not put to the appellant in the second letter of concern; it failed to articulate its concerns relevant to the substantial match assessment; and it did not correctly identify relevant instructions. These errors mean the Tribunal cannot be confident that Immigration New Zealand followed a fair process and reached the correct conclusion.

DETERMINATION

[46] 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.

[47] 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

[48] 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.
3. If the appellant is still employed in the same role, Immigration New Zealand shall determine whether his employment is a substantial match to the occupation description and core tasks of an ICT Customer Support Officer or any other ANZSCO occupation he designates with his updated application.
4. If the appellant is no longer employed as a technology support specialist, he is to be given a reasonable opportunity to put forward evidence of being in skilled employment or having an offer of skilled employment and have that information assessed.
5. The application is then to be assessed against the remaining relevant instructions.
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.

[49] 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.

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

Order as to Depersonalised Research Copy

[51] Pursuant to clause 19 of Schedule 2 of the Act, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant.

Certified to be the Research
Copy released for publication.

H Cochrane
Member

"H. Cochrane"
H Cochrane
Member