

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2011] NZIACDT 06

Reference No: IACDT 0023/10

IN THE MATTER

of a referral under s48 of the Immigration
Advisers Licensing Act 2007

BY

Immigration Advisers Authority
Authority

BETWEEN

CE
Complainant

AND

TFX
Adviser

FOR PUBLICATION COPY

DECISION

REPRESENTATION:

Adviser

In person

Date Issued: 14 February 2011

Decision

The Referral

- [1] This matter was referred to the Tribunal pursuant to section 45 of the Immigration Advisers Licensing Act 2007 (the Act) by the Registrar of the Immigration Advisers Authority. It concerns a complaint the Adviser breached obligations to the Complainant, by accepting instructions and advancing a vexatious or grossly unfounded application.
- [2] The complaint alleges:
- [2.1] The Adviser agreed to represent the Complainant.
- [2.2] There was an agreement whereby the Adviser would assist with an application for a residence permit for the Complainant, and there would be a fee of \$4,000 paid, with an immediate payment of \$1,125.
- [2.3] The Complainant disclosed all material he was asked for in relation to the basis for the application, and he lacked eight months of the necessary work experience for the application to have any prospect of success.
- [2.4] The Complainant relied on the Adviser's professional skill and expertise to engage her to make the application, and had good cause to believe that he was agreeing to pay fees for an application that had a reasonable prospect of success, and certainly was not deficient in a crucial respect.
- [2.5] The Registrar has referred the complaint as a breach of clauses 1, and 2.2 of the Code of Conduct, the Code having been developed pursuant to section 37 of the Act (published www.iaa.govt.nz). In addition, under section 44(2)(d) as being dishonest or misleading behaviour.
- [3] Clause 1 of the Code requires that a licensed immigration adviser act with care, respect, diligence and professionalism, and clause 2.2 prohibits advancing vexatious or grossly unfounded immigration applications.

Factual Background

- [4] The Tribunal undertook a review of the whole of the papers presented, and issued a minute dated 17 November 2010. Among other procedural matters, the minute identified the factual matters in issue, and the potential conclusions that could be reached on the papers before the Tribunal. The parties were given an opportunity to respond.
- [5] The minute noted the materials on record were adequate to form a preliminary view that:
- [5.1] The "Service Agreement" was for the Adviser's firm to make an application for a residence permit, and a further work permit if needed. The agreement was dated 28 July 2009.
- [5.2] The Adviser had identified a note on that Service Agreement, apparently signed by both parties to the effect there were some uncertainties regarding the status of the Complainant's Expression of Interest already lodged with the Immigration New Zealand (by a previous adviser), and that may affect the fees charged.
- [5.3] The Adviser says the agreement had this contingency noted, and she followed through with inquiries. On 4 August 2009, Immigration New Zealand issued a letter declining the Expression of Interest. She followed this development with a discussion with the Complainant, and explained what he might do to overcome the grounds for the decline, the alternatives being increasing his level of formal qualifications, or having three years of work experience. This was again followed up as more detailed information became available. By 13 September, the Adviser had assembled sufficient information to send an email with details of her evaluation of the situation.

- [5.4] This was followed by a series of communications regarding the options available to the Complainant. The Complainant was not sure of what course he would take, so an application for a visitor's permit was made. By this time he had been made redundant from his employment, and was still considering further qualifications. The visitor's permit was issued on 2 November 2009.
- [5.5] This was followed by the Complainant exploring employment opportunities, and the Adviser (personally and through her firm) looking into their effect for the purpose of qualifying for a residence permit. On 19 April 2010, the Complainant notified the Adviser that he had been offered his original employment position again. However, getting a work permit was an issue, and the Adviser's firm investigated that. A work permit was obtained on 14 May 2010.
- [6] There was a conflict between the Adviser and the Complainant. The Adviser contended that at the first interview the Complainant could not provide a copy of the Expression of Interest, and full evaluation of his situation was not possible immediately. The Complainant says he was able to fully brief the Adviser, and she insisted he sign the agreement aware of his situation, before proceeding to investigate further.
- [7] I identified the second page of the Service Agreement, and in particular the note at the foot of it, apparently signed by the Complainant. I indicated this may be material to whether the Complainant's circumstances were appropriately addressed at the time. I noted the only copy of this page of the agreement was provided by the Adviser.
- [8] The note on this page clearly identified concerns the Expression of Interest may not be valid, and the Complainant had not been able to provide necessary information.
- [9] The minute noted the material presently before me did not satisfy me any application was made to Immigration New Zealand by the Agent that was ill founded or inappropriate. In short, the contemporaneous written record as it appears in the information then before the Tribunal supported the Adviser's position.
- [10] The parties provided no further evidence or submissions in response to the minute.

Decision

- [11] For an adviser to accept instructions without identifying difficulties, and warning the potential client of them, may well be grounds for upholding a complaint. Taking fees to advance a hopeless application is typical of the type of conduct the Act was intended to protect consumers against.
- [12] However, on the facts of this case, I am satisfied the Adviser took instructions, and proceeded on a proper and responsible basis on the information she had available.
- [13] The agreement to provide professional services expressly identified her concerns that the status of the Expression of Interest was uncertain. That Expression of Interest had been prepared by a previous adviser. She followed through with enquiries, and in a matter of days Immigration New Zealand issued a letter declining the Expression of Interest.
- [14] I accept the Complainant was genuine, and he misunderstood what the Adviser was conveying to him. However, given that the Adviser expressly identified her concern in the written agreement, and ensured the Complainant initialled the written expression of her concern, I do not consider any blame can attach to the Adviser for the miscommunication.
- [15] In a reasonably short period of time after Immigration New Zealand declined the Expression of Interest, the Adviser had marshalled the facts, and given advice on the Complainant's options. I am satisfied that advice was adequate and appropriate, and the applications that followed proper.

[16] The complaint is accordingly dismissed.

DATED at WELLINGTON this 14th day of February 2011

G D Pearson
Chair