IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 36

Reference No: IACDT 027/17

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar
BETWEEN	**HES** Complainant
AND	**HEMA BEN PAREKH (SINGH)** Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 29 May 2019

REPRESENTATION:

Registrar:	Self-represented
Complainant:	Self-represented
Adviser:	Self-represented

PRELIMINARY

[1] Ms Hema Ben Parekh (Singh), the adviser, represented HES, the complainant, to assist the complainant's husband to obtain a visitor visa in the cultural marriage category to enter New Zealand to live with the complainant.

[2] However, the written client agreement with Ms Parekh's company was not signed by her and did not name her. Furthermore, the two visa applications lodged by Ms Parekh both wrongly stated that the couple had lived together. Nor did the couple otherwise meet Immigration New Zealand's criteria for culturally arranged marriages. The applications were therefore unsuccessful.

[3] The essential issue is whether Ms Parekh's failings amount to a breach of her professional obligations.

BACKGROUND

[4] Ms Parekh is a licensed immigration adviser. She is a director of Destination New Zealand Immigration Ltd.

[5] The complainant is a Fijian born New Zealand citizen who has lived in this country since 2000. She developed an online relationship with a citizen of Pakistan living in that country. They had been in contact since about May 2014 and decided to get married in September 2015. They intended to marry on 12 March 2016 in New Zealand.

[6] The complainant therefore approached Ms Parekh's company and on 6 January 2016 entered into a written agreement for the provision of immigration services. The complainant's fiancé (who will be referred to throughout as her husband) was the named party to the agreement. It was signed by the complainant on his behalf. A licensed adviser employed by Ms Parekh's company signed on its behalf.

[7] The agreement recorded that the couple had yet to meet in person and had been in touch by online chatting. The complainant expressed the wish to bring her husband to New Zealand for a civil marriage to be followed by a cultural marriage. It was made clear in the agreement that the onus was on the couple to provide evidence of their genuine and stable relationship. The company did not guarantee the application would be approved but would use its best endeavours to obtain an optimum result. The initial fee was set at $1,350, with an additional approval fee of $1,350. Disbursements such as Immigration New Zealand's fees would also be charged.

[8] An initial fee of $1,330 was immediately paid to the company on behalf of the husband.

[9] On 29 January 2016, Ms Parekh lodged an application for a visitor visa for the complainant's husband under the cultural marriage category. It recorded that the applicant was in Pakistan and in a relationship with the complainant. He wished to come to New Zealand to marry her and the proposed date had been set for 12 March 2016.

[10] Immigration New Zealand was informed that the partnership had started 18 months previously. In answer to the question as to how long they had spent "living together in a genuine and stable partnership", the answer given was 18 months. In answer to the question whether they were "currently living together in a genuine and stable partnership", the box "yes" was ticked. The box recording that they had "met in person" had also been ticked. The application disclosed that the husband was coming to New Zealand to enter a marriage in accordance with an identified cultural tradition of arranged marriages. In answer to the question whether another person had arranged the marriage, the answer given was "no".

[11] Immigration New Zealand declined the application for a visitor visa on 28 February 2016. This was because the couple had not met in person prior to the application being lodged and they did not satisfy the requirements for a culturally arranged marriage. It was noted that it had been declared on the form that the couple had spent 18 months living together, when in fact they had not met.

[12] On 13 April 2016, Ms Parekh requested Immigration New Zealand to review the decline decision. She stated that the application was on the basis of a culturally arranged marriage. The couple had "yet to meet together". The officer was asked how the couple were supposed to live and spend time together when the husband was not given a chance to meet his future wife.

[13] Immigration New Zealand replied on 23 April 2016 declining to review the decision as there was no procedural error and a correct assessment against immigration instructions had been undertaken. It had been conceded that the couple had not met each other, a minimum requirement of the immigration instructions.

[14] On 26 April 2016, Ms Parekh sent an email to the complainant advising that it was best for her to travel to Pakistan to marry given that Immigration New Zealand was not willing to review the decision.

[15] On 7 June 2016, the complainant travelled to Pakistan and on 11 June the couple married. The complainant returned to New Zealand on 20 June 2017.

[16] On 18 July 2016, Ms Parekh lodged another partnership visitor visa application for the husband with Immigration New Zealand. It was not expressed to be under the culturally arranged marriage category. It recorded that the husband was currently in Pakistan and wished to come to New Zealand to marry the complainant.

[17] The covering letter confusingly stated that "the proposed marriage has been set for 12 March 2016 and the couple got married in Pakistan." The application recorded that the partnership had started 24 months previously. In answer to the question as to how long they had been living together in a genuine and stable partnership, the answer given was 24 months. As to whether they were then "currently living together in a genuine and stable partnership", the "yes" box was ticked. The box recording that they had "met in person" had been ticked.

[18] On 2 August 2016, Immigration New Zealand declined the partnership visa application as the couple had never lived together and there was insufficient evidence to demonstrate that the partnership was genuine and stable. It had been declared on the form that they had been living together for 24 months when in fact they had only spent time living together while on vacation.

[19] Following the decline by Immigration New Zealand, Ms Parekh continued to assist the complainant by approaching the Minster of Immigration and two Members of Parliament. She contended that certain Immigration New Zealand branches had been approving similar partnership applications as an exception to policy, but that the Dubai branch had been making inconsistent decisions, approving some and declining others.

[20] The attempts by Ms Parekh to obtain a visa for the complainant's husband were unsuccessful and he has been unable to travel to New Zealand.

COMPLAINT

[21] On 11 January 2017, the complainant made a formal complaint against Ms Parekh to the Immigration Advisers Authority (the Authority). She stated that Ms Parekh had advised her that everything was possible and would be fine. According to the complainant, Ms Parekh advised her that since the couple had known each other a long time, their case was solid. All they needed to do was apply for a cultural marriage visitor visa. The complainant wanted to recover all her fees and financial losses, such as a deposit for a wedding reception.

[22] The Authority formally advised Ms Parekh of the complaint on 8 June 2017 and set out the details. She was given the opportunity to provide an explanation.

[23] Ms Parekh responded to the Authority's letter on 5 July 2017. She emphatically denied negligence and denied advising the complainant that her chances were high or good. She stated that her company had a fair bit of experience in dealing with these most challenging and quite tricky applications.

[24] It was noted by Ms Parekh that there was a misunderstanding as to the statement that the couple had lived together for 18 months. A partner living in New Zealand could support a partner offshore whom he or she had never met. This was called a "long distance relationship". The problem was that, unless Immigration New Zealand changed its policy, there was nothing much they could do. As for 24 months, that was calculated on the basis of a further six months of an ongoing relationship since the first decline. Ms Parekh said in her letter that she would be happy to refund any reasonable amount recommended by the Authority.

[25] The Registrar of Immigration Advisers (the Registrar), the head of the Authority, referred the complaint to the Tribunal on 23 August 2017. The following grounds of complaint or breaches of the Code of Conduct 2014 (the Code) were alleged:

(1) by failing to ensure a written agreement was entered into with the complainant for services relating to the visa applications, Ms Parekh may not have met her obligations under cl 18(a) of the Code;

(2) by failing to provide appropriate immigration advice or properly assess whether the complainant's partnership could meet the requirements under the instructions or under the culturally arranged marriage category, Ms Parekh may have been negligent or breached cl 1 requiring advisers to be honest and professional, and to conduct themselves with due care and diligence;

(3) by erroneously declaring on the visa application forms that the couple had lived together for 18 months and 24 months respectively, having misinterpreted that question, Ms Parekh may have been negligent or breached cl 1 requiring advisers to be honest and professional, and to conduct themselves with due care and diligence; and

(4) by failing to confirm in writing to the complainant the details of all material discussions with her, Ms Parekh may have breached cl 26(c).

JURISDICTION AND PROCEDURE

[26] The grounds for a complaint to the Registrar made against an immigration adviser or former immigration adviser are set out in s 44(2) of the Immigration Advisers Licensing Act 2007 (the Act):

(a) negligence;

(b) incompetence;

(c) incapacity;

(d) dishonest or misleading behaviour; and

(e) a breach of the code of conduct.

[27] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.[1]

[28] The Tribunal must hear complaints on the papers but may in its discretion request further information or any person to appear before the Tribunal.[2] It has been established to deal relatively summarily with complaints referred to it.[3]

[29] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.[4]

[30] The sanctions that may be imposed by the Tribunal are set out in the Act.[5] It may also suspend a licence pending the outcome of a complaint.[6]

[31] It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.[7]

[32] The Tribunal has received a statement of complaint (23 August 2017) from the Registrar, with supporting documents.

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[1] Immigration Advisers Licensing Act 2007, s 45(2) & (3).
[2] Section 49(3) & (4).
[3] *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].
[4] Immigration Advisers Licensing Act 2007, s 50.
[5] Section 51(1).
[6] Section 53(1).
[7] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [101]–[102] & [112].

[33] There is a comprehensive statement of reply (received 19 September 2017) from Ms Parekh. She denies negligence and draws attention to the lengths to which she went to help the complainant and her husband, including meeting her on numerous unannounced visits to the office. Ms Parekh says she runs a large, successful and professional business which has made investments in technology to be Code compliant. She apologises for any breaches of the Code and has now learned a lot about the Authority's professional expectations. Ms Parekh offered the complainant a full refund, including potentially her expenses.

[34] The complainant provided an email on 25 September 2017 replying to Ms Parekh's statement of reply, together with further documents. The complainant angrily denounces Ms Parekh's conduct in assuring her the case for a visa was solid and then wasting their money, including the cost of the trip to Pakistan. It is alleged Ms Parekh failed to respond to the complainant's communications, would not see her when she turned up at her office and verbally abused her. She claims $36,760.14 in compensation.

[35] Neither the complainant nor the adviser requests an oral hearing.

ASSESSMENT

[36] The Registrar relies on the following provisions of the Code:

> **General**
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> 1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.
>
> **Written agreements**
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> 18. A licensed immigration adviser must ensure that:
>
> a. when they and the client decide to proceed, they provide the client with a written agreement
>
> …
>
> **File management**
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> 26. A licensed immigration adviser must:
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> …
>
> c. confirm in writing to the client the details of all material discussions with the client
>
> …

(1) By failing to ensure a written agreement was entered into with the complainant for services relating to the visa applications, Ms Parekh may not have met her obligations under cl 18(a) of the Code

[37] The complainant, on behalf of her husband, entered into a written agreement with Ms Parekh's company on 6 January 2016. It was signed on behalf of the company by another licensed adviser, an employee.

[38] The Registrar alleges that the written agreement was with another licensed adviser at Ms Parekh's company. Ms Parekh, who performed the bulk of the services, had no agreement with the complainant.

[39] The Code requires the existence of a written client agreement which must be entered into before the adviser commences any work. Since the professional obligations of the adviser are personal to him or her and cannot be discharged by others or by a company, the written agreement should be directly between the adviser and the client.[8] I accept though that the commercial reality is otherwise, as most advisers do business through a limited liability company.

[40] Accordingly, an agreement between the adviser's company and the client which names the adviser and has been signed by him or her on behalf of the company, and which otherwise meets the Code requirements for an agreement, would not be a breach of the Code.

[41] Where there are multiple advisers within the company who work on a client's file, as is the case here, the Code requires that each is named.[9] It would not be practical to require all of them to sign the agreement and the Code does not require this. Whether or not they sign the agreement, they will in any event be bound by it to the extent of their professional obligations the moment they commence any work on the file.

[42] There does exist a written agreement with the complainant. It was signed on behalf of Ms Parekh's company by another licensed adviser. It was not signed by Ms Parekh, but that is not required by the Code. Hence, there is no breach of cl 18(a). Ms Parekh was not named as an adviser who may provide immigration advice, a breach of cl 19(a), but that is not the subject of any complaint by the Registrar.

[43] This head of complaint is dismissed.

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[8] *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [29], [34] & [47].
[9] Code of Conduct 2014, cl 19(a).

[44] The second and third heads of complaint are linked and will be assessed together.

(2) By failing to provide appropriate immigration advice or properly assess whether the complainant's partnership could meet the requirements under the instructions or under the culturally arranged marriage category, Ms Parekh may have been negligent or breached cl 1 requiring advisers to be honest and professional, and to conduct themselves with due care and diligence

(3) By erroneously declaring on the visa application forms that the couple had lived together for 18 months and 24 months respectively, having misinterpreted that question, Ms Parekh may have been negligent or breached cl 1 requiring advisers to be honest and professional, and to conduct themselves with due care and diligence

[45] Both of the visitor visa applications made by Ms Parekh on behalf of the husband were doomed from the start. The couple had never lived together. This was a fatal flaw.

[46] Ms Parekh seems to believe that living apart is permissible where it amounts to what she describes as a long-distance relationship. Certainly, Immigration New Zealand will count periods of separation or living apart, where there is good reason for this, for a couple who have already lived together.[10] However, at the time of the first application, this was a couple who had never met, let alone lived together. Even in respect of the second application, they had only been together briefly while on their honeymoon.

[47] It should have been clear to Ms Parekh that the couple could not possibly meet the "living together in a genuine and stable relationship" criterion. They were together on vacation but were not living together in the sense of living in the same home, as Immigration New Zealand's instructions require.[11] She confused the duration of an online relationship with the duration of living together.

[48] Furthermore, in respect of the first application in the cultural marriage category, the marriage envisaged by the couple did not meet this criterion, as it had been arranged by the couple themselves and not by others.[12]

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[10] Immigration instructions at E4.5.30.d.ii, f & g (see Registrar's supporting documents at 177–178).
[11] At E4.5.30.a & b.ii (see Registrar's supporting documents at 176).
[12] At V3.35.a.ii, V3.35.1.c (see Registrar's supporting documents at 182 & 206).

[49] Ms Parekh failed to take reasonable or due care in assessing the couple's circumstances against Immigration New Zealand's criteria.

[50] It is apparent Ms Parekh was not aware that the applications had no realistic chance of succeeding. Ms Parekh may not have told the complainant that their application was "solid", but what is clear is that she did not advise them of its actual very limited prospects. If she had done so, they would not have proceeded. Ms Parekh should have told the complainant of this, but did not do so because she did not realise it herself. This amounts to negligence, a statutory ground of complaint, and also a breach of cl 1 of the Code.

(4) By failing to confirm in writing to the complainant the details of all material discussions with her, Ms Parekh may have breached cl 26(c)

[51] According to Ms Parekh, the complainant made 19 to 22 unannounced visits to the office and she would meet her despite having a busy schedule.[13] There are also entries in Ms Parekh's diary presumably showing prearranged visits. While there are emails, text messages and even entries in Ms Parekh's diary of a few meetings with the complainant, there are no records of advice given at any of the meetings being confirmed in writing.

[52] It is obvious that information amounting to immigration advice will have been given at many of those meetings. This is a breach of cl 26(c) of the Code.

OUTCOME

[53] The complaint is upheld. Ms Parekh has been negligent and has breached cls 1 and 26(c) of the Code.

SUBMISSIONS ON SANCTIONS

[54] As the complaint has been upheld, the Tribunal may impose sanctions pursuant to s 51 of the Act.

[55] A timetable is set out below. Any requests that Ms Parekh undertake training should specify the precise course suggested. Any request for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim. In particular, the

[13] Ms Parekh's letter to Authority, 5 July 2017.

complainant needs to explain how the items making up the $36,760.14 claimed were caused by Ms Parekh's negligence or breaches of the Code.

Timetable

[56] The timetable for submissions will be as follows:

(1) The Registrar, the complainant and Ms Parekh are to make submissions by **20 June 2019**.

(2) The Registrar, the complainant and Ms Parekh may reply to the submissions of any other party by **4 July 2019.**

ORDER FOR SUPPRESSION

[57] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.[14]

[58] There is no public interest in knowing the name of Ms Parekh's client, the complainant.

[59] The Tribunal orders that no information identifying the client is to be published other than to the parties and Immigration New Zealand.

D J Plunkett
Chair

[14] Immigration Advisers Licensing Act 2007, s 50A.