

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2021] NZIACDT 23

Reference No: IACDT 06/21

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **CL**
Complainant

AND **APURVA KHETARPAL**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 24 September 2021**

REPRESENTATION:

Registrar: Self-represented
Complainant: M Clark, counsel
Adviser: No appearance

INTRODUCTION

[1] Apurva Khetarpal, the adviser, acted for CL, the complainant, on a student visa application. The application was unsuccessful. Ms Khetarpal did not inform the complainant of the decline and deceived her as to the status of the application. The adviser also caused the complainant's husband to unwittingly make a false statement which was filed with Immigration New Zealand (Immigration NZ).

[2] A complaint against Ms Khetarpal was referred by the Immigration Advisers Authority (the Authority) to the Tribunal. It was upheld in a decision issued on 10 August 2021 in *CL v Khetarpal*.¹ Ms Khetarpal was found to have been dishonest and to have breached numerous other professional obligations, contrary to the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] It is now for the Tribunal to determine the appropriate sanctions.

BACKGROUND

[4] The narrative leading to the complaint is set out in the decision of the Tribunal upholding the complaint and will only be briefly summarised here.

[5] Ms Khetarpal was at the relevant time a licensed immigration adviser. Her licence had earlier been cancelled but the District Court had issued an interim order allowing her to practice. That order ceased to have effect subsequent to the events here.

[6] The complainant, a national of India, instructed Ms Khetarpal in early 2019 to file a student visa application. It was filed on 1 February 2019, along with a visitor visa application for the complainant's husband. However, Ms Khetarpal failed to reply to a letter from Immigration NZ, so the student visa application was declined on 20 August 2019. The complainant, now unlawfully in New Zealand, was not informed of the decline. Instead, Ms Khetarpal told her that the agency had requested further information about their funds.

[7] Ms Khetarpal then prepared a statement in English for the complainant's husband falsely stating that an offer of place at a tertiary institution had been given to Immigration NZ. He could not read English. She told him the statement concerned their funds. She then provided the statement to Immigration NZ in support of a discretionary visa request

¹ *CL v Khetarpal* [2021] NZIACDT 18.

made on behalf of the complainant, but without the knowledge of the complainant. The request was declined.

[8] The complainant was informed by Immigration NZ that she was unlawfully in New Zealand and her student visa application had been declined, but when the complainant contacted Ms Khetarpal she was told twice that she had misunderstood the immigration officer. The complainant was advised the application had not been declined.

[9] In January 2020, Ms Khetarpal filed a request for Ministerial intervention, despite her instructions having been terminated. She again used the husband's false statement.

[10] A complaint against Ms Khetarpal was made to the Authority by the complainant's solicitors on her behalf on 15 September 2020. It was referred to the Tribunal.

Decision of the Tribunal

[11] It was found that Ms Khetarpal was dishonest in failing to advise the complainant of the visa decline. She deceived the complainant into believing the visa application was still being processed. Ms Khetarpal was also dishonest in preparing the husband's statement and mistranslating it to him. That statement was then used to falsely contend to Immigration NZ that certain documents had been produced to it.

[12] It was also found that Ms Khetarpal's failure to tell the complainant she only had a provisional licence was deliberate and part of a pattern of dishonest or misleading behaviour.

[13] Furthermore, in filing the Ministerial request Ms Khetarpal misled Immigration NZ into believing she was still authorised to act for the complainant when in fact her engagement had been terminated.

[14] In addition, Ms Khetarpal breached the Code by failing:

- (1) to provide any written agreement, in breach of cl 18(a);
- (2) to provide an invoice, in breach of cl 22;
- (3) to provide the offer of place to Immigration NZ in a timely manner, in breach of cl 1;
- (4) to inform the complainant of two letters from Immigration NZ, in breach of cl 26(b);

- (5) to confirm in writing to the complainant the verbal termination of her engagement, in breach of cl 28(a);
- (6) to inform Immigration NZ of the termination of her services and filing a Ministerial request despite the termination, in breach of cls 2(e) and 28(b);
- (7) to inform the complainant that she was only a provisional licence holder subject to supervision, in breach of cl 8(c);
- (8) to maintain a complete file and provide it to the Authority, in breach of cl 26(a) and (e); and
- (9) to provide the file to the complainant's solicitors, in breach of cl 26(f).

SUBMISSIONS

Submissions from the Registrar

[15] In his submissions of 2 September 2021, the Registrar of Immigration Advisers (the Registrar) notes that dishonesty is at the serious end of the wrongdoing spectrum. Often such a finding will lead to the practitioner being struck off. While this is a sanction of last resort and may adversely affect the practitioner, the Tribunal has a significant responsibility to uphold professional standards and mitigate risk to the public. In recent decisions of the Tribunal where the adviser has chosen not to explain his or her conduct or apologise or express remorse, more severe sanctions have resulted.

[16] Ms Khetarpal has refused to engage with the disciplinary proceedings.

[17] This is not Ms Khetarpal's first appearance before the Tribunal. She has previously been found to be dishonest, negligent and to have breached the Code. She continues to act in a similar fashion. Her behaviour has not changed.

[18] It is submitted that the appropriate sanctions would be:

- (1) censure;
- (2) an order preventing Ms Khetarpal from reapplying for a licence for two years;
- (3) an order requiring Ms Khetarpal to complete the refresher course offered by the Toi-Ohomai Institute of Technology prior to reapplying for a licence;

- (4) an order for payment of a penalty in the vicinity of \$5,000; and
- (5) an order to refund \$3,000 to the complainant.

Submissions from the complainant

[19] There are submissions (30 August 2021) from Michelle Clark, counsel for the complainant.

[20] It is submitted that Ms Khetarpal's conduct was egregious. She repeatedly and deliberately misled the complainant and Immigration NZ. It is contended that she should be censured and prevented from reapplying for a licence for two years.

[21] The complainant seeks compensation of \$18,886.81:

| | |
|----------------------|--------------------|
| Refund | \$ 3,246.00 |
| Solicitors' fee | \$10,640.81 |
| Anguish and distress | \$ 5,000.00 |
| | \$18,886.81 |

[22] The complainant paid \$3,000 in professional fees to Ms Khetarpal and \$246 to Immigration NZ for the failed applications of herself and her husband. They failed because Ms Khetarpal did not provide the necessary information to the agency.

[23] The complainant seeks \$10,640.81, being part only of the fees of Ms Clark's firm, together with disbursements such as Immigration NZ's fees and interpretation fees. Copies of the firm's invoices were sent in support. Ms Clark had to make a discretionary visa request to the Associate Minister of Immigration. Counsel also assisted in making a complaint to the Authority, which was necessary to correctly identify the complainant as a victim of Ms Khetarpal's dishonesty. It was relevant for the Minister to know how the complainant came to be in the country without a visa. The complainant's *bona fides* had to be established, so the complaint had to be made.

[24] According to counsel, the complainant and her husband were granted visitor visas for three months to enable the complainant to make another student visa application. Counsel then made the further applications. They were more complex, due to the need to explain the couple's unlawful status and show that the complainant was a *bona fide* student intending to continue her study.

[25] It is appreciated by counsel that the \$5,000 sought for anguish, stress and emotional distress is at the higher end of awards previously made. However, this is due to Ms Khetarpal's wrongdoing, which led to the couple being unlawfully in New Zealand. There are aggravating factors:

- (1) Ms Khetarpal failed to inform the complainant of her provisional licence, despite being required to do so;
- (2) She repeatedly and deliberately misled both the complainant and Immigration NZ;
- (3) Ms Khetarpal was responsible for the husband making a false statement;
- (4) There was significant delay to preparing the discretionary applications due to Ms Khetarpal's failure to hand over her file to the solicitors;
- (5) She lodged a request without authority and which contained false information; and
- (6) The complainant and her husband were unlawful for a prolonged duration for which Ms Khetarpal is responsible.

Submissions from Ms Khetarpal

[26] There are no submissions from Ms Khetarpal.

JURISDICTION

[27] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following action:²

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.

² Immigration Advisers Licensing Act 2007.

[28] 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.

[29] 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.

[30] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:³

...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.

³ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

...

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.

[31] 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 collective reputation and public confidence in the profession itself.⁴

[32] 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.⁵

[33] The most appropriate penalty is that which:⁶

- (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

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; *Z v Dental Complaints Assessment Committee*, above n 3, at [151].

⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

⁶ *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *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, [2013] NZAR 320 at [49].

- (h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

DISCUSSION

[34] As the Registrar highlights, misconduct involving dishonesty is at the serious end of the spectrum. There was not just one dishonest act. Ms Khetarpal deceived both the complainant and Immigration NZ. She deceived the complainant into believing her student visa application was being processed, caused her husband to falsely state that he had delivered a document to Immigration NZ and then used that document twice to mislead the agency.

[35] In addition to her dishonesty, Ms Khetarpal committed numerous other breaches of her professional obligations.

[36] This is not the first time a complaint has been upheld against Ms Khetarpal. The Tribunal has upheld three previous complaints, which include findings of dishonesty.

[37] In the *Khan* case, Ms Khetarpal was found to have failed to perform her services with due care and professionalism.⁷ She should have assessed a visa application filed as grossly unfounded with no chance of success. Ms Khetarpal was found to have been negligent.

[38] In the *J* complaint, the Tribunal found Ms Khetarpal took funds from her client but then did little or no work on the application.⁸ She did not properly advise the client of his unlawful status and risk of deportation. She was found to have dishonestly procured the payment of her fee. Ms Khetarpal also failed to pay the client's monies into a separate client account, in breach of her professional obligation.

[39] The sanctions imposed by the Tribunal for the *Khan* and *J* complaints were considered together though separate decisions were issued. Ms Khetarpal was censured, as well as ordered to pay total penalties of \$3,500, compensation of \$2,500 and the sum of \$4,450 to another person. Her licence was cancelled and she was prevented from obtaining a full licence until she had completed further training (a Graduate Diploma) and practised for two years under a provisional licence.

⁷ *Khan v Khetarpal* [2015] NZIACDT 45, [2016] NZIACDT 6.

⁸ *J v Khetarpal* [2015] NZIACDT 95, [2016] NZIACDT 7. A judicial review action against the substantive decision (in particular, the dishonesty finding) was dismissed by the High Court in *Khetarpal v Immigration Advisers Complaints and Disciplinary Tribunal* [2016] NZHC 2624.

[40] In *Prajapati*, the Tribunal found that Ms Khetarpal had failed to establish and maintain a separate client bank account and had not deposited the client's money into a separate account.⁹ She was found to have deceived her client in the way she dealt with the funds. The Tribunal censured Ms Khetarpal, ordered her to pay a penalty of \$5,000 and compensation of \$2,200. The directions concerning her licence made in the *Khan* and *J* complaints were repeated.

[41] As noted above, the District Court subsequently issued an interim order on 22 March 2016 allowing Ms Khetarpal to practice under a provisional licence. That order ceased to have effect on 31 January 2020.¹⁰ Ms Khetarpal has not held a licence since then.

[42] Ms Khetarpal has a sustained history of serious misconduct. Her deception of her clients is systemic and her professional transgressions are widespread. This is now aggravated by a contempt for the disciplinary process. She has not demonstrated remorse. There is no evidence she has learned any lesson from all these complaints against her. Ms Khetarpal is unfit to be a member of the profession. Vulnerable immigrants must be protected from her.

[43] This brings the Tribunal to consideration of the sanctions.

Caution or censure

[44] Ms Khetarpal is hereby censured. The Tribunal marks its serious disapproval of her conduct.

Training

[45] The Registrar advises that Ms Khetarpal completed the Graduate Diploma in New Zealand Immigration Advice in 2018. It would not appear that this knowledge has made her any more professional.

[46] The Registrar seeks an order that Ms Khetarpal complete Toi-Ohomai's refresher course in the event that she applies to be relicensed at the expiry of any further period of prohibition. However, the utility of further training is questionable. The answer to any

⁹ *Prajapati v Khetarpal* [2016] NZIACDT 5, [2016] NZIACDT 23 and see also *Malcolm v Khetarpal* [2017] NZIACDT 4.

¹⁰ The Tribunal's requirement that Ms Khetarpal could not apply for a full licence until she had practised under a provisional licence for two years, was deleted by consent in settling the District Court proceedings. The appeals against the *Khan*, *J* and *Prajapati* decisions were otherwise dismissed.

such application from Ms Khetarpal lies in the Registrar's discretion to consider the practitioner's disciplinary history in assessing fitness to practice.¹¹

Cancelling and preventing relicensing

[47] Ms Khetarpal no longer holds a licence. The Tribunal agrees with the Registrar and the complainant that Ms Khetarpal should be prevented from renewing her licence for the maximum period of two years permitted. It is a drastic step but her extensive misconduct and refusal to engage in the disciplinary process leaves the Tribunal with no other appropriate option.

Financial penalty

[48] The Registrar submits that a penalty of \$5,000 would be appropriate.

[49] Penalties of \$3,500 (in total across two complaints) and then \$5,000 have previously been imposed. The misconduct here, involving the deception of the complainant and Immigration NZ is serious. It included procuring and then filing a false statement. She lied to her client on a number of occasions. There is no acknowledgement of wrongdoing or remorse.

[50] However, it is not as serious as that of Mr Ryan where the maximum of \$10,000 was imposed twice for systemic immigration fraud concerning many clients.¹²

[51] The financial penalty will be \$7,000.

Refund

[52] The complainant paid \$3,000 in fees and \$246 to Immigration NZ for the unsuccessful visa applications of herself and her husband. They failed because Ms Khetarpal overlooked a letter from Immigration NZ and failed to send the offer of place to the agency. This was Ms Khetarpal's fault. She does not oppose the order for a refund.

Compensation

[53] The Tribunal can award reasonable compensation and will do so when the loss is caused by or arises out of the adviser's wrongdoing.¹³

¹¹ Immigration Advisers Licensing Act 2007, ss 17(b), 19(1)(b).

¹² *Registrar of Immigration Advisers v Ryan* [2020] NZIACDT 13, *Singh v Ryan* [2020] NZIACDT 14.

¹³ *NLT v Coetzee* [2020] NZIACDT 7 at [47].

[54] The complainant seeks \$10,640.81 for professional legal fees, including disbursements, to regularise her immigration status and that of her husband. The solicitors were successful doing so. The couple was in a precarious position as a result of Ms Khetarpal's misconduct, being liable for deportation. The professional fees are reasonable. They arise directly out of Ms Khetarpal's unprofessional conduct. The order is not opposed by her. The compensation will be awarded.

[55] The Tribunal also has the power to award general damages for inconvenience, anxiety and distress. The sums awarded are modest. The maximum awarded to date has been \$5,000.¹⁴

[56] The complainant seeks \$5,000. This is an appropriate case for such an award. It must have been profoundly distressing for both the complainant and her husband to find out that they were unlawfully in New Zealand, that they had been lied to by Ms Khetarpal and she had caused the husband to make a false statement which had been produced to Immigration NZ. Their immigration situation was precarious, something they would have come to know not later than when they instructed their solicitors. It must have been stressful then waiting some months for their status to be legitimised while being at risk of deportation. An order to pay \$5,000 will be made. It is not opposed by Ms Khetarpal.

OUTCOME

[57] Ms Khetarpal is:

- (1) censured;
- (2) prevented from reapplying for any licence for two years from today's date;
- (3) ordered to pay immediately to the Registrar \$7,000;
- (4) ordered to pay immediately to the complainant \$18,886.81.

ORDER FOR SUPPRESSION

[58] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹⁵

¹⁴ *DKD v Smith* [2020] NZIACDT 9 at [45]–[46].

¹⁵ Immigration Advisers Licensing Act 2007, s 50A.

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

[60] The Tribunal orders that no information identifying the complainant is to be published other than to Immigration NZ.

D J Plunkett
Chair