

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

Decision No: [2015] NZIACDT 37

Reference No: IACDT 011/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

Between

M N and L N

Complainant

AND

Alungamonu (Laki) Tangilanu (Monu)

Adviser

**THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE
PUBLISHED**

DECISION

REPRESENTATION:

Registrar: In person.

Complainant: Mr R Small, lawyer, Pacific Legal Ltd, Lower Hutt.

Adviser: In person

Date Issued: 31 March 2015

DECISION

Introduction

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal.
- [2] The complaint is that Ms Tangilanu accepted instructions and received a fee to assist the complainants who are a married couple with requests for visas. The allegations are that she:
 - [2.1] Was slow to make the request.
 - [2.2] Made a request for one complainant, and should have done so for both.
 - [2.3] Did not include sufficient information in the request.
 - [2.4] Failed to report when Immigration New Zealand rejected the request.
- [3] Ms Tangilanu has not responded to the complaint with an explanation or justification addressing the grounds of complaint.
- [4] The Tribunal has concluded it must uphold the complaint, as the material before it establishes the facts and they establish non-compliance with Ms Tangilanu's professional obligations.

The complaint

- [5] The Registrar filed a statement of complaint, she put forward the following background as the basis for the complaint:
 - [5.1] The complainants were in New Zealand without current visas, and accordingly in New Zealand unlawfully. On 10 May 2011, they engaged Ms Tangilanu to assist them request a visa. They had to make a request under section 61 of the Immigration Act 2009, a discretionary provision that allows a person unlawfully in New Zealand to seek a visa.
 - [5.2] The female complainant signed a written agreement in which Ms Tangilanu agreed to assist with an application under section 61, and on 11 May 2011 paid a fee of \$500 in accordance with the agreement.
 - [5.3] On 8 July 2011, Ms Tangilanu submitted a request for the female complainant only. On 30 August 2011, Immigration New Zealand refused the request, noting the request did not contain sufficient information to support it. Ms Tangilanu did not inform the complainants.
 - [5.4] On 23 September 2011, Ms Tangilanu's licence expired. The complainants first ascertained Immigration New Zealand declined their request for a visa on 31 May 2012 after making their own inquiries with Immigration New Zealand.
- [6] The Registrar identified potential infringement of professional standards during the course of Ms Tangilanu's engagement. Namely:
 - [6.1] That Ms Tangilanu breached clause 1.1(a), of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). That provision required Ms Tangilanu to perform her services with due care, diligence, respect and professionalism. The circumstances alleged to amount to a breach of that obligation were:
 - [6.1.1] Ms Tangilanu delayed making any request for a visa for some two months after receiving instructions in early May 2011. That delay was due to a lack of diligence.
 - [6.1.2] Ms Tangilanu ultimately made the request for a visa, but only for one of the complainants, when both were in New Zealand unlawfully, and it only consisted of a letter with no supporting documents. The information was

inadequate to support the request, and Immigration New Zealand concluded that made declining the request necessary.

- [6.1.3] Making a request for one complainant and not including sufficient information was due to a lack of care.
- [6.1.4] Ms Tangilanu breached clause 1.1(a) due to her lack of care and diligence in performing her service of making the request under section 61.
- [6.2] That Ms Tangilanu breached clause 3(a), of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). That provision required Ms Tangilanu to maintain professional business practices, including confirming in writing to clients when she lodged applications, with ongoing timely updates. The circumstances alleged to amount to a breach of that obligation were:
 - [6.2.1] When Immigration New Zealand made a decision on the request on 30 August 2011, Ms Tangilanu did not report to the complainants.
 - [6.2.2] The complainants only ascertained the position from their own inquiries.
 - [6.2.3] Ms Tangilanu breached her obligation to report when Immigration New Zealand declined the request, and accordingly breached clause 3(a) for that reason.

The responses

- [7] Ms Tangilanu did not file a statement of reply; she was not required to do so if she accepted the contents of the Statement of Complaint.
- [8] The complainants did not file a statement of reply, and they too were not required to do so if they agreed with the contents of the Statement of Complaint.

Discussion

The standard of proof

- [9] The Tribunal determines 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 at [55].

The material before the Tribunal

- [10] The Registrar provided a chronology, and supporting documentation. The parties have not disputed this record or added to it.
- [11] I am satisfied this material supports the grounds of complaint alleged.

The facts

- [12] The facts are uncomplicated, and essentially rely on the documentation the Registrar presented to the Tribunal. Ms Tangilanu accepted instructions, she failed to act in a timely manner, she inexplicably failed to make a request for both clients, the request she made was deficient as it lacked supporting information, and she failed to report.

Breach of clause 1.1(a) of the Code

- [13] When a person is in New Zealand unlawfully, the matter is invariably urgent, as the person is exposed to enforcement action, furthermore the greater the delay in addressing the issue the greater the non-compliance with New Zealand immigration law. That may have adverse effects for future visa applications.
- [14] The unjustified delay of two months was unacceptable, and I am satisfied that amounted to a lack of diligence in Ms Tangilanu providing her services.

- [15] I am also satisfied Ms Tangilanu failed to exercise due care in omitting to request a visa for the male complainant. For the same reasons unnecessary delay is unacceptable, the male complainant's request for a visa was urgent. In addition, the male complainant's circumstances were relevant to the female complainant's request.
- [16] The lack of information to support the request was the reason Immigration New Zealand declined the visa; I am satisfied that was a proper evaluation of the position. As I have noted, the lack of a request for the male complainant is an obvious deficiency.
- [17] It follows I am satisfied that Ms Tangilanu's performance of the services she agreed to provide lacked both due care, and diligence; accordingly she breached clause 1.1(a) of the 2010 Code for those reasons.

Breach of clause 3(a) of the Code

- [18] When Immigration New Zealand declined the request for a visa under section 61, the information was very significant for the complainants. They were in New Zealand unlawfully; continued non-compliance with New Zealand law potentially made their circumstances more difficult, as it could result in enforcement action and affect their ability to gain a visa in the future. There was also a potential to lodge a request for both complainants on appropriate grounds, such a request may well have been successful.
- [19] Ms Tangilanu accepted instructions to lodge a request for both complainants under section 61, accordingly she must have formed the professional opinion that the applications had merit. The reason for rejecting the application was lack of information. Accordingly I am satisfied Ms Tangilanu had an important reason to report, that gave the complainants had the opportunity of pursuing an application supported by all the available and relevant information.
- [20] I am satisfied Ms Tangilanu failed to report that Immigration New Zealand rejected the request, and did not report why it was rejected. She had a duty to do so, and accordingly breached clause 3(a) of the 2010 Code.

Decision

- [21] The Tribunal upholds the complaint pursuant to section 50 of the Act.
- [22] Ms Tangilanu breached the 2010 Code in the respects identified; they are grounds for complaint pursuant to section 44(2) of the Act.

Submissions on Sanctions

- [23] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [24] The Authority and the complainants have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees and compensation. Whether they do so or not, Ms Tangilanu is entitled to make submissions and respond to any submissions from the other parties.
- [25] 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.
- [26] The Registrar is requested to report on the extent to which Ms Tangilanu has complied with previous orders the Tribunal has imposed in respect of sanctions, and the steps she has taken to enforce the orders.

Timetable

- [27] The timetable for submissions will be as follows:
- [27.1] The Authority and the complainants are to make any submissions within 10 working days of the issue of this decision.

[27.2] The adviser is to make any further submissions (whether or not the Authority or the complainant makes submissions) within 15 working days of the issue of this decision.

[27.3] The Authority and the complainants may reply to any submissions made by the adviser within 5 working days of her filing and serving those submissions.

Order prohibiting publication of the complainant's name or identity

[28] As the complainants were in New Zealand unlawfully, the Tribunal orders that their names and any information that may identify them is not to be published.

[29] This order recognises that persons seeking advice regarding their unlawful status in New Zealand are entitled to complain regarding professional misconduct, without fear of publication that may adversely affect them.

[30] Leave is reserved for the complainant or the Registrar to apply to vary this order. The order does not prevent **the complainants** disclosing the decision to their professional advisers, or any authority **they** consider should have a copy of the decision.

DATED at Wellington this 31st day of March 2015

G D Pearson
Chair