

**BEFORE THE IMMIGRATION ADVISERS  
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2015] NZIACDT 36

Reference No: IACDT 014/13

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Roshan Shalini Shankar**

Complainant

**AND**

**Madhur (Maddox) Ahuja**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** Mr A Dumbleton, Lawyer, MBIE, Auckland.

**Complainant:** Mr M Dreaneen, Barrister, Auckland.

**Adviser:** Mr R Chambers and Mr D Shellenberg, Barristers, Auckland

Date Issued: 31 March 2015

## DECISION

### Introduction

- [1] The complainant engaged Mr Ahuja to provide immigration services. Mr Ahuja was employed in a practice which Global Immigration Consultants Ltd. (Global) owned. He was the sole licensed immigration adviser in the practice.
- [2] The complainant says:
  - [2.1] She and her family had to apply for a work visa, and related visas. They had been in New Zealand for a period and their visas would expire in the relatively near future.
  - [2.2] Mr Ahuja accepted instructions to lodge the application for the family.
  - [2.3] He prepared the application, and it was defective. Either Mr Ahuja or someone in his practice filed the defective application.
  - [2.4] Immigration New Zealand returned the application and identified what was required to lodge a complying application.
  - [2.5] The complainant instructed Mr Ahuja to complete the renewal of passports and attended to matters to allow him to lodge the application for a second time.
  - [2.6] Immigration New Zealand gave Mr Ahuja time to provide further information relating to passport renewal, which was in his own control as he had the complainant's instructions to deal with the passport renewals.
  - [2.7] Mr Ahuja, in the face of strict time limits, failed to comply with Immigration New Zealand's requirements.
  - [2.8] When the complainant went to Immigration New Zealand she found out she was unlawfully in the country, as Mr Ahuja failed to comply with the time limit. Mr Ahuja told her that it was not a matter for concern and that he would make a request under discretionary provisions in the Immigration Act. He did so without giving proper advice and taking informed instructions on the matter, and Immigration New Zealand rejected the request.
  - [2.9] The complainant could not work and suffered hardship while she successfully appealed to the Immigration and Protection Tribunal.
- [3] Mr Ahuja says the complainant's account is untrue. He says he did receive instructions, but before he could lodge the application, the complainant removed papers from his office and took over the instructions. She lodged the defective application, which Mr Ahuja had pre-signed, and she continued to deal with the instructions. The difficulties were of her own making, as she took matters out of Mr Ahuja's hands.
- [4] The question for the Tribunal to determine is what occurred; the accounts given by the complainant and Mr Ahuja are quite different. Each says the other was responsible for lodging the applications, which were clearly defective.
- [5] The Tribunal has upheld the complaint and accepted the complainant's evidence of what occurred. It has found Mr Ahuja was negligent, and failed to comply with the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). They are grounds for complaint under the Immigration Advisers Licensing Act 2007 (the Act).

### The grounds of complaint

- [6] The Registrar filed a statement of complaint and identified two grounds of complaint, which she considered the evidence available to her potentially established.

- [7] The first ground was negligence. In this respect the complaint related to two applications, and accordingly two separate issues:
- [7.1] The first concerned a work visa application lodged with Immigration New Zealand on 4 September 2012. The alleged negligence was that:
- [7.1.1] Mr Ahuja failed to advise the applicants their passports had to be valid for 3 months or more beyond their intended stay.
- [7.1.2] He filed an incomplete application form.
- [7.2] The second allegation of negligence related to re-filing the work visa application with Immigration New Zealand on 11 September 2012, after Immigration New Zealand rejected the first filing. The potential negligence arose as:
- [7.2.1] Mr Ahuja was responsible for applying for new passports for the applicants, he failed to do so effectively, and
- [7.2.2] Either:
- [7.2.2] He did not provide requested information to Immigration New Zealand regarding the progress in applying for passports; or
- [7.2.2] If he believed the complainant held the relevant information, he failed to seek immediate instructions before informing Immigration New Zealand the complainant would provide the information.
- [8] The second ground of complaint concerned potential breaches of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). This ground also related to the two applications respectively filed on 4 and 11 September 2012; and in addition an application lodged under section 61 of the Immigration Act 2009 on 13 September 2012. The allegations are:
- [8.1] Mr Ahuja potentially failed to confirm in writing that the respective applications had been lodged, and clause 3(a) of the 2010 Code required him to do so.
- [8.2] He failed to provide ongoing timely updates in respect of the 11 September 2012 application, when Immigration New Zealand returned the application. The update was significant, as the complainant ceased to hold a visa and for that reason was in New Zealand unlawfully. Clause 3(a) of the 2010 Code required that Mr Ahuja provide ongoing timely updates.
- [8.3] He had failed to seek and carry out the complainant's lawful informed instructions when he submitted the application under section 61 of the Immigration Act 2009. This allegation is that Mr Ahuja did not ensure the complainant had sufficient information to give informed instructions. Clause 1.1(b) of the 2010 Code required that Mr Ahuja with due care, respect and professionalism carry out the lawful informed instructions of clients.
- [9] The complainant, when originally making the complaint, had proposed wider grounds. The Registrar filed a Statement of Complaint with the Tribunal on the basis of the grounds set out above. Prior to an oral hearing, neither the complainant nor the Registrar sought to widen the grounds of complaint and, accordingly, those grounds are the full extent of the complaint the Tribunal will determine.

#### **The facts alleged in support of the complaint**

- [10] The Statement of Complaint set out a narrative of the facts alleged to support the complaint, and provided documents said to support the allegations.

- [11] The Statement of Complaint said the key factual allegations were:
- [11.1] On 16 August 2012, the complainant and Mr Ahuja entered into a professional relationship, pursuant to a written agreement of that date. The instructions related to assisting with a work visa application and associated visas for her family.
- [11.2] On 4 September 2012 Immigration New Zealand received the visa application which Mr Ahuja had submitted. However, Immigration New Zealand would not accept the application as the forms were incomplete and the passports included in the application were not valid for 3 months beyond the applicants' intended stay in New Zealand. Accordingly, Immigration New Zealand returned the application to Mr Ahuja.
- [11.3] On 11 September 2012, Immigration New Zealand received a further application for the visas, which Mr Ahuja submitted. Immigration New Zealand contacted Mr Ahuja to request evidence that the complainant and the members of her family affected by the applications had applied for new passports. Mr Ahuja told Immigration New Zealand that the complainant was about to email the necessary information. Immigration New Zealand did not receive information, and accordingly returned the applications to Mr Ahuja.
- [11.4] On 12 September 2012, the complainant's work visa expired, and she was in New Zealand unlawfully from that point in time.
- [11.5] On 13 September 2012, Immigration New Zealand received a request for a work visa under section 61 of the Immigration Act 2009, submitted under Mr Ahuja's licence. Immigration New Zealand refused the request on 9 October 2012.
- [11.6] On 11 October 2012, the complainant and her family met with Immigration New Zealand representatives to discuss why her previous application had been processed under section 61. Immigration New Zealand told her that they had requested further information relating to the second application, nothing was received and they returned the application. Accordingly, she was unlawfully in New Zealand from 12 September 2012. As a result, the complainant terminated Mr Ahuja's instructions.

### **Oral hearing**

- [12] The Tribunal considered the documents lodged by the Registrar when filing the Statement of Complaint, and convened an oral hearing where the parties had the opportunity to present evidence, which was subject to cross-examination.

### **Discussion**

#### *Mr Ahuja's answer to the complaint*

- [13] Mr Ahuja accepted he was the only licensed immigration adviser in the practice. He explained he took employment in the practice and over time became increasingly concerned regarding the conduct of the directors of Global the company that owned the practice. Before he accepted employment in the practice, he knew this Tribunal had cancelled the former licensee's licence. He said the Immigration Advisers Authority encouraged him to take employment in the practice, and that gave him confidence.
- [14] Mr Ahuja said he became concerned the directors and persons associated with Global engaged in dishonest practices and when he responded to the complaint, he said on occasions Global's officers forged his signature on documents, submitted them to Immigration New Zealand, and sent emails in his name without his knowledge. However, he did not say his signature was forged, or emails sent without his knowledge in respect of the complainant's affairs.
- [15] Mr Ahuja said he was not responsible for any irregularity in the complainant's instructions. He said that matters developed in the following manner.

- [16] Mr Ahuja said he was not in constant attendance where the practice was located, he would attend the office as necessary to advise clients. He kept all the records required to meet his professional obligations in his office at the practice. He had a copy of his licence and the 2010 Code displayed where clients could see it at the office where the practice operated. He accepted the agreement to provide professional services to the complainant did identify him as the licensed immigration adviser.
- [17] However, he said the complainant obtained immigration services from the managerial or administrative staff in the practice and that was at the complainant's own risk. He said the complainant and particularly her husband were familiar with visa applications.
- [18] Mr Ahuja said he first met with the complainant on 16 August 2012 and identified that she required a work visa and that her family members required related visas. He identified that the complainant required an employment contract and renewals of the family passports. Mr Ahuja said it was the complainant's responsibility to arrange:
- [18.1] An employment contract; and
- [18.2] Passport renewals
- [19] Mr Ahuja said he was clear with the complainant that she had to renew her and other family passports, as Immigration New Zealand would require that before issuing visas.
- [20] After taking instructions Mr Ahuja said he partly prepared the work visa application, signed it and left it in his office. He did not file the application due to the issue relating to passports, and other documents he had not received from the complainant. He said he was aware of a fee of \$500 received from the complainant, but denied any knowledge of a payment of \$1,000. This, he said, was between the complainant and Global.
- [21] He said his final contact with the complainant and her husband occurred on 30 August 2012. He said he believed that the complainant and the directors of Global took the application he had partly prepared, and the complainant lodged the application herself, though he did not know that at the time.
- [22] Mr Ahuja said the complainant chose to engage the directors of Global, and that was her responsibility and not his. Further, in submitting the application she was acting in contravention of his advice that she should not do so without first attending to renewing her family's passports.
- [23] Mr Ahuja said his first knowledge of someone filing the application was when he attended his office on 10 September 2012, and found a letter dated 6 September 2012 from Immigration New Zealand. This letter was addressed to Mr Ahuja, it discussed the applications for the complainant and her family, and noted the issues in relation to passports and the incomplete applications. The letter also pointed out the obligation to hold a visa at all times while in New Zealand and the liability for deportation if in New Zealand without a visa. Mr Ahuja said his response was to call the complainant's husband, and object to him taking the application and lodging it. Mr Ahuja spoke to the complainant's husband. He, that is, the complainant's husband, was well acquainted with immigration processes. Accordingly, Mr Ahuja suggested to him he might only need Mr Ahuja's assistance to check documents. Mr Ahuja says he had no further interaction with the complainant or her husband until 12 September 2012. Mr Ahuja says he did not lodge the visa applications, that the complainant's husband misused his signature by lodging the application himself.
- [24] The following day, that is 11 September 2012, he said the complainant completed a statutory declaration, which said she and her family had applied for new passports. The declaration was dated 11 September 2012; Mr Ahuja said the complainant drafted the document without assistance from him. Mr Ahuja said that on the same day the complainant gave the passports to one of Global directors and paid him to renew the passports. However, Mr Ahuja was not speaking of what he saw; he said was relying on what the complainant said happened. His position was that the Global director failed to do that, and then the complainant took over responsibility to renew the passports. Mr Ahuja said he had no obligations in relation to the passports, and was unaware of these dealings at the time. Mr Ahuja pointed to an email from the Fiji High Commission dated 14 September 2012. The email was addressed to Mr Ahuja's practice and said money had to be paid to process the passports, and some documentation

completed properly before passports could be issued. There is a note on the email, apparently from the complainant's husband saying the applications should be withdrawn (dated 14 September 2012).

- [25] Mr Ahuja said his only role in the second submission of the application followed contact from Immigration New Zealand on 12 September 2012 regarding the absence of evidence the complainant and her family were renewing their passports. He said he assured Immigration New Zealand he would inform the complainant and her husband who were personally dealing with their applications. Immigration New Zealand gave until 3:30 that afternoon to provide evidence. He said he told the complainant, who assured him Immigration New Zealand would receive the documentation. Immigration New Zealand extended the time to later that afternoon. Mr Ahuja believed the complainant and her husband would deal with the issue after his telephone conversations, so took no further action.
- [26] Mr Ahuja received a letter from Immigration New Zealand dated 12 September 2012 saying the work visa applications had been refused for a second time due to the issue relating to passports, he sent the letter to the complainant as she was dealing with her own immigration affairs. None-the-less Mr Ahuja made inquiries with the Fijian High Commission, and offered to assist the complainant.
- [27] Mr Ahuja denied lodging a request under section 61 on 13 September 2012, he said the complainant, her husband, or a director of Global apparently lodged the application. Mr Ahuja's next contact was a month later, on 12 October 2012 when the complainant and a family member personally contacted him and he saw a letter from Immigration New Zealand dated 9 October 2012 declining the request under section 61. Mr Ahuja agreed to lodge another section 61 application, and arranged for a new service agreement (there was no fee charged). He drafted a further request with Immigration New Zealand.
- [28] He said the complainant revoked his instructions in writing on 15 October 2012, and she uplifted the file with the incomplete section 61 application about 19 October 2012.
- [29] Mr Ahuja accused the complainant of fabricating an account to support her complaint and said he is a victim of fraud by the management and staff of Global.
- [30] In summary, Mr Ahuja claimed:
- [30.1] He gave the correct advice regarding passports from the outset;
- [30.2] He partly prepared the first application and signed the incomplete document. The complainant, her husband and the directors of Global took over the immigration process, and the complainant and her husband lodged the unsatisfactory application. Mr Ahuja had signed and left the application in his office thinking it was secure.
- [30.3] He became aware somebody lodged the application with Immigration New Zealand, and took that up with the complainant and her husband. He continued to act for them, but handed over primary responsibility. They re-lodged the application, and later filed an application under section 61 independently of Mr Ahuja.
- [30.4] Mr Ahuja later reengaged with the complainant and out of sympathy agreed to lodge a further application under section 61.
- [30.5] The difficulties were not of Mr Ahuja's making; rather they were the consequences of the complainant taking over her own immigration affairs.

*The disputed facts*

- [31] Mr Ahuja's position when the oral hearing commenced is outlined under the preceding heading. However, the complainant did not accept that was an accurate description of what had occurred in the course of the instructions.
- [32] The key differences were that the complainant said Mr Ahuja did not identify the issue concerning passports expiring when he took instructions. She said Mr Ahuja lodged the application; and when Immigration New Zealand returned the applications Mr Ahuja for the first time told the complainant of the problem with passports. She said Mr Ahuja drafted the

statutory declaration to submit with the second application. He asked the complainant to have it sworn, and to lodge it with Immigration New Zealand, which she did.

- [33] She said Mr Ahuja resubmitted the application on 11 September 2012. The following day when Immigration New Zealand contacted Mr Ahuja he did not communicate with her regarding Immigration New Zealand issuing a deadline of the afternoon of 12 September 2012; by which time they required proof beyond the statutory declaration regarding passport renewal being in train.
- [34] The complainant said there were four people in Mr Ahuja's practice, and she understood they worked as a team. She said she gave the passports and money to Mr Ahuja who was working with one of the directors of Global, and they agreed to arrange the renewal of the passports. The complainant and her husband took over the passport issue only after Mr Ahuja's practice failed to deal with it properly.
- [35] Accordingly, the complainant rejected Mr Ahuja's claim she had taken over her own immigration application. She said she and her husband engaged Mr Ahuja to assist them, paid him to do so, and had no reason to deal with matters themselves, it was only after the second application failed that it became evident Mr Ahuja was not dealing with their affairs properly and they engaged other assistance.

#### *Factual findings*

- [36] The Tribunal is required to determine facts on the balance of probabilities; however the test must be applied with regard to the gravity of the finding (*Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1).
- [37] Some of the disputed facts are critical to the grounds of complaint. I must decide whether Mr Ahuja or the complainant's evidence is to be preferred.
- [38] Aspects of Mr Ahuja's evidence raised serious concerns regarding his credibility. As noted Mr Ahuja in an affidavit denied having filed the first application, and explained the circumstances in this way:
- “[The complainant and her husband], in the Adviser's absence, took away the partially completed work visa application of the Complainant from Company Office, which the Adviser, to the best of his knowledge believes, was with the consent and connivance of [the directors of Global], and proceeded to lodge the same with INZ themselves without obtaining renewal of the Complainant's passport ...”
- [39] In a brief of evidence filed prior to the hearing, Mr Ahuja simply said the application had been lodged without his involvement.
- [40] When he gave oral evidence Mr Ahuja claimed the complainant and her husband had essentially broken into his office, taken the application and lodged it themselves. He said of the first application that the receptionist reported to Mr Ahuja that the complainant and her husband came to Mr Ahuja's practice, used threats, entered his office and took their file or parts of the file. Mr Ahuja said he admonished the receptionist and replaced her. He said he became aware of the incident after he saw Immigration New Zealand's letter rejecting the application, and sought an explanation as to who lodged the application.
- [41] Mr Ahuja claimed he kept a file note but could not produce it, as the complainant entered his office a second time and again took records including the file note. He said the second occasion was in October of 2012. Mr Ahuja said he reported to the police that the complainant had taken material from his office, but they were not interested.
- [42] The claim is inherently implausible, unless supported by evidence dealing with the difficulty a person should have in entering the office of a professional person they engaged, finding their personal documents, and then being motivated to perform the task they engaged the professional to undertake. Neither opportunity nor motive is obviously present.
- [43] Furthermore, Mr Ahuja says the application was in his office in an incomplete form but none-the-less signed by him in that form. It is of course usual to sign documents when they are complete.

- [44] Mr Ahuja did not provide any sensible explanation for leaving a signed and incomplete application in his office. Mr Ahuja's claim was further compounded by saying the landlord (independent of Global) had a key to his office, and he kept the office locked. He could not explain how the complainant and her husband accessed his office, even if they did persuade the receptionist to assist them.
- [45] Accordingly, Mr Ahuja's account given in his oral evidence leaves unexplained issues regarding the opportunity for clients to access his office, and the improbability of finding a signed but incomplete application in his office.
- [46] His account of his clients gaining unauthorised access to his office emerged for the first time in Mr Ahuja's oral evidence. It was different from his earlier explanations; in particular, what he said in the written material filed before the hearing. When Mr Ahuja drafted his affidavit, what he said in the passage quoted in paragraph [38] is irreconcilable with his oral evidence that the complainant and her husband accessed his office using threats, and that he reported the matter to the police. There would be no reason to report the matter to the police or admonish and replace the receptionist if the directors of Global "consented and connived" as Mr Ahuja previously said in his affidavit. Despite claiming that his clients entered his office without authority, and he reported them to the police, Mr Ahuja admitted he offered to attempt to rectify the situation without charging fees for doing so; that too is incongruous.
- [47] Mr Ahuja also responded to the complainant's claim she paid \$1,150 by an EFTPOS transaction at Mr Ahuja's request. He said the evidence was false, in his written brief of evidence, he said he was not aware of the payment. He claimed the payment related to other services from Global. However, an invoice Mr Ahuja prepared was consistent with the written service agreement Mr Ahuja clearly was aware of and personally required the payment of this amount; faced with the invoice in his own handwriting he accepted his former claim was wrong.
- [48] Aside from the implausibility and the inconsistencies in Mr Ahuja's varying accounts of what occurred, his response to the complaint involves a striking failure to comply with basic elements of professional conduct, and the 2010 Code. Mr Ahuja claims he was the victim of extraordinary events where his clients breached the security in his office, took papers away and then performed his professional duties without reference to him.
- [49] The 2010 Code required that he confirm in writing the details of material discussions with clients. Mr Ahuja says he wrote a file note that his clients later took from his office; but never wrote to his clients confirming discussions regarding either them taking the original application, or removal of the file note.
- [50] Mr Ahuja accepts he was in contact with Immigration New Zealand discussing an application lodged under his signature, which Immigration New Zealand identified was incomplete and also lacked up to date passports. He accepts Immigration New Zealand gave him ultimatums regarding responding to their concerns. He failed to set out in writing for Immigration New Zealand that he did not lodge the application. He did not produce records from Immigration New Zealand regarding an expression of concern regarding his clients filing the application falsely under his name. That is a wholly unprofessional response if Mr Ahuja did not lodge the defective documents.
- [51] I am satisfied Mr Ahuja has developed his response to the complaint as matters have emerged, and I cannot rely on his evidence. Mr Ahuja's essential claim that his clients took over their own immigration affairs is implausible, inconsistent with the record, and developed through changing evidence presented by Mr Ahuja. In contrast, as far as the record goes, the complainant's evidence is consistent both in terms of what she has said since making the complaint and with the record. Her evidence, and the record both show that:
- [51.1] Mr Ahuja accepted instructions to lodge an application;
- [51.2] He prepared the application, and it was defective. Either Mr Ahuja or someone in his practice filed the application;
- [51.3] Immigration New Zealand returned the application and identified what was required to lodge a complying application;

- [51.4] The complainant instructed Mr Ahuja to complete the renewal of passports, and attended to matters to allow him to lodge the application for a second time;
- [51.5] Immigration New Zealand gave Mr Ahuja time to provide further information relating to passport renewal, that should have been in his own control given that his client instructed him to deal with that;
- [51.6] Mr Ahuja in the face of strict time limits failed to comply with Immigration New Zealand's requirements;
- [51.7] When the complainant went to Immigration New Zealand and found out she was unlawfully in New Zealand as the time limit was not complied with, Mr Ahuja told her that it was not a matter for concern, and he would make an application under section 61. He did so without taking instructions on that matter, and that was rejected;
- [51.8] The complainant could not work, and suffered great hardship until she successfully appealed to the Immigration and Protection Tribunal.
- [52] In all respects where the complainant's evidence differs from Mr Ahuja's, I accept the account provided by the complainant.

### *Responsibility*

- [53] In the Tribunal's decision *JM v DTM* [2011] NZIACDT 1, the Tribunal emphasised these aspects of professional responsibility:
- [38] It is evident a key element of the mechanism in the Act is that licensed immigration advisers are clearly identified; client relationships commence with the Adviser identifying their standing, and providing of a copy of the Code (Code clause 1.4). The scope of section 6 is wide, and one no doubt intended to ensure licensed advisers are not able to be used as a "front" for unlicensed operators. The legislation is structured to effect functional exclusion from the professional relationship of any person who is not either licensed or exempt.
- [39] The legislation provides an important privilege to licensed immigration advisers in allowing them to exclusively provide immigration advice (along with exempt persons). However, consistent with that, licensed advisers carry professional obligations. They are personally responsible for the professional relationship, regardless of whether they are employees, or otherwise.
- ...
- [42] Accordingly, licensed immigration advisers are given the freedom to practise as employees where they have little control over the business practices of their employer. However, they do so at their peril unless they establish proper protection for their professional independence, and assurance they can ensure they manage and deliver service for all aspects of the professional relationship (alone or with another licensed adviser).
- [54] It is not open to a licensed immigration adviser to claim they are subordinate to an employer or contractor, or say an unlicensed person was responsible for aspects of the professional relationship. In the present case, I am satisfied Mr Ahuja was wholly responsible for what occurred in the course of the professional engagement with the complainant.
- [55] I do accept that persons in the practice may have conducted themselves inappropriately. They potentially filed a pre-signed application Mr Ahuja left in his office. However, that was his responsibility, not the complainants. I wholly reject his claim his clients used threats to access his secured office or took over their immigration affairs in any other way until they realised they needed other professional assistance. They paid a substantial amount of money to a licensed professional as this application was very important for them and they sought, and were entitled to, professional assistance that met the standards in the Act and the 2010 Code. Mr Ahuja is not in a position where he can place responsibility on anyone other than himself for meeting those obligations.

*Negligence*

- [56] The first ground of complaint is negligence in relation to the two applications.
- [57] In respect of the first work visa application lodged with Immigration New Zealand on 4 September 2012. The alleged negligence related to:
- [57.1] Failing to advise that the applicant's passports had to be valid for 3 months or more beyond the intended stay.
- [57.2] Lodging the form with Immigration New Zealand with several sections incomplete.
- [58] I accept the complainant's evidence Mr Ahuja failed to address the issue relating to the time the passports expired. He had an obligation to address this requirement, as it is a standard requirement. Immigration New Zealand immediately identified the requirement had not been met. The initial failure was not critical, as Immigration New Zealand identified the issue and provided an opportunity to rectify the situation. Accordingly, this failure did involve negligence but at the lower end of the scale. Mr Ahuja was required to confirm advice of this kind in writing pursuant to clause 3(f) of the 2010 Code. He did not do that.
- [59] I have rejected Mr Ahuja's evidence that the complainant took the incomplete application from his office and filed it. I make no finding whether Mr Ahuja personally filed the application, or that he pre-signed the application and left it for unqualified persons in his practice to file. Either of those two potential possibilities involves Mr Ahuja's negligence. If he filed the application personally, he negligently filed an obviously defective application; it was defective to the degree Immigration New Zealand refused to accept it for filing, as sections in it were incomplete. The only potential alternative was that Mr Ahuja signed the incomplete application, and left it in the hands of unqualified staff who filed it as he had signed it. There is no other explanation consistent with the evidence before me. Both options involved Mr Ahuja signing an incomplete application, which his practice filed. He was required to check the application and ensure it was complete and supported by the appropriate documentation, then arrange for filing. If he lacked any information, his clear and obvious duty was to inform his client and confirm that in writing pursuant to clause 3(f) of the 2010 Code. He negligently failed to take those steps, and either filed or caused a defective application to be filed.
- [60] In respect of the second application for a work visa lodged on 11 September 2012, I find Mr Ahuja filed that application. He was on clear notice from Immigration New Zealand of the defects in the first application. I reject his claim his clients filed the application. I am satisfied that the complainant's evidence that Mr Ahuja was responsible for applying for renewal of the passports is correct. The High Commission communicated with Mr Ahuja's practice, and I accept the complainant's evidence she engaged with Mr Ahuja personally (and with a director of Global), provided the passports and paid the money for renewal. Mr Ahuja had a duty to ensure he took the necessary steps to commence the renewal process, and to prove to Immigration New Zealand that he had done so.
- [61] The application for the passports was submitted without the money the complainant paid, and without other supporting material. I am satisfied Mr Ahuja or someone in his practice failed to make proper inquiries, despite knowing that the application was time critical, and had to be explained to Immigration New Zealand. Mr Ahuja was negligent as he failed to take those obvious and necessary steps.
- [62] I am also satisfied Mr Ahuja failed to provide Immigration New Zealand with the information required to establish that the applications for new passports were properly in train. Mr Ahuja accepts that Immigration New Zealand spoke to him and made it clear that the issue was time critical with a deadline of hours. It is clear Mr Ahuja's practice was dealing with the renewal of the passports, as the Fiji High Commission communicated with the practice regarding the issue. It was Mr Ahuja's responsibility to provide proof to Immigration New Zealand. He failed to do so. He has provided no justification or excuse other than saying it was the complainant's responsibility. I find the responsibility was Mr Ahuja's and he negligently failed to discharge the duty.
- [63] I am accordingly satisfied that in the four identified respects Mr Ahuja was negligent in the course of dealing with the complainant's instructions. His negligence resulted in both the first and second applications failing; the responsibility was entirely Mr Ahuja's. If he lacked any

information he required from his clients, I am satisfied that was because he failed to explain what he required and confirm the conversation in writing as clause 3(f) of the 2010 Code mandates.

### *Breaches of the 2010 Code*

- [64] The first alleged breach of the 2010 Code in the complaint is that Mr Ahuja failed to confirm in writing that the respective applications had been lodged; clause 3(a) of the 2010 Code required him to do so. The requirement is straightforward, Mr Ahuja has not provided evidence of reports, indeed he says he did not file the applications. For the reasons discussed I am satisfied either Mr Ahuja or someone in his practice filed the first application, and Mr Ahuja filed the second. Mr Ahuja failed to provide the written confirmation required under the 2010 Code, and breached the Code in this respect.
- [65] The second alleged breach of the 2010 Code is that Mr Ahuja failed to provide ongoing timely updates in respect of the 11 September 2012 application when Immigration New Zealand returned the application. The development was significant as the foreseeable result was that the complainant ceased to hold a visa and for that reason was in New Zealand unlawfully. Clause 3(a) of the 2010 Code required that Mr Ahuja provide ongoing timely updates. The complainant accepts she did engage with Immigration New Zealand as she was concerned about her status. She says she went to Mr Ahuja, and he dismissively said it was not a major issue to apply under section 61. The reality was that Immigration New Zealand did not have to provide reasons under section 61, it is a truly discretionary provision. The situation was in fact very serious, it led to the complainant not working until an appeal to the Immigration and Protection Tribunal was resolved and incurred the expense of that successful appeal.
- [66] The rejection of the second application was, as I have found, due to Mr Ahuja's negligent failure to address urgent concerns Immigration New Zealand raised with him. Mr Ahuja had a duty to disclose to his client the true significance of her and her family being in New Zealand without current visas, the potential remedies, the reasons they were in that predicament, and that they could seek independent advice. A professional response required no less. Clause 3(a) of the Code mandated confirmation in writing of the application failing, and I have identified the information that Mr Ahuja should have conveyed. Instead, he gave a false representation of the circumstances, and did not do so in writing. I am satisfied Mr Ahuja breached clause 3(a) of the 2010 Code.
- [67] After the application failed, Mr Ahuja said a section 61 application was the appropriate step. It was the appropriate first step, and to lodge the application properly Mr Ahuja had to take instructions. To do so he had to disclose his own role in the process, and likely have the application lodged by an independent licensed immigration adviser, or person exempt from being licensed. Instead, Mr Ahuja lodged an application that did not disclose his own actions, and it failed. Clause 1.1(b) of the 2010 Code required that Mr Ahuja with care, diligence, respect and professionalism carry out the lawful informed instructions of his clients.
- [68] Mr Ahuja lodged the application without care, diligence, respect and professionalism. He withheld vital information from his client, namely his own failings. As a result, he could not get informed instructions from her. Mr Ahuja then lodged an application without having informed instructions, and failed to consult his clients on the application. I am accordingly satisfied that Mr Ahuja lodged the application in breach of clause 1.1(b) of the 2010 Code as he did not have lawful informed instructions to lodge the request under section 61.
- [69] Had he disclosed the true circumstances, the application may have been successful, and averted the need to apply to the Immigration and Protection Tribunal with the expense and delay that is inevitable in the course of that process. I find the true circumstances were that Mr Ahuja failed to discharge his duties to his client; instead he precluded her making an application on the true merits under section 61.

### **Decision**

- [70] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [71] Mr Ahuja was negligent, and breached the Code of Conduct in the respects identified, which are grounds for complaint pursuant to section 44(2) of the Act.

[72] In all other respects, the Tribunal dismisses the complaint.

### **Submissions on Sanctions**

[73] The Tribunal has upheld the complaint. Accordingly, pursuant to section 51 of the Act, it may impose sanctions.

[74] The Authority and the complainant now have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees and compensation.

[75] Whether they do so or not, Mr Ahuja is entitled to make submissions and respond to any submissions from the other parties.

[76] Any application for an order for the payment of costs or expenses under section 51(1)(g) should be accompanied by a schedule particularising the amounts and basis for the claim.

[77] The complainant has made some preliminary submissions relating to compensation. Those submissions could not properly anticipate the findings in this decision that bear on causation issues and potential compensation. Accordingly, the complainant may revise those submissions for the purpose of any application for compensation pursuant to section 51(1)(i) of the Act.

[78] The complainant successfully appealed to the Immigration and Protection Tribunal, and resumed working in New Zealand. On the balance of probabilities, on the evidence before me at this point, I find that:

[78.1] The original application for a work visa for the complainant (and consequently other family visas) would have been successful if lodged with due care; and

[78.2] That a section 61 application that disclosed the true reason for not filing the second application with sufficient supporting information was Mr Ahuja's failure, not his clients' failure, would have been successful.

[79] However, this matter was not directly in issue to this point, it primarily concerns sanctions. Accordingly, I reach no concluded view on the issue and give leave to the parties to provide further evidence if they wish to do so.

[80] If the complainant does apply for compensation, she should address quantum and causation in the same way as establishing a civil claim, where the standard of proof is on the balance of probabilities. Any further proof required to support a claim for compensation should be submitted in the first instance by affidavit. Mr Ahuja may apply to cross-examine any deponent, and provide any evidence himself by affidavit.

### *Timetable*

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

[81.1] The Authority and the complainant are to make any submissions, and file any affidavits in support within 15 working days after the issue of this decision.

[81.2] Mr Ahuja is to lodge any further submissions, affidavits and any application to cross-examine deponents (whether or not the Authority or the complainant makes submissions) within 25 working days of the issue of this decision.

[81.3] The Authority and the complainant may reply to any submissions or evidence lodged by Mr Ahuja within 5 working days of him filing and serving those submissions and other material.

**DATED** at WELLINGTON this 31<sup>st</sup> day of March 2015

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**G D Pearson**  
Chair