

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

Decision No: [2015] NZIACDT 32

Reference No: IACDT 046/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Taufa Uatahausi and 'Ana Mohulamu  
Uatahausi**

Complainant

**AND**

**Hakaoro Hakaoro**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** Ms K England, Ministry of Business Innovation and Employment, Auckland.

**Complainant:** Mr N Tupou, Barrister, Tupou Law, Auckland

**Adviser:** In person

Date Issued: 17 March 2015

## DECISION

### Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal.
- [2] The complaint arose when Mr Hakaoro accepted instructions to assist the complainants with a request for a visa; they wished to remain in New Zealand after their temporary permits expired. The circumstances alleged are that:
- [2.1] Immigration New Zealand identified why the complainants could not remain in New Zealand beyond the 9 months allowed. Mr Hakaoro told them they could expect to apply successfully to renew their visas.
- [2.2] Mr Hakaoro wrote to Immigration New Zealand, but he provided reasons that supported or exacerbated the concerns Immigration New Zealand raised.
- [2.3] After Mr Hakaoro was allowed more time, he provided further unsatisfactory reasons to Immigration New Zealand.
- [3] The complaint is that Mr Hakaoro's breached his duties to act with due care and professionalism, when he unrealistically told the complainants their application would likely be successful, and provided inadequate submissions to Immigration New Zealand. They in fact supported Immigration New Zealand's concerns.
- [4] Mr Hakaoro has not responded to the complaint with an explanation or justification addressing the grounds of complaint.
- [5] The Tribunal has concluded it must uphold the complaint, as the material before it establishes the facts, and they establish a lack of care and professionalism in dealing with the complainants' instructions.

### The complaint

- [6] The Registrar filed a statement of complaint, she put forward the following background as the basis for the complaint:
- [6.1] On 7 August 2012, the complainants submitted a visitor visa application. They had been in New Zealand since 18 November 2011, and their visas expired on 19 August 2012.
- [6.2] On 13 August 2012, Immigration New Zealand sent them an email regarding their application. They engaged Mr Hakaoro to assist them on 15 August, and paid him \$1,000 for his services.
- [6.3] On 17 August 2012 Immigration New Zealand sent the complainants a letter identifying three concerns:
- [6.3.1] They may not be *bona fide*. They did not have jobs or other ties that provided an incentive to return to their country of origin.
- [6.3.2] They did not have arrangements to return to their country of origin.
- [6.3.3] The maximum time sponsored visitors, which they were, could stay, was nine months, and they were not eligible to remain after that time.
- [6.4] Mr Hakaoro responded to Immigration New Zealand the same day, and said the complainants were applying for a visa as an exception to immigration instructions. Mr Hakaoro provided the following circumstances to justify this course:
- [6.4.1] The complainants were related to a child who was having his seventh birthday in November;

- [6.4.2] Their life in their country of origin was uncertain, and their opportunities in a number of respects better in New Zealand;
  - [6.4.3] They were caregivers for up to five of their relatives' children, and that contributed to New Zealand.
  - [6.4.4] They were involved in a local church.
  - [6.4.5] They were eligible to apply for New Zealand residence, and would do so if granted a further visa.
- [6.5] On 22 August 2012, Immigration New Zealand declined the application on the grounds it did not meet immigration instructions, and they did not consider the matters raised in the letter justified a different result.
- [6.6] On 23 August 2012, Mr Hakaoro telephoned Immigration New Zealand and requested an extension of time to reply to Immigration New Zealand's letter of 17 August 2012. Immigration New Zealand did allow further time. Mr Hakaoro emailed Immigration New Zealand on 10 September 2012 with further grounds, namely the complainants wanted to attend another child's birthday celebration, were bona fide visitors and one of them was a police officer in their country of origin.
- [6.7] On 11 September 2012, Immigration New Zealand again declined the application.
- [7] The Registrar identified potential infringement of professional standards during the course of Mr Hakaoro's engagement. Namely:
- [7.1] That Mr Hakaoro breached clause 1.1(a) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code) as he failed to provide his services with due care, diligence, respect and professionalism. The grounds were:
    - [7.1.1] The complainants had been in New Zealand for the maximum of 9 months when they instructed him. He told them their application to remain in New Zealand would be successful.
    - [7.1.2] Immigration New Zealand in the letter of 17 August 2012 identified why the complainants could not remain in New Zealand beyond the 9 months allowed. Mr Hakaoro's letter the following day did not address any of those concerns.
    - [7.1.3] Mr Hakaoro's letter of 18 August 2012 provided reasons that supported or exacerbated the concerns Immigration New Zealand raised in their letter of 17 August 2012.
    - [7.1.4] After Immigration New Zealand allowed Mr Hakaoro more time, he provided further unsatisfactory reasons, and failed to provide supporting evidence.
    - [7.1.5] Mr Hakaoro breached his duties to act with due care and professionalism, when he unrealistically told the complainants their application would be successful; and when he provided inadequate submissions to Immigration New Zealand, which in fact supported Immigration New Zealand's concerns.

### **The responses**

- [8] Mr Hakaoro did not file a statement of reply. He belatedly applied to have the complaint referred back to the Registrar. In a separate decision, the Tribunal declined that application, on the grounds there is no justification for Mr Hakaoro's failure to answer the complaint.
- [9] The complainant did not file a statement of reply. They were not required to do so if they accepted the Registrar's statement of complaint set out the facts and matters in dispute appropriately.

## Discussion

### *The standard of proof*

- [10] The Tribunal determines 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*

- [11] The Registrar provided a chronology, and supporting documentation. The parties have not disputed this record or added to it.
- [12] I am satisfied this material supports the grounds of complaint alleged.
- [13] Mr Hakaoro has had many opportunities to provide an explanation, and has wholly failed to answer the complaint. It is not a complicated complaint, and the Registrar has provided the documentation supporting it.

### *The facts*

- [14] The facts are uncomplicated, and essentially rely on the documentation the Registrar presented to the Tribunal. The principal issue is evaluating the material; the Tribunal sits as a specialist Tribunal and is required to evaluate the work of licensed immigration advisers<sup>1</sup>. In the present case this is uncomplicated, as Immigration New Zealand put Mr Hakaoro on notice of the correct issues, and it is simply necessary to evaluate his response to the identified concerns.

### *The charge of professional misconduct*

- [15] The professional misconduct potentially arising from the facts before the Tribunal, are set out above in paragraph [7]. The facts and documentary material properly found the grounds. Mr Hakaoro breached the 2010 Code due to the facts and circumstances identified in that paragraph.
- [16] I find Mr Hakaoro breached clause 1.1(a) of the 2010 Code. Any competent licensed immigration adviser ought to have recognised the complainants were in a difficult situation when they consulted Mr Hakaoro. They could imperil their prospects of returning to New Zealand, if they did not comply with their visas. They had family in New Zealand, and that was potentially a significant matter for them. It was wholly inappropriate to say they could expect to apply successfully to remain in New Zealand. They were entitled to a clear explanation that remaining in New Zealand carried risks, unless there were truly compelling circumstances. There was none.
- [17] Mr Hakaoro then wholly failed to have regard to, and answer the issues Immigration New Zealand raised. He pursued nothing else of merit that could, or should have caused Immigration New Zealand to take a different view. They did not take a different view, and reaffirmed their position.
- [18] I am satisfied those matters evidence a lack of care and professionalism in dealing with the complainants' instructions.

## Decision

- [19] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [20] Mr Hakaoro breached the 2010 Code in the respects identified; that is a ground for complaint pursuant to section 44(2) of the Act.

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<sup>1</sup> *Loh & Gu-Chang v IACDT & IAA* [2014] NZHC 1166, at Para.[64]

**Submissions on Sanctions**

- [21] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [22] 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, Mr Hakaoro is entitled to make submissions and respond to any submissions from the other parties.
- [23] 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.
- [24] The Registrar is requested to report on the extent to which Mr Hakaoro has complied with previous orders the Tribunal has imposed in respect of sanctions, and the steps she has taken to enforce the orders.

*Timetable*

- [25] The timetable for submissions will be as follows:
- [25.1] The Authority and the complainants are to make any submissions within 10 working days of the issue of this decision.
- [25.2] 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.
- [25.3] The Authority and the complainants may reply to any submissions made by the adviser within 5 working days of him filing and serving those submissions.

**DATED** at Wellington this 17<sup>th</sup> day of March 2015

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**G D Pearson**  
Chair