

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 15

Reference No: IACDT 002/17

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

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

**BETWEEN** **GZ**  
Complainant

**AND** **KE (LUKE) LU**  
Adviser

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**DECISION**  
**Dated 15 March 2019**

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**REPRESENTATION:**

Registrar: Self-represented  
Complainant: Self-represented  
Adviser: J McLeod, counsel

## **PRELIMINARY**

[1] Mr Lu, until recently a licensed immigration adviser, is based in Australia. He became a director of a New Zealand company which provides student placement services for prospective foreign students. This company was instructed by the complainant to seek for her son a student placement at a school and a student visa. The immigration work was undertaken by unlicensed staff of the company in the name of Mr Lu. He says he did not authorise this.

[2] The essential issue to consider is whether Mr Lu allowed unlicensed staff to perform work which only a licensed adviser can undertake.

## **BACKGROUND**

[3] Mr Ke (Luke) Lu is resident in Australia, where he is an Australian licensed migration agent.

[4] In 2012, Headsun International Group Ltd (Headsun) was registered in New Zealand. In 2013, Mr Lu became a director and shareholder. Ms L is also a director and shareholder. She is based in New Zealand. Headsun was intended as a joint venture between the two of them, whereby Mr Lu could refer to Ms L and Headsun his clients in Australia who wished to study in New Zealand. Ms H is an employee of Headsun.

[5] Mr Lu became a licensed immigration adviser in New Zealand in January 2014.

[6] On 18 August 2015, the complainant approached Headsun for assistance with immigration matters so her son could attend school in New Zealand. The family are based in China. There was a discussion on that day by "WeChat" between the complainant and Ms L.

[7] The Tribunal has been sent transcripts of 'WeChat' conversations between the complainant and either Ms L or Ms H. They are dated between 18 August and 26 December, presumably in 2015. Both Ms L and Ms H advised the complainant concerning Immigration New Zealand's requirements, the documents needed in support of their proposed applications and the fees of Immigration New Zealand and Headsun. On 5 September, Ms L advised the complainant not to disclose to Immigration New Zealand the true intention of visiting to study.

[8] On 8 September 2015, the complainant entered into two written agreements with Headsun for services relating to a guardian visa application for herself and a

student visa application for her son. The agreements were signed by Ms L of Headsun and the complainant.

[9] Headsun described itself in the agreements as “an authorised agency of overseas education consultancy services” for those wishing to receive education in New Zealand. It assisted with touring, enrolment applications, the preparation and translation of visa documents, advice on visa applications, flight bookings, airport pick-ups and accommodation. It would handle all visa application procedures. A professional fee of RMB5,000 was to be paid to Headsun.

[10] Headsun then arranged education and accommodation services for the complainant. An Auckland secondary school offered the complainant’s son a placement.

[11] As the complainant’s son expressed unhappiness at studying in New Zealand, the complainant decided they would visit New Zealand so the boy could make a decision about whether he wanted to come here. She agreed with Ms L’s recommendation that they would visit as tourists. The complainant says that throughout this process she was guided by Ms L and Ms H of Headsun.

[12] On 23 September 2015, the complainant herself lodged with Immigration New Zealand visitor visa applications for both herself and her son. The applications stated that the purpose of their visit was sightseeing. They were approved on 7 October 2015.

[13] The complainant and her son, together with the complainant’s husband, arrived in New Zealand on 16 October 2015. As the son decided he would like to attend school in New Zealand, Ms L and Ms H were instructed to prepare guardian and student visa applications. They completed the forms and drafted the cover letter to Immigration New Zealand for the complainant to sign.

[14] On 2 November 2015, applications for a guardian visitor visa and a student visa were lodged by the complainant herself with Immigration New Zealand.

[15] Immigration New Zealand wrote to the complainant on 24 November 2015 outlining a number of concerns with her application. It was not satisfied as to her funds or that she met the requirements of good character or to be a *bona fide* applicant. It was noted that she had previously obtained a visitor visa for sightseeing and her son had received a placement offer from a school prior to visiting but this had not been disclosed.

[16] Immigration New Zealand also questioned Ms H's involvement as she was nominated as the address for communication and had declared that she had assisted the complainant as an interpreter and translator.

[17] The following exchange concerning Immigration New Zealand's letter took place by 'WeChat' between the complainant and Ms L on "26 November" (as translated):<sup>1</sup>

[The complainant]: Hi, [Ms L]! Up to now I have not viewed [Ms H]'s response to the PPI letter. Can you give her a push? If it is hard for you and [Ms H] to make it, please do let me know, I will try to find alternative way out.

[Ms L]: Hi, there, please don't mess yourself up! I pledge my word of honour that I will clear the hassle and you will definitely be granted the visa. Please allow us more time.

[Ms L]: Don't mess about it! We are very experienced in handling this issue!

[The complainant]: But, you know [Ms H] is handling this issue for the first time. We can not afford to risk the decline of the application and carry the disgrace of the visa record. My son need a chance to study overseas.

[date/time deleted]

[Ms L]: It will never happy!

[Ms L]: My business partner and I have 16 years experience in visa application.

[Ms L]: My business partner is a licensed immigration adviser who can handle applications both in New Zealand and Australia. So, whatever the cases, we have experienced a lot? [Ms H] only writes some letter for us.

[date/time deleted]

[The complainant]: I do hope you can seek assistance from your licensed business partner, and don't mess up the application.

[18] As discussed in the exchange, Ms H prepared a draft letter in response to Immigration New Zealand's letter of 24 November 2015. It was emailed by Ms L to Mr Lu on 29 and/or 30 November 2015. Mr Lu returned the draft to Ms L on 30 November, having made some changes to it. According to the complainant, Ms L told her that it had been drafted by Ms H and checked by their licensed adviser. It was signed and sent by the complainant to Immigration New Zealand. The copy provided to the Tribunal is undated and unsigned.

[19] The letter to Immigration New Zealand set out evidence as to the complainant's funds. It explained why she and her son had come to New Zealand for sightseeing and how that had subsequently led to the guardian and student visa applications. She explained why she was a *bona fide* applicant. The complainant stated that she did not intend to work in New Zealand as her company was still operating in China. As for

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<sup>1</sup> The earlier communications in this exchange appear to be misdated "26 December".

Ms H, she assisted with translating some medical words and had used her credit card to pay the fees. The letter appended numerous documents.

[20] On 8 December 2015, Immigration New Zealand wrote to the complainant declining the visa applications for both the complainant and her son. It was not satisfied that they were *bona fide* applicants or met the requirements set out in the relevant immigration instructions.

## **COMPLAINT**

[21] On 24 December 2015, the complainant made a formal complaint about Mr Lu to the Immigration Advisers Authority (the Authority), headed by the Registrar of Immigration Advisers (the Registrar).

[22] It was alleged in the complaint that Ms L told the complainant on 18 August 2015 that Headsun was an approved education agent and also licensed to provide immigration advice. Ms L said her business partner was a licensed immigration adviser. The complainant said she was upset that her application has been declined and even worse that her son had been found to be of bad character.

[23] The Authority wrote to Mr Lu on 15 June 2016 formally advising him of the complaint and outlining the details. In particular, it was noted that guardian and student visa applications had been prepared by Ms L and Ms H of Headsun, as was a response to Immigration New Zealand's letter of 24 November 2015. These applications had been lodged in the name of the complainant and her son. There was no evidence a licensed adviser had been involved. Furthermore, Ms L had sent a message to the complainant in November 2015 stating that her business partner was licensed for both New Zealand and Australia. The complainant had discovered that Mr Lu was a director of Headsun.

[24] It appeared to the Authority that Ms L and Ms H, who were not licensed, were giving immigration advice. As Mr Lu may have allowed that, it appeared he was not meeting his obligations under the Code of Conduct 2014 (the Code).

[25] On 26 August 2016, Mr Lu's counsel, Mr McLeod, responded to the Authority. It was acknowledged that Mr Lu was a director and shareholder of Headsun. The company was to be a joint business venture with Ms L, whereby he would refer to her his Australia based clients who wished to study in New Zealand. The intention was that Headsun would provide only education placement services and not immigration advisory services. In return, Mr Lu would be paid a commission. He was paid a salary of \$1,000 for approximately 12 months, with the last payment having been made some

two and a half years previously. The business venture was unsuccessful as he only referred one client to Headsun. When Headsun stopped paying Mr Lu, he considered his involvement to be at an end.

[26] According to counsel, Mr Lu never played any management role in Headsun. He never provided any services to the company or to its clients. He was a director and shareholder in name only. He was not aware of Headsun providing any immigration advice to any of its clients. So far as he was aware, it provided student recruitment only. Nor did he ever authorise Headsun to use his licence or mention his name in any way. Mr Lu obtained his New Zealand licence in January 2014, but it was not for any purpose related to Headsun. He had only used his licence on three occasions, but never through Headsun.

[27] Counsel added that Mr Lu had no knowledge of the complainant. He did not know whether she was given any immigration advice. Nonetheless, should the complainant's allegation be true, it was accepted that Mr Lu could bear some responsibility to the complainant. He therefore wished to satisfy himself that appropriate steps had been taken to resolve the complaint and to ensure that any mistakes made by Headsun and its employees were not repeated. The Authority was informed that Ms L and the complainant had been in discussions with a view to settling the matter and this could result in the complaint being withdrawn.

[28] A further letter was sent by counsel to the Authority on 12 September 2016. He advised that Headsun was engaged by the complainant to provide services relating to her and her son coming to New Zealand, but not immigration advice. It was not engaged to obtain visitor and student visas. The client agreements did not reflect the intention of the parties. It was an old form of contract, only used due to the complainant insisting on having a written agreement. Mr Lu had no knowledge of it. Headsun did not submit visa applications for the complainant and her son, as they were filed by the complainant herself.

[29] In his letter to the Authority, counsel conceded that Headsun employees could have strayed into providing immigration advice in a number of 'WeChat' exchanges with the complainant and by assisting her to respond to Immigration New Zealand's letter. These mistakes were isolated and not part of a wider provision of immigration advice to the complainant or other clients. The Headsun staff had now reflected carefully on what had happened.

[30] Counsel stated that Mr Lu now acknowledged that on one occasion he did check and make minor grammatical suggestions to the contents of the complainant's

proposed letter in response to Immigration New Zealand's concerns. He had not recalled it previously as his involvement was so minimal. It was accepted that this ought to have alerted him to the possibility Headsun might have been straying into providing immigration advice to the complainant. This assistance provided by Mr Lu was unpaid and in the context of helping a friend.

[31] Mr Lu was now proactively engaged in ensuring that the complaint was resolved and that any mistakes made by the employees were not repeated.

[32] Mr Lu intended to remove himself as a director and shareholder of Headsun.

[33] The Registrar filed a statement of complaint (dated 9 January 2017) with the Tribunal, together with supporting evidence. It alleges Mr Lu breached the Code in the following respect:

- (1) allowed unlicensed individuals to provide services only a licensed immigration adviser can provide, thereby failing to meet his obligation to act in accordance with the Immigration Advisers Licensing Act 2007 (the Act), in breach of cls 1 and 3(c).

## **JURISDICTION AND PROCEDURE**

[34] 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 Act:

- (a) negligence;
- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour; and
- (e) a breach of the Code of Conduct.

[35] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>2</sup>

[36] 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>3</sup>

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

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

[37] 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>4</sup>

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

[39] 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>7</sup>

[40] The Tribunal has received a statement of complaint and supporting documents from the Registrar. It has received from counsel for Mr Lu a completed statement of reply form (7 February 2017), submissions in the form of a statement of reply (10 February 2017) and an affirmation from Mr Lu (9 February 2017). Mr Lu does not request an oral hearing.

## ASSESSMENT

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

### General

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

### 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.

[42] The Tribunal has adversely commented in previous decisions on the practice which developed in the immigration advisory industry of what is known as “rubber stamping”.<sup>8</sup>

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<sup>4</sup> Section 50.

<sup>5</sup> Section 51(1).

<sup>6</sup> Section 53(1).

<sup>7</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [101]–[102] & [112].

<sup>8</sup> *Stanimirovic v Levarko* [2018] NZIACDT 3 at [4], [36]–[38]; *Immigration New Zealand (Calder) v Soni* [2018] NZIACDT 6 at [4], [50]–[61].



[43] Typically, this occurs where a licensed immigration adviser uses offshore agents to recruit the clients, prepare the immigration applications and send them to the licensed adviser to sign off and file with Immigration New Zealand. There is little, if any, direct contact between the licensed adviser and the client.

[44] The practice is plainly unlawful. A person commits an offence under the Act if he or she provides “immigration advice” without being licensed or exempt from licensing.<sup>9</sup> A person may be charged with such an offence even where part or all of the actions occurred outside New Zealand.<sup>10</sup>

[45] The statutory scope of “immigration advice” is very broad:<sup>11</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
- (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.

[46] The exclusion from the scope of “immigration advice” potentially relevant here is subs (1)(b)(iii) concerning clerical work, translation or interpretation services.

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<sup>9</sup> Immigration Advisers Licensing Act 2007, s 63.

<sup>10</sup> Sections 8 & 73.

<sup>11</sup> Section 7.

[47] “Clerical work” is narrowly defined in the Act:<sup>12</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

[48] The Registrar’s allegation here is that in relation to the complainant, Mr Lu engaged in rubber stamping. He allowed Headsun to engage the client and control the immigration process. Ms L and Ms H, who were unlicensed, advised the complainant on all immigration matters. What they did went beyond clerical work. They prepared the immigration applications and dealt with Immigration New Zealand’s concerns.

[49] While a licensed adviser involved in rubber stamping usually files the applications prepared by the unlicensed staff, in this case Mr Lu did not, since they were sent by Headsun to the complainant to file herself with Immigration New Zealand. Mr Lu was not involved at all in the applications made to Immigration New Zealand, but he was responsible for finalising the letter to Immigration New Zealand in reply to its concerns.

[50] Mr Lu denies engagement in any form of rubber stamping, though in hindsight acknowledges he should have realised on receiving the draft letter that the staff appeared to have unlawfully given immigration advice.

[51] The affirmation from Mr Lu sets out in some detail the history of his relationship with Ms L and Headsun, as outlined above. He is employed as a migration agent by an Australian consulting company. It was his understanding that Headsun only provided student placement services and not immigration services to its clients. The only time he ever discussed the possibility of Headsun providing immigration advice was when Ms L suggested he move to New Zealand to do so, but that was not possible. Mr Lu said he played no management role in the company and only ever visited its premises when he was on holiday in New Zealand. He had never authorised Headsun to use his licence or his name to promote its business. The business venture was unsuccessful as he only ever referred one client to Headsun.

[52] Mr Lu said he was unaware of the complainant until Ms L asked him to review a draft response to Immigration New Zealand’s letter expressing concerns. He had

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<sup>12</sup> Section 5, “clerical work”.

assumed the complainant had drafted the letter and that Headsun had only translated it. He made minor grammatical changes to the letter. He was not paid for that work as he considered it a favour to a friend. He had not considered at the time that Headsun was providing immigration advice, but with the benefit of hindsight he can now recognise that responding to such a letter from Immigration New Zealand on someone's behalf would appear to cross the line into giving immigration advice. He accepts that he should have made further enquiries and that by not doing so he made a mistake and potentially breached his obligations under the Code.

[53] In his affirmation, Mr Lu expresses disappointment that Ms L acted in the way she did since she should have known better. He had no control over the business and accepts that it was unwise for him to be a director and shareholder of Headsun. He was also disappointed with himself for not appreciating the potential seriousness of the situation and investigating as soon as he received Ms L's request to review Immigration New Zealand's letter.

[54] According to Mr Lu, he believes he took all reasonable steps to fulfil his professional obligations to the complainant. He had obtained Ms L's assurance that it was a one-off mistake and would not be repeated. She had assured him that the staff were now fully aware of the definition of immigration advice and that Headsun would not provide immigration services, but would refer all such matters to external consultants and solicitors. He negotiated with Ms L compensation which eventually led to her paying the claimant \$10,000. He had severed his ties with the company by removing himself as a director and shareholder. He did not receive any payment in doing so.

[55] I generally accept the factual circumstances set out by Mr Lu in his affidavit with two exceptions.

[56] First, I do not accept that Headsun was engaged by the complainant to provide education placement services only. It is obvious that, from the point of view of the complainant based in China, she was looking for immigration as well as education consulting services. The conduct of Ms L and Ms H is consistent only with the conclusion that Headsun knew it had been engaged to provide immigration services. I am confident the two written agreements signed reflected the true intent of both Headsun and the complainant.

[57] In making that finding though, I accept for the purpose of this complaint that Mr L was not aware of the complainant at the time that the agreements were entered into or at the time the various immigration applications were made.

[58] Furthermore, I do not accept Mr Lu's contention that, on receipt of the draft letter, he did not realise that Ms L must have been providing immigration advice to the complainant. This is implausible. It seems to me self-evident that any competent adviser would have realised that. After all, who did Mr Lu think was providing that advice?

[59] A student placement requires a visa. It is apparent from Mr Lu's affirmation that Ms L did not inform him that someone else such as a lawyer or another licensed adviser was dealing with the immigration side of the placement, either generally or in respect of the complainant specifically. Indeed, that was why she was seeking his assistance. This was a letter to Immigration New Zealand concerning visa applications, so it must have been clear that Ms L was giving immigration advice.

[60] I note that Ms L and Ms H acknowledge that they did give immigration advice in early September 2015 and "at some points of the process", though they deny giving such advice in response to Immigration New Zealand's letter.<sup>13</sup> The denial is somewhat unreal.

[61] I find that Mr Lu would have realised, on receiving the draft letter, that Ms L was providing immigration advice and guiding the complainant in her communications with Immigration New Zealand.

[62] Mr Lu also downplays his role in reviewing the draft letter. He says in his affirmation that he made minor grammatical changes. It was much more than that. There are numerous revisions as to its content.

[63] However, while I find Mr Lu must have been aware of the role of Ms L and Ms H in providing immigration advice to the complainant in relation to Immigration New Zealand's letter, there is no evidence this was anything other than a one-off instance of such conduct. I accept that Mr Lu did not set up a business structure designed to circumvent the licensing legislation. There is no pattern of misconduct.

[64] While some isolated instances do not engage a professional disciplinary regime, this complaint does. Mr Lu's violation is at the lower end of the 'rubber stamping spectrum', but it is a serious breach of the Code to permit unlicensed individuals to give immigration advice even once. They might have committed offences for which there can be imprisonment. This is more than just a failure to make an enquiry or a minor error of judgment, as characterised by Mr McLeod.

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<sup>13</sup> See Headsun solicitor's letter, 9 September 2016.

*Conclusion*

[65] It was by using Mr Lu's licence that the staff of Headsun could mislead the complainant into believing that a licensed adviser was guiding her immigration applications. Mr Lu did not know this when the applications were filed, but he did know about it on 30 November 2015 and took no action to take over the conduct of the applications. He facilitated the conduct of Ms L and Ms H in drafting and finalising an important letter to Immigration New Zealand, which was contrary to the Act. He is therefore in breach of cl 3(c) of the Code. For the same reason, he has not been professional, diligent or conducted himself with due care. He is therefore in breach of cl 1 of the Code.

[66] I acknowledge Mr McLeod's submission that Mr Lu, to his credit, has been proactive since the complaint was made in resolving the dispute with the complainant and ensuring that Headsun's staff are aware of the statutory requirements. That will be relevant to the next stage of the process.

**SUBMISSIONS ON SANCTIONS**

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

[68] A timetable is set out below. Any request that Mr Lu 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.

*Timetable*

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

- (1) The Registrar, the complainant and Mr Lu are to make submissions by **8 April 2019**.
- (2) The Registrar, the complainant and Mr Lu may reply to the submissions of any other party by **22 April 2019**.