

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

Decision No: [2014] NZIACDT 34

Reference No: IACDT 025/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

SLA

Complainant

AND

MTD

Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: In person

Date Issued: 20 March 2014

DECISION

Preliminary

- [1] The Registrar received a complaint relating to the adviser.
- [2] The basis of the complaint was the adviser:
 - [2.1] Unnecessarily opened a medical report, failed to check it, and sent it to Immigration New Zealand unnecessarily;
 - [2.2] Failed to keep the complainant informed;
 - [2.3] Told the complainant an immigration adviser was mandatory; and
 - [2.4] Required \$1,000 to return documents.
- [3] The issues are essentially factual ones. The adviser denies the essential truth of the complaint.
- [4] The Tribunal has determined it must dismiss the complaint, as the facts on which the complaint relies are not proved.

Discussion

The complaint

- [5] On the basis of the papers before the Tribunal, the material facts on which the complaint is based are:

The background

- [5.1] The complainant entered New Zealand on a visitor visa and then wanted to apply for a three-month student visa.
- [5.2] The adviser assisted with the application, submitting it on 13 December 2011.
- [5.3] On 7 February 2012, Immigration New Zealand declined the application for a Student Visa. The grounds were that the complainant was not genuine and intended to work in New Zealand so was not a genuine student.
- [5.4] Her medical certificate disclosed she intended to work in New Zealand for three years. However, she had not disclosed that in her application. Immigration New Zealand considered she was misleading them.

The basis of the complaint

- [5.5] The Statement of Complaint says:
 - [5.5.1] The medical report was in a sealed envelope. The complainant did not need to provide a medical certificate for a student visa application; however, the adviser opened it and submitted it.
 - [5.5.2] The adviser failed to report on the progress of the application.
 - [5.5.3] The adviser refused to return documents unless \$1,000 was paid.
 - [5.5.4] The adviser told her she was required to use a licensed immigration adviser.

The adviser's Statement of Reply

- [6] The adviser's Statement of Reply responds to the complaint in the following terms:
- [6.1] The adviser said it was not necessary to file a medical certificate for the student visa, and she advised the complainant of that fact. However, the complainant wanted to file it so that it would remain valid, as she expected to apply for a long-term visa later.
- [6.2] The adviser informed the complainant she had filed the application. A letter giving notice from Immigration New Zealand that they had concerns was sent on 30 January 2012 and discussed between the complainant and the adviser.
- [6.3] When seeking information to respond to the query, it became evident the complainant had been employed. The relationship between the adviser and the complainant broke down at this point.
- [6.4] At no time did she demand a payment for the return of documents, or say that use of a licensed immigration adviser was mandatory.

No reply

- [7] The complainant did not lodge a Statement of Reply or respond to the adviser's Statement of Reply. The Registrar did not respond either.
- [8] Accordingly, the adviser's reply is unchallenged; however, I must evaluate it against the record before the Tribunal.

Discussion

- [9] The Tribunal is required to determine facts on the balance of probabilities; however the test must be applied with regard to the gravity of the finding (*Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1).
- [10] The material before me does not provide a basis to be satisfied it is probable there was any professional failing on the part of the adviser in relation to disclosing the complainant's long-term objectives.
- [11] It is evident the heart of this complaint is a relatively uncomplicated communication error, which could involve fault on the part of the adviser.
- [12] The complainant apparently intended to go through a process of getting a visitor's visa and coming to New Zealand, then:
- [12.1] Getting a student visa to improve her English language skills; and
- [12.2] She intended to seek a work permit and employment in New Zealand.
- [13] It appears the complainant had disclosed her long-term plans to the medical assessor and the assessor recorded them in the report.
- [14] The material before me leaves open the possibilities:
- [14.1] The adviser failed to question the complainant sufficiently closely;
- [14.2] The complainant was not fully frank about her intentions; or
- [14.3] Neither of them had any reason to look beyond the immediate application being made to Immigration New Zealand.
- [15] The adviser admits she was informed the complainant wanted to submit the medical certificate in anticipation of later applying for a long-term visa.

- [16] I have considered the fact the information, which formed the basis for declining the student visa, was in the Medical Certificate and the fact that the document was not required for the application. However, the adviser was not on notice that there was any reason to examine closely the medical assessment; given it is a medical assessment and would not usually contain wider information, and it concluded there were “no significant or abnormal findings”.
- [17] In addition, I have considered the fact the adviser was on notice of the possibility the complainant would want to apply for a long-term visa after study. However, that is a common aspiration. It was only the express statement in the medical certificate that took the matter outside the routine. Accordingly, I cannot be satisfied the circumstances did put the adviser sufficiently on notice that there was an issue that had to be resolved at the time the instructions were given.
- [18] Additionally, when the professional relationship between the complainant and the adviser ended, the complainant instructed counsel to act for her. Her counsel wrote to Immigration New Zealand and said that the statement in the medical certificate was “simply a mistake, or misunderstanding”. That is not consistent with it being likely the adviser had a reason to explore the issue further.
- [19] I can be satisfied of no more than that, there was a comment in a document which was not necessary, and which a licensed immigration adviser would not necessarily examine beyond the medical adviser’s conclusion. It follows, I am not satisfied that there was any fault on the part of the adviser.
- [20] In relation to communication failures, the adviser has said she did report properly to the complainant. That derives some support from the record, including the complainant having the relevant materials, and responding to Immigration New Zealand’s query. Some of the reporting was oral, though that appeared to be in addition to the minimum requirements.
- [21] On the issues of whether:
- [21.1] The adviser attempted to solicit a fee of \$1,000 for the return of documents, or
- [21.2] Misrepresented it was necessary to engage a licensed immigration adviser,
- They are simple credibility issues.
- [22] The complainant says that occurred; the adviser denies it. There is no documentation to support the claim. The complainant has not answered the adviser’s denial in her Statement of Reply. I cannot be satisfied there are reasons to prefer the complainant’s claims to the adviser’s denial. It follows I must find this aspect of the complaint has not been proved.
- [23] Accordingly, I find the material before me does not establish the facts on which the complainant lodged the complaint or a breach of any other any material professional standard in the Code of Conduct or the Act.

Decision

- [24] The Tribunal dismisses the complaint, pursuant to section 50 of the Immigration Advisers Licensing Act 2007.

DATED at WELLINGTON this 20th day of March 2014

G D Pearson
Chair