



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### NELSON GUANG LAI SHI v MIGRATION AGENTS REGISTRATION AUTHORITY

The Administrative Appeals Tribunal (AAT) was entitled to take account of fresh evidence when reviewing a decision by the Migration Agents Registration Authority (MARA) to cancel a migration agent's registration, the High Court of Australia held today. The Court held that the AAT was entitled to lift a caution imposed on an agent in the light of the evidence of subsequent events.

In July 2003, MARA cancelled Mr Shi's registration. It refused to renew his registration in October 2003, suspended his registration in April 2004, and again refused to renew his registration in August 2004. Each decision was stayed, enabling Mr Shi to continue acting under supervision as a migration agent. The stay of the cancellation was conditional upon his undertaking not to handle protection visas and upon his being supervised by another agent. MARA had found 98 breaches of the Code of Conduct prescribed under the *Migration Act*. These related to Mr Shi's dealings with clients; his knowledge of the Act and regulations; his control of his office, financial and other records; and his supervision of staff. Most of the breaches of the Code concerned applications for protection visas. MARA was satisfied Mr Shi was not a person of integrity or a fit or proper person to give immigration assistance. He applied to the AAT for review of the cancellation decision.

On 6 April 2005, the AAT published its findings about the breaches of the Code of Conduct. It found 51 breaches, concluding that other breaches had not been established. On 2 September 2005, the AAT published its decision on the review of MARA's decision about Mr Shi's registration. It concluded that it was not satisfied that he was not a person of integrity or not otherwise a fit and proper person to give immigration assistance, and set aside the cancellation decision and the other decisions. The AAT decided Mr Shi should instead be cautioned and that the caution would be lifted on 1 September 2008 so long as he did not assist with protection visas and if he were supervised by another migration agent. In deciding whether or not Mr Shi was person of integrity or was a fit and proper person, the AAT took into account evidence of his conduct since July 2003 when MARA cancelled his registration.

MARA appealed to the Federal Court of Australia, which accepted its submission that the AAT had made an error of law by asking whether, at the time the AAT made its decision in September 2005, Mr Shi was shown not to be a person of integrity or was not a fit and proper person to give immigration assistance. MARA argued that the appropriate time for consideration of the evidence was July 2003 and that the AAT should have considered whether at that date the proper action was to cancel Mr Shi's registration. Justice Richard Edmonds held that neither MARA nor the AAT could set conditions for the lifting of a caution given to a migration agent if those conditions could not be imposed as conditions of registration. Mr Shi appealed to the Full Court of the Federal Court which, by majority, dismissed the appeal. He then appealed to the High Court.

The Court, by a 4-1 majority, allowed the appeal and ordered that the AAT decision be restored. The Court unanimously held that the AAT was not restricted to considering evidence of the facts and circumstances as they existed at the time of MARA's decision. The AAT was empowered under the *AAT Act* to exercise all the powers and discretions conferred on MARA by the *Migration Act*. The majority further held that the AAT was entitled to impose the conditions it did when cautioning Mr Shi and to lift the caution. The *Migration Act* provides for MARA to caution an agent and to set conditions for the lifting of a caution and the majority held that the AAT could also exercise these powers.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*