

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

Decision No: [2012] NZIACDT 62

Reference No: IACDT 008/11

IN THE MATTER

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

BETWEEN

Immigration Advisers Authority

Authority

AND

Joel Miranda Angon

Adviser

DECISION

REPRESENTATION:

Authority: Mr R J Henshaw, Ministry of Business, Innovation & Employment, Auckland

Adviser: In person

Date Issued: 28 September 2012

DECISION

Introduction

- [1] This matter is an “own motion complaint” presented by the Registrar pursuant to section 46 of the Act. It involves the procedures for an offshore Philippines-based adviser dealing with potential migrants located in the Philippines.
- [2] The issue of concern is that unlicensed staff dealt with clients, and Mr Angon who is licensed issued a certificate to Immigration New Zealand that did not accurately reflect these circumstances.
- [3] The Authority accepts the unlicensed staff were people who provided immigration advice; however they provided services related exclusively to student permits, and accordingly were exempt from being licensed.
- [4] The complaint is advanced solely on the basis that Mr Angon’s certificate was misleading.
- [5] The issue for determination is whether the certificate was misleading, and if so whether it was dishonest.
- [6] The conclusion is that the certificate was misleading, but it was the result of a relatively minor lack of care, not dishonesty, on Mr Angon’s part.

Facts

Background

- [7] Mr Angon is a licensed immigration adviser practising in the Philippines. The practice where he works has a number of staff, and branches. Mr Angon is the only licensed immigration adviser and he is also the General Manager of the practice. He is located in Cebu, but regularly visits branch offices and keeps in contact with the staff in the other offices.
- [8] The practice assists potential migrants to New Zealand to gain occupational licensing in New Zealand, particularly registration as a nurse.
- [9] Occupational licensing is a necessary step in getting immigration visas to work in New Zealand.
- [10] The practice promotes this process as an *opportunity leading to permanent residency*. That language is used in promotional material the practice presents to clients and potential clients.
- [11] Mr Angon does not have the initial contact with potential migrants; other staff who are not licensed explain the process required for registration, eligibility for registration, and the related immigration requirements. Those staff would assist clients to complete an application for a work visa, and before it was lodged Mr Angon would examine and assess the application, together with the supporting documentation. If satisfied, the application would be lodged and Mr Angon would be identified in the application as the licensed immigration adviser. He would personally manage the application from that point.
- [12] Mr Angon maintains close control of staff members, and consults them and advises as required.
- [13] While the practice assists with the process of occupational registration, gaining work in New Zealand and obtaining a work visa, it does not assist with seeking residence. That is something clients would seek after they obtained work in New Zealand.

- [14] However, the Authority has made it clear this complaint does not relate to those wider issues and is advanced solely on the conduct relating to two people seeking student visas. Accordingly, this decision will deal only with those two clients. Given the Authority's view, it is not appropriate for this Tribunal to exercise its inquisitorial functions to make further inquiries into the wider circumstances.
- [15] Mr EC, and Ms CA each independently dealt with Mr Angon's practice. Each lodged an application for a student visa, with the intention of using the visa to pursue a course in English language for nursing.
- [16] Both Mr EC and Ms CA dealt with staff members in Mr Angon's practice in the respective offices they approached. Neither Mr EC nor Ms CA had any contact with Mr Angon, either in person or by telephone or electronic means.
- [17] The Authority has apparently satisfied itself that the staff members dealing with Mr EC and Ms CA are persons who exclusively provide immigration advice in relation to student visas only, and are accordingly exempt from licensing pursuant to section 11(h) of the Immigration Advisers Licensing Act 2007, which at the material time provided:
- "The following persons are exempt from the requirement to be licensed:
- ...
- (h) Persons who provide immigration advice offshore in relation to applications or potential applications for student visas or student permits only ..."
- [18] In both applications for student visas, Mr Angon identified himself in section M of the form as a licensed immigration adviser, and in the following section N he signed a certificate which included the following certification:
- "I certify that the applicant asked me to help them complete this form and any additional forms. I certify that the applicant agreed that the information provided was correct before signing the declaration.
- ...
- I have provided immigration advice (as defined in the Immigration Advisers Licensing Act 2007) ..."
- [19] The certificates were dated 18 September 2010 (Ms CA), and 5 October 2010 (Mr EC).
- [20] The Tribunal issued a Minute, which identified the grounds of complaint, response, and the issues arising; and gave the parties the opportunity to provide further information.
- [21] Both parties responded to the Minute, and their respective positions identified below take those responses into account.

The Authority's Position

- [22] The Authority's complaint is solely that Mr Angon certified that Ms CA and Mr EC asked him to help and agreed the information they provided was correct before signing the form, when he had never met or personally dealt with either of them.
- [23] The complaint alleges Mr Angon intended that Immigration New Zealand would rely on such certification, and believe the applications were made after Mr Angon gave advice, when that was not correct.
- [24] The Authority takes the view this was false or misleading.
- [25] The referral to the Tribunal identifies the Licensed Immigration Advisers Code of Conduct in relation to:
- [25.1] The obligations of care, respect, diligence and professionalism (Code clause 1.1).

[25.2] The requirement to act in accordance with legislation and operating requirements (Code clause 2.1).

[25.3] The obligation to ensure that documents are not false or misleading (Code clause 5.2).

Mr Angon's Position

[26] It appears Mr Angon's essential position is that he believed it was in order for him to undertake the initial process of advising clients and having applications completed through delegation to staff.

[27] The Authority does not dispute he was entitled to delegate the work for Ms CA and Mr EC.

[28] Mr Angon has explained he is strongly committed to properly managing his professional practice and maintaining high standards, and has identified his commitment to maintaining and developing his skills.

[29] He has emphasised that he appreciates, like all professional people, he can make errors, but emphasises his willingness and desire to learn and correct any errors.

[30] Mr Angon explained he supervised staff who dealt with clients in the initial phases of engagements, but would ensure he personally delivered immigration advice.

[31] In relation to the certification, his practice was that:

[31.1] Clients were aware Mr Angon was the licensed immigration adviser.

[31.2] They would sign an agreement nominating him as their immigration adviser.

[31.3] They sought his help in writing to complete the visa application form.

[31.4] The staff dealing with clients would ensure the forms were properly checked, their accuracy confirmed, and clients were aware of the importance of these matters.

[32] Mr Angon believes his certification is correct, as:

[32.1] His role and assistance was nominated in writing by his clients.

[32.2] Clients agreed in writing that the information they provided on the forms was correct, and complete.

Issue

[33] The complaint will be determined by addressing whether Mr Angon misrepresented his role when he completed the relevant sections of the application form for a student visa; and if so, the nature of that misrepresentation.

Decision

Misrepresentation

[34] Immigration New Zealand has included sections in its forms to record when licensed immigration advisers have prepared applications. Immigration New Zealand is entitled to take account of the fact a licensed immigration adviser has supervised the submission of an application. Their professional input carries the expectation the application is proper, and the applicant understands the importance of the accuracy of the information relied on.

[35] The relevant representation has two parts:

First:

"I certify that the applicant asked me to help them complete this form and any additional forms."

Second:

"I certify that the applicant agreed that the information provided was correct before signing the declaration."

[36] I am satisfied Mr Angon could not provide the first part of that certificate as a true description of events.

[37] Mr Angon had no contact with these clients. So neither Ms CA nor Mr EC had asked him personally for his assistance.

[38] I have considered Mr Angon's claim that he was nominated in writing. I accept there may be instances where written communication is used, and a request can be in that form.

[39] However, what occurred in this case was a client dealing with a person other than Mr Angon. The clients may have known Mr Angon's name, qualifications and his role in the practice, but they had no direct communication with him.

[40] In this context the words "asked me" in the certificate are misleading. Mr Angon did not engage with these clients at all. I am satisfied the words "asked me" imply the adviser was personally engaged with the client.

[41] The certification is given when the adviser is aware, or ought to be aware, of its purpose; namely that identified in the opening paragraph of this discussion (refer para [34] above).

[42] Accordingly, it carries the implication of personal professional engagement, and the attendant responsibility.

[43] The Authority's contention in respect of the second representation is more problematic. Mr Angon says he had systems in place to ensure clients did agree the information was correct; indeed it is an element of Immigration New Zealand's forms.

[44] Further, the Authority accepts the relevant staff were entitled to undertake a professional advisory role in relation to these clients, as they only dealt with student visas and were exempt from being licensed.

[45] The Authority's case is that this part of the certificate was untrue, as:

"Neither applicant agreed with Mr Angon that the information was correct before signing the declaration."

[46] However, that is not what the certificate says. It says only that the applicant did agree, and Immigration New Zealand's forms themselves emphasise this requirement to the client. I am satisfied Mr Angon had an adequate factual foundation to certify that Ms CA and Mr EC had agreed the forms contained correct information.

[47] It would be quite different if the engagement with clients was through a person who was not exempt or licensed. Advising clients on the importance of accuracy is an important professional obligation. It would be misleading to make the statement if the professional duty had been performed unlawfully.

[48] Accordingly, I am satisfied only that the first part of the certification was misleading. I am also satisfied Mr Angon had not appreciated it was misleading and had not intended to mislead Immigration New Zealand.

- [49] The complaint is that the inaccuracy in the certificate breaches the Code in relation to:
- [49.1] The obligations of care, respect, diligence and professionalism (clause 1.1).
- [49.2] The requirement to act in accordance with legislation and operating requirements (clause 2.1).
- [49.3] The obligation to ensure that documents are not false or misleading (clause 5.2).
- [50] I am satisfied there was a lack of care, but not at a high level. The Authority accepts that appropriately qualified people delivered professional services and makes no complaint regarding the quality of the service or advice.
- [51] Mr Angon identified he was responsible for the application. He should have taken more care over the implication that he was personally engaged with the clients in certifying that they “asked me to help them”. The certificate was, to that extent, misleading, but only through want of care; it was not deliberate.

Conclusion

- [52] It follows that I uphold the complaint as a breach of clause 1.1 and clause 5.2 of the Code.
- [53] The Tribunal upholds the complaint in the respect identified. Section 44(2)(e) provides that a breach of the Code is grounds for upholding a complaint.

Submissions on Sanctions

- [54] Given the findings, section 50 allows the Tribunal to impose one or more of the disciplinary sanctions under section 51 of the Act.
- [55] The parties have the opportunity to present submissions.
- [56] The timetable for submissions will be as follows:
- [56.1] The Authority is to make any submissions within 10 working days of the issue of this decision.
- [56.2] Mr Angon is to make any submissions (whether or not the Authority makes any submissions) within 15 working days of the issue of this decision.

Conclusion

- [57] The parties are notified this decision will be published after five working days unless any party applies for orders not to publish any aspect.

DATED at WELLINGTON this 28th day of September 2012

G D Pearson
Chair