

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

Decision No: [2015] NZIACDT 79

Reference No: IACDT 020/14

IN THE MATTER

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

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

E B T

Complainant

AND

Viveg Lingam Mudaliar

Adviser

THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE PUBLISHED

DECISION

REPRESENTATION:

Registrar: Ms S Blick, lawyer, MBIE, Auckland.

Complainant: In person

Adviser: Mr N King, Lawyer, Auckland.

Date Issued: 6 August 2015

DECISION

INTRODUCTION

- [1] The Registrar of the Immigration Advisers Authority referred this complaint to the Tribunal. The facts on which the complaint is based are:
- [1.1] The complainant and his wife engaged Mr Mudaliar to assist them with immigration issues.
- [1.2] He assisted with a number of immigration processes. It appears that Mr Mudaliar potentially failed to obtain the documentation required by the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). The Code requires an adviser to hold a written agreement relating to all instructions, setting out relevant particulars including details of fees and disbursements; they must also hold written confirmation that the complainant has agreed to the terms of agreement.
- [1.3] The more serious aspect of the complaint relates to information provided to Immigration New Zealand in support of a residence application for the complainant's wife. Mr Mudaliar drafted terms of employment for his client on two occasions. The information was different on each occasion; however, Mr Mudaliar's client's employment may not have been different. Immigration New Zealand took the view that the first set of documentation presented to support a work visa application was accurate, and the second set of documentation to support a residence visa application was dishonest and misleading.
- [2] Mr Mudaliar did not take issue with the essential facts and accepted he may have failed to provide fully compliant documentation for the work he performed. However, he contended that, if the information provided in respect of his client's employment was false, he was the victim of his client providing false information, which he then innocently submitted, to Immigration New Zealand.
- [3] Accordingly, the Tribunal has to consider:
- [3.1] The documentation required for the professional work he carried out, and compare that documentation with the requirements of the 2010 Code;
- [3.2] Whether the information supplied to Immigration New Zealand regarding Mr Mudaliar's client's employment was false and misleading and, if so, whether it was his fault or not. Then, if it was his fault, decide whether Mr Mudaliar was dishonest.
- [4] The Tribunal has upheld both aspects of the complaint. It found Mr Mudaliar failed to document his professional engagements and dishonestly provided false information to Immigration New Zealand.

THE COMPLAINT

- [5] The Registrar's Statement of Complaint put forward the following background:

Documentation of client engagement

- [5.1] Between 2010 and 2012, Mr Mudaliar submitted immigration applications for the complainant's wife (the applicant). The applications were for a student permit, a graduate job search visa, a work visa, an expression of interest, and a residence visa.
- [5.2] Mr Mudaliar potentially did not have proper documentation for these instructions as he:
- [5.2.1] Did not have a written agreement for the student permit, or work visa applications.
- [5.2.2] Had an agreement for the graduate job search visa application, but it did not state the type of application to which it related.

- [5.2.3] Commenced work on the skilled migrant visa in February 2012, but only entered an agreement relating to that work on 5 March 2012.
- [5.2.4] Submitted applications for two work visas and a visitor and student visa for the complainant and his son, but had no written agreements relating to that work.

Documentation of employment

- [5.3] Mr Mudaliar and his support staff prepared employment agreements and job descriptions to support the applicant's work and residence visa applications.
- [5.4] The first set of documents was for a work visa application. The job description was for a position as a beauty therapist. The list of services and skills related to that role, but included "back massage and relaxing facial massage". In reliance of those documents, Immigration New Zealand issued a work visa for the applicant on 9 August 2011, which was valid until 9 August 2013.
- [5.5] The applicant continued to work for the same employer under the work visa, and in March 2012 Mr Mudaliar submitted a residence visa application for her. Mr Mudaliar and his support staff prepared a job description to support that application. This job description stated that the applicant's role was a "massage therapist", not a beauty therapist, in contrast with the previous application. It said her role was therapeutic and she would take a client's medical history, propose a treatment plan, and provide therapeutic massage.
- [5.6] Immigration New Zealand wrote to Mr Mudaliar regarding the discrepancy between the different occupations described for the work permit application and the residence application. Immigration New Zealand had made inquiries with the employer who confirmed the applicant was a beauty therapist, not providing therapeutic massage.

Consequences of incorrect documentation of employment

- [5.7] Mr Mudaliar responded to Immigration New Zealand's concerns regarding the information submitted with the applicant's residence application. He said his support staff prepared the job descriptions, and that he had visited the work place where the applicant worked. He explained the discrepancies in terms of typing errors, the employer's limited English language skills, and said the relevant ANZSCO Unit Group 4116 (411611 Massage Therapist) was consistent with beauty services. He claimed many tasks in the Massage Therapist description did not relate to "any form of therapeutic massage". He concluded "as a massage therapist our client performs the duties of both a beauty and massage therapist".
- [5.8] Immigration New Zealand reviewed Mr Mudaliar's response and concluded:
 - [5.8.1] The employer did not write the job description.
 - [5.8.2] The person writing the job description wrote it to cover the tasks of a massage therapist, not what the applicant did in her work.
 - [5.8.3] The employer confirmed that the applicant was a beauty therapist, with a small component of massage therapy. A site visit confirmed that to be the case.
 - [5.8.4] The employer had no difficulty communicating in English, and wrote in a manner demonstrating a clear understanding of the issues.
 - [5.8.5] Those facts raised concerns regarding Mr Mudaliar's integrity.
- [5.9] Immigration New Zealand declined the applicant's application as the job description submitted with the residence application was false and misleading. Immigration New Zealand was not prepared to give a character waiver for the applicant. The applicant could not meet the skilled migrant category requirements if her work and skills were as

a beauty therapist; whereas the false job description Mr Mudaliar provided potentially did so.

[5.10] Immigration New Zealand treated the applicant as responsible for the false information as she had a statutory duty to ensure information was correct.

[6] The Registrar identified potential breaches of professional standards during the course of Mr Mudaliar's engagement, the allegations were that potentially:

Breach of duties relating to written agreements and fees

[6.1] Mr Mudaliar breached clause 1.5(a), (b), (d) and 3 of the Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code). The provisions requires him to ensure that before entering an agreement, clients are made aware in writing and in plain language of the terms of the agreement and all significant matters relating to it. Agreements must also contain a full description of the services Mr Mudaliar will provide, and that his clients confirm in writing that they accept the terms. He was also required to maintain professional business practices in relation to contracts. The alleged circumstances were:

[6.1.1] Mr Mudaliar had no written agreement for:

[6.1.1] The applicant's applications for a student permit and a work visa.

[6.1.1] The complainant's two applications for a work visa.

[6.1.1] The complainant and the applicant's son's applications for a visitor and student visa.

[6.1.2] Consequently, for those instructions he did not meet the requirements set out in clauses 1.5(a), (b) and (d) of the 2010 Code.

[6.1.3] In respect of his instructions for a graduate job search visa for the applicant, Mr Mudaliar had a written agreement, though it did not have a full description of the services, or state what type of visa. Accordingly, Mr Mudaliar breached his obligation to have an agreement that set out a full description of the services he would provide (2010 Code: clauses 1.5(b)).

[6.1.4] In respect of his instructions for a residence application for the applicant, Mr Mudaliar started the work in February 2012, and he entered into a written agreement for that service on 5 March 2012. Accordingly, he did not have a complying agreement in the first three weeks, breaching his duty to do so and breaching his duty to maintain professional business practices in relation to contracts (2010 Code: clauses 1.5(b) and 3).

[6.2] Mr Mudaliar also breached clause 8(b), (c) and (d) of the 2010 Code. The provisions required that before he commenced work incurring fees that he set out the fees, disbursements, payment terms and conditions, and ensure he provided written information regarding them to his client. The circumstances were:

[6.2.1] Mr Mudaliar was wholly non-compliant on the occasions when he had no written agreement (refer paragraph [6.1.1] above). He did not set out the required information for his client (2010 Code: clauses 8(b) and (c)).

[6.2.2] When Mr Mudaliar did enter into written agreements (refer paragraphs [6.1.3] and [6.1.4] above), he did not set out payment terms and conditions, including when the fees were due. Accordingly, he failed to provide that information as clause 8(d) of the 2010 Code required.

Dishonest or misleading behaviour

[6.3] Mr Mudaliar engaged in dishonest or misleading behaviour, in breach of section 44(2)(d) of the Immigration Advisers Licensing Act 2007 (the Act) and clause 5.2 of the 2010 Code. The Act provides it is a ground for complaint where a licensed immigration

adviser engages in dishonest or misleading behaviour, and the 2010 Code provides a licensed immigration adviser must not knowingly provide false or misleading documentation with an application. The circumstances were:

- [6.3.1] Mr Mudaliar provided different job descriptions for the applicant. The first supported her application for a work permit, and the second supported her application for a work visa.
 - [6.3.2] The two job descriptions were inconsistent, but related to the same position of employment.
 - [6.3.3] The job description for the residence application was a job description for a massage therapist.
 - [6.3.4] Immigration New Zealand found the job description for the residence visa application was false and misleading, as the applicant was a beauty therapist with a small component of massage therapy.
 - [6.3.5] Immigration New Zealand found Mr Mudaliar's claim the applicant's employer could not communicate in English effectively was incorrect.
 - [6.3.6] It appeared Mr Mudaliar used a false description to meet the relevant immigration criteria.
- [6.4] Accordingly, Mr Mudaliar engaged in dishonest and misleading behaviour, and knowingly provided false and misleading information, in breach of the relevant provisions.
- [7] The grounds of complaint were wider; the complainant has not sought to pursue the wider grounds of complaint. Accordingly, the Tribunal will only consider the grounds the Registrar considered to have potential support.

THE STATEMENTS OF REPLY

- [8] The complainant filed a statement of reply, he agreed with the contents of the Statement of Complaint.
- [9] Mr Mudaliar filed a statement of reply, the substantive component was to refer to his email to the Registrar when he answered the complaint; the key matters he raised were:
 - [9.1] He denied deliberate breaches of professional duty.
 - [9.2] Said his clients were satisfied with his services until the residence application failed.
 - [9.3] He kept his clients informed of the work he was doing.
 - [9.4] The faults with his written agreements were the result of oversight.
 - [9.5] He first became a licensed immigration adviser on 12 June 2009; before that, he submitted the applicant's first work visa application.
 - [9.6] The late signing of an agreement was the result of the applicant not being able to attend his office.
 - [9.7] He visited the applicant's place of work regularly, and provided a letter to confirm that.
 - [9.8] The training organisation where the applicant studied beauty therapy was providing information.
 - [9.9] The applicant paid fees in advance, and did not take issue with the fees, which were low.

- [9.10] Mr Mudaliar's support staff prepared the employment agreement for the residence visa application. The applicant and her employer signed the documents (the latter in Chinese script). The employer disputed the job title and offer after Immigration New Zealand contacted her, but not when Mr Mudaliar was dealing with her. Mr Mudaliar drafted a letter dated 18 January 2012 at the request of the applicant and her employer.
- [9.11] Mr Mudaliar drafted the job description and employment agreement as the applicant and her employer lacked the skills to do so. He did not intend that the job description would mislead or provide false information. Mr Mudaliar had no motive to do so, and the employer confirmed the applicant was a massage therapist.
- [9.12] Mr Mudaliar visited the applicant's work on several occasions. He said "The employer did not spend too much time with me and simply said I should discuss things with [the applicant]". Mr Mudaliar said he had difficulty in communicating in English with the employer.
- [9.13] Mr Mudaliar said he may not have followed the requirements for written agreements, but did not deliberately mislead with the information he submitted.
- [9.14] He provided character references.

THE TRIBUNAL'S DIRECTIONS GIVING MR MUDALIAR AN OPPORTUNITY TO ANSWER THE COMPLAINT

- [10] On 7 April 2015, the Tribunal issued directions. Before doing so, the Tribunal put Mr Mudaliar on notice:
- [10.1] The allegations in the Registrar's Statement of Complaint included a complaint that Mr Mudaliar engaged in dishonest or misleading behaviour in relation to the provision of a job description to Immigration New Zealand. If made out, there could be little doubt potential sanctions would extend to cancellation of Mr Mudaliar's licence, as the Registrar's Statement of Complaint alleged he potentially made a dishonest misrepresentation to Immigration New Zealand to advance an immigration application.
- [10.2] That Mr Mudaliar's response to the complaint was in substance a page and a half email. The material the Registrar had provided in support of the complaint amounted to more than 500 pages of documentation.
- [10.3] Mr Mudaliar had indicated he did not seek an oral hearing, and accordingly the email was his full answer to the complaint. The Tribunal observed that at that point, it had not attempted a complete analysis of the complaint and the response. However, it was none-the-less evident Mr Mudaliar's response was general in nature, and failed to respond at an evidential level to the material before the Tribunal.
- [11] The Tribunal went on to point out to Mr Mudaliar he should consider taking legal advice; though that was a matter for him.
- [12] The Tribunal then noted it would give Mr Mudaliar the opportunity to present a case to answer the complaint, including sworn evidence and submissions. Then said that doing so was a conventional response for a person challenging serious allegations of professional offending. The directions noted the Tribunal could conduct an oral hearing where witnesses would be cross-examined, if a party applied for it, and there was justification for that step here.
- [13] The Tribunal set a timetable for Mr Mudaliar to file affidavits and submissions, and to deal with any application for an oral hearing.

MR MUDALIAR'S RESPONSE TO THE TRIBUNAL'S DIRECTIONS

- [14] Mr Mudaliar instructed Mr King as counsel to represent him. He filed:
- [14.1] Submissions.

- [14.2] A letter from Mr C Q who was the former owner of the place where the applicant trained as a beauty therapist.
- [14.3] A letter from Ms Hazel A Mudaliar (who is unrelated to Mr Mudaliar, the surname being a coincidence). She was one of Mr Mudaliar's support staff.
- [14.4] Ms N T also provided a letter. She was a beauty therapy student who graduated from the same course as the applicant, and later worked with her. She said Mr Mudaliar delivered papers to the applicant at her place of work. She said Mr Mudaliar also prepared employment agreements and job descriptions for her own residence application. She did not provide copies of those documents.
- [15] The submissions took the position that:
- [15.1] The job description relied on details provided by the applicant, matched to the ANSCO description, and confirmed with the applicant.
- [15.2] The applicant had a work visa under a similar contract, also prepared by Mr Mudaliar.
- [15.3] The new contract was for a position as a massage therapist. The applicant did not object to the massage therapist designation, and the employer signed it off.
- [15.4] Mr Mudaliar completed the employment contract as the employer and the applicant did not know how to prepare it, which is common.
- [15.5] Immigration New Zealand determined the applicant was not working as a massage therapist. This was the applicant's fault as she instructed Mr Mudaliar to prepare the contract, provided details and signed the contract, as did her employer. The complainant, the applicant and her employer were responsible for the deception:
- They suppl[ied] .. misleading information and if they are successful, then they do not complain. If they are unsuccessful then they blame [Mr Mudaliar].
- This is quite unfair upon [Mr Mudaliar] who is caught in a situation of being obliged to follow his client's instructions which appear genuine or be subject to a complaint. Then if those instructions are later found to be misleading, [Mr Mudaliar] is subject to a complaint. Either way he would be subject to a complaint.
- [16] Mr Prasad's letter discussed how Mr Mudaliar provided immigration services to students at Mr Mudaliar's training organisation. He generally discussed his high opinion of Mr Mudaliar and the services he provided.
- [17] Ms Mudaliar's letter said she assisted in preparing an employment agreement, job description and offers of employment for the applicant and her employer. She said she designed a letterhead for the employer. She said the applicant saw the materials she prepared, and provided information for them. She did not reference any specific correspondence. She generally said that Mr Mudaliar was competent and responsible, and characterised the complaint as a "malicious attack" on Mr Mudaliar's character.

THE COMPLAINANT'S REPLY

- [18] The complainant replied to Mr Mudaliar's submissions. He referred to the evidence presented in support of the Statement of Complaint, and the Statement of Complaint. It is not necessary to traverse the information in detail, as it is essentially complementary to the Statement of Complaint.
- [19] He concluded by saying:
- [The applicant] gave instructions to [Mr Mudaliar] to proceed with the application ... and did not give [him] instructions to file misleading information to Immigration and betray her reputation with Immigration. [She and I] are not professional and

experienced in immigration matters, if we were we would not have hired Mr Mudaliar to act on our behalf.

DISCUSSION

The standard of proof

- [20] 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 facts

- [21] The Registrar provided a chronology and supporting documentation; Mr Mudaliar has not engaged with that body of documentary evidence in any detail. Instead, he has made an overall denial of liability. He has claimed that his clients were responsible for misleading him, that he is a victim of their dishonesty, and claimed that the failures to document his engagements were oversights.
- [22] The factual issues require the Tribunal to identify each of the grounds of complaint, satisfy itself the Registrar's foundation for the alleged facts is justified on the material before it, then examine Mr Mudaliar's explanation.
- [23] Mr Mudaliar is on clear notice that he had the opportunity of presenting sworn evidence, which would potentially be subject to cross-examination. He has had the benefit of legal advice, and chosen not to do so. I give this no regard when determining whether there is a *prima facie* case; however, I will discuss that matter further in relation to Mr Mudaliar's defence to the complaint.

Failure to document client engagement and fees

- [24] The Registrar, in her Statement of Complaint set out clearly why Mr Mudaliar was non-compliant in relation to documenting his instructions. In the respects set out above, he failed to have written agreements for some instructions (refer paragraph [6.1.1]), so he breached clauses 1.5(a), (b) and (d) of the 2010 Code. For another instruction he failed to have a full description of his services (refer paragraph [6.1.3]), so he breached clause 1.5(b) of the 2010 Code. For a further instruction, he was late in getting confirmation of the agreement (refer paragraph [6.1.4] above), so he breached clauses 1.5(b) and 3.
- [25] He also failed to set out the fees and disbursements where he had no agreement, and on other occasions failed to set out when fees were due. Accordingly in the former category he breached clauses 8(b) and (c) of the 2010 Code, and clause 8(d) in the latter category.
- [26] Mr Mudaliar, to his credit, has largely accepted he was non-compliant; though he has offered various excuses. The 2010 Code is statutory regulation. It is highly prescriptive regarding establishing the terms of a client engagement. That is for the benefit of both licensed immigration advisers, and their clients. This element of compliance is at the core of immigration practice. Nothing Mr Mudaliar has said realistically addresses his non-compliance; he has been lax in a matter where the law requires strict compliance.
- [27] In relation to these matters, they are not at the most serious end of the scale. Furthermore, I do not find the non-compliance was to hide excessive charging, or other sharp practice. I can accept the circumstances as mitigating factors; however, it is clear Mr Mudaliar breached the 2010 in the respects identified. Accordingly, I find breaches of clauses 1.5(a), (b), (d), 3, and 8(b), (c) and (d) of the 2010 Code, as particularised in paragraph [6.1] and [6.2] above.

Dishonest or misleading behaviour

The issue

- [28] The most serious issue in this complaint is that Mr Mudaliar allegedly engaged in dishonest and misleading behaviour. The allegation is uncomplicated. The Registrar alleges the evidence potentially establishes Mr Mudaliar knowingly presented false and misleading information to support an immigration application. She has presented evidence of a job

description and related documentation; that documentation says the applicant worked as a massage therapist. However, she also produced evidence Mr Mudaliar previously presented documentation, which showed the applicant was a beauty therapist, not a massage therapist. The difference in context was critical. For the residence visa, the original job description would not qualify, whereas the massage therapist job description would qualify her for the visa.

The process

- [29] The Tribunal must evaluate whether the changed job description was correct and, if not, whether Mr Mudaliar changed it dishonestly.
- [30] This Tribunal deals with complaints on the papers; when appropriate, it has discretion to hold oral hearings. The Tribunal gave Mr Mudaliar notice of the gravity of the allegation against him, and invited him to answer the complaint with sworn testimony. Counsel represents Mr Mudaliar, and he has chosen not to provide any sworn testimony, or seek an oral hearing. The Tribunal will not interfere in the conduct of Mr Mudaliar's case. In a telephone conference, all parties agreed the Tribunal should decide the complaint on the papers.
- [31] My approach is to examine the complaint, and determine whether the information supporting the complaint establishes there is, in effect, a case to answer. If there is no case to answer on the material before me, then it is not necessary for Mr Mudaliar to provide an answer. The complaint will fail for lack of evidence.
- [32] If there is a case to answer, I will consider Mr Mudaliar's defence, which is, effectively, that his client duped him. He says she is responsible for any false information provided to Immigration New Zealand.

A case to answer

- [33] The first matter of inquiry is whether the material before me establishes that Mr Mudaliar provided false or misleading information to Immigration New Zealand. I have considered the material itself. There are obvious differences between beauty therapy, and therapeutic massage. In the context of the applicant's application for a residence visa there was a different status between the two occupations. I do however accept there is some overlap in areas of skill and knowledge, but it is not the majority of the two occupations.
- [34] When dealing with occupational categories for immigration purposes, there is considerable precision. The categories matter a great deal, and for that reason, Immigration New Zealand's processes use published prescriptions. The immigration outcomes for different categories may be quite different. Understanding these issues are core skills for a licensed immigration adviser working in this area. Furthermore, a licensed immigration adviser will be fully aware that Immigration New Zealand takes the view providing false information goes to the applicant's character, and will potentially be a reason in itself for excluding a person from migrating to New Zealand.
- [35] In short, the description of a person's employment is a critical issue, where precision is required, and the consequences of embellishment or false descriptions have potentially serious consequences.
- [36] Another background factor is that Mr Mudaliar personally took responsibility for drafting the relevant employment contract, job description and related material. He did so when aware of the importance of the work, and the consequences for his client if he did not perform the work correctly and accurately. While Mr Mudaliar claims this is routine work for a licensed immigration adviser, I do not accept that without proof. In any case, it is deeply imprudent practice. An immigration adviser will not usually have skills in employment law and practice, necessary to draft employment agreements. Furthermore, a licensed immigration adviser drafting employment documentation for the purposes of an immigration application is at great risk if they draft the documentation around immigration standards, not what the potential migrant in fact does. The immigration adviser in these circumstances is at risk of allegations of the kind Mr Mudaliar now faces. The usual course is for an employer and employee to have employment offers and job descriptions documented by them, with professional assistance from employment professionals.

- [37] Against that background, I consider the material itself. First, the employment documentation Mr Mudaliar drafted when the applicant sought a work permit. That documentation was for her employment as a beauty therapist. The documentation was consistent with her qualifications, and the work everyone accepts she has always done in her employment. Mr Mudaliar could only prepare that documentation to submit to Immigration New Zealand if he made inquiries of as to what the applicant was qualified to do, and what she in fact did in her employment. There is nothing contentious about that documentation. The documentation states her position of employment is as a "Beauty and Body Therapist", and it is evident that job description would not meet the ANSCO description for a Massage Therapist.
- [38] The critical point in the chain of events was when the applicant sought a residence visa. Mr Mudaliar produced quite different documentation to support this application. First, he submitted an expression of interest for the applicant. That is a preliminary step prior, where there is less information required. In that documentation, he described the applicant as a massage therapist. The information included that her employment was as an ANSCO "411611 Massage Therapist". The context was an immigration form which requires the person to state their "main occupation"; the forms says it is the "job you spent most hours doing in the last 12 months". That is plainly significant, as Mr Mudaliar had documented the employment for the applicant and her employer in relation to the work she did in the last 12 months. It was not as a "411611 Massage Therapist". Accordingly, it would appear if the contents of the expression of interest were true, then the first employment documentation was wrong and Mr Mudaliar should not have used it to obtain a work permit. On that basis, the alternatives are: the applicant had changed the nature of her employment and not notified Immigration New Zealand, or the claim she was a massage therapist was wrong.
- [39] While the significance of the discrepancies may not be obvious to a person without immigration expertise, a licensed immigration adviser is required to understand the difference. At the point Mr Mudaliar lodged the expression of interest identifying the applicant as a massage therapist, he had a duty to make inquiries and identify the reasons for the discrepancy with documentation he prepared earlier.
- [40] There is nothing in the record that identifies that Mr Mudaliar did make any inquiries, or raise the discrepancy between the applicant's work permit application, her work experience, and the description he used in the expression of interest. He had a duty to raise the issue with his client, and address the issues with Immigration New Zealand.
- [41] Mr Mudaliar then drafted further employment documentation, which is quite different from the documentation he prepared for the work permit. Significant features of this documentation are:
- [41.1] A letter offering employment dated 18 January 2012 referred to the applicant being a "beautician and a Massage Therapist". It referred to her qualifications in beauty therapy, and did not discuss the absence of qualification in massage therapy; but said she would specialise in that work.
- [41.2] The employment agreement inconsistently referred to employment only as a Massage Therapist.
- [41.3] The job description then contained a description relating to a massage therapist, and not a beauty therapist. It referred to her work being to take medical histories, propose a treatment plans, maintaining clinical records; and generally describing the work of a health professional not a beauty therapist.
- [42] The other information relevant to whether Mr Mudaliar has a case to answer is Immigration New Zealand's response to the information he prepared and submitted in support of the applicants application for a residence visa. Immigration New Zealand took issue with the inconsistent information Mr Mudaliar provided. Immigration New Zealand received the application on 8 March 2012, and on 8 November 2012 raised concerns after they investigated the application for a residence visa. There were three elements:
- [42.1] The application contained false information, and that went to the applicant's character;
- [42.2] She did not have the employment skills, qualifications, and work experience claimed; and

- [42.3] Her relationship with her husband was an issue, as he did not live in New Zealand.
- [43] On the first issue, the letter said the employment documents Mr Mudaliar prepared and submitted to Immigration New Zealand were not the documents the applicant's employer provided and they were false and misleading.
- [44] On the second issue, the applicant was a beauty therapist, not a massage therapist. The work visa application correctly described her position and the residence visa application falsely described it.
- [45] The applicant needed to establish her marriage was genuine and stable as her and her husband were living in different countries.
- [46] At this point Mr Mudaliar was fully on notice of the allegation that the employment documentation he prepared and submitted was false and presented dishonestly with the intention of misleading Immigration New Zealand.
- [47] Mr Mudaliar replied to Immigration New Zealand in a letter dated 29 November 2012. In this letter, he acknowledges he prepared the impugned employment documents using his support staff. He said his client had not "in any way or form provided misleading or incorrect information". He claimed the employer's English language skills were an issue.
- [48] Mr Mudaliar went on to claim that as a beauty therapist the applicant was also a massage therapist.
- [49] Immigration New Zealand reviewed Mr Mudaliar's response and considered further matters. On 17 January 2013, they gave notice the applicant's residence application failed, concluding:
- [49.1] The applicant's employer stated she did not provide the job description Mr Mudaliar supplied to Immigration New Zealand.
- [49.2] The applicant was, and worked as, a beauty therapist. That did not meet the criteria for a residence visa.
- [50] I am satisfied Mr Mudaliar has a case to answer, as:
- [50.1] He was responsible for preparing and submitting a false description of the applicant's employment to Immigration New Zealand.
- [50.2] The false description was clear and obvious, and a matter Mr Mudaliar must have focused on, given the inconsistency with the documentation he previously prepared for a work visa application. Preparing inconsistent documentation required communication with his client, and Immigration New Zealand.
- [50.3] Immigration New Zealand confronted Mr Mudaliar with its concerns that the documentation he submitted was dishonest. In response, he did not provide information to demonstrate he had been misled, rather he asserted he prepared the information and it was true.
- [50.4] The false documentation appears crafted to meet immigration requirements; there is no contemporaneous evidence that Mr Mudaliar's documentation reflected any information he had gathered regarding the applicant's work. Immigration New Zealand's inquiries provide some evidence the opposite is true.
- [51] This information is sufficient to found a case that Mr Mudaliar probably constructed false documentation to facilitate an immigration application, where he was engaged as a licensed immigration adviser.
- [52] Furthermore, the information was inconsistent with the documentation Mr Mudaliar formerly prepared, and there is no evidence he took appropriate steps to address that situation. Accordingly, the most probable explanation is that he dishonestly drafted the inconsistent documentation expecting not to be detected.

[53] I have had regard to the fact that the findings are at the highest end of professional offending; none-the-less the evidence is compelling and I am sure that unless answered the only proper finding is that Mr Mudaliar dishonestly provided the false information. Accordingly, Mr Mudaliar does have a case to answer on the information before me.

Mr Mudaliar's defence

[54] Mr Mudaliar says he drafted the job description using his support staff and details provided by the applicant. He says he matched that information to the ANSCO description, and confirmed it with her and her employer. He says this was a new position and both the applicant and the employer signed off the new position.

[55] Mr Mudaliar says the complainant, the applicant and her employer were responsible for the deception. He says they adopted a strategy of providing false information, with the intention of blaming him if Immigration New Zealand detected the deception. He says it is unfair, as they were genuine instructions and he was obliged to carry them out.

[56] Ms Mudaliar (one of Mr Mudaliar's support staff) said the applicant assisted in preparing the employment agreement, job description and offers of employment for the applicant and her employer. She said she designed a letterhead for the employer. She said the applicant saw the materials she prepared, and provided information for them. However, she provided no documentary records.

[57] I find Mr Mudaliar's defence implausible, and inconsistent with his obvious professional obligations. Mr Mudaliar must have been aware of the gravity of providing a false job description and false claim regarding work experience. He was fully aware that he had previously been responsible for preparing the employment documentation that was not consistent with the instructions he claims to have received.

[58] If he received such instructions he had a clear duty to tell his client she was working in a position different from the job description she used to gain a work visa, and he needed to discuss that with Immigration New Zealand. Furthermore he ought to have been most concerned that his client was attempting to lodge a fraudulent claim with Immigration New Zealand, and the result could well be that her prospects of migrating would be seriously harmed. Mr Mudaliar claims neither that he took such steps, nor has he produced evidence of receiving the instructions or reacting to them in a professional manner. The 2010 Code (clause 3(f)) required Mr Mudaliar to confirm in writing the details of material discussions. He ought to have written to his client in the clearest of terms if he received the instructions he claims he received.

[59] The reality is that Mr Mudaliar as a licensed immigration adviser knew what the requirements were for job descriptions and what qualified and what did not. The impugned job description is crafted around the ANSCO description, not what the applicant did. It is probable that Mr Mudaliar was wholly responsible for the false job description.

[60] I am satisfied Mr Mudaliar's claim his client and her employer were responsible is probably a fabrication. They relied on Mr Mudaliar's knowledge of what was permissible and what was not. Mr Mudaliar's reaction when Immigration New Zealand questioned the documentation and said it was false and dishonest, is strong evidence of the true position. Mr Mudaliar did not say his client and her employer provided false information. That was the only rational response if they had done so. Instead, he attempted to justify the documentation he created, and claimed it was correct. Only when answering this complaint has Mr Mudaliar claimed he was the victim of his client and her employer.

[61] Accordingly, I am satisfied that Mr Mudaliar probably did not receive incorrect information from the applicant or her employer and, rather, he was responsible for the false employment documentation. I reach these conclusions having regard to their gravity, and am sure it is the proper finding on the information before me.

[62] I draw these conclusions based on the papers before me. I observe that I invited Mr Mudaliar to present his defence on oath and he chose not to do so. It is not necessary to draw any inference from his choice, and I have not done so. I simply note Mr Mudaliar has had the opportunity of presenting his case without restriction, and I have evaluated it in the form he

chose to present it; I am satisfied the material before me allows clear and adverse findings against Mr Mudaliar.

- [63] I am satisfied Mr Mudaliar was wholly responsible for his attempt at deception, and the applicant relied on him to advise her as to what category her work could properly be put into. She had no expertise in ANSCO job descriptions, and even when Immigration New Zealand queried it, Mr Mudaliar attempted to justify the documentation. His client did not have the skills to query his advice, until Immigration New Zealand pointed out the true position. It is not fair or reasonable to attribute blame to a client without immigration expertise for a position a licensed professional advocates as being correct; there is no information before me that suggests the applicant was other than a victim of Mr Mudaliar's professional offending.

Finding

- [64] I accordingly find Mr Mudaliar dishonestly prepared and submitted documentation to support the applicant's residence application. He did so on his own initiative and the applicant relied on his professional advice that the documentation was correct, and met the relevant immigration requirements. I accordingly find he engaged in dishonest and misleading behaviour, which is a ground of complaint under section 44(2)(d) of the Act. Further, he knowingly provided false and misleading information with an application and that breaches his duties under clause 5.2 of the 2010 Code.

DECISION

- [65] The Tribunal upholds the complaint pursuant to section 50 of the Act; I find that Mr Mudaliar breached clauses 1.5(a), (b), (d), 3, 5.2 and 8(b), (c) and (d) of the 2010 Code, and engaged in dishonest and misleading behaviour. Those are grounds for complaint pursuant to section 44(2) of the Act.
- [66] In other respects, the Tribunal dismisses the complaint.

SUBMISSIONS ON SANCTIONS

- [67] The Tribunal has upheld the complaint; pursuant to section 51 of the Act, it may impose sanctions.
- [68] The Authority and the complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs and compensation. Whether they do so or not, Mr Mudaliar is entitled to make submissions and respond to any submissions from the other parties.
- [69] If the complainant seeks compensation for the loss of immigration opportunities, or effects on employment (or other losses) he will need to demonstrate that there is a causal link between Mr Mudaliar's professional offending; and demonstrate the amount of the loss. I note that section 51 of the Act allows the Tribunal to make orders in favour of the complainant and other persons; which will potentially include the applicant.
- [70] 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.

Timetable

- [71] The timetable for submissions will be as follows:
- [72] The Authority and the complainant are to make any submissions within 15 working days of the issue of this decision.
- [73] The adviser is to make any further submissions (whether or not the Authority or the complainant makes submissions) within 20 working days of the issue of this decision.
- [74] The Authority and the complainant may reply to any submissions made by the adviser within 5 working days of him filing and serving those submissions.

DATED at Wellington this 6th day of August 2015.

G D Pearson
Chair