

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

Decision No: [2014] NZIACDT 58

Reference No: IACDT 011/12

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Maumi Ngalu

Complainant

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

DECISION

REPRESENTATION:

Registrar: In person

Complainant: In person

Adviser: In person

Date Issued: 30 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.
- [2] The grounds of complaint are uncomplicated. The adviser submitted the request and Immigration New Zealand declined the request. The adviser was aware of that. The complaint alleges the adviser failed to inform her that Immigration New Zealand declined the request, and instead said they were still processing it.
- [3] Immigration New Zealand commenced deportation processes and the complainant was deported.
- [4] The adviser has not challenged the allegations and the Tribunal has upheld the complaint.

The Statement of Complaint

- [5] The Registrar filed a statement of complaint. It recognises the complainant lodged the initial complaint on wider grounds, but the Registrar has identified material that supports more limited grounds of complaint and so has advanced it on the following basis:
 - [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 (clause 1.1(a)); and
 - [5.1.2] In relation to providing timely updates (clause 3(a)).
- [6] In outline, the background was:
 - [6.1] On 5 April 2011, the adviser agreed to provide the complainant with professional assistance to request a visa under section 61 of the Immigration Act 2009. The terms were set out in a written agreement.
 - [6.2] The adviser submitted the section 61 visa application to Immigration New Zealand on 11 April 2011.
 - [6.3] On 20 April 2011, Immigration New Zealand declined the application and informed the adviser.
 - [6.4] The adviser did not inform the complainant of the outcome of the request. The complainant sought information and the adviser failed to return telephone calls.
 - [6.5] On one occasion, the adviser's husband told the complainant her request was unsuccessful. The adviser later said that was wrong and that Immigration New Zealand was still processing the request.
 - [6.6] In August 2011, Immigration New Zealand served the complainant with a deportation order.
- [7] The statement of complaint provides particulars of the alleged infringements of professional obligations. The particulars relate to both grounds of complaint:

Clauses 1.1(a) and 3(a) – the obligation to perform services with: due care, diligence, respect and professionalism, and the obligation to provide ongoing timely updates.

 - [7.1] The adviser did not inform the complainant when Immigration New Zealand declined the request for a visa. Instead, she provided misinformation.

- [7.2] That conduct breached the duty under clause 3 of the Code to provide ongoing updates and lacked the care, respect, diligence and professionalism required by clause 1.1(a).
- [7.3] That conduct deprived the complainant of the opportunity of getting further advice before Immigration New Zealand served a deportation order.

Reply to the Statement of Complaint

The complainant

- [8] The complainant did not file a statement of reply to the March 2014 statement of complaint, 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 the statement of complaint.

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 supporting them.
- [11] In her response to the initial complaint, the adviser denied the allegation that she did not inform the complainant of the result of the s 61 application. The adviser has provided no records that support this explanation. She was obliged to keep records (Code clause 3) if she did that.
- [12] I prefer the account given by the complainant. The adviser's decision not to lodge a statement of reply in any case involves her abandoning any challenge to the facts set out in the statement of complaint.

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

- [13] It is elementary that the client of a professional is entitled to accurate and timely information regarding the services the professional has agreed to perform.
- [14] In this case, the adviser has provided no explanation and allowed the complainant to think processes were in train, when she was subject to deportation. She later provided false information.
- [15] The conduct is disrespectful to her client and amounts to evidence of lack of care, diligence and professionalism. I am satisfied the adviser failed to address an issue arising from her instructions that was pressing and of serious concern to her client.
- [16] Accordingly, I find she breached the Code in this respect.

Clauses 3(a) – obligation to provide timely updates

- [17] The same facts that amounted 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 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 complainant 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 her filing and serving those submissions.

DATED at WELLINGTON this 30th day of April 2014.

G D Pearson
Chair