

Assessment Report

201720030 – Colin David Rath - compliance with residency conditions

Key information

| | |
|-------------------------|-----------------------------|
| Incident date | 15 June 2021 |
| Triage date | 29 June 2021 |
| Assessment date | 9 August 2022 |
| Incident officer | Davinnia Tan |
| Assessment team | Andre Baldock; Will McGrath |

Brief summary of Incident as alleged

1. On 19 January 2018, OIA consent was granted to Colin David Rath and Waipara Winds Limited (**Waipara Winds**) to acquire a freehold interest in approximately 28.74 hectares of farmland at 244-246 Georges Road, Waipara, Canterbury (the **Land**) which contains an established vineyard, residence, tasting room, café, B&B and wine manufacturing equipment (**Investment**).
2. Mr Rath was the sole 'individual with control of the relevant overseas person' as at all material times he has been the sole director and shareholder of Waipara Winds.
3. Mr Rath is a citizen of the United States of America. Mr Rath had been granted an entrepreneur visa by Immigration New Zealand (**INZ**) and applied for OIA consent under the intention to reside pathway. The Investment was Mr Rath's pathway to obtaining a residence class visa (estimated at approximately two years in the consent decision).
4. Mr Rath's consent contained three residency conditions which required him to:

| Cond. | Requirement | Status | Breach? |
|--------------|---|---|----------------|
| 3 | live in NZ and be present here for not less than 183 days in any 12 month period (until he ceases to be an overseas person) | Mr Rath is likely to have been present in NZ for more than 183 days in each period, but is not yet ordinarily resident as he does not yet have a residence visa. | N |
| 4 | submit an application for a residence class visa to INZ by June 2020 | Mr Rath did not lodge his residence visa application by the required date (1 June 2020), but did submit his application on 15 January 2021 after receiving a reminder from the OIO. | Y |

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| | | | |
|---|---|--|---|
| 5 | possess a residence class visa and cease to be an overseas person by 30 June 2021 | Mr Rath had not obtained a residence class visa by the required date (30 June 2021) ^{s9(2)(a)} [REDACTED] | Y |
|---|---|--|---|

5. Mr Rath has not complied with Condition 4 or Condition 5 and is now in breach of both conditions.
6. The Consent states that if Mr Rath does not comply with Conditions 3, 4, or 5 then he must dispose of the Investment pursuant to Condition 9 (and by the process set out in that condition).
7. We note that Mr Rath (and entities associated with him) have been involved in two court cases (in relation to which we have opened separate investigations):
 - (a) civil action against Mr Rath related to the ship "Persevere" – brought by a US lender (ST Liberty LLC) and alleging breaches of the loan and security agreement and first preferred ship mortgage; ^{s9(2)(ba)(i)} [REDACTED]
 - (i) Discontinued in July 2022 ^{s9(2)(ba)(i)} [REDACTED]
 - (ii) ^{s9(2)(ba)(i)} [REDACTED]
 - (b) civil and criminal action against Mr Rath brought by Inland Revenue consisting of over 100 charges alleging false and fraudulent use of GST tax returns with the intention of obtaining a financial advantage ^{s9(2)(ba)(i)} [REDACTED]

Recommendation

8. Given Mr Rath has not complied with Condition 4 or Condition 5 and is now in breach of both conditions, we recommend that:
 - (a) the case progress to implementation phase
 - (b) Mr Rath be notified that he is required to dispose of the Investment pursuant to Condition 9
 - (c) the disposal process be amended to take into account the Inland Revenue case.

Asset concerned

9. Approximately 28.74ha of land located at 244-246 Georges Road, Waipara, Canterbury (Titles: CB41A/409 and CB40C/475).

¹ CIV-2021-404-302. OIO investigation opened 15 March 2021. <http://inca/#/ca/71894>

² Email from Fee Langstone to Andre Baldock, dated 26 July 2022. <https://linzone/id:A4966599>

³ CIV-2021-409-533. OIO investigation opened 22 February 2022. <http://inca/#/ca/75642>

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10. The land contains an established vineyard (Fiddler's Green), residence, tasting room, café, B&B, and wine manufacturing equipment.⁴
11. The land is sensitive land because it is over 5ha of non-urban land.

| Titles at time consent granted | Subsequent actions | Comment/Status |
|---|--|---|
| CB41A/409 – Lot 1 DP 65625 9.2800 ha | Cancelled 29/11/2019 and 2 new titles issued | N/A |
| | 876059 – Lot 1 DP 533254 0.9000 ha | 20/12/2019 title transferred to The Vines Accommodation Limited 50/50 shareholders Gavin Dysart; Lesley Joy Weavers. |
| | 876060 – Lot 2 DP 533254 8.38 ha | Still owned by Waipara Winds Ltd 30/11/2021 – Caveat lodged by RGL (s149 Land Transfer Act) – re High Court freezing order under CIV-2021-409-533 (IR case) 25/5/2022 – Caveat lodged by Fletcher Distribution Ltd (t/a PlaceMakers Christchurch Ltd) – re mortgage dated 30/6/2020 |
| CB40C/475 – Lot 1 DP 69707 19.46 ha | N/A | Still owned by Waipara Winds Ltd Subject to same caveats as 876060. |

12. Titles 876060 and CB40C/475 are subject to the following mortgages:

- (a) 2018/4346 – between Vulcan Mortgage Limited Partnership and Waipara Winds Ltd
- (b) 2018/4344 – TBV Ltd and Waipara Winds Ltd

Person/s concerned

13. At the time consent was granted, Colin David Rath was a US citizen who had been granted an entrepreneur work visa by INZ.

14. Mr Rath s9(2)(a) applied for residency visas on 15 January 2021. s9(2)(a)

15. s9(2)(a)

(a) s9(2)(a)

(b) s9(2)(a)

⁴ <https://www.fiddlersgreen.nz/>

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(c) s9(2)(a)

(d) s9(2)(a)

16. s9(2)(a)

Brief summary of information reviewed/inquiries made since triage

Key steps taken

17. In June and July 2021, I reviewed the consent and monitoring files to identify documents and information of relevance to our assessment of Mr Rath's compliance with his consent conditions – and sought information from M&I staff with knowledge of the files.
18. In July 2021 we sought information from Mr Rath via Lane Neave – who Mr Rath had instructed to act for him in April 2021 in response to our enquiries concerning allegations related to Mr Rath's ownership and sale of the yacht 'Perservere'.
19. Lane Neave were unable to finalise terms of engagement with Mr Rath and ceased acting for him. Mr Rath did not instruct another legal advisor and responded to our queries himself and with information provided to him by his immigration advisor, Malcolm Pacific Immigration (**Malcolm Pacific**).
20. Information provided by Mr Rath has been included in the sections below.

Compliance with Condition 4 – apply for a residence class visa by 1 June 2020

21. By 1 June 2020, Mr Rath was required to have submitted an application for a residence class visa to Immigration NZ – and to have provided the OIO with evidence the condition had been complied with.
22. Mr Rath did not apply for a residence visa by 1 June 2020 – and we have no correspondence on file with Mr Rath about it until 16 December 2020 when the Monitoring team sent Mr Rath a reminder letter which:
 - (a) informed Mr Rath that we have no record of him having complied with Condition 4
 - (b) requested that he report to us concerning his progress against Condition 4 by no later than 15 January 2021.⁵
23. We note that on 21 December 2020 Catherine Reid informed the OIO that she no longer acts for Mr Rath – and forwarded the reminder letter on to Mr Rath.
24. On 22 December 2020, Mr Rath informed Monitoring that:
 - (a) "We are in the process of filling my application for residency. It should be completed & submitted prior to the 15th of January. s9(2)(a)
 - (b) he could provide confirmation once the visa application is lodged in the new year.⁶
25. On 15 January 2021, Mr Rath informed Monitoring that he had submitted his residence visa application earlier that day.⁷ There is no record of Monitoring acknowledging receipt of the information or responding to Mr Rath about his compliance with Condition 4.

⁵ Email from OIO Monitoring to Catherine Reid, dated 16 December 2020. <https://linzone/id:A4300096>

⁶ Email from Colin Rath to OIO Monitoring, dated 22 December 2020. <https://linzone/id:A4309456>

⁷ Email from Colin Rath to OIO Monitoring, dated 15 January 2021. <https://linzone/id:A4323252>

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26. However, the Obligation Monitoring file in INCA concerning Condition 4:
- (a) contains an internal note stating "extension granted until 15 January 2021" – which corresponds with the information contained in the reminder letter
 - (b) was updated on 19 January 2021 to show the compliance status as "complied".
27. We note that there are no other internal records concerning the extension (such as who approved it, on what basis etc) and the matter (compliance with Condition 4) was not referred to Enforcement.
28. On 23 June 2021, Monitoring referred Mr Rath's likely non-compliance with Condition 5 to Enforcement – on the basis that he was unlikely to possess a residence class visa by the required date, 30 June 2021. We then sought submissions from Mr Rath concerning the reasons for his non-compliance with Conditions 4 and 5.
29. Mr Rath provided the following submissions concerning Condition 4:⁸
- (a) there was a delay in the purchase of the vineyard due to the OIO process – consent was granted on 19 January 2018 – 15 months after entering into the agreement for sale and purchase – and settlement took place on 29 June 2018
 - (b) Mr Rath was granted a work visa under the Entrepreneur Category – s9(2)(a)
[REDACTED]
 - (c) the resident visa under the Entrepreneur Category could only be lodged after the accounts were finalised at the end of Year 2 s9(2)(a)
[REDACTED]
30. We sought further information from Mr Rath about why he had not applied for the residence class visa by 1 June 2020 – or sought a variation to the condition.⁹ On 3 September 2021, we received further submissions from Mr Rath, including:
- (a) "s9(2)(a) [REDACTED] I was in the process of finalizing the annual report and gathering all the required documentation from overseas to apply for the residency application. The documentation from the States took alot longer than expected to receive, some documents took several months due to Covid and government delays as there are worldwide. Our Residency application process all started in April, 2020 and took over 9 months to get all the required information in, documented, and accepted by immigration."
 - (b) further information about his Entrepreneur work visas – including that ¹⁰
[REDACTED]
[REDACTED]
[REDACTED]
31. s9(2)(a) [REDACTED]

⁸ Email from Colin Rath to Andre Baldock, dated 20 July 2021. <https://linzone/id:A4615923>

⁹ Email from Andre Baldock to Colin Rath, dated 19 August 2021. <https://linzone/id:A4616688>

¹⁰ Email from Colin Rath to Andre Baldock, dated 3 September 2021. <https://linzone/id:A4631380>

s9(2)(a)

[REDACTED]

[REDACTED]

[REDACTED]

Compliance with Condition 5 – possess residence visa and cease to be an OSP by 30 June 2021

32. Condition 5 required that by 30 June 2021, Mr Rath must possess a residence class visa and cease to be an overseas person.
33. As discussed above, Mr Rath applied for a residence class visa on 15 January 2021.
34. On 15 June 2021, Mr Rath provided Monitoring with a letter from Malcolm Pacific setting out that while INZ has accepted Mr Rath's residence visa application – it has not yet been allocated to a case officer due to "operational and resourcing issues".¹¹
35. Monitoring acknowledged receipt of the information from Mr Rath, then subsequently referred the matter to Enforcement on the basis that Mr Rath was likely to breach Condition 5. We then sought further information from Mr Rath.
36. On 20 July 2021, Mr Rath provided us with correspondence between INZ and Malcolm Pacific stating that the application was unlikely to be allocated in July as INZ only had one person doing residence visa work and there were five people in the queue ahead of Mr Rath.¹²
37. On 25 August 2021, Mr Rath provided us with further correspondence from INZ that they had still not progressed his application due to Covid-19 and lockdown issues.¹³
38. In May 2022, we sought information from INZ directly concerning the status of Mr Rath's residence visa application – particularly as by this time we had become aware of two serious court cases against Mr Rath which were potentially going to impact on the assessment of his application.

39. s9(2)(a)

s9(2)(a)

[REDACTED]

[REDACTED]

[REDACTED]

40. We invited Mr Rath to provide us with any further submissions of relevance. On 22 July 2022 Mr Rath responded as follows:
 - (a) "I believe the residency requirements have been addressed by myself & Mr. Thompson previously as shown in previous emails. But, they are obviously mute [sic] points presently."
 - (b) "The property is on the market for sale with the intent to sell as soon as possible. Which most likely will not settle until actual tourism returns to New Zealand late next year."

¹¹ Email from Colin Rath to OIO Monitoring, dated 15 June 2021. <https://linzone/id:A4520871>

¹² Email from Colin Rath to Andre Baldock, dated 20 July 2021. <https://linzone/id:A4615923>

¹³ Email from Colin Rath to Andre Baldock, dated 25 August 2021. <https://linzone/id:A4880666>

¹⁴ Filenote of call between OIO and INZ, dated 24 May 2022. <https://linzone/id:A4947033>. Email from INZ to OIO, dated 24 May 2022. <https://linzone/id:A4900889>

41. s9(2)(a)
42. At no point has Mr Rath applied for, or been granted, a variation of Condition 5 or its timeframes.
43. Mr Rath has not obtained a residence class visa and has not become ordinarily resident in New Zealand.

Status of the property

44. As discussed in the Asset section above, the two main properties (Titles 876060 and CB40C/475) are still owned by Waipara Winds and Mr Rath, and remain subject to the caveat related to the High Court Freezing Order from the Inland Revenue court case.
45. However, Mr Rath has told us that the property is on the market for sale and he intends to sell it as soon as possible.¹⁵ The property has been listed for sale with PGG Wrightson Real Estate.¹⁶

Mr Rath's representation during the investigation

46. Mr Rath was represented by Catherine Reid during the consent application process, but she stopped acting for him once the consent process was complete. Mr Rath initially instructed Lane Neave in response to our enquiries, but did not complete the terms of engagement – resulting in no substantial correspondence between us and Lane Neave concerning consent issues.
47. Mr Rath responded to our enquiries himself, with input and information from Malcolm Pacific.

Assessment

48. On the basis of the information currently available:

| Question | Y/N | Basis for answer |
|---|-----|---|
| Does there appear to have been a breach of the Rules? | | <p>Breach of Condition 4</p> <p>Mr Rath did not lodge his residence visa application by the required date (1 June 2020). From that point onwards Mr Rath was in breach of Condition 4.</p> <p>We note that Mr Rath has not applied for (or been granted) a variation to formally extend the timeframe for this condition.</p> <p>Mr Rath submitted his residence class visa application to INZ on 15 January 2021 after receiving a reminder from the OIO (and being given until 15 January 2021) to provide an update.</p> <p>The breach does not appear to have been formally addressed by Monitoring at the time and was not referred to Enforcement.</p> |

¹⁵ Email from Colin Rath to Andre Baldock, dated 22 July 2022. <https://linzone/id:A4964248>

¹⁶ <https://www.pggwre.co.nz/property/RAN34496/246-georges-road-waipara/>; <https://linzone/id:A4975364>

| Question | Y/N | Basis for answer |
|---|----------|--|
| | | <p>It is arguable that Mr Rath resolved the breach by submitting his residence visa application to INZ.</p> <p>Breach of Condition 5 Mr Rath had not obtained a residence class visa by the required date (30 June 2021) s9(2)(a) [REDACTED]</p> <p>As Mr Rath has not obtained a residence class visa he has not become ordinarily resident (despite being in NZ for the required number of days). s9(2)(a) [REDACTED]</p> <p>Breach of Condition 7(a) and/or (b) Re requirement to notify the OIO in writing within 20 working days if any individual with control commits an offence or contravenes the law (whether convicted or not). Mr Rath did not inform the OIO of the Inland Revenue charges or court case.</p> |
| Does the Incident fall within the OIO's Enforcement Criteria? | Y | <p>Consent was granted under a residency pathway. Thus compliance with the residency conditions is an essential aspect of the consent. Mr Rath failed to obtain his residency visa, and has at times failed to provide the OIO with information concerning his compliance with Conditions 4 and 5. We note that Mr Rath was previously issued with a Compliance Letter on 8 March 2018 concerning the lease he entered into over the land prior to applying for OIO consent.¹⁷</p> |
| Is there any reason to qualify, amend or add to the answer to Triage questions? | N | |

Recommendation

Based on my review of the information, I recommend:

¹⁷ <https://linzone/id:A3183745>

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| Recommendation | Tick | Basis for answer |
|--|------|--|
| You decide you have reason to suspect that there has been a breach of the Act or an offence under the Act has been committed | Y | |
| The Incident progress to Implementation phase | Y | Given Mr Rath has not complied with Condition 4 or Condition 5 and is now in breach of both conditions, we recommend that: (a) the case progress to implementation phase (b) Mr Rath be notified that he is required to dispose of the Investment pursuant to Condition 9 (c) the disposal process be amended to take into account the Inland Revenue case. |
| No further action be taken and the Incident be closed | N | |
| An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed | Y | Issue notice to dispose of the Investment pursuant to Condition 9 |

s9(2)(a)

Pedro Morgan / Sarah Scott
Principal Advisor Enforcement

Agree:

Disagree:

Amend as marked:

Date: 9 August 2022

s9(2)(b)

Simon Pope
Manager Enforcement

Agree:

Disagree:

Amend as marked:

Date: 9 August 2022

Notes/guidance for Investigation Team

| Matters to be considered | Notes |
|---|-------|
| Enforcement tool to be deployed and Implementation person or matter to be closed? | |

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| Otherwise | |
|---|--|
| Investigation team members | |
| Lead Investigator (note responsible for setting strategy meeting and devising Investigation Plan) | |
| Track I or Track II Investigation | |
| Date of First Advisory Group (note ordinarily 30 working days for Track II and 20 working days for Track I Investigation) | |
| Comments/Guidance on Investigation | |

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