

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 6

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**  
**Date: 14 February 2019**

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**REPRESENTATION:**

Registrar: In person

Complainant: In person

Adviser: In person

## **PRELIMINARY**

[1] The adviser, Mr Dua, represented Ms DJ in respect of unsuccessful graduate work and visitor visas applications. The complainant says she was misled by Mr Dua, who advised her she could obtain a graduate experience work visa based on her employment in a takeaway shop. According to her, when that application failed he incompetently dealt with a visitor visa application.

[2] The essential issues are whether a competent and professional adviser would have lodged such a work visa application based on employment in a takeaway shop and whether a last minute visitor visa application was competently managed.

## **BACKGROUND**

[3] Mr John Vikrant Dua is a licensed immigration adviser who is based in New Zealand. He is, or was, a director of Welsh Immigration & Studies (NZ) Ltd. He is now a director of Micro Immigration & Employment Law Services Ltd.

[4] Ms DJ holds a Diploma of Business Management (level 6) from a New Zealand institution. She was working as the assistant manager and Asian cook and then manager of a fish and chips shop in New Zealand.

[5] Ms DJ sought Mr Dua's services to apply for a graduate work experience visa, also known as a "post-study work visa – employer assisted". She entered into a written agreement with him on 22 September 2015. Her husband, Mr KK, entered into a written agreement with Mr Dua on the same day. He sought a partnership work visa. Mr Dua provided Ms DJ with a checklist of documents which would be required by Immigration New Zealand.

[6] On 25 September 2015, Mr Dua emailed to Ms DJ a sample individual employment agreement. On 4 November, Ms DJ emailed Mr Dua the completed employment agreement as the manager of the fish and chips shop where she worked.

### *Application for work visa*

[7] Immigration New Zealand received Ms DJ's application for a graduate work visa on 10 November 2015 (covering letter dated 3 November 2015). It had been filed by Mr Dua. The application was on the basis that she would be the manager of the fish and chips shop. The remuneration offered was "\$16 per annum", presumably meaning per hour. The completed employment agreement between Ms DJ and the shop owner was sent with the application.

[8] Immigration New Zealand sent a letter to Ms DJ on 2 December 2015 raising numerous concerns about her application. According to Immigration New Zealand, she did not appear to meet the “relevance” requirements for the visa, the rate of pay did not meet the market requirements, the position offered might not genuinely be that of a manager and she had insufficient funds for maternity health services (\$9,000 or sponsorship). Ms DJ was due to give birth in May 2016. She was invited to provide further information.

[9] On 7 December 2015, Mr Dua sent to Ms DJ a checklist of documents required in order to respond to the concerns of Immigration New Zealand. She was asked to provide them the following working day. A sample letter for the shop owner to complete was provided by Mr Dua to Ms DJ on 9 December 2015.

[10] Ms DJ provided documents to Mr Dua on both 8 and 9 December 2015.

[11] A reply to the letter of 2 December 2015 was provided to Immigration New Zealand by Mr Dua on 10 December 2015, supported with additional documents. Mr Dua advised that the business had a high turnover and wanted to expand. Ms DJ's studies had been implemented in the business. The employer was satisfied he was paying the market rate in the town in which the business was based.

[12] An organisation chart of the business sent with the letter to Immigration New Zealand showed that two people (the chef and the kitchen helper) reported to the manager, who in turn reported to the owner. A letter from the owner (8 December 2015) stated that Ms DJ had been offered the job because of her relevant qualification. Her main tasks were budgeting, ordering stock, managing rosters and the like. This was the completed version of the sample letter sent by Mr Dua on 9 December.

[13] On 10 March 2016, Mr Dua asked the immigration officer to issue a three months visitor visa for Ms DJ if her work visa was to be declined.

[14] Immigration New Zealand declined the application for the graduate work visa on 22 March 2016. This was because there was no evidence that the business had a high turnover and was to expand. Furthermore, the position may not be genuinely that of a manager nor 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.

[15] Mr Dua applied on 1 April 2016 on behalf of Ms DJ for a reconsideration of Immigration New Zealand's decline of her graduate work experience visa. In essence, Mr Dua said that Ms DJ's studies helped her perform the duties of manager efficiently.

Her duties were rostering and maintaining the performance of the staff, housekeeping including maintaining hygiene, purchasing supplies, stock control and marketing, customer service, preventing theft, compliance with the law, maintaining the correct price and sales returns. The employer reported her performance was excellent. Her knowledge gained on the course undertaken had been implemented in the business. Mr Dua advised that the employer could not provide any documents concerning the high turnover of the business.

[16] An interim work visa was granted to Ms DJ on 15 April 2016, to expire when the decision was made on her reconsideration application.

[17] On 19 April 2016, Immigration New Zealand wrote to Ms DJ, courtesy of Mr Dua, declining the reconsideration application. It was not satisfied that Ms DJ met the requirements in the work visa instructions. The information provided did not mitigate the concerns previously expressed. She should arrange to leave New Zealand before her visa expired on 22 April 2016.

[18] Mr Dua informed Ms DJ of the decline of the reconsideration by email on 22 April 2016. He attached Immigration New Zealand's letter of 19 April.

#### *Application for visitor visa*

[19] It will be recalled that Ms DJ's visitor visa was due to expire on 22 April 2016.

[20] On 22 April at 2:44 pm, Mr Dua sent her the relevant page of a visitor visa application form to sign. She appears to have returned it to him signed at 5:00 pm that day.

[21] An application for a visitor visa for three months was lodged by Mr Dua on behalf of Ms DJ and her husband on 22 April 2016. He advised Immigration New Zealand that Ms DJ wished to apply for a visitor visa as:

- Client is due for delivery of a child on 15/05/2016.
- Client & her family want to plan her next plan of action to live in New Zealand.

[22] Mr Dua advised Ms DJ by email on 22 April at 5:05 pm that he had lodged the visitor visa application with Immigration New Zealand.

[23] On the same day at 5:09 pm, Mr Dua sent another email to Ms DJ and her husband attaching an “important agreement” and urging its return by midday the next day. It was in the form of a statement to be signed by her as the client (*verbatim*):

The following has been discussed with me. This is regarding my application for Visitor’s Visa which has been lodged on 22/04/2016.

I understand that:

- the application was lodged without mine and my husband’s signature on the application form.
- This application was lodged without the proof of Funds for Living Expenses. This should be \$7,500 or otherwise we should be supported by a NZ Resident/Citizen.
- This application was lodged with our photographs.

We both understand that this application can be returned unactioned, if these documents are not provided by Wednesday, 27/04/16.

I understand the above statements. To my knowledge the above are true and correct:

[place for client name, signature, date, date of birth]

[24] In the same email, Mr Dua urged Ms DJ to provide the requested documents identified in an attached “case summary” (unseen by the Tribunal).

[25] Ms DJ returned the statement, signed by her and her husband and dated 23 April 2016, on that day. There are two signed versions. One is signed unaltered. In another version, within the third item in the list concerning photographs the word “with” has been replaced by “without”.

[26] On 28 April 2016, Mr Dua sent additional documents to Immigration New Zealand in support of the visitor visa application.

[27] 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 a signed and dated form and evidence of funds. Her application had been closed and she would need to reapply. Her documents were returned.

[28] It can only be assumed that some documents were immediately provided as Immigration New Zealand wrote again to her on the following day advising that the visitor visa application required only a photograph of herself. Mr Dua sent this to Immigration New Zealand on 5 May 2016.

[29] Ms DJ advised Immigration New Zealand by an undated letter received on 9 June 2016 that she and her husband had no immigration adviser. The previous adviser had given them wrong information. Immigration New Zealand could contact them directly.

[30] 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:

- (1) It was incomplete as she had not given the names and addresses of any friends, relatives or contacts, nor had she declared all periods of employment. By failing to give the required information, it could be considered she had provided false and/or misleading information, or withheld material information.
- (2) It did not appear she had sufficient funds. She required funds of \$1,000 per month for her and \$400 per month for each secondary applicant as well as funds for outward travel, plus \$9,000 to cover maternity costs. However, she had only funds of \$7,727.99.
- (3) Applicants must be genuine and *bona fide*. She had previously been declined a work visa and had been granted a visitor visa in order to leave New Zealand or seek reconsideration. The reconsideration had been declined. She now sought another visa in order to make a plan of action to live in New Zealand. This did not appear to be a lawful purpose.
- (4) Her husband was not eligible for a visitor visa as he had already exceeded the maximum stay by almost three months.

[31] Ms DJ responded to Immigration New Zealand's letter on 21 June 2016. She apologised for the incomplete application. They had done everything required by Mr Dua. However, he had given them wrong information.

[32] According to Ms DJ, Mr Dua had told her she could get a graduate work visa based on being the manager of the fish and chips shop. She did not want a visitor visa, but when the reconsideration was rejected, she did not have enough time to apply for a student visa. Mr Dua told them to apply for a visitor visa and later apply for the next visa. He did not advise that her husband could not get a visitor visa.

[33] In her letter to Immigration New Zealand, Ms DJ advised she had been living in New Zealand for four years and her husband for almost one year. She now wanted to study for a Post Graduate Diploma in Business Enterprise (level 8). She had been

offered a place at a named institution. Ms DJ requested a visitor visa for one month, or alternatively a student visa so her husband would be eligible for an open work visa. She sent evidence of \$13,900 in bank deposits.

[34] On 11 July 2016, Immigration New Zealand declined the visitor visa. The response of 21 June to the concerns expressed in the letter of 17 June was not sufficient to justify the grant of a visitor visa as an exception to instructions. In particular, looking for a college in order to seek a student visa was not considered a lawful purpose. As for the funds of \$13,901.92, the majority had been transferred into the bank accounts on 20 June 2016. Furthermore, she had an outstanding debt owed to her local DHB. Ms DJ was advised to depart New Zealand.

## **COMPLAINT**

[35] On 6 July 2016, Ms DJ made a formal complaint about Mr Dua to the Immigration Advisers Authority (Authority), headed by the Registrar of Immigration Advisers (Registrar).

[36] Ms DJ said in her complaint that Mr Dua advised her she could apply for a work visa based on her job in the “restaurant” (the fish and chips shop) and that her studies were related to the job. He said the hourly rate should be \$16. She and her husband prepared all the documents required by him. After the application was filed, Immigration New Zealand said the hourly rate should be \$18 and the qualification was not relevant to the job. According to Ms DJ, Mr Dua then said he would write a letter as he had done in other like cases.

[37] In the complaint, Ms DJ stated that when the work visa had been rejected, Mr Dua advised her that she could apply for reconsideration and she would definitely get the work visa. She thought he was telling the truth because he was a licensed adviser. This was not successful. Mr Dua then told her the visitor’s visa would expire on 22 April 2016. He told her he would have to send the application that day, as she would not be able to apply from the next day, except under “section 61”. He sent the application form without the signatures on 22 April and said he would send the rest of the documents “on the coming Wednesday”. She did everything asked by him.

[38] According to Ms DJ, she was now in a bad situation and was helpless, having trusted an immigration adviser. She had spent \$4,000 but had got nothing.

[39] The Authority wrote to Mr Dua on 9 November 2016 formally advising him of the complaint and setting out the details.

[40] Mr Dua replied to the Authority on 7 December 2016. In particular, he noted that there had been no indication or instruction from Ms DJ until the last day of her visitor's visa, 22 April 2016. If he had not represented her, she and her husband's visas would have expired that day. Mr Dua sent to the Authority a chronology of the work he had undertaken, as well as his case assessment sheets completed on 22 September 2015, 1 April and 23 April 2016.

[41] The Authority filed a statement of complaint (20 December 2016) with the Tribunal, together with supporting documents. It alleges Mr Dua was negligent and breached the Code of Conduct 2014 (the Code) in the following respects:

- (1) Failing to adequately assess the eligibility for a graduate work experience visa, including the suitability of the employment agreement, in breach of cl 1.
- (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, in breach of cl 1.
- (3) Failing to identify the correct amount of funds required for a visitor visa, in breach of cl 1.
- (4) Including Ms DJ's husband in the visitor visa application when he was not eligible, in breach of cl 1.
- (5) Failing to supply the visitor visa application form to Ms DJ to review and sign prior to filing it with Immigration New Zealand, in breach of cl 1.
- (6) Filing a visitor visa application with Immigration New Zealand that was incomplete, thereby raising potential character concerns for Ms DJ, in breach of cls 1 and 31(a).

## **JURISDICTION AND PROCEDURE**

[42] 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.

[43] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>1</sup>

[44] 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>2</sup>

[45] 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>3</sup>

[46] The sanctions that may be imposed by the Tribunal are set out in the Act.<sup>4</sup> It may also suspend a licence pending the outcome of a complaint.<sup>5</sup>

[47] 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>6</sup>

[48] The Tribunal advised the parties on 21 December 2016 that complaints are usually determined on the papers.

[49] The Tribunal has received the statement of complaint and supporting documents from the Registrar. It has received from Mr Dua a statement of reply (16 January 2017) with an attached letter (12 January 2017). Mr Dua advised that he did not seek an oral hearing.

[50] The Tribunal also received a letter (21 December 2016) from Ms DJ. She is concerned that their applications were declined because Immigration New Zealand does not believe them. It thinks they provided false or misleading information and that the work visa application was not genuine. When their visas expired, they could not return to their home country as their son (presumably the baby due to be born) did not have a

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<sup>1</sup> Immigration Advisers Licensing Act 2007, s 45(2) & (3).

<sup>2</sup> Section 49(3) & (4).

<sup>3</sup> Section 50.

<sup>4</sup> Section 51(1).

<sup>5</sup> Section 53(1).

<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [101]–[102] & [112].

passport. They were then deported. All of these things happened because Mr Dua did not properly represent them.

[51] At the request of the Tribunal, further documents were provided by the Registrar on 8 February 2019.

## **ASSESSMENT**

[52] 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.

### **Applications**

31. A licensed immigration adviser must:
  - a. not deliberately or negligently provide false or misleading documentation to, or deliberately or negligently conceal relevant information from, the decision maker in regard to any immigration matter they are representing

[53] I will deal with the heads of complaint in turn.

(1) *Failing to adequately assess the eligibility for a graduate work experience visa, including the suitability of the employment agreement*

[54] The Immigration Instructions for a graduate work experience visa require that the applicant hold an offer of full-time employment relevant to the qualification. The visa is to obtain practical work experience relevant to the qualification. The qualification must be directly applicable to the employment and a key factor in the decision to employ the applicant.<sup>7</sup>

[55] It is clear that being the manager of a small to average sized suburban fish and chips shop with only two staff reporting to her is not employment relevant in any material way to Ms DJ's business qualification. The owner signed a statement drafted by Mr Dua to say that her qualification was a key factor, but this defies common sense. The title is inconsistent with the low rate of pay. There is no evidence of a high turnover or expansion, as alleged. It is unsurprising that Immigration New Zealand did not accept that the job was genuinely that of a manager nor that her qualification was relevant to obtaining employment.

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<sup>7</sup> Immigration New Zealand Operational Manual (Immigration Instructions) at WD1a.ii, b, e.ii & iii, g, 1.5 (at 211 of the Authority's supporting documents).

[56] Ms DJ states in her complaint that Mr Dua advised her she could apply for a work visa based on her employment in the takeaway shop. There is no evidence Mr Dua advised Ms DJ that her application for a work visa was highly unlikely to succeed, based on her employment offer.<sup>8</sup> It borders on being a futile application. Indeed, there is no evidence from Mr Dua that he properly assessed the merits of the proposed application at all. His case assessment sheet of 22 September 2015 contains no review of the merits.

[57] In his reply to the Tribunal, Mr Dua says he did not see the risk involved as he has had similar cases approved by Immigration New Zealand. He does not identify the circumstances of those allegedly successful applications. I do not know how similar they were to Ms DJ's circumstances. Whatever were the circumstances of those other cases, it is apparent that Ms DJ's application was highly unlikely to meet the Immigration Instructions. This would be obvious to any competent adviser.

[58] I accept Ms DJ's evidence in the complaint that Mr Dua advised her she could apply for a work visa based on her employment. After all, she would not otherwise have spent a considerable sum of money to seek the visa. Mr Dua does not deny the allegation.

[59] I find that Mr Dua was negligent in failing to assess the eligibility of the application, including the suitability of the employment agreement. I also find Mr Dua was neither professional nor diligent, since he failed to assess her eligibility and the suitability of the agreement. This is a breach of cl 1 of the Code.

(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) *Failing to identify the correct amount of funds required for a visitor visa*

(4) *Including Ms DJ's husband in the visitor visa application when he was not eligible*

[60] I will deal with these together. They concern the visitor visa application lodged on 22 April 2016 and declined on 11 July 2016.

[61] Applicants for a temporary visa must show they genuinely intend a temporary stay for a lawful purpose. The person must be a *bona fide* applicant, in that there must be a genuine intention to stay temporarily. In the opinion of the immigration officer, the applicant must be a person not likely to remain in New Zealand unlawfully. A lawful

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<sup>8</sup> Such advice should be in writing – see cl 9(a) & 26.a.iii of the Code.

purpose is holidaying, sightseeing, family and social visits, amateur sport, business consultation or medical treatment.<sup>9</sup>

[62] In the letter of 17 June 2016, Immigration New Zealand raised a concern about Ms DJ being a *bona fide* visitor given the decline of an earlier work visa application and her expressed reason of seeking a visitor visa in order to form a plan of action to live in New Zealand.

[63] Such an expressed reason, given the decline of Ms DJ's work visa application, was bound to raise a suspicion with the immigration officer that she was not intending a temporary stay.

[64] A competent immigration adviser would know this could not be a lawful purpose and would put at risk Ms DJ presenting herself as a *bona fide* visitor.

[65] I find that Mr Dua failed to take reasonable care and was therefore negligent in lodging a visitor visa application expressing a purpose which was not lawful. He was also neither professional nor diligent in doing so, a breach of cl 1 of the Code.

[66] The funds required by the Immigration Instructions for the application, which was for three months, were \$1,400 monthly for both Ms DJ and her husband.<sup>10</sup> Additionally, she needed \$9,000 because of her pregnancy and sufficient funds for outward tickets for them both.

[67] It is apparent from the statement drafted by Mr Dua and signed on 23 April 2016 by Ms DJ and her husband that they were aware they needed \$7,500 in funds. They provided evidence of \$7,727.99 to Immigration New Zealand.

[68] The sum of \$7,727.99 was presumably sufficient for living costs for three months and outward travel, but it did not cover the maternity costs. However, it appears from Ms DJ's letter of 21 June 2016 to Immigration New Zealand that they knew \$9,000 was needed for such a purpose.

[69] Mr Dua says he advised Ms DJ she could show the funds later, as Immigration New Zealand could not decline the application without asking for such evidence (raising a "PPI" or potentially prejudicial information letter, as Mr Dua calls it).

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<sup>9</sup> Immigration Instructions, above n7, at E5.1, 5.5, 5.10, V2.1.1 (at 387–389 of Authority's supporting documents).

<sup>10</sup> Immigration Instructions, above n7, at V2.20, V2.20.5, V2.25.1 (at 385–386 of the Authority's supporting documents).

[70] While I agree Immigration New Zealand would send such a letter, it appears the application did not make any mention of any funds to meet the maternity costs. This may be because the couple did not have the money to cover it on 22 April 2016, bearing in mind that Immigration New Zealand say most of the couple's money was deposited in their bank accounts on 20 June 2016.

[71] While the evidence is not entirely clear, it would seem Mr Dua did identify the correct amount. The application should have stated the correct amount, but as it appears they did not have sufficient funds for the pregnancy, that may be the reason it was omitted. I find no breach of any professional obligation in respect of the funds.

[72] Visitors to New Zealand are limited to a maximum duration of nine months, subject to certain exceptions which usually permit a maximum extension of only three months.<sup>11</sup>

[73] Ms DJ's husband had already exceeded the maximum period of nine months by almost three months at the time of application. The exceptions do not apply to him. He was therefore ineligible for a further visitor visa. There is no evidence that Mr Dua raised this with Ms DJ or her husband or pointed out that his inclusion could jeopardise her own application.

[74] Mr Dua has been negligent and was neither professional nor diligent in including the husband in Ms DJ's visitor visa application. This is a breach of cl 1 of the Code.

(5) *Failing to supply the visitor visa application form to Ms DJ to review and sign prior to filing it with Immigration New Zealand*

[75] Mr Dua sent the visitor visa application (dated 22 April 2016) to Immigration New Zealand under cover of a letter to Immigration New Zealand also dated 22 April. It was lodged on that day. Both the application and letter bear Immigration New Zealand date stamps of 22 April. This was the day the couple's existing visitor visas were due to expire.

[76] The application form was not signed by Ms DJ or her husband, though the covering letter from Mr Dua stated it had been signed by them. The form had been signed by Mr Dua on 22 April.

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<sup>11</sup> Immigration Instructions, above n7, at V2.5.1 (at 390 of Authority's supporting documents).

[77] The relevant page of the form containing the signatures of Ms DJ and her husband, together with other documents, were sent by Mr Dua to Immigration New Zealand on 28 April 2016. The couple had signed the form on 26 April.

[78] Immigration New Zealand wrote to Ms DJ, through Mr Dua, on 2 May 2016 advising the application was incomplete as it had not been signed. The officer may have overlooked the letter of 28 April as on 3 May he wrote again to advise he only needed a photograph.

[79] It is self-evident that the application should have been signed by Ms DJ and her husband before it was lodged with Immigration New Zealand.

[80] Mr Dua's explanation is that the exigencies of the last minute instructions by Ms DJ prevented this. He says she instructed him to seek the visas only on 22 April, the day their permits were due to expire.

[81] It is not clear when Mr Dua knew the work visa reconsideration application had been declined. Immigration New Zealand had written to Ms DJ, courtesy of Mr Dua, on 19 April 2016 to advise her of the decline, but I do not know when Mr Dua received that letter. He did not send it to Ms DJ until 22 April which may have been when he received it.

[82] It was important to apply for the extension of the visitor visa no later than 22 April, the date of expiry of the then current visa. The couple did not live in Auckland so Mr Dua could not arrange for them to see him on that day. However, he would have been aware of the imminent expiry of the visitor visa in the days leading up to 22 April. Even if he was not aware of the decline of the reconsideration until 22 April, a diligent adviser would have taken steps to obtain instructions from Ms DJ on the visitor visa prior to 22 April.

[83] Instead, Mr Dua waited until the afternoon of 22 April to send the completed application form to Ms DJ and obtain her signature. By the time Ms DJ returned it by email at 5:00 pm, it was too late to include in the documents already lodged that day with Immigration New Zealand.

[84] The last minute instructions from Ms DJ and subsequent flurry of emails between her and Mr Dua that day was due to his own failure to diary the imminent expiry of the visitor visa. He had been acting for her since September 2015. He had sought the existing visitor visa for her. In the event the reconsideration was declined, which he must have understood was a real risk, a competent and diligent adviser would know it was important to lodge the visitor visa application on or before 22 April.

[85] An application should not be filed with Immigration New Zealand without the applicant's signature. I do not accept the exigencies of the last minute instruction as an adequate explanation for the failure to obtain the signatures of the applicants.

[86] The self-serving exculpatory statement drafted by Mr Dua and signed by Ms DJ and her husband on 23 April 2016 is an acknowledgement by him that he knew that the application should have been signed. In any event, this is too late to excuse his conduct.

[87] I find that Mr Dua was negligent and was neither professional nor diligent in failing to obtain the signature of Ms DJ on the visitor visa application form prior to filing it. This is a breach of cl 1 of the Code.

(6) *Filing a visitor visa application with Immigration New Zealand that was incomplete, thereby raising potential character concerns for Ms DJ*

[88] Certainly, the failure to answer certain questions on the application form did raise character concerns for Immigration New Zealand. The letter of 17 June 2016 to Ms DJ stated that omitting to identify her friends, relatives and contacts, as well as omitting to declare all previous employment raised such an issue. It was considered that the failure to provide the required information might amount to the provision of false or misleading information or the withholding of material information.

[89] This does not seem to me to be a fair inference by Immigration New Zealand at all. I suspect Immigration New Zealand had all that information on their files in respect of other applications Ms DJ or her husband had made. There is nothing about her application giving rise to such suspicions. A more logical explanation for the omissions would have been the last minute nature of the application.

[90] I note also that there is no finding in the letter of 11 July 2016 declining the visitor visa application that misleading information was provided or that there was any concealment.

[91] Immigration New Zealand's unjustified suspicions cannot be laid at the door of Mr Dua. It is the type of information which can be provided promptly later. There is no breach of any professional obligation by Mr Dua here.

## **OUTCOME**

[92] I uphold the first, second, fourth and fifth heads of complaint. I find Mr Dua to have been negligent and to have breached cl 1 of the Code in that he was neither professional nor diligent.

## SUBMISSION ON SANCTIONS

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

[94] A timetable is set below. Any requests that Mr Dua undertake training should specify the steps suggested. Any requests 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*

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

- (1) The Registrar, the complainant and Mr Dua are to make submissions by **6 March 2019**.
- (2) The Registrar, the complainant and Mr Dua may reply to the submissions of any other party by **20 March 2019**.

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D J Plunkett  
Chair