

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 12

Reference No: IACDT 003/16

**IN THE MATTER** of a referral under s 48 of  
the Immigration Advisers  
Licensing Act 2007

**BY** **THE REGISTRAR OF  
IMMIGRATION ADVISERS**  
Registrar

**BETWEEN** **MZ**  
Complainant

**AND** **JIANYA (BILL) SUN**  
Adviser

---

**DECISION**

**Date: 4 March 2019**

---

**REPRESENTATION:**

Registrar: R Garden, counsel

Complainant: In person

Adviser: G Aulakh, counsel

## PRELIMINARY

[1] Mr Sun, who lives in China, represented the complainant in relation to an application for a long-term business visa. The complainant was the client of a migration company registered in China to provide such services. The company was independent of Mr Sun. While Mr Sun filed the application with Immigration New Zealand and was responsible for communications with it, he did not deal directly with the complainant at any time, as the entire relationship with him was managed by the migration company.

[2] The Registrar of Immigration Advisers (Registrar) contends that Mr Sun's business practice breaches his professional obligations as a licensed adviser. Mr Sun's response is that this is the only way he can operate so as to comply with Chinese law.

[3] The essential issues to consider are whether the company's staff, unlicensed under New Zealand law, are operating unlawfully and whether Chinese law qualifies Mr Sun's professional obligations.

## BACKGROUND

[4] Jianya Sun, otherwise known as Bill Sun, is a licensed immigration adviser. He resides in Shanghai, China.

[5] In January 2010, Mr Sun entered into a memorandum of understanding with a Shanghai migration company. He says the company is independent of him. The company possessed the (*verbatim* translation) "Operation License of a migration intermediary approved by Ministry of Public Security". It agreed to actively promote migration to New Zealand.

[6] Under the agreement, the Shanghai company would enter into an agency agreement with the client when Mr Sun confirmed that the client met New Zealand's migration requirements. Mr Sun was responsible for reviewing whether the client met the immigration criteria and would give directions to the company as to the preparation of an application. The company would submit the documents prepared by the client to Mr Sun. He would file the visa application with the relevant New Zealand government department and maintain contact with it. Mr Sun was not allowed to contact the client, except through the company's staff. The company's fees were set out in the agreement.

[7] A "Private Immigration Agency Business License" was issued to the Shanghai company by the Ministry of Public Security in 2012.

[8] On 22 December 2012, the complainant entered into an agreement with the Shanghai company for services relating to a long term business visa for New Zealand. The agreement stated that the company provided an “intermediary service” and would give assistance in handling the visa. It further stated that the company would prepare and submit the visa application, as well as handle the funding procedures. Mr Sun was not named and there was no reference to any person outside the company assisting with the visa applications, aside from the possible charge of a foreign lawyer.

[9] The Shanghai company forwarded the complainant’s documents to Mr Sun on 24 December 2012 for preliminary advice as to his eligibility for a visa. Mr Sun responded to the company confirming eligibility on the same day. He advised that the complainant should prepare the application documents pursuant to a list he attached (which appears to be an Immigration New Zealand checklist). The company was told it could contact investment experts directly on the required business plan.

[10] From January to March 2013, the Shanghai company prepared a business plan for the visa application. The complainant confirmed the core information for the plan in a “Business Plan Information Summary” signed by him and provided to the company on 2 February 2013. A number of emails sent in March 2013 between the complainant and the company concerning the business plan have been produced to the Tribunal.<sup>1</sup> Mr Sun did not participate in this email exchange.

[11] In the email exchange, the complainant requested amendments to the draft business plan. The company replied on 11 March 2013 stating that the person who prepared the proposal (not Mr Sun) advised there was no need to change it. Presumably in response to a request for clarification from the complainant, the company stated in a further email sent to the complainant on 11 March (*verbatim* translation):

Q: In the business proposal, Sales Amount/Gross Profit/Investment Amount/Staff Wages can adjust lower a little bit?

A: In our proposal the standard of financial budget generally estimated conservatory according to New Zealand business actual conditions. Unless there are obvious errors, the Analyst would not re-adjust the budget. Please inform client, if the proposal was prepared by using the lowest standard, client’s application success rate would also be the lowest.

[12] According to Mr Sun, he was at some point sent the documents prepared by the complainant in response to the checklist he had earlier sent the company. He thoroughly assessed the documents against both the checklist and the business plan summary

---

<sup>1</sup> Registrar’s supporting documents at 11–34.

signed by the complainant. He then dictated to the company's staff the details to be recorded on the application form and the steps required to complete it.<sup>2</sup>

[13] On 15 March 2013, the Shanghai company sent the completed documents to Mr Sun stating that the application could be submitted if he thought there were no questions.

[14] On 19 March 2013, Mr Sun advised the company that the application had been posted to Immigration New Zealand that day (though his letter to the department was dated 13 March). It was received by Immigration New Zealand on 22 March 2013.

[15] An updated business plan was given to Immigration New Zealand by Mr Sun on 18 October 2013.

[16] On 23 December 2013, Immigration New Zealand sent a letter to the complainant, through Mr Sun, expressing concerns with the application. These related to the complainant's lack of both relevant business experience and knowledge of the New Zealand market, and the financial viability of the business.

[17] Mr Sun forwarded Immigration New Zealand's letter of 23 December 2013 to the company on the same day. There was no advice in Mr Sun's email. The company was informed it may need to discuss the matters with the writer of the business proposal directly.

[18] An amended business plan was prepared by the Shanghai company. It was sent by the company to the complainant in an email on 20 January 2014. The complainant confirmed it in an email on the same day.

[19] On 21 January 2014, the Shanghai company sent the amended business plan to Mr Sun advising that the complainant had confirmed it and he could send it to Immigration New Zealand.

[20] Mr Sun wrote a detailed letter to Immigration New Zealand that day, setting out the complainant's response to the concerns which had been expressed as to his business experience, his knowledge of the New Zealand market and the financial viability of his plan. Also submitted to Immigration New Zealand was the amended business plan, as well as two letters of intent on cooperation (undated) whereby the complainant and the other parties agreed to cooperate on importing New Zealand products into China.

[21] Immigration New Zealand approved the visa on 13 March 2014. A work visa was issued to the complainant on about 8 April 2014.

---

<sup>2</sup> Affidavit Mr Sun, 30 August 2016, at [26].

[22] Following his arrival in New Zealand, the complainant says that he found the business plan did not match what he had approved. A request to Immigration New Zealand on 2 December 2014 (through his new licensed immigration adviser) to change the plan and the terms of his visa was declined on 22 December 2014. Reference was made in the decline letter to the complainant agreeing to “falsify the cooperation agreements that exactly match with the revenue forecasts”.

[23] An interim visa was granted to the complainant by Immigration New Zealand on about 1 January 2015, allowing him to maintain his lawful status until a decision was made on his work visa, due to expire on 8 January 2015.

[24] On 26 February 2015, the complainant’s new adviser sent an email to Immigration New Zealand concerning the application to change the business plan. He acknowledged that the complainant was not completely innocent in that he had agreed to pay a large fee to the previous adviser in order to falsify “the statement”. He was complicit but had trusted the adviser.

## **COMPLAINT**

[25] On 15 January 2015, the complainant filed a complaint (dated 12 January 2015) against Mr Sun with the Immigration Advisers Authority (Authority), headed by the Registrar, together with a statutory declaration (28 July 2014).

[26] In that declaration, the complainant stated that Mr Sun was the owner of the Shanghai company. He had been told by the company that he could have at least one face-to-face meeting with Mr Sun, but he was not able to have even a single meeting. All questions were relayed through the staff of the company.

[27] The complainant declared that he eventually came to learn that the plan filed with Immigration New Zealand was not what he had been told was the final version. Some of the contents of the plan, including the scope of the business and most of the financial data, had been altered without his knowledge. The investment amount had been increased, as had the total turnover.

[28] The complainant produced a further statutory declaration on 8 November 2014. He admitted using false financial information in his visa application on the advice of the staff of the Shanghai company. The complainant appears to resile from this admission in his recent submissions to the Tribunal.<sup>3</sup> He now states there is a grave linguistic mistake in the declaration, due to him overestimating his English competency. The

---

<sup>3</sup> Submissions, 8 February 2019, at [64].

financial information was not false, but was acquired by making a payment to an unnamed government agency in order to obtain a copy of an authentic document. I do not need to resolve this inconsistency in his evidence.

[29] The Authority notified Mr Sun of the complaint on 23 October 2015 and advised him of the details.

[30] Counsel for Mr Sun replied in a lengthy letter to the Authority on 26 November 2015. It was contended that the complainant had not approached the Authority with “clean hands”. The complaint had been filed with the motive of extracting money from Mr Sun and defaming him.

[31] Counsel stated that Mr Sun was not a director/shareholder, owner or employee of the Shanghai company. He did, however, have a cooperation agreement with this independent entity. The declarations filed by the complainant, alleging that documents had been changed without his knowledge and that he had paid the Shanghai company to prepare false documents, were false. The complainant had signed a contract with the company which agreed to provide intermediary services. The complainant was aware that the company had no authority to advise on New Zealand immigration law. The agreement authorised the company “to step in the shoes of [the complainant]”. Furthermore, the complainant was aware that he would not be meeting or communicating directly with Mr Sun due to Chinese law.

[32] In his letter, counsel further stated that the Shanghai company had engaged the services of Mr Sun to advise it. This company was in fact Mr Sun’s client. It had the authority to instruct him on behalf of the complainant. It was noted that Mr Sun did not provide any business, accountancy or financial advice. He did not prepare business plans or financial reports. He was not privy to any arrangements that visa applicants had with their financial advisers or accountants. It was Mr Sun who lodged the documents with Immigration New Zealand, all of which had been approved by the complainant. In order to comply with Chinese law, Mr Sun advised and commented on documents obtained and provided by the complainant through the intermediary.

[33] A statement, dated 23 November 2015, from the general manager of the Shanghai company was produced to the Authority. He said that under Chinese law, a foreign immigration adviser was not permitted to conduct immigration business in China directly. Such a person was only allowed to cooperate with a legal immigration agency, such as the company. Foreign advisers could not meet or advise clients directly. All the information requested by the adviser was collected from the client by the company. The adviser’s advice was then sought and relayed to the client.

[34] According to the general manager, the complainant in this case was told of these restrictions before the contract with him was signed on 22 December 2012. The company did not provide any advice to him, as it relayed Mr Sun's advice. The complainant provided all the documents and there was no collusion by his staff to provide false documents. The business plan was produced by "external services" based on information supplied by the complainant.

[35] The Registrar filed a complaint (dated 12 February 2016) in the Tribunal on 18 February 2016.

[36] The Registrar contends that Mr Sun has violated the Code of Conduct 2010 (the 2010 Code) and the Code of Conduct 2014 (the 2014 Code), effective 13 January 2014, in the following manner:

- (1) Entering into an arrangement whereby at no point did he engage directly with the complainant to obtain his lawful instructions, in breach of cl 1.1(b) of the 2010 Code and cl 2(e) of the 2014 Code.
- (2) Not properly reviewing or discussing any of the submitted documents with the complainant or if applicable the Shanghai company, in breach of cl 1.1(a) of the 2010 Code and cl 1 of the 2014 Code.
- (3) Allowing unlicensed persons to provide services only a licensed adviser could provide, in breach of cl 2.1(b) of the 2010 Code and cl 3(c) of the 2014 Code.

## **JURISDICTION AND PROCEDURE**

[37] 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.

[38] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>4</sup>

[39] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.<sup>5</sup>

[40] 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.<sup>6</sup>

[41] The sanctions that may be imposed by the Tribunal are set out in the Act.<sup>7</sup> It may also suspend a licence pending the outcome of a complaint.<sup>8</sup>

[42] 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.<sup>9</sup>

[43] Following the receipt of the statement of complaint against Mr Sun with supporting documents, the Tribunal issued a number of directions. In Minute No. 5 issued on 24 January 2019, it advised that the complaint would be heard on the papers. A timetable was set for further submissions.

[44] The Registrar filed a statement of complaint (12 February 2016) and extensive supporting documents. The Registrar adopts the submissions of 13 December 2018 that had been filed on his behalf in a similar complaint against Mr Sun.

[45] There is a statement of reply from counsel for Mr Sun, Mr Aulakh, dated 20 March 2016. In addition, there are submissions from him dated 30 August 2016, supported by an affidavit from Mr Sun of the same date, an affidavit from the general manager of the Shanghai company of 29 August 2016, statements from Mr Sun and the general manager dated 2 August 2016, as well as other supporting documents. Mr Aulakh also adopts his submissions of 13 December 2018 filed in the similar complaint. He makes supplementary observations in an email to the Tribunal on 21 February 2019.

[46] The complainant sent submissions on 8 February 2019 with supporting documents.

---

<sup>4</sup> Immigration Advisers Licensing Act 2007, s 45(2) & (3).

<sup>5</sup> Section 49(3) & (4).

<sup>6</sup> Section 50.

<sup>7</sup> Section 51(1).

<sup>8</sup> Section 53(1).

<sup>9</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [101]–[102] & [112].

## ASSESSMENT

[47] I will deal with the third head of complaint first as the assessment of the first and second heads, which will be done together, is dependent on the outcome of the third head.

(3) *Allowing unlicensed persons to provide services only a licensed adviser could provide, in breach of cl 2.1(b) of the 2010 Code and cl 3(c) of the 2014 Code*

[48] The following provisions of the Codes are relied on:

### Code of Conduct 2010

#### **2. Obligations to the Minister of Immigration, the Department handling immigration matters, the Immigration Advisers Authority and the Immigration and Protection Tribunal**

##### 2.1 Legislation and operating requirements

A licensed immigration adviser must, at all times:

...

- b) act in accordance with immigration legislation, including the Immigration Act 2009 and regulations made under it, the Immigration Advisers Licensing Act 2007, and applicable international obligations

### Code of Conduct 2014

#### **Legislative requirements**

3. A licensed immigration adviser must:

...

- c. whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.

[49] The Registrar notes that the agreement between Mr Sun and the Shanghai company prohibits contact between Mr Sun and the client and specifies that the company will conduct the initial meetings with the client and make an initial assessment of suitability for immigration, which would then be passed onto Mr Sun. This was the experience of the complainant. The Registrar also relies on the allegation by the complainant that Mr G of the company expressed to him a hope that he could increase his investment amount in the business plan to over NZD150,000 since, according to Mr G, anything else would not be approved.<sup>10</sup> The complainant further alleges that his business plan did not match what he had approved. He did not find this out until arriving in New Zealand.<sup>11</sup>

[50] Mr Sun has explained his business practice and hence his relationship with the complainant in the affidavit of 30 August 2016 produced to the Tribunal. He states that, while he is a citizen of New Zealand, he has been living and working in China since 2001. He confirms he is not the owner or an employee of the Shanghai company.

[51] Mr Sun further states that Chinese law prohibits foreign registered advisers from engaging directly with and advising Chinese citizens who are interested in migrating. Only intermediaries authorised by the Chinese government are allowed to directly speak and engage with prospective Chinese migrants. Therefore, he had a cooperation agreement with the Shanghai company, whereby it sought advice from him. The company provided him with the client information, which he assessed and on which he advised the company, with his advice then being conveyed by the company to the Chinese citizen.

[52] In his affidavit, Mr Sun states that at the time he was asked to advise in relation to the complainant, the company told him the complainant had been informed of the restrictions under Chinese law. Furthermore, the complainant had been told the company was not a New Zealand registered adviser and could not provide the advice itself.

[53] Mr Sun confirms that he thoroughly assessed and checked the documents filed on behalf of the complainant. According to Mr Sun, he dictated to the company the details to be recorded on the application form. When he received confirmation that the application had been completed as dictated by him, he reviewed the documents and lodged the application. It is therefore not correct to suggest that he did not exercise due care and diligence.

---

<sup>10</sup> Statutory Declaration of complainant, 28 July 2014, at 3 of translation.

<sup>11</sup> At 1, 2 & 3 of translation.

[54] Mr Sun accepts he did not have direct contact with the complainant due to the restrictions under Chinese law. He honestly believed he had to comply with the local laws. Mr Sun says these were, in essence, also the complainant's instructions as he knew of the restrictions.

[55] Mr Sun does not accept that the Shanghai company provided any advice. All the advice came from him to the company and was conveyed by the company to the complainant. The complainant knew that the advice came from Mr Sun and knew of his details. All of the documents filed came from the complainant and Mr Sun had no knowledge of any fabrication or forgery. To the best of his knowledge, the company was doing clerical work only. No immigration services were provided by the company.

[56] It is acknowledged by Mr Sun that preparation of a business plan was not within his expertise, so he told the company at the beginning to let the complainant contact the plan writer directly. He did advise the company's staff regarding the concerns expressed in Immigration New Zealand's letter of 23 December 2013. The company sought his advice on the immigration part of the plan. He can remember commenting to the staff that any investment amount below NZD150,000 may not be looked at favourably.

[57] On receipt of the amended plan, Mr Sun says he cross-checked it with other documents and once satisfied, he prepared a detailed response and sent it to Immigration New Zealand on 21 January 2014.

[58] In his affidavit, Mr Sun requests that the Authority guide him in the future, so that he will not be in breach of New Zealand or Chinese law. Due to the lack of clarity as to his obligations, given the conflict between New Zealand and local Chinese law, he had not submitted any applications to Immigration New Zealand or advised any new clients lately.

[59] The general manager of the Shanghai company confirms in his statement of 2 August 2016 that the company is authorised by the Chinese government to provide intermediary services to Chinese residents migrating to different countries. Mr Sun is not an employee or owner of the company. The complainant was aware of the restrictions under Chinese law. The complainant instructed the company to engage the services of a professional business plan writer. Based on information provided, the plan was prepared by experts and then approved by the complainant. Mr Sun was then instructed to file it. At no point did the complainant state that the company's staff were not listening to him, nor had he terminated the agreement by the time his visa was granted.

[60] As the Registrar does not contest the evidence filed on behalf of Mr Sun, I will accept his assertions as to the factual circumstances giving rise to this complaint.

[61] I appreciate that the complainant certainly does contest much of what Mr Sun asserts. Notably he contends that Mr Sun was “the boss” of the Shanghai company (and the complainant provides evidence in support of this allegation), that it was not explained to him that the Shanghai company was only an intermediary between him and Mr Sun and that staff of the company answered his queries regarding immigration issues. The complainant emphasises that he trusted the Shanghai company as the boss was a licensed immigration adviser.

[62] It will be seen shortly that I regard it as self-evident that the company’s staff provided immigration advice to the complainant, as the latter contends. However, as for the complainant’s other contentions, I have decided to accept, for the purpose of this complaint, that Mr Sun was independent of the company and that the complainant was always aware of this. In order to determine this complaint, I do not need to resolve the dispute as to the precise nature of Mr Sun’s relationship with the Shanghai company or whether the complainant was told about this.

[63] While I generally accept Mr Sun’s description of the circumstances, I note a surprising lack of written communications between Mr Sun and the company as to his alleged advice at every step of the process and his dictation of information to be recorded on the application form.<sup>12</sup> That is particularly so concerning the business plan, which went through at least two sets of amendments. Mr Sun says he advised on the immigration parts of the plan, but his counsel inconsistently states that preparation of the business plan was “carried out entirely between the complainant, [the company] and other professionals” and Mr Sun was not privy to any of these communications.<sup>13</sup> Nonetheless, for the purpose of this complaint, I will accept Mr Sun’s version of the facts.

[64] Accordingly, for the purpose of this complaint, I accept that Mr Sun:

- was independent of the Shanghai company;
- was consulted by the company on whether the complainant was eligible for any visa to New Zealand;
- advised the company on his eligibility and from time to time on other core criteria;

---

<sup>12</sup> Itself a breach of cl 3(f) of the 2010 Code and cl 26(a)(iii) of the 2014 Code.

<sup>13</sup> Statement of Reply, 20 March 2016, at “Background (xvi)”.

- was known by the complainant to be involved;
- filed the application with Immigration New Zealand based on the information and documents supplied by the company (which may or may not have come from the complainant);
- maintained contact with Immigration New Zealand on behalf of the complainant; and
- was not aware of any falsity or forgery of any document.

[65] I further accept that Mr Sun believed the company's work was only of a clerical or interpretation/translation nature. Of course, whether it was only clerical or fell within the scope of work that could only be performed by a licensed person is a legal issue involving interpretation of the Act and is not determined by Mr Sun's belief.

[66] The question that arises therefore is whether Mr Sun's complete failure to have any contact with the complainant puts him in breach of his professional obligations as a licensed adviser under New Zealand law. To answer that, I first have to assess whether the staff of the Shanghai company have violated New Zealand law by performing work reserved to a licensed person.

*Have the unlicensed company's staff undertaken licensed work?*

[67] I will start by looking at the statutory privileges of an adviser, the corollary being the prohibition on unlicensed persons undertaking that work.

[68] A licensed immigration adviser, and with limited exceptions no other person, is entitled to provide "immigration advice" to another person.<sup>14</sup> The statutory scope of "immigration advice" is very broad.<sup>15</sup>

## **7 What constitutes immigration advice**

(1) In this Act, **immigration advice**—

- (a) means using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward; but

---

<sup>14</sup> Immigration Advisers Licensing Act 2007, s 6.

<sup>15</sup> Section 7.

- (b) does not include—
  - (i) providing information that is publicly available, or that is prepared or made available by the Department; or
  - (ii) directing a person to the Minister or the Department, or to an immigration officer or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or
  - (iii) carrying out clerical work, translation or interpreting services, or settlement services.
- (2) To avoid doubt, a person is not considered to be providing immigration advice within the meaning of this Act if the person provides the advice in the course of acting under or pursuant to—
  - (a) the Ombudsmen Act 1975; or
  - (b) any other enactment by which functions are conferred on Ombudsmen holding office under that Act.

[69] The exclusion from the scope of “immigration advice” advanced by Mr Sun to explain the work of the Shanghai company’s staff is subs (1)(b)(iii) concerning “clerical work, translation or interpreting services”.

[70] “Clerical work” is narrowly defined in the Act:<sup>16</sup>

**clerical work** means the provision of services in relation to an immigration matter, or to matters concerning sponsors, employers, and education providers, in which the main tasks involve all or any combination of the following:

- (a) the recording, organising, storing, or retrieving of information:
- (b) computing or data entry:
- (c) recording information on any form, application, request, or claim on behalf and under the direction of another person

[71] It is common ground that Mr Sun had no direct contact or communication in any way with prospective migrants, such as the complainant. Mr Sun says this was mandated by Chinese law. It is not my role to determine Chinese law, nor do I have the expertise. For the purpose of this complaint, I will accept Mr Sun’s contention. It cannot be contested that Mr Sun must comply with the law of the country in which he resides. Indeed, this is even a professional obligation under the Codes.<sup>17</sup> The relevance, if any, of the source of the restriction to the scope of Mr Sun’s professional obligations, will be assessed shortly.

---

<sup>16</sup> Section 5, “clerical work”.

<sup>17</sup> Clause 2.1(a) of the 2010 Code and cl 3(b) of the 2014 Code.

[72] While the company's agreement with the complainant of 22 December 2012 does not mention Mr Sun or that its services will be undertaken by an external adviser, I have accepted Mr Sun's evidence that the complainant knew from December 2012 when he first engaged the company that Mr Sun, from outside the company, was the licensed adviser providing advice on New Zealand immigration law.

[73] The only contemporary written evidence that Mr Sun provided any advice to the company is his email of 24 December 2012 as to the complainant's eligibility for a visa.

[74] Mr Sun says he provided other advice to the company to be conveyed to the complainant. I do not know in what form his advice was provided by the company to the complainant. Mr Sun's advice was not in writing so plainly there was nothing from him to simply on-forward to the complainant. It is apparent that in paraphrasing what must have been a lot of oral advice from him, the staff will on occasion have modified it or added some additional advice. Moreover, I regard it as obvious that the complainant would have had additional questions, which the staff would have answered themselves.

[75] It is highly unlikely, given the very broad statutory definition of immigration advice, that the company's staff did not on multiple occasions throughout the lengthy process of about 16 months (involving concerns expressed by Immigration New Zealand and twice amending the business plan), use their knowledge or experience of New Zealand immigration to advise or assist the complainant, particularly regarding the content and form of the supporting information needed for the original application and to respond to Immigration New Zealand's concerns.

[76] This is a company which specialises in migration services to different countries, not just New Zealand. It is a large company which claims to have had, "Tens of thousands of immigration customers".<sup>18</sup> Under the memorandum of understanding with Mr Sun, the company was even required to promote migration to New Zealand. Plainly, this is a company with experience of New Zealand immigration and which claims such expertise in its communications with clients. It is inevitable that in the absence of an ability to communicate with Mr Sun, the complainant would look to the company for advice from time to time.

[77] Indeed, despite the paucity of written communications, there is evidence that the company's staff did advise the complainant. There is the email of 11 March 2013 from the company concerning the business plan's budget and its effect on the success rate.

---

<sup>18</sup> *LL v Sun* [2019] NZIACDT 3 at [74] & n13.

This is not conveying Mr Sun's claimed advice concerning a minimum investment of \$150,000, as that occurred later.<sup>19</sup>

[78] As for Immigration New Zealand's letter of 23 December 2013 expressing concerns with the financial viability of the business, Mr Sun passed this onto the company without comment. Mr Sun's counsel confirms that the professional business plan writer did not require any guidance or advice to understand the concerns expressed in the letter.<sup>20</sup> Mr Sun and the general manager say that Mr Sun advised the company concerning the immigration aspects of the plan. As Mr Sun's advice was not in writing, some of the oral advice would have been modified in being passed on. The company would also have added to it, in response to the complainant's questions.

[79] The "clerical work" exclusion from the scope of immigration advice relied on by Mr Sun to legitimise the company's work is very narrow. I accept that Mr Sun believed this was all they were doing, but it is not at all likely they were merely recording or organising information from either Mr Sun or the complainant, without adding, modifying or deleting information using their own knowledge and experience.

[80] The clerical work exception allows the company's staff to record information on a form or application "on behalf and under the direction of another person". In the context here, that other person would have to be Mr Sun or even the complainant himself.

[81] It is apparent that on 15 March 2013, the company's staff sent the completed and signed visa application form to Mr Sun, together with all the supporting documents. He posted it to Immigration New Zealand on 19 March 2013. There is no record of Mr Sun having advised in relation to the voluminous supporting information required by Immigration New Zealand. The template Immigration New Zealand checklist he had sent the company on 24 December 2012 would not have adequately told the complainant what he needed.

[82] The same can be said of the business plan. While it is acceptable for an unlicensed expert writer to produce such a plan, particularly as to the commercial and financial objectives, it would also have to satisfy immigration criteria. I have accepted, for the purpose of this complaint, that Mr Sun provided advice on such matters. However, he does not know what advice was passed onto the complainant by the company.<sup>21</sup> I have already made the point that it is inevitable it will not have always been identical to Mr Sun's advice. I regard it as self-evident that the complainant would have a myriad of questions concerning Immigration New Zealand's requirements for the business plan

---

<sup>19</sup> Affidavit of general manager, 29 August 2016, at [27].

<sup>20</sup> Statement of Reply, 20 March 2016, at [4.6].

<sup>21</sup> At [4.3].

and other supporting documentation which the company would have answered without asking Mr Sun.

[83] As the various forms have been completed in English, it will not have been the complainant who filled them in. It must therefore have been the company's staff. It is clear the detailed information in the forms was not being recorded at Mr Sun's direction. He was not physically present when the information was being obtained from the complainant or was being recorded in the forms. Mr Sun acknowledges that he received the forms for filing after they were completed and signed.

[84] Mr Sun's written communications with the company are extremely limited. I have accepted his assertion that he dictated to the staff the details to be recorded on the application form, but the information required by Immigration New Zealand is so extensive that, in the absence of a written record, he cannot have dictated or directed every piece of information to be recorded or produced in support. Much will have been left to the company's staff to decide what to record.

[85] It defies common sense to accept that no immigration advice and assistance was given to the complainant by the company's staff, or to accept that all such assistance was specifically directed by Mr Sun.

[86] Nor was the recording of information on the forms done under the direction of the complainant, as he would not have known what information was required and is unlikely to have recorded it in English.

[87] I find that the Shanghai company's work cannot be described as "clerical work" as defined. The staff have therefore performed work falling within the statutory scope of "immigration advice" despite not being licensed. This is contrary to the Act and is an offence.<sup>22</sup> That law applies to acts outside New Zealand.<sup>23</sup>

[88] Mr Sun has permitted that to occur. He knew the company's mode of operation and in particular that it holds itself out as a migration company, including migration to New Zealand. He knew the company's staff were unlicensed under New Zealand law. He knew they were interviewing the complainant and assisting him to put together the application, the business plan and the supporting materials. Mr Sun has enabled unlicensed persons to provide services only a licensed adviser is lawfully permitted to provide.

---

<sup>22</sup> Immigration Advisers Licensing Act 2007, ss 6 & 63(1).

<sup>23</sup> Sections 8(1) & 73.

[89] The next question is whether this is a breach of Mr Sun's professional obligations.

*Is Mr Sun's arrangement with the company a breach of his professional obligations?*

[90] The obligations set out in the two Codes applicable here are personal to the licensed immigration adviser and cannot be delegated.<sup>24</sup>

[91] The Registrar relies on cl 2.1(b) of the 2010 Code for the period up to 12 January 2014.

[92] First, there is an issue as to who is Mr Sun's client. He contends that his client was the company. To the extent that Mr Sun has a commercial relationship with the company, that is correct. However, in terms of his obligations under the Act and the Codes, his client was the complainant. His role in respect of the instructions from the company was to "advise" and "represent another person in regard to an immigration matter".<sup>25</sup> That person was the complainant. Whether or not Mr Sun owed the same obligations to the company's staff concerning his advice to them is not material.

[93] In respect of the obligation in cl 2.1(b) to comply with all immigration legislation, I find Mr Sun was a necessary and critical party to an unlawful arrangement with the Shanghai company. He permitted and facilitated the unlawful conduct of the company's staff who provided immigration advice even though they were not licensed.

[94] Mr Sun says in his affidavit that to the best of his knowledge, the staff carried out only clerical work. I have accepted that Mr Sun believed the company's staff were merely performing clerical work. It is apparent he misunderstood the law.

[95] However, while Mr Sun misunderstood the scope of the statutory clerical work exclusion to the advisers' exclusive immigration advice work, he did not misunderstand what the staff were doing. He must have known what tasks they were undertaking. Mr Sun knew the company's staff interviewed the complainant, completed the forms, arranged the business plan and other supporting documents. He knew the company's staff were communicating with the complainant concerning the voluminous information and supporting materials required by Immigration New Zealand.

---

<sup>24</sup> *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [29], [34] & [47].

<sup>25</sup> Immigration Advisers Licensing Act 2007, s 7(1)(a).

[96] It will have been clear to Mr Sun that the complainant would have had many questions, as all applicants do. There is no written evidence of any of those questions being passed back to Mr Sun or of his advice to the company, aside from the initial eligibility advice, though I have accepted his assertion that he provided some advice on immigration matters from time to time. That advice must have been oral.

[97] The company could not have held itself out as being able to arrange and conduct immigration applications on behalf of clients without someone who was recognised by Immigration New Zealand as a person permitted to file applications and be responsible for the relationship with that department, since it would not have dealt directly with the unlicensed persons within the company.

[98] Mr Sun excuses his business practice by reference to the restrictions under Chinese law. Without reviewing the evidence adduced on Chinese law, I have already accepted his contention that such restrictions exist. They are irrelevant to Mr Sun's obligations under the Act and Codes, which are not qualified in any way by Chinese law. The 2014 Code expressly makes this clear, but it is also a matter of general law.<sup>26</sup>

[99] Also immaterial is the complainant's knowledge of the restrictions at the time he engaged the Shanghai company. Mr Sun cannot operate in a way which is contrary to New Zealand law because his client endorsed it.

[100] If Mr Sun wants to enjoy the rights and privileges under New Zealand law of a licensed immigration adviser then, irrespective of where he lives, he must comply with his professional obligations. If he cannot do that while residing in China, he must relinquish his licence.

[101] Mr Sun requests the guidance of the Authority so that he will not be in breach of New Zealand or Chinese law. It is not for the Authority to interpret Chinese law or reconcile any conflict between the laws of the two countries. That is for Mr Sun. Otherwise, he must surrender his licence.

[102] While I do not accept that Mr Sun could in reality have dictated every piece of advice subsequently given by the company to the complainant, even that would not comply with the Codes. The obligations are personal to the adviser. There cannot be a wholesale delegation of engagement with the client in the way that occurred here.

---

<sup>26</sup> Clause 3(c) of the 2014 Code.

[103] Had the company's staff conveyed Mr Sun's advice or given their own advice on isolated occasions only, particularly as to the form of supporting information or as to biographical information and the like, with Mr Sun directly providing to the complainant the bulk of the advice and assistance, his knowledge of such occasional unlawful advice by the staff would not engage the disciplinary regime. However, that is not what happened here. There was a complete abdication of the obligation to personally engage with the client.

[104] I find that Mr Sun was in breach of cl 2.1(b) of the 2010 Code in respect of his lack of a relationship with the complainant. In permitting the Shanghai company's staff to undertake the bulk of the assistance to the complainant, Mr Sun was not acting in accordance with the Act. An adviser must personally discharge his or her professional obligations, which inevitably means taking charge of and actually undertaking communications with the client. Mr Sun knew the company's staff were assisting the complainant. It is no defence that he believed this was merely clerical work.

[105] The Registrar alleges that the company's staff not only conducted the initial meeting with the client, but also made the initial assessment of suitability for immigration, which would be passed onto the adviser. The agreement between Mr Sun and the company stipulated such a process. However, I note that the agreement further stated that Mr Sun would make the final evaluation for the client. That was the process carried out for the complainant. I would not have thought such a process violates Mr Sun's professional obligations, given that it is clear he did provide the final assessment of the complainant's eligibility. It is all the assistance given by the company to the complainant after the initial evaluation that breaches the Act and Mr Sun's obligations under the 2010 Code.

[106] As for the later period, from 13 January 2014 onwards, the Registrar relies on cl 3(c) of the 2014 Code.

[107] During this period, Mr Sun continued the same arrangement with the Shanghai company, operating at arm's length from his client. The obtaining of information and instructions from the complainant was largely the work of the staff.

[108] During the earlier period, Mr Sun had received Immigration New Zealand's letter of 23 December 2013 which he had passed onto the company's staff without comment. Then on 21 January 2014, he received the amended business plan which he promptly sent to Immigration New Zealand under cover of a fulsome letter. While I have accepted his assertion that he did provide advice to the company in relation to the business plan, despite the lack of a written record, I do not accept that he provided all the assistance

relating to Immigration New Zealand's requirements for the business plan. The company must have been using its experience and knowledge of New Zealand immigration to assist with the finalisation of the amended plan. Any other scenario is implausible.

[109] As was the case for the earlier period, Mr Sun's arrangement with the company means he was not acting in accordance with the Act from 13 January 2014, as his conduct enabled the company's staff to provide unlicensed immigration advice. He was a party to the unlawful conduct of the staff. The company could not have held itself out as facilitating New Zealand immigration without the use of his license. This was a breach of cl 3(c) of the 2014 Code to conduct himself in accordance with New Zealand immigration legislation.

[110] I uphold the third head of complaint. Mr Sun allowed the company's staff to interview the complainant, take his instructions, complete the application and other forms, complete the business plan and generally give him assistance on immigration criteria from time to time. Mr Sun is in breach of cl 2.1(b) of the 2010 Code and cl 3(c) of the 2014 Code.

[111] The first and second heads of complaint overlap.

- (1) *Entering into an arrangement whereby at no point did he engage directly with the complainant to obtain his lawful instructions, in breach of cl 1.1(b) of the 2010 Code and cl 2(e) of the 2014 Code*
- (2) *Not properly reviewing or discussing any of the submitted documents with the complainant or if applicable the Shanghai company, in breach of cl 1.1(a) of the 2010 Code and cl 1 of the 2014 Code*

[112] The following provisions of the Codes are relied on:

Code of Conduct 2010

**1. Obligations to clients**

1.1 Care, respect, diligence and professionalism

A licensed immigration adviser must, with due care, diligence, respect and professionalism:

- a) perform his or her services; and
- b) carry out the lawful informed instructions of clients

Code of Conduct 2014**General**

1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

**Client Care**

2. A licensed immigration adviser must:

...

- e. obtain and carry out the informed lawful instructions of the client

[113] The Registrar contends that Mr Sun did not at any time have contact with the complainant, since all communications were through the Shanghai company. Mr Sun entered into a contractual relationship with the company whereby he was expressly prohibited from directly contacting the persons whose visa applications he was dealing with. It is alleged the documentation was prepared by the company and then sent to Mr Sun to be submitted to Immigration New Zealand. Mr Sun left the review and scrutiny of the documents largely to the company.

*First head of complaint – obtaining and carrying out instructions*

[114] In respect of the period before 13 January 2014, the issue under cl 1.1(b) is whether Mr Sun failed to “carry out” the lawful informed instructions of the complainant.

[115] There is no dispute that the complainant gave a mix of lawful and unlawful instructions. As I have accepted that Mr Sun did not know of the falsity of any document, I put to one side the unlawful instructions. As for the lawful instructions, Mr Sun carried them out to the extent that he filed the application, managed communications with Immigration New Zealand and gave advice to the company from time to time, as I have accepted. However, the application and supporting documents, including the business plan, were compiled by the company. Mr Sun delegated the bulk of the ‘carrying out’ role to the company.

[116] Accordingly, Mr Sun breached cl 1.1(b) of the 2010 Code.

[117] As for the period from 13 January 2014 onwards, the scope of obligation under cl 2(e) of the 2014 Code is wider. There is now an express requirement to “obtain”, as well as “carry out” the lawful informed instructions of the complainant.

[118] Mr Sun's process of operating at arm's length through the Shanghai company means that he did not obtain instructions. As was the case for the earlier period, Mr Sun continued to fail to undertake the bulk of the services for the complainant and hence to carry out his instructions. Those tasks were performed largely by the company.

[119] Mr Sun is in breach of cl 2(e) of the 2014 Code.

*Second head of complaint – performing services and diligence*

[120] The Registrar alleges that Mr Sun did not properly review or discuss any of the submitted documents with the complainant "or if applicable the Shanghai company".

[121] A discussion with the company does not discharge Mr Sun's personal obligations to the complainant. It is not applicable.

[122] Mr Sun did not discuss any of the submitted documents with the complainant. He was obliged to do so. They cannot all have been complete and perfect when presented by the complainant to the company for filing with Immigration New Zealand. Certainly, the business plan was not as it twice required amending. Mr Sun may well have done a final pre-filing review of the documents, but he did not engage with the complainant while the materials were being put together.

[123] This also amounts to a breach of cl 1.1(a) of the 2010 Code and cl 1 of the 2014 code. The failure to engage directly with the client on the application details and the supporting documents, including the business plan, is a breach of the obligation to personally perform his services and to do so in a professional and diligent manner.

## **OUTCOME**

[124] I uphold all three complaints. Mr Sun breached cls 1.1(a), 1.1(b) and 2.1(b) of the 2010 Code and cls 1, 2(e) and 3(c) of the 2014 Code.

## **SUBMISSIONS ON SANCTIONS**

[125] As the complaint has been upheld, the Tribunal may impose sanctions pursuant to s 51 of the Act. A timetable is set below.

[126] I am mindful of the considerable overlap of the professional violations found against Mr Sun. They all arise from one fundamental violation, which was misunderstanding the scope of the clerical work exception to an adviser's personal

work and hence permitting the company to unlawfully give immigration advice. There will be no double-counting in imposing sanctions.

[127] As Mr Sun's entire business model is in breach of the Act and the current Code, one of the options to be considered given the expiry of Mr Sun's licence will be an order preventing him from renewing his licence for the maximum period of two years. The parties are invited to specifically address this. 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.

*Timetable*

[128] The timetable for submissions on sanctions will be as follows:

- (1) The Authority, the complainant and Mr Sun are to make submissions by **27 March 2019**.
- (2) The Authority, the complainant and Mr Sun may reply to any submissions by another party by **10 April 2019**.

---

D J Plunkett  
Chair