

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

Decision No: [2015] NZIACDT 96

Reference No: IACDT 050/12

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Michael Carley (Immigration New  
Zealand)**

Complainant

**AND**

**E B**

Adviser

---

**DECISION**

---

**REPRESENTATION:**

**Registrar:** Alastair Dumbleton, solicitor, Ministry of Business, Innovation and Employment,  
Auckland

**Complainant:** Mr I Murray, lawyer, Crown Law Office, Wellington and Mr A McIlroy, solicitor, Ministry  
of Business, Innovation and Employment, Wellington

**Adviser:** Mr S Laurent, solicitor, Laurent Law, Auckland.

Date Issued: 17 November 2015

## DECISION

### Preliminary

- [1] This complaint involves fraudulent documentation supporting student visa applications. The events arose in an offshore country. Ms B is a licensed immigration adviser; her practice was located both there and in a secondary office.
- [2] Immigration New Zealand received three separate applications for student visas with forged documentation purporting to be from a particular cookery school; Ms B was the licensed immigration adviser who submitted the three applications and that documentation. Immigration New Zealand alleged that Ms B was involved in the production of the fraudulent documentation, and she presented it to Immigration New Zealand dishonestly. Alternatively, Immigration New Zealand alleges she failed to manage her practice properly, thus allowing others to produce fraudulent documents in her name and without proper scrutiny.
- [3] Ms B's response was to accept the documentation was fraudulent, but say she did not know that at the time. She said that when she became aware applicants were routinely supporting their applications with forged certificates and the like, she contacted Immigration New Zealand and submitted all documentation to an independent verifying body, which Immigration New Zealand trusted. Furthermore, she took serious steps to supervise and vet staff within her practice.
- [4] To determine this complaint, it is necessary to decide whether the evidence establishes that Ms B knew the documents she submitted to Immigration New Zealand were fraudulent when she submitted them and, whether she took sufficient care in responding to the reality that her practice was required to manage potential immigration fraud.
- [5] The Tribunal has dismissed the complaint, having found Ms B acted honestly, and in accordance with her professional obligations.

### The Complaint

- [6] The Registrar filed a statement of complaint. It set out a factual narrative, and identified potential breaches of the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). The key elements in the narrative were:
  - [6.1] Between June 2011 and November 2011, Ms B lodged three applications for student visas with Immigration New Zealand. Each contained documents relating to a cookery school (the Cookery School). The International Organisation for Migration (IOM) ultimately determined the documents were fraudulent.
  - [6.2] Immigration New Zealand declined the applications and questioned the applicant regarding the fraudulent documents. Immigration New Zealand concluded the applicants were not aware of the fraudulent documents.
  - [6.3] One of the applicants submitted a second application with Ms B's assistance. That application included a letter that explained the fraudulent documentation, and purportedly submitted a letter from the Cookery School. Later IOM assessed this letter, purporting to be from the Cookery School, as fraudulent.
- [7] The Statement of Complaint identified two potential breaches of the 2010 Code, and one arising under the Act. In essence they were:
  - [7.1] Ms B breached clause 1.1(a) and (b) of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code) in that she did not perform her services, and carry out her instructions with due care, diligence and professionalism. The particulars were:

- [7.1.1] She was the sole licensee in the practice where she worked since March 2009, and was responsible for all immigration work in the practice.
- [7.1.2] She was aware of the applications, which she submitted under her licence, and accordingly was responsible for them.
- [7.1.3] The documents were fraudulent, and Ms B had not carried out her duties with due care, diligence and professionalism.
- [7.2] Ms B was negligent, which is a ground for complaint under section 44(2)(a) of the Immigration Advisers Licensing Act 2007 (the Act). The particulars were:
- [7.2.1] Ms B knew from three previous applications that certificates from the Cookery School were likely fraudulent.
- [7.2.2] She lodged the second application with further fraudulent information, as she negligently failed to make adequate inquiries.
- [8] The Registrar referred the complaint on those grounds; however, Immigration New Zealand (as the complainant) lodged the complaint on wider grounds, namely that Ms B's conduct was dishonest and misleading. Immigration New Zealand prosecuted the complaint and supported each of the grounds, including dishonest and misleading behaviour.
- [9] Accordingly, the Tribunal will determine the complaint on the basis all of the grounds of complaint including Immigration New Zealand's wider grounds extending to dishonesty.

### Responses to the Statement of Complaint

- [10] It suffices to say both Immigration New Zealand and Ms B did not accept the Registrar's evaluation of the complaint. Ms B rejected the allegations of wrongdoing in whole, and Immigration New Zealand pursued the allegations of dishonest and misleading behaviour, which the Registrar did not support. The issues are essentially factual. The Tribunal is required to hear complaints on the papers under section 49 of the Act; however, in appropriate cases it may conduct an oral hearing<sup>1</sup>. Given the significance of credibility findings that are central to the outcome of this complaint, the Tribunal conducted an oral hearing.

### Evidence

- [11] The Tribunal has a body of written material before it, some filed with the Statement of Complaint and some filed subsequently by the parties. The evidential issues were more difficult because the main events occurred in an offshore country. Ms B's practice had offices in two locations. Her husband is a national of the offshore country, and he is active in the practice in the offshore country but not in the secondary office.
- [12] The hearing was in New Zealand; accordingly, the Tribunal accepted witnesses could give evidence by video link. As it transpired, some of the proposed witnesses were not available. It is accordingly, necessary to have regard to the written record, oral evidence, and the witness statements of witnesses who were not available for cross-examination. The formal rules of evidence do not apply to the Tribunal; however, the principles do go to weight. I will have regard to that when evaluating the evidence.

### Discussion

#### *The standard of proof*

- [13] The Tribunal determines facts on the balance of probabilities; however, the test must be applied with regard to the gravity of the potential finding: *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [55].

---

<sup>1</sup> Section 49 provides for appearances, and the Schedule to the Act includes powers relating to oral hearings.

- [14] The critical finding in this case concerns allegations of dishonesty; in that respect, the gravity is at the highest end of the scale and I determine the issue accordingly. Other grounds of complaint are less serious, however, my evaluation of the evidence does not reach such a fine balance that this decision turns on the onus of proof, and the nuances of the standard of proof. I have made positive findings in Ms B's favour.

### *Background*

- [15] It is necessary to give some context to the circumstances that gave rise to this complaint.
- [16] Generally, unless the service provider is a licensed immigration adviser or otherwise exempt, the Act treats the provision of immigration services as a criminal offence, whether provided in New Zealand or elsewhere. The main exempt category is lawyers currently practising. However, section 11(h) of the Act also exempts persons who provide immigration advice outside New Zealand if they only do so only in respect of student visas. The applications in issue all relate to student visas.
- [17] It is common ground that fraudulent documentation supported the relevant applications for student visas. The parties agree the IOM makes professional assessments of immigration documentation, and it is reliable in detecting fraud. Furthermore, the parties agree that there was a substantial volume of fraudulent documentation generated in the offshore country to support applications for student visas at the relevant time.
- [18] None of the events in contention occurred in Ms B's secondary office, they all arose in her offshore office. Ms B's evidence is that her husband was involved in her offshore office, and that as a national of the offshore country he had the skills to operate in that community with assurance; whereas, she lacked the language and experience to do so. The essence of Ms B's explanation is that while she accepts the relevant documents were fraudulent, she did not know that at the time. She found herself in an environment where she became aware that systematic immigration fraud was common. She took steps to deal with the situation by contacting Immigration New Zealand, and submitting all documentation supporting applications to IOM before lodging them with Immigration New Zealand. She was concerned there were potentially persons within her practice who deceived her; but she took adequate and reasonable steps at the time given the circumstances confronting her.
- [19] To evaluate the grounds of complaint I am required to determine whether Ms B either deliberately assisted with providing fraudulent documentation, or she failed to take adequate steps to prevent others from using her as a conduit for fraudulent documentation. Ms B says that others duped her with fraudulent documentation. She is uncertain as to who was orchestrating the deception, and who was aware of it. Whether the applicants were parties to deception or not does not determine whether I accept Ms B's claim, it is simply one of the circumstances going to the credibility of the evidence.

### *Immigration New Zealand's case regarding student visa applications from the offshore country*

- [20] Ms Gardiner, a witness for Immigration New Zealand, gave evidence regarding the environment in which Immigration New Zealand detected fraudulent student visa applications from the offshore country. Immigration New Zealand employed her as a risk manager in its Bangkok office at the material time. She said that in early 2011 Immigration New Zealand declined a significant number of applications from Ms B's practice due to false documentation. Ms Gardiner said that Ms B's practice appeared to be a common link for false documents relating to the Cookery School, and their only link appeared to be Ms B's practice.
- [21] She also gave evidence of IOM reporting that two employees in Ms B's practice had attempted to bribe IOM. However, the IOM official did not give evidence, and the material did not indicate Ms B was involved personally in the bribery attempt.
- [22] Immigration New Zealand also provided evidence in respect of each of the three applications that were the subject of the complaint.

*Ms B's case*

- [23] Ms B does not dispute that she was responsible for submitting fraudulent documentation to Immigration New Zealand. Accordingly, rather than reviewing the detail of Immigration New Zealand's case I will commence with Ms B's explanation as to how this occurred, despite, as she says, meeting her professional obligations.
- [24] At the time the complaints arose Ms B was primarily in New Zealand, but also spent time in the offshore country. Ms B's husband supervised the staff in the offshore office.
- [25] Ms B said that in August 2010 she was aware there were a high number of applicants for student visas who provided fraudulent documentation. She approached Immigration New Zealand's office in Bangkok regarding the issue. This was the office where Immigration New Zealand processed student visa applications from the offshore country. She said she was conscious she was a foreigner in the offshore country, and her language skills and the cultural environment were barriers to her personally investigating documentation effectively. She accordingly developed a strategy of submitting material to IOM before filing it with Immigration New Zealand. She did not find this a complete answer to fraudulent documentation either. She said she sent every document Immigration New Zealand now relies on as evidence of her dishonestly to IOM before submitting it to Immigration New Zealand.
- [26] Ms B said that after she lodged documents with Immigration New Zealand, IOM would report to Immigration New Zealand. However, she has not seen these reports, as they are not part of the documentation relating to the complaint. Ms B said that despite the pre-submission verification from IOM, the first notice of potential fraud occurred when Immigration New Zealand raised "potentially prejudicial information" queries after she submitted documents. Ms B had suspicions that staff in her practice were procuring and submitting fraudulent information, she suspected students used "subagents" who would procure fraudulent documentation that they presented to her, and she was aware of attempts to use the name of her practice by illicit operators.
- [27] In addition to her meeting with Immigration New Zealand to discuss her concerns, and the pre-lodgement submission of documentation to IOM, Ms B suspended the practice's work with student visa applications. She then had workplace cameras installed. Because of her actions, the police arrested one staff member for fraud. Ms B said she was still not satisfied she had been able to eradicate student visa fraud, and greatly reduced the work she accepted in that area.
- [28] In short, Ms B's case was that fraudulent documentation to procure student visas was very common in the offshore country, she was open with Immigration New Zealand regarding the issue and sought their guidance, she used independent verification, and took robust steps to manage the issues in her practice. Immigration New Zealand did not challenge her evidence regarding those steps.
- [29] Ms B provided an affidavit from one of the two employees who allegedly attempted to bribe IOM. One of the employees denied having attempted to bribe IOM, and said that in fact the IOM official had attempted to solicit a sexual relationship with her.

*Evaluation of the evidence*

- [30] The Statement of Complaint alleges that Ms B's submission of fraudulent documentation may be sufficient to establish she was responsible for the material. Often that will be the case, and in the absence of further evidence, a person's actions may reasonably be considered to be both informed and intentional. That is all the more applicable in a context where they have professional duties, and the expertise to evaluate the relevant material. However, I have no grounds to reject Ms B's explanation as implausible. She accepts Ms Gardiner's view that visa fraud was common in the offshore country, and that a substantial volume presented in documents submitted from Ms B's practice.
- [31] Ms B also says that there was something of a cottage industry in forging documents to support immigration applications in the offshore country. That is not particularly surprising, given that the offshore country is a country, where civil war gravely disrupted society in the relatively recent past. That history in some cases makes it difficult to investigate records of employment and education. The routine use of IOM to assess documents also attests to the reality of the

prevalence of immigration fraud, as do the particulars of this complaint and Ms Gardiner's evidence. Immigration New Zealand categorises the offshore country as high risk for visa fraud. Ms B says she now suspects that many of her clients first contacted a subagent, who would assemble documentation, some of which was forged or otherwise crafted to misrepresent the applicant's true background. The applicant would then present this material to Ms B or a staff member as genuine.

- [32] Ms B was frank; she came to suspect staff members could have been aware of these practices, and potentially assembled documentation in the same way as subagents.
- [33] In relation to the alleged attempt to bribe IOM, the officer in IOM who made the allegation did not give evidence. The written material does not indicate Ms B was a party to the attempted bribery. The employee allegedly primarily involved in attempted bribery provided an affidavit, and she made a counter allegation against the IOM official. She did not present for cross-examination. Ms B produced some telephone records consistent with the counter allegation. Given this case requires proof at the higher end of the scale, I do not find the allegations of bribery, and counter allegations of solicitation from persons who have not presented for cross-examination at all probative, and in any case does not refer to any actions by Ms B. Accordingly, I disregard this evidence.
- [34] In her evidence, Ms Gardiner attached significance to the three apparently unconnected applicants all producing forged certificates purporting to be from the Cookery School. However, the potential reasons for the common element include someone in Ms B's practice, a common subagent or associated subagents. Ms B also produced evidence that the Cookery School advertised in Newspapers offering scholarships and visa services for New Zealand. There is no evidence connecting Ms B with the Cookery School or forged certificates relating to it. On the contrary, there is evidence she referred each of the forged certificates to IOM for independent evaluation before submitting them to Immigration New Zealand. Accordingly, I find the reasons for the three apparently independent applicants using forged certificates speculative. In any case, the only issue of real significance is that the evidence does not establish Ms B was the common link, or her lack of care created the opportunity for the link.
- [35] Accordingly, I am not in a position to infer from the fact that Ms B produced fraudulent documentation that she knew that documentation was fraudulent at the time.
- [36] It is also necessary to consider the level of care required from Ms B. There is no doubt a licensed immigration adviser is generally wholly responsible for the practice they conduct. That responsibility is personalised as clause 2.1(h) of the 2010 Code requires a written authority from clients for the licensed immigration adviser to act on their behalf; and as already noted it is a criminal offence for any person who is not a licensed immigration adviser or exempt to provide immigration services. However, persons providing immigration services outside New Zealand that exclusively relate to student visas are exempt.
- [37] Ms B gave evidence that a number of people in her practice did provide immigration services. Immigration New Zealand did not challenge their exempt status. The question arises as to what level of supervision of exempt persons was required from Ms B, and what other steps were necessary. Clause 3 of the 2010 Code does require professional business practices relating to staff management; and it is plainly unacceptable for a licensed immigration adviser to be associated with a practice where persons are given an impression services are provided in accordance with the standards of the Act and the 2010 Code if that is not the case.
- [38] Ms B makes two points; first, there was a barrier to her exercising complete control due to language barriers, and lack of experience in the offshore country. She believed she managed this risk as her husband who did not have those impediments was exercising control over staff. When it became evident to her, that the control she exercised was not preventing fraudulent applications she took three actions:
- [38.1] She personally approached Immigration New Zealand, explained her concerns and discussed using IOM to make pre-lodgement assessments. In short, she would use an organisation Immigration New Zealand trusted to evaluate the documentation before presenting it to Immigration New Zealand.
- [38.2] She approached IOM, and disclosed her concerns and strategy to minimise fraud; and did submit all documentation before filing it with Immigration New Zealand.

- [38.3] She largely stopped accepting work relating to student visa applications for a period, and altered the management of her practice in an attempt to minimise the risk of fraud.
- [39] I have no grounds to reject Ms B's evidence regarding the steps she has taken. I have no basis to regard these steps as unsatisfactory or inadequate; they are the sort of actions a competent, informed and reasonable licensed immigration adviser might take in the circumstances. Accordingly, I cannot infer from the fact that Ms B presented fraudulent documents that she did so through a lack of care, diligence, professionalism, negligence, or dishonesty.
- [40] While those findings may be an answer to the complaint, there was specific evidence relating to each of the three instances of forged documentation on which Immigration New Zealand founded its complaint. Accordingly, I test Ms B's evidence against the three specific cases.

*The expert evidence on emails and document production*

- [41] Mr Chappell gave evidence for Immigration New Zealand regarding the electronic production and transmission of the fraudulent documentation, and Dr Bandara gave evidence on the same issue for Ms B. There were some differences between their views of the evidence, but the differences were nuances rather than any fundamental divergence. Nothing determinative turns on the differences between the two experts.
- [42] Significantly, neither Mr Chappell nor Dr Bandara suggested any of the forged material either emanated from Ms B's New Zealand office, or passed through that office. Accordingly, their evidence was in effect that to a greater or lesser extent that the creation of the documents involved steps that were consistent with the documents being forgeries; and there were suspicious elements in the transmission of the documentation to B's office. Neither expert suggested the evidence connected Ms B personally to forging the documents, soliciting the forgeries, or knowing the particular documents were forgeries.
- [43] Accordingly, the evidence did not take matters further than confirming the position of all parties. They all agreed the documents were forgeries; and that the supply of documents to Ms B's office did raise questions regarding personnel in that office.

*Applicant 1*

*The evidence*

- [44] I will refer to the three applicants as 1, 2, and 3. Of the three applicants, only Applicant 1 gave evidence in person before the Tribunal and presented for cross-examination. His evidence was that he primarily dealt with Ms B's husband and one of the employee's in Ms B's office. The employee was the same one who allegedly attempted to bribe IOM and who made the counter allegation that the IOM official sexually propositioned her (the employee). Applicant 1 said he also met with Ms B three or four times.
- [45] His explanation for the forged documents supporting his visa application was that he signed a partially completed form and left it with the employee for her to complete. He said he also gave the employee access to his and his wife's email accounts by giving her their passwords. He said he received queries from Ms Gardiner, of Immigration New Zealand, regarding his application, and he became aware of the Cookery School documents for the first time. He did not know where they came from, and did not know they were part of his application. He also said a CV submitted with his application was not the same CV as he provided to Ms B's practice. In particular, somebody altered the document adding a reference to the forged the Cookery School documents. He also said a statement of purpose submitted with his application was a document he had neither seen nor written; but none-the-less it did have his signature on it. He said a supplementary form submitted with his application had been altered.
- [46] Applicant 1 said Ms B told him Immigration New Zealand could not verify his former employer's reference, and it would be best to submit a new application, with a letter of explanation. He said he worked at the hotel to which the reference related from 1994 to 1996, and when IOM rang to verify the reference a trainee staff member was unaware of Applicant 1's history with the hotel. Accordingly, the proprietor later provided information that Applicant 1 sent to the employee.

- [47] He said nobody in Ms B's practice told him Immigration New Zealand declined his application, or that the Cookery School documents were fraudulent. He said he trusted the employee, and allowed her to complete the forms, which he later discovered were fraudulent.
- [48] The employee's statement of evidence said Applicant 1 provided the fraudulent documentation to her, and pointed to various email correspondence as evidence. It suffices to say that the evidence supports the employee's account unless she, as Applicant 1 claims, was using Applicant 1's email account.
- [49] Ms B's evidence was that the employee had most of the dealings with Applicant 1. Her only close involvement occurred after the first application failed, she was aware of the fraudulent first application and she assisted with a new application. She wrote a letter dated 10 November 2011. This letter, to Immigration New Zealand, sought a character waiver for Applicant 1. The letter acknowledges the Cookery School certificate was categorised by Immigration New Zealand as fraudulent, as was a work reference relating to Applicant 1 working in the hotel from 1994 to 1996. In her letter, Ms B provided a letter purporting to come from the Cookery School, saying Applicant 1 had completed diploma courses and been provided with certificates, but that through an administrative error confirmation was not provided when inquiries were made.
- [50] Ms B went on to say in her letter that a newspaper advertisement, which she provided, showed that the Cookery School was actively promoting scholarships to New Zealand, with visa assistance provided. She indicated that the Cookery School was withholding certification if students used other service providers for visa services. She said this might have been the background to the non-verification and fraudulent categorisation.
- [51] In relation to the hotel, she provided a letter purporting to be from the proprietor saying confirmation was withheld due to a misunderstanding.

*My view of the evidence relating to Applicant 1*

- [52] The documentary evidence points to Applicant 1 supplying forged certificates. He counters that by claiming the emails that appear to make him responsible are the result of giving passwords to emails accounts to the employee, and she used that email account to send the forgeries to herself. That, for obvious reasons, would be a surprising thing to do. He endeavoured to explain his decision to compromise his and his wife's privacy on the basis they did not use email very much at the time. It is a far from compelling explanation. The information technology experts neither eliminate nor confirm the employee was using the email accounts.
- [53] In relation to the application form that Applicant 1 signed, he claimed he signed a partially completed form, again that could happen, but it is a further element of his evidence that is at least somewhat surprising.
- [54] However, there are a two further points that Applicant 1 cannot sensibly explain at all. He referred to his statement of purpose, he said he had not seen the document, and did not write it. However, he admits the signature on the last page is his signature. The document refers to the Cookery School diploma. When queried by Immigration New Zealand he said "Most part the document wrote by me, but for the professional qualification part, I did not put two cookery Diplomas." When questioned in the course of his evidence, he did not provide an explanation that could explain how he signed the document without knowing its contents, or how the document was altered after he signed it. Applicant 1's claim he was not aware of the contents of the document are not credible on the material before me.
- [55] Applicant 1 also claimed he signed a supplementary form submitted to Immigration New Zealand, which referred to the fraudulent qualifications, and disclaimed knowledge of the contents.
- [56] Taken together, the implausibility of giving over passwords to email accounts, partially completing a form and signing it, signing two documents without knowing their contents; and providing inconsistent explanations, satisfy me Applicant 1's evidence is wholly unreliable. The employee has not presented herself for cross-examination. I am not in a position to make any finding on the respective roles of Applicant 1 and the employee in presenting a fraudulent application to Immigration New Zealand. Whether Applicant 1 acted alone, or the employee was a party to the attempted deception is speculative.



- [57] The question remains as to Ms B's role. I regard her letter written to Immigration New Zealand on 10 November 2011 as the best evidence. It is important to recognise that Ms B, when she wrote this letter, was aware that Immigration New Zealand was fully on notice regarding the irregularities in Applicant 1's application. Immigration New Zealand was not going to accept her letter without scrutiny, and investigation.
- [58] I accept Ms B's evidence that she wrote the letter after Applicant 1 produced the two letters that provide apparently plausible explanations for IOM not being able to verify Applicant 1's documents. Ms B contended in her letter that the documents were genuine, and the issues arose through misunderstanding. Ms B, it appears, accepted Applicant 1 at face value, and believed his representations. She had no apparent reason not to do so. She had previously submitted the documents to IOM with a positive result. She could reasonably expect Applicant 1 to understand that if he were presenting further forged documents, the result would be the same as the first submission of forged documents. I am satisfied that Ms B genuinely believed there had been a mistake, and her client had provided an adequately documented explanation. Accordingly, the evidence satisfies me she was honest when she wrote this letter.
- [59] There is a further question of whether Ms B personally took adequate steps to verify the explanation. She said she was not personally equipped to make her own inquiries. While I accept that evidence, it is not sufficient to answer the issue. Ms B could have directed her husband or other employees in the practice to make inquiries. However, professional practice often requires reliance on representations from clients. On some occasions, it is very important to be very clear representations are from a client, not the professional person presenting them. Some minor criticism could be made that Ms B's letter should have been oriented more to being what her instructions were, rather than her personal representation. However, in context they are minor criticisms. Ms B fully understood that Immigration New Zealand thought the original documents were fraudulent and would investigate the new documents. This is not a case where Ms B exhibited inadequate professional scepticism, I am satisfied her client provided plausible documentation, and an explanation; she was entitled to act on that in the circumstances.
- [60] It follows that in relation to Applicant 1's instructions, I am satisfied:
- [60.1] Ms B did not engage in misleading or dishonest behaviour;
- [60.2] She acted with due care, diligence and professionalism; and
- [60.3] She was not negligent.
- [61] Accordingly, the Tribunal will dismiss the complaint in respect of Applicant 1.

### *Applicant 2*

#### *The evidence*

- [62] Applicant 2 provided a signed and unsworn brief of evidence, she did not present for cross-examination, though the Tribunal agreed to allow her to give evidence by telephone or video. I will not speculate as to the reasons for her unavailability, as she lives in the offshore country and may well have good reasons for not being available.
- [63] The essence of Applicant 2's statement of evidence is that she primarily dealt with Ms B's husband and the employee. She says the employee told her to leave her application blank, and sign it. She says she provided genuine documents, and an unidentified person submitted her application with fraudulent documentation. She said she had no reason to submit the Cookery School certificates as she had a genuine certificate from another school. She said that other documents had forged signatures, and somebody altered them.
- [64] Ms B said she had only limited contact with Applicant 2, and her instructions. She said she did submit her documents to IOM for pre-verification before submitting the application to Immigration New Zealand. At that time, Applicant 2 completed a document in her own handwriting. Applicant 2 verified this document with a photograph, signature and thumb print. This document clearly refers to qualifications both from the Cookery School, and the other school referred to in Applicant 2's evidence.

*My view of the evidence relating to Applicant 2*

- [65] Neither Applicant 2 nor any other witness has cast any doubt on the verification form, which on its face indicates that Applicant 2's claim she was unaware of the Cookery School documents is false. On the contrary, it indicates Ms B undertook and documented a careful checking process, and engaged IOM to assist with that process; it appears that Applicant 2 attempted to deceive Ms B by producing forged certificates. Applicant 2's evidence is simply irreconcilable with the unchallenged evidence relating to her handwritten document, authenticated by her signature and thumb print.
- [66] It follows that in relation to Applicant 2's instructions, I am satisfied:
- [66.1] Ms B did not engage in misleading or dishonest behaviour;
- [66.2] She acted with due care, diligence and professionalism; and
- [66.3] She was not negligent.

*Applicant 3**The evidence*

- [67] Applicant 3 did not provide a statement of evidence, or make herself available to give evidence. Instead, Ms Gardiner, from Immigration New Zealand, provided hearsay evidence on her behalf. She said Applicant 3 claimed Ms B's practice submitted the Cookery School certificates with her application. However, she claimed she had not supplied the certificates. She also told Ms Gardiner that the practice submitted other documents without her knowledge.
- [68] I will not speculate as to the reasons for Applicant 3's unavailability as a witness. However, the allegations she makes through Ms Gardiner are obviously contestable, the lack of opportunity to cross-examine her is not a mere technicality.
- [69] In her evidence, Ms B pointed out some of the difficulties with Applicant 3's reported evidence. She noted that the evidence included emails from Applicant 3 that are inconsistent with her reported evidence. Ms B gave evidence that she did review the documentation and arranged to present it to IOM for verification before presentation to Immigration New Zealand; Applicant 3 authorised this by way of signed documents with her thumbprint also affixed, and a declaration she had reviewed all the documentation.

*My view of the evidence relating to Applicant 3*

- [70] Applicant 3's reported evidence raises serious questions. On the face of it her reported evidence is inconsistent with the written documentation, which does point to her having knowledge of a deception practised on Ms B. I regard the reported evidence of Applicant 3 as wholly unreliable, and as far as it goes, the written evidence indicates Applicant 3 provided fraudulent documentation to Ms B's practice. Ms B referred that material to IOM before submitting it to Immigration New Zealand.
- [71] It follows that in relation to Applicant 3's instructions, I am satisfied:
- [71.1] Ms B did not engage in misleading or dishonest behaviour;
- [71.2] She acted with due care, diligence and professionalism; and
- [71.3] She was not negligent.

**Conclusion**

- [72] As counsel for Immigration New Zealand observed in opening: "If the essential elements of the complaint are established then this would be serious behaviour and essentially indistinguishable from criminal conduct." The proof of the more serious elements required cogent evidence corresponding with the allegations.

- [73] The essence of the allegation was that Ms B orchestrated the production of false documentation, and duped the three applicants as to what she was doing. The three applicants must know whether that was true or not. Only one of them gave evidence and subjected himself to cross-examination. His evidence is both implausible, and irreconcilable with the written record, including documents he disclaims knowledge of but admits signing.
- [74] Ms B gave evidence and established that in every case she referred the fraudulent documents to an independent verification body, which Immigration New Zealand trusted. Only after that body approved them did she submit them to Immigration New Zealand. There is nothing in the written record that either connects Ms B personally to the production of the documents, or evidences her having knowledge of their falsity at a material time.
- [75] She also gave evidence that after she became aware of the issue relating to fraudulent documentation, she took active and serious steps to mitigate risk. She engaged with Immigration New Zealand and the independent verifier; she also actively managed her practice because she had concerns regarding the personnel within it.
- [76] I am satisfied that Ms B was honest, and complied with her professional obligations in every respect in relation to this matter.

### **Decision**

- [77] The Tribunal dismisses the complaint pursuant to section 50 of the Act.

**DATED** at WELLINGTON this 17<sup>th</sup> day of November 2015.

---

**G D Pearson**  
Chair