

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

Decision No: [2014] NZIACDT 33

Reference No: IACDT 035/12

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Roniel Prasad**

Complainant

**AND**

**Artika Archina Devi**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** In person.

**Complainant:** In person.

**Adviser:** S Singh, Singhs Barristers & Solicitors, Auckland.

Date Issued: 19 March 2014

## DECISION

### Introduction

- [1] The complainant dealt with his own immigration application; he provided information about his wife but did not mention he had separated from his wife and was in a relationship with someone else.
- [2] He then engaged the adviser to assist with a new application. Immigration New Zealand raised a concern that his previous application was misleading and was not prepared to grant the application for that reason.
- [3] The adviser lodged another three applications or requests for visas for the complainant, and never addressed Immigration New Zealand's concern, despite the concern being pointed out repeatedly.
- [4] The adviser says she did not address Immigration New Zealand's concern, as the complainant had full and accurate advice, and instructed her not to. He instructed her instead to keep lodging applications or requests without addressing Immigration New Zealand's concerns.
- [5] This Tribunal cancelled the adviser's licence on the basis of an unrelated matter; the complainant says the adviser did not tell him or give advice regarding his options. Instead, he discovered what happened from his own research.
- [6] The issue for the Tribunal is whether the adviser has justified her failure to engage with Immigration New Zealand's concerns and whether she did take the steps required to ensure her client had representation when she lost her licence.
- [7] The Tribunal has upheld the complainant.

### The complaint

- [8] The Statement of Complaint set out the narrative founding the complaint, and a Supplementary Statement of Complaint refined the grounds.
- [9] The allegations of fact and the potential professional disciplinary offences identified were in essence that:

#### *Alleged Facts*

- [9.1] In September 2009 and April 2010, the complainant submitted applications to Immigration New Zealand for a visitor visa. In those applications he recorded, he had a wife in Fiji.
- [9.2] The complainant engaged the adviser to file an application for a work visa. The application stated he had been living with his partner in New Zealand since late February or early March 2010.
- [9.3] Immigration New Zealand wrote a letter on 5 October 2010 addressed to the adviser's practice inquiring into why the complainant had previously referred to his wife when applying for a visitor's permit, when at the time he was living with his partner.
- [9.4] The adviser replied to Immigration New Zealand's letter, with a letter dated 18 October 2010. The response enclosed a letter from the complainant which explained his relationship with his partner and confirmed that he still had a wife in Fiji.
- [9.5] In October 2010, Immigration New Zealand declined the complainant's application on the grounds his new relationship was not genuine and he may have provided misleading information in his visitor visa application.
- [9.6] The adviser took further steps to seek a visa for the complainant:
  - [9.6.1] An application for a work visa, on the grounds of partnership, filed in November 2010.

- [9.6.2] A request for the discretionary grant of a visa under section 61, filed in March 2011.
- [9.6.3] A request for a Ministerial intervention, lodged in August 2011.
- [9.7] On 9 August 2011, the Minister's delegate requested further information regarding non-disclosure in the past. On 24 August 2011, the adviser notified the Minister's delegate that the complainant's divorce was finalised and he would marry his partner the following month.
- [9.8] This Tribunal, following an unrelated complaint, cancelled the adviser's licence with effect from 12 September 2011.
- [9.9] In December 2011, the Minister declined to intervene. That was because the Minister did not receive the requested explanation, namely, why the complainant had not declared he had separated from his wife in his visitor visa application.

*Analysis of potential professional disciplinary offences*

- [9.10] The Registrar identified two potential disciplinary offences arising from the facts.
- [9.11] The first ground was a breach of Clause 1.1(a) of the Code of Conduct that required the adviser to provide her services with due care, diligence, respect and professionalism. The particulars in support of that potential offence were:
- [9.11.1] The adviser submitted four applications or requests for a work visa under partnership grounds.
- [9.11.2] When processing the first application, Immigration New Zealand notified the adviser of its concern that the complainant failed to disclose his relationship with his partner in his previous visa application.
- [9.11.3] The adviser failed to address Immigration New Zealand's concern, and submitted a further three applications or requests without addressing the question. When the Minister's delegate directly raised the issue, the adviser failed to address it, instead stating that the complainant's divorce was complete and he would marry the partner.
- [9.11.4] Lodging three applications or requests on the same basis without addressing Immigration New Zealand's concerns lacked care, diligence and professionalism.
- [9.12] The second ground was a breach of Clause 1.1(c) of the Code of Conduct, which required the adviser to take reasonable steps to ensure clients' interests were represented if the adviser could not for any reason continue as the representative. The particulars in support of that potential offence were:
- [9.12.1] On 5 September 2011, the Adviser lost her licence, effective one week from that date to allow the Adviser time to refer clients to another licensed immigration adviser.
- [9.12.2] At that time, the request to the Minister had not been determined.
- [9.12.3] The adviser appeared to take no steps to ensure the complainant's interests were represented; the complainant had to make his own inquiries to find out the adviser's licence had been cancelled.
- [10] The Registrar recognised the complainant also raised the potential grounds of negligence, incapacity, and dishonest or misleading behaviour. The Registrar identified the grounds outlined above in [9.11] and [9.12]; he did not identify a foundation for making adverse findings on the other grounds alleged by the complainant. If dissatisfied with this formulation, the complainant had the opportunity to challenge it by filing a Statement of Reply.

## Responses to the Statement of Complaint

- [11] The complainant did not file a Statement of Reply. Accordingly, I will proceed on the basis he accepts the Registrar's formulation of the complaint and address only the two grounds raised by the Registrar in the Supplementary Statement of Complaint.
- [12] The adviser filed a Statement of Reply, with submissions from her counsel.
- [13] The adviser did not seek an oral hearing.
- [14] In relation to the first issue, namely a failure to exercise due care, diligence and professionalism in addressing Immigration New Zealand's concerns, the adviser's position is that:
- [14.1] She has no knowledge of the application made by the complainant in Fiji.
- [14.2] She has "at all times acted on the instructions of the complainant, who provided contrary instructions to her, despite the advice the adviser provided and the information requested".
- [14.3] The complainant "opted not to provide any information [addressing Immigration New Zealand's concerns] despite" her advice of the consequences.
- [14.4] The complainant was fully aware, when he gave instructions not to address Immigration New Zealand's concerns.
- [15] On the second issue, regarding continued representation after she lost her licence, her position is:
- [15.1] The adviser telephoned the complainant to inform him about her licence.
- [15.2] Her former practice engaged another licensed immigration adviser to provide services. However, before that occurred (on 22 September 2011), the complainant terminated the engagement.
- [15.3] The complainant provided misleading information to Immigration New Zealand, the Authority, and this Tribunal.
- [16] Counsel for the adviser, in her written submissions, supported the grounds in the Statement of Reply.

## Discussion

### *Failure to address Immigration New Zealand's concerns*

- [17] The papers lodged with the Tribunal in support of the complaint evidence the first ground of the complaint. Namely, Immigration New Zealand raised an important issue regarding an earlier application, which may have contained inaccurate information regarding the complainant's marital status.
- [18] The issue arises frequently in immigration practice. Sometimes there is an innocent mistake made by a person who does not understand a form well. On other occasions, a person has intentionally or carelessly misstated facts. Immigration New Zealand will take the issue seriously and require an explanation, and evaluate it before granting or declining a visa.
- [19] The adviser has accepted the allegation she failed to address Immigration New Zealand's concerns, and lodged repeated applications and requests, still without addressing Immigration New Zealand's concerns. That extended to not answering the question when put by the Minister's delegate.
- [20] On the face of it, that conduct, on the most favourable construction, lacked care, diligence and professionalism. The adviser's defence is she was justified as:

- [20.1] She had no knowledge of the application in which the complainant provided the false information.
- [20.2] She “acted on the instructions of the complainant”.
- [20.3] The complainant gave his instructions despite her advice to the contrary, which fully informed the complainant.
- [21] The adviser has not provided documents to support her claim and invited the Tribunal to determine the complaint on the papers without an oral hearing.
- [22] In essence, the adviser claims her client was instructing her not to respond to the central issue preventing him getting a visa. She lodged another three applications or requests despite knowing that was the position.
- [23] The claim is implausible and contrary to what the complainant says. If the adviser told the complainant he would not get a visa without addressing the issue, it is difficult to understand why he would have chosen to keep making hopeless applications. That is particularly so when the inaccurate information was not in the most serious category.
- [24] Furthermore, the adviser had clear duties if her client did refuse to follow her advice. Clause 2.2 of the Code of Conduct requires a licensed immigration adviser instructed to lodge a hopeless application to encourage the client not to lodge it, advise the client in writing, and seek a written acknowledgement from the client.
- [25] There is no evidence the adviser did any of that; she does not claim she did. There is evidence the Minister’s delegate squarely raised the issue in writing on 9 August 2011, and she replied on 24 August 2011 in a manner that evaded the question. That in itself was unprofessional.
- [26] If what the adviser claims were true, she would have had to terminate her engagement and put her reasons in writing for her client, rather than deal with the Minister in the manner she did.
- [27] It is not professional to ignore appropriate questions put by proper authorities. If her client would not allow her to answer, she had to say so. If her client would not let her do that, then she needed to terminate her instructions. It is not professional to create a false impression a professional person is responsible for the failure to answer a question to assist her client to avoid the question.
- [28] I am satisfied the reality is the complainant sought the adviser’s assistance as he considered he needed professional support to complete his application. The adviser wholly failed to engage with Immigration New Zealand’s concerns. Her conduct lacked care, diligence and professionalism. I am satisfied she breached Clause 1 of the Code of Conduct in this respect. Her conduct was not the result of her client’s instructions; he wanted his immigration application advanced effectively.

*Failure to provide continuing professional representation*

- [29] The second ground is a breach of Clause 1.1(c) of the Code of Conduct that required the adviser to “take reasonable steps to ensure clients’ interests are represented if the adviser cannot for any reason continue as a representative”.
- [30] After having her licence cancelled, the adviser claims to have made a phone call to the complainant but does not say it resulted in a conversation. The complainant says there was no communication. Regardless, the adviser had to communicate in writing, even if she initially communicated by telephone (Clause 3(f) of the Code of Conduct). The adviser also had to address significant issues; they included refunding fees (Clause 3(c) of the Code of Conduct) and continued representation (Clause 1.1(c) of the Code of Conduct).
- [31] There can be little doubt the complainant was entitled to have all of the fees he paid refunded, as the adviser had not advanced his situation through a failure to deal with Immigration New Zealand’s central concern.
- [32] The adviser does not claim to have undertaken a process that meets the minimum standard in dealing with clients after she lost her licence.

- [33] I am satisfied the adviser breached Clause 1.1(c), as she failed to ensure the complainant's interests were represented when she could not continue to do so.

### **Decision**

- [34] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [35] The adviser breached the Code of Conduct in the respects identified. That is a ground for complaint pursuant to section 44(2)(e) of the Act.
- [36] In other respects, the Tribunal dismisses the complaint.

### **Suppression of name**

- [37] The adviser sought an order to keep her identity confidential. The grounds were she:
- [37.1] Is no longer a licensed immigration adviser.
- [37.2] Acted in a professional manner and denies wrongdoing on her part.
- [37.3] Has another career, where she is in "a special relationship of mutual confidence and trust".
- [37.4] Did not gain financially.
- [37.5] Due to her culture, there will be repercussions for her and her family.
- [38] The submissions have an element of unreality. The Tribunal has upheld a number of complaints against the adviser and cancelled her full licence. The decisions are public information and involve conduct as serious as the present complaint. The incremental effect of publishing another disciplinary finding, which is the issue, is not consistent with the grounds advanced.
- [39] There is no sensible reason not to publish the present complaint in these circumstances. I appreciate counsel could of course advance reasons for suppression that were not advanced previously, and if a case were made out, the Tribunal would make an appropriate order. However, the situation is one where publication is a routine consequence of the disciplinary process.
- [40] There are no special circumstances. If the adviser is in a position of mutual confidence and trust in her current work, that is not a justification for suppressing her professional disciplinary background.
- [41] Unfortunately, the adviser's disciplinary history is not an isolated lapse; rather she has engaged in a sustained course of conduct resulting in multiple complaints the Tribunal has upheld. That is not information the Tribunal should deny to the public, particularly when the adviser is seeking confidence and trust in a professional capacity. The Tribunal has found on repeated occasions she had abused trust and confidence given to her as a licensed immigration adviser.
- [42] Accordingly, the Tribunal will not make an order restricting publication of this decision.

### **Submissions on sanctions**

- [43] The Tribunal has upheld the complaint accordingly; pursuant to section 51 of the Act, it may impose sanctions.
- [44] The Authority and the complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees and compensation. Whether they do so or not, the adviser is entitled to make submissions and respond to any submissions from the other parties.

[45] 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.

*Timetable*

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

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

[46.2] The adviser is to make any further submissions (whether or not the Authority or the complainant make submissions) within 15 working days of the issue of this decision.

[46.3] The Authority and the complainant may reply to any submissions made by the adviser within 5 working days of her filing and serving those submissions.

**DATED** at WELLINGTON this 19<sup>th</sup> day of March 2014

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**G D Pearson**  
Chair