

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

Decision No: [2012] NZIACDT 6

Reference No: IACDT 009/11

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**  
Authority

**BETWEEN**

**LD**  
Complainant

**AND**

**KR**  
Adviser

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**DECISION**

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Date Issued: 13 March 2012

## DECISION

### Introduction

- [1] Mr LD has lodged a complaint against Ms KR. He says she provided incorrect immigration advice to his former employer. Namely, that an application for a further work permit was unlikely to be approved. His employer acted on that advice, and withdrew an offer of continuing employment.
- [2] He says the advice was wrong, and he has been affected by the incorrect advice.
- [3] However, Ms KR says she gave only informal preliminary advice, and correctly described the relevant immigration issues. She was not engaged by Mr LD's employer, so never had the opportunity of getting a complete understanding of the facts, and advising on them.
- [4] The issues to determine are the true nature of the professional relationship between Ms KR and Mr LD's employer, and whether her advice was correct and appropriate in the circumstances.

### Facts

- [5] The Tribunal issued a minute setting out the facts as they appeared from the material held by the Tribunal, and the potential findings in relation to the complaint. The parties were invited to provide any further factual material or submissions. Neither party presented further information.
- [6] Ms KR has explained the background to the complaint. She said in a letter to the Authority when it was processing the complaint:

"My records show that on 11 August 2010 I received a telephone call from an employer. ...I can only assume that he picked me randomly out of the list of registered immigration advisors.

Our conversation consisted of a short telephone call where I advised him that as a general rule UNLESS the position was on the Skill Shortages list they would be required to advertise for a NZ Resident or Citizen. The employer did not expand on the position...

We have never carried out any work for either the employer or the employee and in fact have never made any enquiries with Immigration NZ about this person as it was just a general enquiry and the advice given was in fact correct."

- [7] Mr LD's former employer did advertise the position. The manager of the employer said that as a result, 49 applications were received. There were better qualified people than Mr LD who applied.
- [8] The employer then told Immigration New Zealand what had occurred.
- [9] Immigration New Zealand explained to the employer the position was on the "Immediate Skill Shortage List". Accordingly, the position did not need to be advertised; it followed that if the employer left the position of employment open, Immigration New Zealand could process Mr LD's application regardless of the response to the advertisement.
- [10] The employer said that more qualified staff had been engaged, as it appeared Mr LD's visa would not be renewed and there had been an opportunity to improve the company's skill base.
- [11] Immigration New Zealand responded to this information saying:
 

"It's no problem. In fact, it's fantastic to hear that you have taken on New Zealanders, as it's often difficult for employers to understand why this can be important, especially at a time like this (during recession)."

## Decision

- [12] I am satisfied Ms KR was never engaged in a professional capacity by either Mr LD or his former employer.
- [13] Ms KR was not paid, and did not go through the process of gathering information to give formal advice.
- [14] What Ms KR did was receive a telephone query from Mr LD's employer as a potential client, and make some general observations on the relevant immigration principles.
- [15] It is important that potential clients can discuss their circumstances and the services required before engaging a professional adviser. Otherwise, they cannot negotiate an agreement for the provision of professional services on an informed basis.
- [16] The material before me satisfies me Ms KR accurately identified the issues for Mr LD's employer, but she did not receive instructions. She was never in a position to ascertain the status of Mr LD's employment.
- [17] She did accurately identify what was required if the matter was to be taken further. In particular, whether his position was on the Immediate Skill Shortage List (which would have required some investigation of the true nature of the position).
- [18] Mr LD's employer acted on the preliminary discussion, investigated the market, conferred with Immigration New Zealand, and made a decision that led to Mr LD's employment not continuing. The course of action was determined by the employer. He did not engage Ms KR to investigate and determine his options.
- [19] Ms KR had no opportunity to provide full professional advice; she simply scoped the issues for a potential client.
- [20] No doubt it is possible for an adviser to fall short of their professional obligations in a preliminary discussion of this kind. This decision is not based on the premise that a licensed immigration adviser is free of professional obligations until engaged formally. In this case, I am satisfied Ms KR made appropriate preliminary inquiries, and identified what would follow if she was engaged.
- [21] I am satisfied the complaint should be dismissed on the basis that:
- [21.1] Ms KR was fulfilling her obligation to allow a potential client to make an informed decision as to whether to engage her in a professional capacity.
- [21.2] While acting in that capacity she gave an accurate overview of the relevant issues, correctly noting what further investigation would be required if she was engaged.
- [22] I am satisfied Ms KR's conduct was professional, competent, and appropriate in the circumstances.

**DATED** at WELLINGTON this 13<sup>th</sup> day of March 2012

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**G D Pearson**  
Chair