

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 22

Reference No: IACDT 018/16

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

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

**BETWEEN** **DJ**  
Complainant

**AND** **JOHN VIKRANT DUA**  
Adviser

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**DECISION  
(Sanctions)  
Dated 18 April 2019**

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**REPRESENTATION:**

Registrar: S Carr, counsel  
Complainant: Self-represented  
Adviser: Self-represented

## **INTRODUCTION**

[1] The Tribunal upheld this complaint in a decision issued on 14 February 2019 in *DJ v Dua* [2019] NZIACDT 6. It found that Mr Dua had been negligent and had breached his obligation under cl 1 of the Code of Conduct 2014 (the Code) to be professional and diligent.

## **BACKGROUND**

[2] The narrative is set out in the earlier decision of the Tribunal and will only be briefly summarised here.

[3] Mr Dua represented the complainant, Ms DJ, in respect of unsuccessful graduate work and visitor visa applications. She had a Diploma of Business Management from a New Zealand institution and worked as the assistant manager and Asian cook, then as the manager, of a fish and chips shop in New Zealand. She sought Mr Dua's services to apply for a graduate work experience visa, also known as a "post-study work visa – employer assisted", together with a partnership visa for her husband.

[4] Mr Dua duly filed an application for a graduate work visa with Immigration New Zealand on 10 November 2015 based on Ms DJ's employment as the manager of the fish and chips shop at a remuneration of \$16 hourly. Mr Dua then replied to Immigration New Zealand's letter of 2 December 2015 which had raised numerous concerns about her application, notably that she did not appear to meet the relevance requirements for the visa, her rate of pay did not meet the market requirements and the position might not genuinely be that of a manager. Additionally, Ms DJ appeared to have insufficient funds, given her pregnancy.

[5] In March 2016, Mr Dua asked the immigration officer to issue a visitor visa for Ms DJ for three months in the event that her work visa was declined.

[6] Later in the same month Immigration New Zealand declined the application for a graduate work visa on the basis that the position might not genuinely be that of a manager and it did not provide relevant experience, nor was the qualification a key factor in obtaining employment. Ms DJ was, however, granted a visitor visa valid until 22 April 2016.

[7] On behalf of Ms DJ, Mr Dua applied on 1 April 2016 for a reconsideration of Immigration New Zealand's decline of her graduate work experience visa application. It was asserted that Ms DJ's studies helped her perform the duties of a manager efficiently. The knowledge she had gained on the course had been implemented in the business.

[8] Immigration New Zealand granted an interim work visa to Ms DJ on 15 April 2016, to expire when the decision was made on her reconsideration application.

[9] The reconsideration application was declined by Immigration New Zealand on 19 April 2016. It was not satisfied that Ms DJ met the requirements of the work visa instructions. She was advised to leave New Zealand before her visa expired on 22 April 2016. Mr Dua informed Ms DJ of the decline of the reconsideration on 22 April 2016.

[10] There was then an exchange of emails between Mr Dua and Ms DJ on the afternoon of 22 April in relation to a new visitor visa application. He appears to have lodged it electronically with Immigration New Zealand before 5 pm on that day. One of the reasons given for seeking the visa was that Ms DJ and her family "want to plan her next plan of action to live in New Zealand".

[11] As there were some supporting documents missing from the application, Mr Dua sent them to Immigration New Zealand on 28 April 2016.

[12] On 2 May 2016, Immigration New Zealand wrote to Ms DJ advising that it had not accepted the application for both her and her husband because it was incomplete. She had not provided mandatory documents such as the signed and dated form and evidence of her funds.

[13] As documents were presumably immediately provided, Immigration New Zealand wrote to Ms DJ on 3 May 2016 advising that the visitor visa application required only a new photograph of herself. Mr Dua sent this to Immigration New Zealand on 5 May 2016.

[14] Ms DJ advised Immigration New Zealand on 9 June 2016 that she and her husband no longer had an immigration adviser and it should contact them directly.

[15] On 17 June 2016, Immigration New Zealand sent Ms DJ a letter outlining a number of concerns with her visitor visa application and on which her comments were invited. This included incomplete information and insufficient funds. Furthermore, her application did not appear to be genuine and *bona fide*, as she had previously been declined a work visa and granted a visitor visa in order to leave New Zealand or seek reconsideration. That reconsideration had been declined. She had now sought another visa in order to make a plan of action to live in New Zealand, but this did not appear to be a lawful purpose. Additionally, her husband was not eligible for a visitor visa as he had already exceeded the maximum stay by almost three months.

[16] Ms DJ responded to Immigration New Zealand's concerns on 21 June 2016. She blamed Mr Dua for giving them wrong information. She now wanted to study for a postgraduate diploma and had been offered a place at a named institution. She sought a student or visitor visa and a work visa for her husband.

[17] On 11 July 2016, Immigration New Zealand declined a visa. In particular, it did not consider that looking for a college in order to seek a student visa was a lawful purpose. It was also noted that the majority of her funds had been transferred into her bank only recently.

#### *Complaint*

[18] Ms DJ lodged a complaint against Mr Dua with the Immigration Advisers Authority (the Authority) on 6 July 2016. The Authority is headed by the Registrar of Immigration Advisers (the Registrar). Mr Dua was formally notified on 9 November 2016 and replied to the Authority on 7 December 2016.

[19] The Registrar then filed a statement of complaint (20 December 2016) with the Tribunal, together with supporting documents. The Tribunal received a statement of reply (16 January 2017) and a letter (12 January 2017) from Mr Dua. It also received a letter (21 December 2016) from Ms DJ.

#### *Decision of Tribunal*

[20] In the decision of 14 February 2019, the Tribunal upheld the complaint and found that Mr Dua had been negligent and had not been professional or diligent, thereby breaching cl 1 of the Code in the following respects:

- (1) failing to adequately assess Ms DJ's eligibility for a graduate work experience visa, including the suitability of the employment agreement;

- (2) lodging a visitor visa application with a stated reason which did not meet the definition of lawful purpose as set out in the immigration instructions;
- (3) including Ms DJ's husband in a visitor visa application when he was not eligible; and
- (4) failing to supply the visitor visa application form to Ms DJ to review and sign prior to filing it with Immigration New Zealand.

## **SUBMISSIONS**

[21] Counsel for the Registrar, Ms Carr, submits that Mr Dua should be:

- (1) cautioned or censured;
- (2) ordered to complete the full Graduate Diploma in New Zealand Immigration Advice;
- (3) ordered to pay a penalty; and
- (4) ordered to pay a nominal figure of \$1,000 for the costs of the investigation.

[22] There is a letter from Ms DJ (6 March 2019). She is now resident in Sri Lanka. Ms DJ contends that Mr Dua played with her future. Her plan had been to obtain a Master's degree and then some experience in New Zealand, prior to returning to Sri Lanka. However, as she only had a diploma and no experience, she could not find a good job in Sri Lanka. Ms DJ stated that she had spent a lot of money but had nothing to show for it. All of this happened because of Mr Dua.

[23] According to Ms DJ, if Mr Dua had provided the correct information, she would have done everything the proper way and would not have been deported from New Zealand. Immigration New Zealand looked at them very badly because of him. There was now a black mark on their file. As she was deported, it was really hard to get a visa to another country. Ms DJ would be happy to receive a refund of the money paid to Mr Dua.

[24] In his letter to the Tribunal (6 March 2019), Mr Dua accepts the Tribunal's decision, but then briefly justifies his conduct. The Tribunal dealt with such matters in its earlier decision. Nonetheless, he agrees to undertake the full Graduate Diploma and to refund the money paid by Ms DJ.

[25] Ms DJ was invited by the Tribunal to compile a schedule with a breakdown of the fees and disbursements paid to Mr Dua. On 23 March 2019, Ms DJ advised the Tribunal she had paid Mr Dua \$5,835, including Immigration New Zealand's fees for the futile applications. She provided her bank account details.

[26] Mr Dua was then given the opportunity to agree to Ms DJ's proposal for the repayment of \$5,835 or to provide his objection.

[27] On 15 April 2019, Mr Dua advised the Tribunal that he had been adjudicated bankrupt on 27 February 2019. The bankruptcy decision of the High Court was provided. It is noted that the Court accepted that Mr Dua was unable to pay his debts and that his family's financial circumstances were difficult. He advised the Tribunal that he agreed to repay \$5,835, but at \$30 weekly starting immediately.

[28] Ms DJ responded on 16 April 2019 to the offer to pay \$5,835 at the rate of only \$30 weekly. She seeks \$500 weekly. She needs the compensation in order to study in another country.

[29] The Tribunal has also learned that Mr Dua surrendered his licence as an immigration adviser on 27 March 2019.

## **JURISDICTION**

[30] The Tribunal's jurisdiction to award sanctions is set out in the Immigration Advisers Licensing Act 2007 (the Act). Having heard a complaint, the Tribunal may take the following action:<sup>1</sup>

### **50 Determination of complaint by Tribunal**

After hearing a complaint, the Tribunal may—

- (a) determine to dismiss the complaint:
- (b) uphold the complaint but determine to take no further action:
- (c) uphold the complaint and impose on the licensed immigration adviser or former licensed immigration adviser any 1 or more of the sanctions set out in section 51.

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<sup>1</sup> Immigration Advisers Licensing Act 2007.

[31] The sanctions that may be imposed are set out at s 51(1) of the Act:

**51 Disciplinary sanctions**

- (1) The sanctions that the Tribunal may impose are—
- (a) caution or censure:
  - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
  - (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
  - (d) cancellation of licence:
  - (e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:
  - (f) an order for the payment of a penalty not exceeding \$10,000:
  - (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
  - (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
  - (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[32] In determining the appropriate sanction, it is relevant to note the purpose of the Act:

**3 Purpose and scheme of Act**

The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.

[33] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:<sup>2</sup>

It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.

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<sup>2</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

...

The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

...

Lord Diplock pointed out in *Ziderman v General Dental Council* that the purpose of disciplinary proceedings is to protect the public who may come to a practitioner and to maintain the high standards and good reputation of an honourable profession.

[34] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the profession itself.<sup>3</sup>

[35] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.<sup>4</sup>

[36] The most appropriate penalty is that which:<sup>5</sup>

- (a) most appropriately protects the public and deters others;
- (b) facilitates the Tribunal's important role in setting professional standards;
- (c) punishes the practitioner;
- (d) allows for the rehabilitation of the practitioner;
- (e) promotes consistency with penalties in similar cases;
- (f) reflects the seriousness of the misconduct;
- (g) is the least restrictive penalty appropriate in the circumstances; and
- (h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

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<sup>3</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee* at [151].

<sup>4</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

<sup>5</sup> *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], relying on *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51] and *Katamat v Professional Conduct Committee* [2012] NZHC 1633 at [49].



## DISCUSSION

[37] I will deal with the potentially relevant sanctions in the order in which they appear in s 51 of the Act. The only sanctions that can be imposed are those appropriate for the complaint upheld, not Mr Dua's recent bankruptcy. An undischarged bankrupt is prohibited from holding a licence.<sup>6</sup>

### *Caution or censure*

[38] I agree with Ms Carr that the Tribunal's disapproval of the quality of the services provided by Mr Dua should be marked by a censure. There was never really any basis for the graduate work visa application, based on Ms DJ's employment as the manager of a modest suburban fish and chips shop in a provincial town. No competent adviser would have advised a client to advance such an application.

### *Training*

[39] Mr Dua acknowledges the need to undertake the full Graduate Diploma. I do not know, however, how realistic it is for Mr Dua to recover his licence and resume practice, given his financial circumstances. I do not therefore intend to order training. However, if he intends to apply for any licence once discharged from bankruptcy, he must undertake the Graduate Diploma.

### *Order preventing reapplication*

[40] I would not contemplate such an order based on the complaint, nor is it sought by the Registrar. I merely make the point that Mr Dua should not be granted a full licence until he has completed or at least made satisfactory progress towards completion of the Graduate Diploma and is faithfully repaying the complainant.

### *Penalty*

[41] Ms Carr submits that the Tribunal should order payment of a penalty, but advances no reasons. While a low penalty might be appropriate, the priority should be reimbursing Ms DJ for the wasted expenditure. Furthermore, Mr Dua is bankrupt.

[42] While I am sympathetic to Ms DJ's plight, it is somewhat unfair to blame Mr Dua for her predicament. He wasted her money by filing the graduate work visa application, but is not responsible for its failure. It was doomed from the start. It failed because

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<sup>6</sup> Immigration Advisers Licensing Act 2007, s 15(1)(a).

she did not have (and presumably could not get) a job relevant to her qualification. While Mr Dua should have better handled the visitor applications, I do not see how he can be blamed for the family's apparent deportation. I do not know how that came about. Ms DJ had been advised by Immigration New Zealand to depart the country on 19 April 2016.

#### *Costs of investigation*

[43] Ms Carr seeks a nominal \$1,000 for the costs of the investigation. The Tribunal does not routinely make orders for costs. There was nothing complex about the investigation, nor did Mr Dua's conduct unduly prolong the investigation or increase its costs. Furthermore, Mr Dua is bankrupt. I decline to order payment of any costs.

#### *Refund of fees*

[44] Ms DJ seeks the refund of all monies paid to Mr Dua and I accept this is appropriate. This is acknowledged by Mr Dua. No part of his service was of value to Ms DJ. It is not just his fees which were wasted, but also the visa fees paid to Immigration New Zealand and any other disbursements.

[45] Ms DJ seeks \$5,835. Mr Dua agrees to this amount but seeks to pay it off at \$30 weekly given his financial circumstances. I appreciate it will take him almost four years to pay Ms DJ, but I do not see any alternative. It is most unfortunate for Ms DJ, but is the best that can be done for her. It is not my role to analyse Mr Dua's financial affairs to see if he can pay more. The best evidence before me is his bankruptcy and the decision of the High Court, which found he could not pay his debts.

### **OUTCOME**

[46] Mr Dua is:

- (1) censured; and
- (2) ordered to pay to Ms DJ \$5,835 in refund of the fees and expenses paid, at \$30 weekly starting immediately.