

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 30

Reference No: IACDT 01/22

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **ZK**
Complainant

AND **HAO LI**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 19 December 2022**

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: Mr Laurent, counsel

INTRODUCTION

[1] The complainant, ZK, engaged Hao Li, a licensed immigration adviser, to seek residence. The application failed because of the way her employer structured her income, something the complainant says Mr Li always knew about.

[2] A complaint against Mr Li to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It was partially upheld in a decision issued on 8 November 2022 in *ZK v Li*.¹ While the Tribunal dismissed the principal complaint of negligence on the part of Mr Li, it found that he had not confirmed in writing to the complainant the oral advice given as to the risks of the application. Mr Li was found to have breached 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 earlier decision of the Tribunal and will only be briefly summarised here.

[5] Mr Li is a director of Ursacorp Consulting (Ursacorp), of Auckland.

[6] The complainant, a national of China, was working in New Zealand in the travel industry. She approached Mr Li in April 2018 seeking advice as to whether her job could be considered skilled employment for residence. His advice was encouraging. However, the remuneration structure was complex. Her retainer was \$3,500, but her employment conditions also provided for an assured income level of \$55,000. The latter was above Immigration New Zealand (Immigration NZ)'s minimum threshold.

[7] A residence application was filed on 31 January 2019. Immigration NZ raised concerns about the application on 23 September 2020, particularly the remuneration. Mr Li responded to Immigration NZ's letter on 28 September 2020.

[8] On 6 October 2020, Immigration NZ wrote to Mr Li notifying him that the complainant's application for residence had been declined. Her remuneration was regarded as less than what she had claimed and was below the minimum requirement.

¹ *ZK v Li* [2022] NZIACDT 27.

Decision of the Tribunal

[9] The Tribunal partially upheld the complaint. It was found that the visa application was not futile. There was merit to Mr Li's argument that the complainant met the immigration criteria for remuneration.

[10] Mr Li was found not only to have been aware of the risk of the complainant's income not meeting the criteria, but to have verbally advised her of that risk at meetings on 1 May and 3 October 2018. However, he did not confirm that advice in writing to her. The Tribunal did not regard this as a trivial bureaucratic obligation. It was particularly important in this case, given the risk to the application, that Mr Li reinforced in writing to the complainant his oral advice as to the possibility of the remuneration structure not meeting the immigration criteria. He was therefore in breach of cl 26(c) of the Code.

SUBMISSIONS

Submissions from the Registrar

[11] In submissions (30 November 2022) from Ms Issar, of the Registrar's office, she states that Mr Li's conduct shows a sloppy approach to professional standards, though it is accepted that the conduct is at the low end of the scale in terms of seriousness. It is his first appearance before the Tribunal. The one breach found by the Tribunal did not have significant consequences for the complainant. It was submitted that the Tribunal should consider issuing a caution to the adviser.

Submissions from the complainant

[12] In her submissions of 30 November and 14 December 2022, the complainant seeks a refund and/or compensation amounting to \$19,867:

Mr Li's fees	\$ 5,500
Immigration NZ fees	\$ 3,240
	\$ 427
	\$ 700
Emotional distress and time wasted	\$10,000 ²

² No breakdown is given between emotional distress and time spent and nor is clear what the time was spent doing, apart from an unsuccessful appeal to the Immigration and Protection Tribunal.

[13] The complainant repeats the story she has given the Authority and the Tribunal. She says Mr Li did not verbally advise her that the application would not be straightforward. If she had been made aware of the risk, she would not have applied for residence. All the time Mr Li spent on the application was wasted.

[14] The complainant and her husband were devastated by Immigration NZ's decline of residence. This was not only because it had failed but also because it had failed for a reason which she had clearly disclosed to Mr Li prior to signing his service agreement. She was innocent and felt deeply aggrieved by the decision. She and her husband had suffered years of wasted effort, money lost and had been deeply mentally destroyed. She sets out in her submissions certain medical consequences.

[15] The complainant attaches a number of supporting documents to her submissions, including a brief statement (27 November 2022) from her husband. He confirms the terrible psychological experience the failure of permanent residence had and the negative effects on their day to day lives.

Submissions from Mr Li

[16] In his submissions (30 November 2022), Mr Laurent records that Mr Li had already admitted the breach of cl 26(c). Mr Li takes no issue with the Authority's position on sanctions.

[17] In respect of the claim for compensation from the complainant, it is well established that losses justifying payment of compensation must be caused by, or relate to, or arise from the wrongdoing.³ The Tribunal decided that Mr Li did orally advise the complainant of the risk of pursuing the application. While a written summary might have assisted her to reflect further on the wisdom of her decision, it seems clear that her mind was firmly made up to go ahead regardless, on the basis of her contention that the commission was "assured". The overriding cause of the complainant's losses was her own insistence on proceeding in the face of caution sounded by Mr Li.

[18] There were other supervening factors which led to the decline of the visa application, notably the change in the complainant's role. This was something unrelated to the earlier failure of Mr Li to record his advice in writing and further dilutes any nexus between the breach of cl 26(c) and the loss of other fees and costs incurred by the complainant. The damages claim is also arbitrary and unsupported by evidence of

³ *DA v Ji* [2022] NZIACDT 26 at [40].

alleged harm. More critically, the alleged distress and inconvenience must be causally connected to the breach that has been found.⁴

[19] It is submitted that it is implausible that the complainant suffered psychological harm when she did not get written confirmation of a verbal discussion she already had. It is not doubted that she was distressed by the decline of the application and subsequent appeal, but those future outcomes were not connected to the breach of cl 26(c) back in late 2018.

[20] In summary, it is contended that no claim for compensation can be justified.

JURISDICTION

[21] The Tribunal's jurisdiction to impose sanctions is set out in the Immigration Advisers Licensing Act 2007 (the Act). Having heard a complaint, the Tribunal may take the following action:⁵

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.

[22] 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:

⁴ *Unnikrishnan v Goldsmith* [2017] NZIACDT 22 at [30]–[31], *NT v Parker* [2019] NZIACDT 71 at [60].

⁵ Immigration Advisers Licensing Act 2007.

- (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.

[23] 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.

[24] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:⁶

...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.

...

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.

⁶ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

[25] 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.⁷

[26] 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.⁸

[27] The most appropriate penalty is that which:⁹

- (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.

DISCUSSION

[28] While sympathetic to the clear distress the complainant and her husband suffered as a result of the decline of the application, this was not caused by Mr Li's wrongdoing as upheld by the Tribunal. The evidence shows that Mr Li did raise orally with the complainant the risk of failure of the residence application, but she was keen to proceed. The Tribunal will not revisit its earlier finding that the complainant was so advised.

⁷ *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 6, at [151].

⁸ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

⁹ *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].

[29] Since the complainant was advised of the risk, Mr Laurent is correct in contending that it is implausible that the consequences of the failure of the application (which consequences the Tribunal does accept) were caused by the absence of written confirmation of the risk. For the same reason, compensation for the wasted expenditure and time spent are not recoverable.

[30] There will be no refund nor award of compensation.

[31] The Registrar submits that only a caution is warranted here. Mr Li has accepted the breach of cl 26(c). This is Mr Li's first appearance before the Tribunal. The Tribunal agrees a caution, rather than censure, is warranted. Mr Li should reflect on the importance of confirming in writing material verbal advice given, in order to reinforce the message given orally to the client. There is no good reason to require him to undertake any retraining.

OUTCOME

[32] Mr Li is cautioned.

ORDER FOR SUPPRESSION

[33] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹⁰

[34] There is no public interest in knowing the name of Mr Li's client, the complainant.

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

D J Plunkett
Chair

¹⁰ Immigration Advisers Licensing Act 2007, s 50A.