

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

Decision No: [2012] NZIACDT 11

Reference No: IACDT 020/10

**IN THE MATTER**

of a referral under s 48 of the Immigration  
Advisers Licensing Act 2007

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**TG**  
Complainant

**AND**

**Alungamonu (Laki) Tangilanu (Monu)**  
Adviser

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**DECISION**

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**REPRESENTATION:**

**Adviser**

In person

**Complainant**

In person

Date Issued: 27 March 2012

## DECISION

### Preliminary

- [1] Ms Tangilanu acted as Ms TG's immigration adviser. She became a licensed immigration adviser on 24 September 2010.
- [2] This Tribunal deals only with licensed immigration advisers. Accordingly, work performed and fees expended for that work prior to Ms Tangilanu becoming licensed are not within the Tribunal's jurisdiction.
- [3] The relevance of prior work is that Ms Tangilanu was obliged to put her dealings with Ms TG on a proper professional basis when she did become licensed.
- [4] The complaint, as it relates to the time when Ms Tangilanu was a licensed immigration adviser, is that Ms Tangilanu:
- [4.1] Did not complete the process for client engagement under the Code of Conduct ([www.iaa.govt.nz](http://www.iaa.govt.nz)) governing licensed immigration advisers. That applied both to instructions from Ms TG to apply for student permits for her children, and subsequent instructions to apply for residence permits.
  - [4.2] Failed to carry out her instructions, and misled Ms TG regarding progress with carrying out her instructions.
  - [4.3] Did not account for fees paid as client funds in accordance with the Code.
- [5] Ms Tangilanu denied there was a basis for the complaint, but provided no records to support that denial. She had a professional obligation to keep such records.
- [6] The issue for determination is whether the complaint that Ms Tangilanu ignored her obligations under the Code of Conduct and misled her client is established; after considering all of the material before the Tribunal.

### The Complaint, and the Adviser's Response

- [7] The key events and circumstances raised by the complaint were:
- [7.1] Ms TG engaged Ms Tangilanu in February 2008, and an application for residence was made. The application was unsuccessful.
  - [7.2] Ms Tangilanu became a licensed immigration adviser on 24 September 2010.
  - [7.3] In September 2010, Ms TG paid Ms Tangilanu \$520 to lodge applications for student permits for her two children. These applications were never lodged.
  - [7.4] In January 2011, Ms TG paid Ms Tangilanu \$700 to make another residence application. Ms Tangilanu told Ms TG the application had been resubmitted to Immigration New Zealand in November 2010.
  - [7.5] Ms TG subsequently rang Immigration New Zealand who informed her no residence application had been submitted.
  - [7.6] Ms Tangilanu refunded Ms TG \$1,220 of the total of \$3,320 fees paid. This refund comprised the fees charged for the student permits and the 2011 residence application.

- [7.7] Ms Tangilanu informed Ms TG that she could not provide a full refund of all fees paid, as \$700 was paid to Immigration New Zealand as “service fees”, and the fees for the job offers were not refundable unless Immigration New Zealand provided evidence that they did not rely on them when determining Ms TG’s application.
- [8] Ms TG seeks a refund of all fees paid and not yet refunded, being \$2,100.
- [9] Ms Tangilanu responded to the complaint and said:
- [9.1] She advised Ms TG the children’s permits were being dealt with by the Ministry of Education, so permits from Immigration New Zealand were no longer required.
- [9.2] She provided services properly. However, no evidence or records to support this claim were provided.
- [9.3] Ms TG had often sought her advice and obtained services for little or no charge.

#### **Minute Issued by the Tribunal and responses**

- [10] The Tribunal reviewed the papers before it, and issued a minute giving notice of the potential findings on the papers then before the Tribunal. The parties were given the opportunity to provide further evidence and submissions; and if appropriate to seek an oral hearing.
- [11] The minute gave notice that the potential findings were:
- [11.1] From 4 May 2009 until 24 September 2010, Ms Tangilanu was unlicensed and provided immigration advice to Ms TG. In doing so, she was in breach of sections 6 and 63 of the Immigration Advisers Licensing Act 2007.
- [11.2] This Tribunal has no jurisdiction over persons who are not licensed immigration advisers. Accordingly, Ms Tangilanu’s actions prior to being licensed are not a basis for upholding the complaint.
- [11.3] When Ms Tangilanu became a licensed immigration adviser on 24 September 2010, she had a client relationship with Ms TG. She was, from that point, obliged to fulfil her professional obligations to her and this Tribunal has jurisdiction over any failure to do so.
- [11.4] The inference from the written material is that no proper professional engagement followed from Ms Tangilanu’s instructions in September 2010 regarding student permits or the later instructions regarding residence permits. Ms Tangilanu had provided no evidence of a written agreement or any of the other steps required by the Code. She also provided no evidence of discharging her engagement; leaving open the inference that she wholly failed to discharge her engagement.
- [11.5] If established, these potential findings lead to the conclusion that Ms Tangilanu failed to meet proper professional standards in her dealings with Ms TG. In particular, she:
- [11.5.1] Failed to establish a professional engagement with Ms TG in the manner required by the Code.
- [11.5.2] Failed to carry out Ms TG’s instructions and misled her regarding her instructions to lodge student permit applications.
- [11.5.3] Failed to lodge a residence application in accordance with her instructions.
- [11.5.4] Dishonestly misrepresented a residence permit application was lodged in November 2010, knowing that was false, and intending to mislead her client.

- [11.5.5] Failed to use Ms TG's funds only for the purpose for which they were given to her, and did not deal with them as client funds in accordance with the Code. Those funds being \$1,220 were the sums of \$520 paid to apply for student permits and \$700 for a residence application.
- [12] The minute addressed two further issues.
- [13] The papers indicated that fees of \$1,220 had been refunded. However, there had been no refund of the fees paid for work Ms Tangilanu undertook before becoming a licensed immigration adviser. As work was carried out, even if unlawfully, it did not appear possible to regard the fees paid as client funds being held when Ms Tangilanu became a licensed immigration adviser on 24 September 2010, as they had been expended by that time. Accordingly, it appeared the Tribunal had no jurisdiction over those fees.
- [14] Ms Tangilanu was the holder of a provisional licence. She had referred to her supervisor having a role in these instructions. It was not clear from the papers what that role was. Accordingly, the minute notified Ms Tangilanu that if she considered her supervisor had any responsibility for her actions, she should fully explain that position. In the absence of such information, the Tribunal would necessarily assume any failure on Ms Tangilanu's part to meet professional standards was the result of matters within her personal responsibility.
- [15] Ms Tangilanu responded to the minute issued by the Tribunal stating that most of the services were provided prior to May 2009, and there had been a refund.
- [16] Ms TG did not respond to the minute.

### **Decision**

- [17] I am satisfied the complaint must be upheld, on the basis of the potential findings identified in the minute, which have been detailed above.
- [18] When Ms Tangilanu became a licensed immigration adviser, regardless of what had occurred before, she was obliged to conduct her professional relationship in accordance with the Code from that point forward.
- [18.1] The Licensed Immigration Advisers Code of Conduct ([www.iaa.govt.nz](http://www.iaa.govt.nz)) was developed pursuant to section 37 of the Act. The Code applied to Ms Tangilanu, and contains the conventional contemporary obligations on a professional person providing services to the public. The Code requires:
- [18.1.1] The professional engagement is to commence with a written agreement, which includes a full description of the services to be provided (clause 1.5 of the Code). There are accompanying disclosure requirements such as providing a copy of the Code to the client.
- [18.1.2] The licensed immigration adviser must also maintain professional business practices relating to finances, records, documents, contracts, and confirm in writing to clients when applications have been lodged, and give timely updates (clause 3 of the Code).
- [18.2] The Tribunal drew Ms Tangilanu's attention to the evidence against her, and the potential consequences, if she could not answer it.
- [18.3] Ms Tangilanu has not produced the records she was required to keep pursuant to the Code. She has not produced any evidence from anyone else in her office, including her supervisor.
- [18.4] Further, she has failed to provide a coherent or sensible response to the evidence against her; at best she has made a general denial.

- [18.5] I am satisfied Ms Tangilanu's response is consistent with the complaint made against her. If the complaint was ill-founded, she would no doubt have responded with documents, and a sensible explanation.
- [18.6] I am required to assess the material before me on the balance of probabilities, though on a sliding scale according to the seriousness of the issues to be determined. The issues are at the serious end of that scale, as they involve allegations of misleading a client, and systematic failure to comply with the Code.
- [18.7] I am satisfied the following breaches of the Code have occurred:
- [18.7.1] Ms Tangilanu systematically failed to act with care, diligence and professionalism in performing her services, by ignoring the requirements of the Code, and accordingly breached clause 1.1 of the Code.
- [18.7.2] She failed to carry out Ms TG's instructions to apply for both student permits and residence permits. Ms Tangilanu has never adequately explained to Ms TG or the Tribunal why either application was not made. She did claim the Ministry of Education was dealing with the issues relating to student permits. That claim makes no obvious sense, and has never been explained. Accordingly, there was a breach of clause 1.1 of the Code, as Ms Tangilanu failed to act with care and professionalism; and did not carry out the lawful informed instructions of her client.
- [18.7.3] She failed to commence her professional engagements as a licensed immigration adviser with a written agreement, and accordingly breached clause 1.5 of the Code. That applies to both the instructions relating to student permits, and residence.
- [18.7.4] She failed to report to Ms TG. That was a breach of clause 3 of the Code.
- [18.8] A breach of the Code is a ground for a complaint pursuant to section 44(2)(e) of the Act. Accordingly, the Tribunal upholds the complaint in the respects identified.
- [18.9] I am also satisfied Ms Tangilanu misled her client. That is a ground for upholding a complaint pursuant to section 44(2)(d) of the Act.
- [18.10] I am satisfied Ms Tangilanu misled Ms TG by telling her in January 2011 that the residence application had been resubmitted in November 2010, when she knew that was false. I am satisfied Ms TG's evidence of that is plausible, consistent with the record, and Ms Tangilanu has failed to provide any sensible alternative view or explanation.
- [18.11] I am satisfied that Ms Tangilanu also misled Ms TG by informing her the applications for student permits were in progress. Ms TG said Ms Tangilanu told her the applications together with passports had been submitted to the Manakau Branch of Immigration New Zealand. That representation was false. Again, Ms TG's account is plausible, consistent with the record, and there has been no adequate explanation from Ms Tangilanu.
- [18.12] In relation to the payments amounting to \$1,220, and Ms Tangilanu's obligation to deal with them as client funds, the evidence is very limited. Ms TG can only say the money was refunded after a period of delay, and Ms Tangilanu has not provided records showing how they were dealt with. Given the lack of evidence and the ultimate refund, I am not satisfied she failed to deal with the money as client funds under clause 4 of the Code. I reach no view regarding the other money paid as fees prior to Ms Tangilanu being licensed, as that is not a matter within the jurisdiction of the Tribunal, for the reasons identified.

## Submissions on Sanctions

[19] Given the findings, disciplinary sanctions under section 51 of the Act may be imposed by the Tribunal.

[20] Section 51 provides:

“Disciplinary sanctions

(1) The sanctions that the Tribunal may impose are —

- (a) caution or censure:
- (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
- (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
- (d) cancellation of licence:
- (e) an order preventing the person from reapplying for a licence for a period not exceeding two years or until the person meets specified conditions:
- (f) an order for the payment of a penalty not exceeding \$10,000:
- (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
- (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
- (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.”

[21] The Authority and Ms TG have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees, and compensation.

[22] Any application for an order for the payment of costs or expenses under section 51(1)(g) should be accompanied by a schedule particularising the amounts and basis for the claim.

[23] Ms Tangilanu will have the opportunity to respond to any submissions from the Authority and Ms TG. Whether or not they make submissions, Ms Tangilanu may provide submissions on penalty.

[24] Should Ms Tangilanu have a submission regarding inability to pay a penalty, that submission is to be supported by a statement of assets and liabilities, and particulars of income and outgoings.

[25] The timetable for submissions will be as follows:

[25.1] The Authority and Ms TG are to make any submissions within 10 working days of the issue of this decision.

[25.2] Ms Tangilanu is to make any submissions (whether or not the Authority or Ms TG make submissions) within 15 working days of the issue of this decision.

[26] The parties are notified this decision will be published, with the names of the parties, after five working days unless any party applies for orders not to publish any aspect.

**DATED** at WELLINGTON this 27<sup>th</sup> day of March 2012

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**G D Pearson**  
Chair