

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

Decision No: [2013] NZIACDT 72

Reference No: IACDT 047/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

KFC and EL

Complainants

AND

NGZ

Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainants: In person

Adviser: In person

Date Issued: 25 November 2013

DECISION

Preliminary

- [1] The Registrar received a complaint relating to the adviser.
- [2] The Registrar identified the basis of the complaint as being that the adviser behaved in a dishonest or misleading manner.
- [3] It is evident from the Statement of Complaint the Registrar filed, that the complaint does not provide a basis for finding dishonest or misleading behaviour; the adviser has provided a thorough and professional response that leaves no room for any adverse finding against him.
- [4] The Tribunal has dismissed the complaint.

The Statement of Complaint

- [5] The Registrar referred a complaint brought by the complainants against the adviser, who is a licensed immigration adviser. The female complainant was the subject of the applications made by the adviser while the male complainant was her partner (hereafter referred to as “the partner”).
- [6] The Registrar identified the grounds for referral as being that the adviser engaged in dishonest or misleading behaviour (section 44(2)(d) of the Act).
- [7] The Registrar has statutory powers to gather information, which extend to powers of inspection; he is required to determine whether a complaint should be referred to the Tribunal or addressed in another way.
- [8] The Registrar identified the following material facts as the basis for referring the complaint to the Tribunal, on the grounds identified in paragraph [6] above, pursuant to section 45:
 1. On 1 Nov 2011 [the female complainant] signed a written agreement with the Adviser for assistance with a request for a student visa under section 61 of the Immigration Act 2009.
 2. This agreement states that the total professional fee for the application was \$4,700, to be paid in three instalments. The agreement states that the first two payments, of \$1000 and \$300 respectively, are non-refundable.
 3. The agreement also states that the Adviser’s company will apply for a similar category of application for the client without charging further fees if the initial application is not successful.
 4. The Complainants state that they gave the Adviser a copy of a letter they had received from Immigration New Zealand (INZ) declining [the female complainant]’s last visa application.
 5. The Complainants state that the Adviser told them that it would not be difficult to get [the female complainant] a visa, and that he had seen worse cases.
 6. On 29 November 2011 [the female complainant] paid the agreed sign on fee of \$1,000 and a note of this was made on the agreement [Page 9]. The Complainants state that they did not receive an invoice or receipt for this payment.
 7. The Complainants state that the Adviser then provided them with a checklist of documents to provide, which included a medical certificate and police records from Korea. The Complainants state that they then organised getting these documents.
 8. The Complainants state that the Adviser had them sign a student visa application form, and that they later discovered this was never sent to Immigration New Zealand.

9. The Complainants state that the Adviser told them that as [the partner] was a New Zealand citizen he would be able to sponsor [the female complainant], and that she would only need to show \$5,000 in her bank account, rather than \$12,000.
10. The Complainants state that [the partner] was not able to get hold of his New Zealand passport so the Adviser told them they could do the application without a partner sponsor.
11. On 22 December 2011 the Adviser submitted a section 61 request on [the female complainant]'s behalf, to Immigration New Zealand.
12. On 12 Jan 2012 INZ refused the request. As the request was made under section 61, INZ did not supply reasons for its decision.
13. The Complainants state that the Adviser told them that the reason it was refused was because they took too long to hand it in, and because INZ did not believe they were in a steady relationship.
14. The Complainants state that the Adviser told them not to worry, that they could try as many times as they wanted, and that there were worse cases than [the female complainant]'s.
15. The Complainants state that [the partner] was then able to provide his passport so they were able to submit an application on the basis that he was her sponsor. The Complainants state that they then gathered documents for this, such as letters of support from friends, photos and bank details.
16. On 15 February 2012 the Adviser made a further request for a visa on behalf of [the female complainant].
17. On 1 March 2012 INZ refused this further request. As the request was made under section 61, INZ did not supply reasons for its decision.
18. The Complainants state that the Adviser told them that because it had been a request under section 61 he could not tell them the reason why it had been refused, but that there was a lack of evidence that they were partners.
19. The Complainants state that the Adviser told them that since there was no change in their application that his services were finished and that the best option was for [the female complainant] to go back to Korea and apply from there.
20. The Complainants state that they decided to make a further request by themselves. The Complainants state that the Adviser had told them that they would not need to sign a new application form as INZ had all the documents already.
21. On 14 March 2012 a new request for a visa under section 61 was submitted for [the female complainant], this time without the Adviser's name attached. On 4 April 2012 this request was also refused.
22. The Complainants state that when they contacted INZ they were told [the female complainant] would need to leave New Zealand before 20 April 2012, which she did.

[9] The Registrar stated he could only reject a complaint if satisfied it did not disclose any of the grounds in section 44(2) of the Act, and "he was not satisfied that the complaint failed to disclose any grounds". The Registrar did not relate any of the material facts to the grounds on which he referred the complaint.

[10] These facts in themselves provide no foundation for an allegation of dishonesty. Only by inference could the material be a foundation for a finding of misleading behaviour.

[11] However, the Registrar also had the adviser's response. His response makes it clear that what the Registrar identified as material facts are founded on fundamental misconceptions of the professional engagement.

- [12] The adviser provided a comprehensive response to the allegations.
- [13] The adviser's response is set out in the Statement of Complaint, and the documents supporting it have been filed. In essence the response and the documents provide both statements and documentary evidence that:
- [13.1] The adviser's advice was that any application to Immigration New Zealand was not likely to be successful.
- [13.2] After appropriate warnings, he accepted instructions to lodge an application for a discretionary decision (section 61). He gathered the appropriate information, that would be required if the initial application was successful (and necessary to evaluate the merits of the application).
- [13.3] He filed further applications until reaching a point where he considered it was not proper to lodge the same application again without new circumstances.
- [13.4] He gave accurate and appropriate advice on sponsorship issues (which were only peripherally relevant to what could be achieved initially).
- [13.5] He responded professionally and properly to unrealistic expectations from his client, and provided consistently accurate advice.

The response to the Statement of Complaint

The adviser

- [14] The adviser did not challenge the Statement of Complaint, and was not required to do so provided it adequately set out his position.

The complainants

- [15] The complainants filed a Statement of Reply to the Statement of Complaint, but it only addressed some minor factual matters. In particular saying the female complainant told Immigration New Zealand she was leaving New Zealand, rather than Immigration New Zealand saying she had to leave.

Discussion

The material facts and infringements are not coherent

- [16] The infringements alleged are dishonest or misleading behaviour; the facts presented by the Registrar cannot support a finding on either ground.

First apparent basis for allegation of dishonesty

- [17] The first argument appears to be that if the adviser falsely represented an application had been made when in fact a letter had been sent, that could be grounds for a finding of dishonest or misleading behaviour.
- [18] However, that is not sensible in the circumstances that appear to arise in this complaint.
- [19] The only realistic application that could be made, and the application that was made, was under section 61 of the Immigration Act 2009. It is elementary that an application under section 61 is usually made by letter.
- [20] It is incomprehensible to this Tribunal how the adviser could have dishonestly misrepresented that he made an application, whereas he in fact sent a letter. A letter is the usual form of the application in issue. Immigration New Zealand has no other form for a section 61 application.
- [21] It is usual to gather information and, if the section 61 application is accepted, to then lodge the full information required in the standard visa application form. The matter never reached that stage as Immigration New Zealand declined the application.

Second apparent basis for allegation of dishonesty

- [22] The second ground for the alleged dishonesty is not comprehensible.
- [23] The complainants apparently say that they subsequently discovered they needed to have been in a relationship for two years to qualify for sponsorship. However, that cannot in itself be grounds for finding dishonesty on the part of the adviser. There would have to be some representation made by the adviser.
- [24] Furthermore, the adviser has pointed out to the Registrar the two year period is not consistent with New Zealand Immigration instructions and that sponsorship was secondary as it would not be a major factor in having a section 61 application accepted. There is no foundation for finding dishonesty in relation to this issue.

Misleading behaviour

- [25] It is evident the facts presented by the Registrar are not informed by any understanding of the grounds for the section 61 application, and the process for making the application. It appears the Registrar has uncritically relayed what the complainants have said.
- [26] The adviser has produced documents that disprove he made the misrepresentations implied in the facts presented. For example, he is alleged to have misled the complainants by saying there was a good prospect of a successful application, saying they "should not worry" and there were "worse cases". The adviser has produced a written acknowledgement signed by one of the complainants saying the application was "likely to be denied".
- [27] The written record kept by the adviser presents a clear picture of a responsible adviser discharging his professional duties in a cautious and responsible manner, while taking care to inform his clients.
- [28] The facts presented as the ground for the complaint are not consistent with the written record.
- [29] The adviser's response is entirely consistent with normal principles of immigration practice and the written record. I accept the adviser's account in all respects where it differs from the facts the Registrar has presented as the basis for the complaint.

Conclusion

- [30] I am satisfied the Statement of Complaint the Registrar has presented establishes no foundation for finding the dishonest or misleading behaviour he has referred to the Tribunal for determination.

Order

- [31] The complaint is dismissed.

DATED at WELLINGTON this 25th day of November 2013

G D Pearson
Chair