

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

Decision No: [2012] NZIACDT 15

Reference No: IACDT 002/11

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**Roshni Ben**  
Complainant

**AND**

**Artika Archina Devi**  
Adviser

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**DECISION**

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**REPRESENTATION:**

**Adviser**

In person

**Complainant**

In person

Date Issued: 28 March 2012

## DECISION

### Preliminary

- [1] Ms Ben engaged Ms Devi to assist her with immigration matters.
- [2] Ms Devi is a licensed immigration adviser, and the director of Fast Track Immigration & Employment Services Ltd (since renamed Universal Immigration Services NZ Ltd) – (“the company”).
- [3] Ms Devi is the only licensed immigration adviser associated with the company. The company is incorporated in New Zealand. The company traded in New Zealand and Fiji.
- [4] Ms Ben initially dealt with the company’s Fiji office, then met with Ms Devi in Auckland about a month after her initial contact with the Fiji office.
- [5] Ms Ben has complained that money paid for fees has not been accounted for, and that she has not received satisfactory service. In particular, a work visa for Ms Ben’s husband was sought for the wrong dates.
- [6] Ms Devi says in response that the work was satisfactory, and any deficiencies were not her concern, as it was the responsibility of another company in Fiji.
- [7] The issues, are:
  - [7.1] To what extent was Ms Devi responsible for the issues Ms Ben complains of.
  - [7.2] If she was responsible, were there deficiencies in the work, and accounting for fees.

### The Material Supporting and Answering the Complaint

- [8] After receiving the complaint and supporting materials, the following position was evident on the papers then before the Tribunal.
- [9] The key events and circumstances raised by Ms Ben appeared to be:
  - [9.1] Ms Ben entered into a written agreement with the company dated 22 August 2009 to provide immigration services. This followed contact on 15 August 2009 to discuss engaging the company and payment of a deposit of FJD500. These events took place at the company’s Fiji office.
  - [9.2] On 15 September 2009, Ms Ben met with Ms Devi at the company’s Auckland office. Ms Devi offered to arrange a visitor’s visa for Ms Ben’s husband to travel to New Zealand. No further contract was signed at this point.
  - [9.3] Ms Ben’s husband deposited FJD990 into the company’s bank account on 16 September 2009 using the details he had been supplied.
  - [9.4] On 17 September 2009, a representative of the company called Ms Ben’s husband, and said the money had not been received. The following day (18 September 2009), he deposited an additional FJD990 into another bank account with a reference the company supplied.
  - [9.5] Ms Ben’s husband received a work visa but it was not for the date that Ms Devi had been instructed to apply for.
  - [9.6] Ms Devi refused to address the first deposit of \$990 and claimed it had not been received, when it had been.

- [9.7] After proof of the payment of the first deposit, Ms Devi gave Ms Ben a cheque for FJD900 which was dishonoured. Eventually, NZD250 was refunded.
- [9.8] No further fees have been refunded.
- [10] Ms Devi had responded to the complaint, saying:
- [10.1] The visa application was appropriate and satisfactory in all respects.
- [10.2] The payment of FJD500 in Fiji was for job search work and not related to Ms Devi's responsibilities as a licensed immigration adviser. Ms Devi had not explained the contract dated 22 August 2009, which appeared to indicate this money was paid for immigration services to obtain a work visa.
- [10.3] Ms Ben provided false and misleading information to the Authority to the effect that Ms Devi met with her in Fiji on 15 August 2009. For clarity, the Tribunal notes Ms Devi made this allegation but the record contained no evidence of that claim. The record showed that Ms Ben said she met with other representatives of the company in Fiji in August 2009, and Ms Ben in New Zealand in the following month. It appears Ms Devi had misunderstood Ms Ben's claim.
- [10.4] The company had no responsibility for the payment of FJD990 into a bank account for "Fiji Fast Track". Ms Devi had not addressed why that was so when Ms Ben's dealings, including the contract, had been through the company. The cheque was dishonoured as "the company was closed in Fiji and Westpac bank have closed the account". Ms Devi has not explained why she would permit her client to have a refund made by drawing a cheque on a closed bank account with no funds. Further, she had not explained why she did not rectify the situation if it arose out of an oversight.
- [10.5] The payment of NZD250 was paid to refund half of the initial payment of FJD500. Ms Devi does not explain why that refund was made, and the balance was not addressed.

#### **Minute Issued**

- [11] The Tribunal issued a minute to the parties identifying the material before the Tribunal, areas which Ms Devi had not addressed, and the potential findings.
- [12] The minute recorded that the Tribunal may conclude that:

#### *Ms Devi's role*

- [12.1] Ms Devi was the licensed immigration adviser responsible for the conduct of Fast Track Immigration and Employment Services Ltd. It was a company through which she provided immigration services and she was responsible for the professional relationship with Ms Ben throughout.
- [12.2] All material dealings were in pursuance of that client relationship.

#### *Failure to act competently and communicate*

- [12.3] Further, Ms Devi:
- [12.3.1] Failed to carry out instructions and obtain a work visa for an appropriate date.
- [12.3.2] Failed to deal competently and professionally with fees paid for immigration services including failing to keep client funds in a separate bank account from which a refund could be paid.

[12.3.3] Failed to refund overpaid fees when requested.

- [13] The minute gave the parties the opportunity to respond, and both Ms Devi and Ms Ben did respond with submissions.

### **Response to the Minute**

#### *Payment of \$500*

- [14] Ms Devi said that the \$500 paid on 28 August 2009 was paid for job search, not immigration services, despite the terms of the contract. She produced a receipt, the receipt noted that the payment was for "Job search in NZ".
- [15] Ms Ben acknowledged she appreciated the payment was for job search services, but did not see how that would absolve Ms Devi from responsibility to carry out the terms of the contract.

#### *Responsibility for the Fiji office*

- [16] Ms Devi said that she was residing in New Zealand, and her Fiji office was managed by a person employed in that role. She found he was untrustworthy, and concealed information from her. It was not fair to hold her responsible for his actions.
- [17] Ms Ben responded to this claim by referring to the Fair Trading Act, and also observing Ms Devi was the principal of the practice, and could be expected to take responsibility for her practice. Further, Ms Devi herself previously conducted her practice from that office, and could be expected to be in a position to personally understand and manage information systems there. She owed a duty to her clients to do so, and do so effectively.

#### *Payment of \$990*

- [18] In relation to the deposit of \$990, Ms Devi said that she gave Ms Ben her New Zealand bank account number, whereas Ms Ben's husband deposited the money into the bank account in Fiji. The Fiji office had supplied the details of that bank account. Ms Devi expected that the money should be paid again, and a deposit made into the New Zealand account, which it was.
- [19] Ms Ben responded by questioning why Ms Devi did not take responsibility for the two bank accounts her practice was operating.

#### *Refund from closed bank account*

- [20] Ms Devi said she was not aware the bank account on which the refund cheque was drawn was closed. She made a partial refund of \$250 from another account, and before the balance was refunded Ms Ben moved to Fiji, and made the complaint. She elected not to refund the balance in the light of these developments.
- [21] Ms Ben responded by pointing out Ms Devi should have been aware of whether the bank account was open or not, given it was a bank account operated by her practice. Further, she had the necessary information to deposit the balance into Ms Ben's New Zealand bank account, had promised to do so and failed to make the payment.

### **Decision**

#### *Ms Devi was responsible for the professional engagement*

- [22] Central to this complaint is the issue of the extent to which Ms Devi had responsibility for the professional relationship with Ms Ben.
- [23] Ms Devi was the only licensed immigration adviser in her practice. She personally engaged with Ms Ben, and knew Ms Ben was dealing with her Fiji office.

- [24] Ms Devi says she was not responsible for the conduct of an employee in her practice.
- [25] Ms Devi held herself out as a licensed immigration adviser, conducting her practice in both her Fiji office and her New Zealand office. Ms Ben was entitled to expect that the professional obligations that go with the status of a licensed immigration adviser would underpin her dealings with both Ms Devi's offices.
- [26] Section 6 of the Act provides that unless a person is licensed under the Act or exempt from the requirement to be licensed, they may not provide immigration advice. Section 63 makes it an offence to breach that requirement. "Immigration Advice" is defined in section 7. There are exceptions which are not presently material; section 7(a) provides "Immigration Advice":
- "means using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward; ..."
- [27] Licensed immigration advisers must be the only persons (unless exempt) who give professional advice and assistance to immigration clients. Of course, clerical assistance and the like is not immigration advice.
- [28] It is evident a key element of the mechanism in the Act is that licensed immigration advisers are clearly identified; client relationships commence with the licensed adviser identifying their standing, and providing of a copy of the Code (clause 1.4), along with the other Code requirements. The scope of section 6 is wide, ensuring licensed advisers are not able to be used as a "front" for unlicensed operators. The legislation is structured to effect functional exclusion from the professional relationship of any person who is not either licensed or exempt.
- [29] The legislation provides an important privilege to licensed immigration advisers in allowing only them to provide immigration advice (along with exempt persons). There are corresponding professional obligations placed on licensed advisers. They are personally responsible for the professional relationship, regardless of whether they are employees, or otherwise.
- [30] The purpose of the Act is set out in section 3, and it includes promoting and protecting the interests of consumers receiving immigration advice.
- [31] A licensed immigration adviser must take responsibility for the practice operated in reliance on their licence.
- [32] Until 4 May 2010, it was still lawful for persons outside New Zealand to give immigration advice without holding a licence. However, where a person engages a practice operating under the mandate of a licensed immigration adviser, the licensed adviser cannot absolve themselves from professional obligations simply because an unlicensed person is undertaking some of the work, even where that is lawful.
- [33] In the present case, the position is uncomplicated.
- [34] On 15 September 2009 Ms Devi met with Ms Ben in Auckland, and was personally acquainted with the professional engagement. Ms Devi was obliged at that point to ensure the professional relationship was properly established including identifying herself as a licensed adviser, and giving Ms Ben a copy of the Code. It was also necessary for there to be a written agreement which contained a full description of the services to be provided by the adviser. Ms Devi relied on the written agreement signed in Fiji the previous month. While it was perfectly acceptable for her to do so if it complied with the Code, by doing so she clearly conveyed to her client she was aware of, and taking responsibility for the engagement that commenced in the Fiji office.
- [35] The conduct which is the subject of the complaint occurred after the time Ms Devi personally met with Ms Ben. Accordingly, Ms Devi was fully responsible for ensuring this professional engagement was honoured.

*Failure to apply for correct dates for work permit*

- [36] I am satisfied that through an error in Ms Devi's office, Ms Ben's husband's application for a work permit was made for the incorrect dates. It is evident from the papers Ms Ben communicates clearly, and there is no suggestion of any change of circumstances. She raised the incorrect date promptly when she became aware of the issue.
- [37] Ms Devi has provided no explanation.
- [38] It may be surmised in the absence of an explanation that an error of this kind may be a simple mistake.
- [39] Of more concern is that Ms Devi has failed to take responsibility for what occurred. Unfortunately that characterises her attitude to her client. It is the essence of professionalism that a person delivering professional services takes responsibility for their work, and addresses errors when they occur.
- [40] I find Ms Devi's conduct in this respect was a breach of the Code. Pursuant to clause 1.1 of the Code an immigration adviser must, with due care, diligence, respect and professionalism perform his or her services.
- [41] Ms Devi failed to ensure that an application for the correct dates was made. She then failed to address the problem when a visa for the wrong dates was issued. She had provided no justification or excuse, and accordingly failed to meet the standard in clause 1.1 of the Code. A breach of the Code is grounds for a complaint under section 44(2)(e) of the Act, and accordingly I uphold the complaint.

*Dealing with payments for professional services*

- [42] For the reasons discussed, I am satisfied Ms Devi was wholly responsible for accounting for all fees paid by Ms Ben and her husband in relation to this professional engagement.
- [43] While the initial payment of \$500 was identified as relating to job search services, it was integrally tied to the contract for immigration services. Accordingly, I consider that payment was within Ms Devi's professional obligations.
- [44] Ms Devi had an obligation to keep control of the financial records in her Fiji office, which included being aware of the state of bank accounts into which her clients had been invited to deposit funds. She was personally responsible for accounting for the fees when services were not provided, and to refund fees when her client had paid twice.
- [45] Clause 3 of the Code requires a licensed immigration adviser to maintain professional business practices relating to finances, records, documents, contracts and staff management. Ms Devi failed to manage the financial aspects of her engagement with Ms Ben, and then compounded that failure by not refunding money. Ms Devi's explanation that she partly refunded money, and then failed to refund the remainder as Ms Ben returned to Fiji and made a complaint, has no merit.
- [46] Ms Devi's conduct and attitude toward her obligations to her client wholly lacked the standards of professionalism required of her.
- [47] Ms Devi was dealing with a situation where her client had made double payments due to shortcoming in the management of her practice, and she had failed to deliver a professional service of any value due to the incorrect dates for which a visa was issued.
- [48] It ought to have been obvious to Ms Devi she needed to take decisive action to put the situation right. She has instead sought to blame others, and defer meeting her obligations.
- [49] Accordingly, I find Ms Devi's conduct in this regard is also a breach of clause 3 of the Code, and uphold this aspect of the complaint.

## Submissions on Sanctions

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

[51] 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."

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

[53] Ms Ben has indicated she seeks a refund of fees paid, on the basis no professional services of value to her were provided. That is part of the compensation the Tribunal will consider. Ms Ben indicated the fees paid were in total FJD2,480, which equated to approximately NZD1,755. However, NZD250 had been repaid.

[54] Accordingly, I understand the balance of fees is NZD1,505.

[55] I will treat that as an accurate estimation unless any party indicates I should take a different view of the amount.

[56] 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.

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

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

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

[59.1] The Authority and Ms Ben are to make any submissions within 10 working days of the issue of this decision; and

[59.2] Ms Devi is to make any further submissions (whether or not the Authority or Ms Ben make submissions) within 15 working days of the issue of this decision.

[60] 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 28<sup>th</sup> day of March 2012.

  
G D Pearson  
Chair

