

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

Direction No: [2014] NZIACDT 43

Reference No: IACDT 062/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Asotoelau Liufau

Complainant

AND

Ueite (Itaotemai) Letalu

Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: In person

Date Issued: 31 March 2014

DECISION

Introduction

- [1] The Complainant was in New Zealand unlawfully and sought the Adviser's assistance to apply for a visa. He agreed, the Complainant paid fees and after a long delay the Adviser lodged an application.
- [2] The complaint is that the Adviser did not have a written agreement and his conduct lacked care and diligence.
- [3] The Adviser did not dispute the facts, but said he had met his professional obligations.
- [4] The Tribunal has upheld the complaint.

The Complaint

- [5] The Registrar filed a statement of complaint. The factual background, identified in the statement of complaint, on which the complaint is founded is:
 - [5.1] The Complainant and her family started dealing with the Adviser in May 2010. The Complainant had been in New Zealand without a current visa since 2007 and the Adviser acknowledges that he knew this from the first meeting.
 - [5.2] The Complainant engaged the Adviser to apply for a visa based on her child being a New Zealand citizen.
 - [5.3] On 10 May 2010, the Adviser requested information from Immigration New Zealand. He received the information on 8 June 2010.
 - [5.4] The Complainant paid the adviser a total of \$1,687.50 by 14 June 2010 for immigration services.
 - [5.5] The Adviser did not submit a request for a visa until 7 February 2012; which Immigration New Zealand refused on 13 February 2012.
- [6] The statement of complaint identifies the potential grounds for upholding the complaint, with particulars. The key elements and particulars being:
 - [6.1] A breach of clause 1.1(a) of the Code of Conduct – the obligation to perform services with due care and diligence. The particulars are:
 - [6.1.1] The Adviser knew from the start of the engagement that the Complainant was in New Zealand unlawfully.
 - [6.1.2] He received information from Immigration New Zealand regarding the Complainant's immigration history on 8 June 2010.
 - [6.1.3] He failed to apply for a visa for the Complainant until 7 February 2012.
 - [6.2] A breach of clause 1.5 of the Code of Conduct – obligations relating to written agreements. The particulars are:
 - [6.2.1] The Authority has requested that the Adviser provide a copy of a written agreement for the provision of immigration services to the Complainant, he has not done so.
 - [6.2.2] There was no written agreement between the Complainant and the Adviser.

Responses to the Statement of Complaint

The Complainant's response

- [7] The Complainant filed a statement of reply, and supported the contents of the Statement of Complaint.

The Adviser's response

- [8] The Adviser did not file a statement of reply, but sent an email.
- [9] The email failed to address specifically the grounds in the statement of complaint.
- [10] Aside from a general denial, the Adviser:
- [10.1] Did not claim there was a written agreement; or
- [10.2] Explain why he took some 20 months to lodge an application for the Complainant.

Discussion

- [11] The Adviser has not responded to the statement of complaint in a way that sensibly challenges the grounds for complaint. Documentation filed with the statement of complaint supports its contents.
- [12] I am satisfied the statement of complaint, with its supporting documents, establish the grounds of complaint.
- [13] It is evident the Adviser did not have a written agreement. The Code of Conduct prescribes the process of client engagement. It includes mandatory requirements that the adviser will:
- [13.1] Explain and provide a copy of the Code of Conduct (clause 1.4(a) of the Code of Conduct).
- [13.2] Explain and provide a copy of their internal complaints procedure and the complaints and disciplinary procedures that are outlined in the Immigration Advisers Licensing Act 2007 (clause 9(b) and (c) of the Code of Conduct).
- [13.3] Set out fee and disbursements (clause 8(b) and (d) of the Code of Conduct).
- [13.4] Make their client aware in writing of the terms of an agreement for the provision of services, and all significant matters relating to it (clause 1.5(a) and (b) of the Code of Conduct).
- [13.5] Inform their client they are entitled to seek independent legal advice before entering into agreements (clause 1.5(c) of the Code of Conduct)
- [14] The Adviser was required to keep records of this process for seven years (clause 3(e) of the Code of Conduct).
- [15] I am satisfied the Adviser failed to set out in writing the terms of his agreement to provide immigration services and in doing so breached clause 1.5 of the Code of Conduct.
- [16] When a person is in New Zealand unlawfully, the circumstances are both serious and urgent. All licensed immigration advisers are required to understand this elementary principle. It is reinforced by clause 2.1(i) of the Code of Conduct that requires a licensed immigration adviser to:
- “take all reasonable steps to submit applications in a timely manner and ensure that clients maintain lawful immigration status.”
- [17] The requirement to uphold the integrity of New Zealand's immigration system (clause 2.1(f)) is also relevant.

- [18] The Complainant was in New Zealand unlawfully, that in itself made it important to deal with the situation in a timely manner.
- [19] While the Adviser could not prevent the Complainant having the status of being “unlawfully in New Zealand”, none-the-less, it was not acceptable to delay. The Complainant was at a risk of deportation and that could only become more urgent after the Adviser contacted Immigration New Zealand; as Immigration New Zealand would have a duty to take enforcement action when her circumstances were drawn to their attention, unless she could make a case for withholding that action
- [20] If the Complainant had a case to make for the issue of a visa, her interest required that her Adviser lodge the application promptly. Further delay, or only applying when a deportation process commenced, would create the impression that the Complainant did not respect New Zealand’s immigration law and policy. That could potentially prejudice the outcome
- [21] On any view, an unexplained delay of some 20 months appears to be delinquent. The Adviser did not explain his conduct.
- [22] I am satisfied the Adviser’s delay in lodging the application was due to a lack of care and diligence; accordingly, he breached clause 1.1(a) of the Code of Conduct.

Decision

- [23] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [24] The Adviser breached the Code of Conduct in the respects identified. These are grounds for complaint pursuant to section 44(2)(e) of the Act.

Submissions on Sanctions

- [25] The Tribunal has upheld the complaint; accordingly, pursuant to section 51 of the Act, it may impose sanctions.
- [26] 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.
- [27] The Tribunal requests the Complainant to identify the amount of the fee she seeks to have repaid.
- [28] 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

- [29] The timetable for submissions will be as follows:
- [29.1] The Authority and the Complainant are to make any submissions within 10 working days of the issue of this decision.
- [29.2] 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.

[29.3] The Authority and the Complainant may reply to any submissions made by the Adviser within 5 working days of him filing and serving those submissions.

DATED at WELLINGTON this 31st day of March 2014.

G D Pearson
Chair