

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

Decision No: [2014] NZIACDT 56

Reference No: IACDT 016/13

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Anafatai Moala**

Complainant

**AND**

**Alungamonu (Laki) Tangilanu (Monu)**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** In person

**Complainant:** In person

**Adviser:** In person

Date Issued: 29 April 2014

## DECISION

### Preliminary

- [1] The complainant engaged the adviser to assist with a request for a visa; she was in New Zealand without a current visa and therefore illegally. The adviser submitted the request and Immigration New Zealand declined the request.
- [2] The complaint is that the adviser took some four months to lodge the request and there was no justification for the delay.
- [3] The adviser was aware Immigration New Zealand declined the request. The complainant alleges the adviser failed to inform her and was not available when she made inquiries.
- [4] The adviser has not challenged the allegations, and the Tribunal has upheld the complaint on the grounds of delay in lodging the request and failing to communicate adequately with her client.

### The Statement of Complaint

- [5] The Registrar filed a statement of complaint. It recognises the complainant lodged the complaint on wider grounds, but the Registrar identified material that supports more limited grounds of complaint and the statement of complaint advances those grounds:
  - [5.1] The adviser breached the Licensed Immigration Advisers Code of Conduct 2010, in that she breached her duties:
    - [5.1.1] Of care, diligence, respect and professionalism under the Code of Conduct, in performing her services and carrying out instructions (clause 1.1(a) and (b)); and
    - [5.1.2] To maintain professional business practices, including confirming in writing to clients when applications have been lodged, with ongoing timely updates (clause 3(a)).
- [6] In outline, the background was:
  - [6.1] In November 2010, the adviser agreed to provide the complainant with professional assistance to request a visa under section 61 of the Immigration Act 2009. She had been in New Zealand without a current visa since 2007.
  - [6.2] She paid \$50 on 18 November and a further \$500 on 15 December 2010.
  - [6.3] The complainant understood the adviser submitted the request in December 2010, but could not contact the adviser after that time.
  - [6.4] Immigration New Zealand received a request for a work visa in April 2011, and declined the request in May 2011.
  - [6.5] The complainant did not know the adviser lodged the request, or that Immigration New Zealand declined it.
- [7] The statement of complaint provides particulars of the potential infringements of professional obligations. The particulars relate to both grounds:
 

*Clause 1.1(a) and (b) – the obligation to perform services and carry out lawful and informed instructions with: due care, diligence, respect and professionalism, and*

*Clause 3(a) – the obligation to maintain professional business practices, including confirming in writing when she lodged applications and providing ongoing timely updates.*

  - [7.1] The complainant engaged the adviser to provide professional assistance in November 2010 and paid for the service in December 2010.

- [7.2] The adviser failed to lodge the application for four months. That may evidence a lack of diligence.
- [7.3] The adviser was not available and did not tell the complainant she had lodged the request, or that Immigration New Zealand declined it.
- [7.4] The adviser failed to:
- [7.4.1] Perform her services with care and diligence (clause 1.1(a));
  - [7.4.2] Carryout her instructions with care, diligence, respect and professionalism (clause 1.1 (b)); and
  - [7.4.3] Provide the complainant with written confirmation when the adviser filed the application, and that Immigration New Zealand declined it (clause 3(a)).

### **Reply to the Statement of Complaint**

#### *The complainant*

- [8] The complainant did not file a statement of reply, and was not required to do so unless challenging the statement of complaint. As there was no challenge, it is only necessary to determine the aspects of the complaint in respect of which the statement of complaint identifies supporting grounds.

#### *The adviser*

- [9] The adviser did not file a statement of reply and, like the complainant, was only required to do so if challenging it.

### **Discussion**

- [10] I have reviewed the statement of complaint, and the documents filed in support. I am satisfied the complaint must be upheld in the respects where the statement of complaint has identified grounds and evidence in support.

#### *Clause 1.1(a) and (b) – the obligation to perform services and carryout instructions with: due care, diligence, respect and professionalism*

- [11] The complainant was in New Zealand without a permit, Immigration New Zealand would potentially move to deport her. It was important to act promptly and ensure Immigration New Zealand received the complainant's request for a visa.
- [12] It is elementary that the client of a professional person is entitled to accurate and timely information regarding the services the professional has agreed to perform.
- [13] In this case, the adviser has provided no explanation and allowed the complainant to think processes were in train after her request failed. The adviser did not provide the means for her client to contact her either.
- [14] The adviser has provided no explanation for the delay in lodging the request, or the failure to inform her client what was happening.
- [15] The conduct was disrespectful to her client and amounts to a lack of care, diligence and professionalism. I am satisfied the adviser failed to address the issues arising from her instructions promptly, it was pressing and of serious concern to her client.
- [16] Accordingly, I find she breached clause 1.1(a) and (b) of the Code.

*Clauses 3(a) – obligation to provide timely updates*

- [17] The same communication failures that amount to a breach of clause 1.1(a) of the Code are also a breach of clause 3(a).
- [18] The latter provision has an express requirement that advisers provide written confirmation that applications are lodged, and then provide timely updates, even where the information is not critical. In this case, the information was critical.
- [19] Accordingly, I also find the adviser breached this provision of the Code.

**Decision**

- [20] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [21] 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.
- [22] In other respects the complaint is dismissed.

**Submissions on Sanctions**

- [23] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [24] 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.
- [25] 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*

- [26] The timetable for submissions will be as follows:
- [26.1] The Authority and the complainants are to make any submissions within 10 working days of the issue of this decision.
- [26.2] The adviser is to make any further submissions (whether or not the Authority or the complainant makes submissions) within 15 working days of the issue of this decision.
- [26.3] 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 29<sup>th</sup> day of April 2014.

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**G D Pearson**  
Chair