

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

Decision No: [2014] NZIACDT 76

Reference No: IACDT 002/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Langafaiva and Moeakiola Pole**

Complainants

**AND**

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

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** In person

**Complainant:** Mr R Small, Pacific Legal Ltd, Wellington.

**Adviser:** In person

Date Issued: 26 August 2014

## DECISION

### Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal. The grounds alleged in the Statement of Complaint are that the adviser was negligent and breached the Immigration Advisers Code of Conduct 2010 (the Code).
- [2] The relevant events relate to a point in time when the complainants and their family were in New Zealand unlawfully. However, the family had had their residence application referred back to Immigration New Zealand by the Residence Review Board. The complainants paid Ms Tangilanu to apply for visas to end their unlawful status, and she was dealing with the residence application.
- [3] Ms Tangilanu took some three months to apply for visas and then, despite clear warnings of the consequences, failed to pass on the information Immigration New Zealand required to re-evaluate the residence application. The family's residence application failed as a result.
- [4] Ms Tangilanu did not challenge the grounds of complaint or the material supporting them.
- [5] The Tribunal has upheld the complaint based on negligence and a failure to meet her obligations of care, diligence and professionalism under the Code.

### The complaint

- [6] The Registrar filed a statement of complaint, she put forward the following background as the basis for the complaint:
  - [6.1] Ms Tangilanu became a licensed immigration adviser in September 2010. She held a provisional licence. Prior to that time, she had lawfully provided immigration services to the complainants and their family as there was no requirement to have a licence when she gave the advice.
  - [6.2] The events that give rise to the complaint commenced in April 2011. At that point, the Residence Review Board had referred a residence application for the complainants, and their family back to Immigration New Zealand for reconsideration. The complainants engaged Ms Tangilanu to assist with an application for work visas. They paid her \$620 towards the fee for that service.
  - [6.3] Some three months later, on 8 July 2011 Ms Tangilanu lodged the applications for work visas under section 61 of the Immigration Act. At this time, Immigration New Zealand was dealing with the residence application referred back by the Residence Review Board. Immigration New Zealand sent written requests to Ms Tangilanu seeking further documents on 7 July, 28 July and 4 August 2011 and gave a final deadline of 10 August 2011 to provide the information requested. Ms Tangilanu did not provide the information to Immigration New Zealand, though the complainants had given her that information.
  - [6.4] Immigration New Zealand declined the request for work visas on 30 August 2011, and declined the residence application on 2 September 2011. Immigration New Zealand declined the applications due to the failure to provide information.
- [7] The Registrar identified the potential infringements of professional standards.
 

*Negligence (section 44(2)(a) of the Immigration Advisers Licensing Act 2007).*
- [8] Ms Tangilanu was potentially negligent as she had the necessary information from her clients to respond to Immigration New Zealand's requests for information, but failed to provide it.

*Breach of the Code in relation to duties of care, diligence, respect and professionalism (clause 1.1(a) and (b)).*

[9] Ms Tangilanu failed to act on her instructions to apply for work visa for some three months, which potentially breaches the Code in the following respects:

[9.1] A failure to perform services with due care and diligence (clause 1.1(a)); and

[9.2] Failure to carry out instructions with due care, diligence and professionalism (clause 1.1(b)).

### **The responses**

[10] Neither Ms Tangilanu nor the complainants responded to the Statement of Complaint. They were not required to do so if they accepted that it set out the facts and matters in dispute appropriately.

### **Discussion**

#### *The standard of proof*

[11] 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 at [55].

#### *The material before the Tribunal*

[12] The Registrar provided a chronology, and supporting documentation. The parties have not disputed this record or added to it.

[13] I am satisfied this material supports the grounds of complaint alleged.

#### *Negligence (section 44(2)(a) of the Immigration Advisers Licensing Act 2007).*

[14] Ms Tangilanu's clients were in a situation where their circumstances were critical. They were in New Zealand unlawfully, but the Residence Review Board had referred their application for residence back to Immigration New Zealand. A residence application is virtually always a very significant matter for migrants, it is evident that was the case for the complainants and their family.

[15] Ms Tangilanu does not challenge the allegation she had the information required to respond to Immigration New Zealand's inquiries, or that she failed to do so.

[16] Immigration New Zealand declined the residence application because it did not receive the information necessary to process the residence application. It only did so after clear warnings to Ms Tangilanu that this would be the outcome if she did not provide the information.

[17] I am satisfied Ms Tangilanu was negligent, indeed grossly so. The matter was vital to the complainants and their family. Ms Tangilanu had clear warnings from Immigration New Zealand of the consequences of failing to act; she failed to act despite holding the necessary information and having the professional duty to provide the information.

[18] I am satisfied Ms Tangilanu was negligent in the course of carrying out her professional engagement for the complainants, which is a ground for complaint under section 44(2)(a) of the Act.

*Breach of the Code in relation to duties of care, diligence, respect and professionalism (clause 1.1(a) and (b)).*

[19] Ms Tangilanu's failure to apply for a work visa promptly was a failure to provide her services with due care and diligence. The background discussed in relation to negligence is relevant to this ground also. The complainants and their family were in New Zealand unlawfully but the Residence Review Board had given them something of a reprieve. The purpose of the work

visa was to allow the family to regain a lawful status in New Zealand. That was important for two reasons; firstly, the family could only be in New Zealand, and work lawfully, with the visas. That was in itself important. In addition, continuing with an unlawful status could have compromised the residence application. There was an urgent imperative to lodge the application, and Ms Tangilanu's unexplained failure to do so promptly is explicable only in terms of lack of care and diligence in performing her services.

- [20] The same reasoning applies to Ms Tangilanu's failure to carry out the complainants' instructions. Her conduct lacked care, diligence and professionalism.
- [21] Accordingly, I am satisfied the adviser breached clauses 1.1(a) and (b) of the Code, which are grounds for complaint under section 44(2)(e) of the Act.

### **Decision**

- [22] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [23] The adviser was negligent and breached the Code in the respects identified.

### **Submissions on Sanctions**

- [24] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [25] The Authority and the complainants 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.
- [26] 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*

- [27] The timetable for submissions will be as follows:
- [27.1] The Authority and the complainants are to make any submissions within 10 working days of the issue of this decision.
- [27.2] The adviser is to make any further submissions (whether or not the Authority or the complainants make submissions) within 15 working days of the issue of this decision.
- [27.3] The Authority and the complainants may reply to any submissions made by the adviser within 5 working days of her filing and serving those submissions.

**DATED** at Wellington this 26<sup>th</sup> day of August 2014

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**G D Pearson**  
Chair