

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

Decision No: [2017] NZIACDT 6

Reference No: IACDT 014/16

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Darren Calder (Immigration New  
Zealand)**

Complainant

**AND**

**Aseen Bharani**

Adviser

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**DECISION**

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**REPRESENTATION:**

**Registrar:** Mr M Denyer, Lawyer, MBIE, Auckland

**Complainant:** Ms J Ellison, Lawyer, MBIE, Wellington

**Adviser:** The adviser in person

Date Issued: 6 April 2017

## DECISION

### Background

- [1] Mr Bharani is the director of a company providing immigration services in India; he has his principal office in Australia. The matters in issue arose while Mr Bharani was in his office in Australia, and the complainant, who was seeking a visitor visa, was receiving services from the Indian office.
- [2] The essence of the complaint is that Mr Bharani used an unlicensed person in the Indian office to provide services to the complainant, failed to have a written agreement as required under the relevant professional code, and he failed to keep proper business records.
- [3] Mr Bharani, while accepting that he does not have the records that might be expected to demonstrate he complied with all of his professional obligations, contends he did in fact comply. However, he says it is necessary to allow for the way in which he had to deliver services to a client in a remote office.
- [4] Accordingly, the Tribunal must make factual determinations as to how Mr Bharani did deliver his services, and then measure those findings against the professional code.

### The complaint

- [5] The Registrar's statement of complaint put forward the following background as the basis for the complaint:
  - [5.1] Immigration New Zealand received an application for a visitor's visa from an applicant (the applicant). Mr Bharani was listed on the visa application form as the person who provided immigration advice; he had completed a declaration to that effect.
  - [5.2] When Immigration New Zealand looked into the application, it conducted a telephone interview with the applicant. During that interview, the applicant indicated he had not dealt with Mr Bharani at all, rather he had dealt with people in Mr Bharani's office in India.
  - [5.3] Immigration New Zealand was satisfied that the visa application was in order, and granted it.
- [6] Immigration New Zealand, through one of its officers, lodged this complaint. The Registrar required Mr Bharani to provide a copy of his client file for inspection; however, he only supplied the documents that had been delivered to Immigration New Zealand in support of the visa application. He did not provide anything that could be described as a conventional client file.
- [7] The Registrar identified potential infringements of professional standards during the course of the adviser's professional engagement. The allegations were that Mr Bharani potentially:

- [7.1] breached clauses 2(e) and 3(c) of the Code of Conduct 2014 (the 2014 Code). In particular:
- [7.1.1] He failed to obtain and carry out the lawful informed instructions of the applicant; and
  - [7.1.2] He failed to act in accordance with New Zealand Immigration legislation, including the Immigration Act 2009 and the Immigration Advisers Licensing Act 2007.
- [7.2] breached clause 18(a) of the 2014 Code by failing to the applicant with a written agreement;
- [7.3] breached clause 26(a) of the 2014 Code by failing to maintain the applicants' client file. In particular, he failed to maintain a copy of the client's application, written agreements, client communication, invoices and receipts provided to the client, and evidence of the safe return of the client's original documents.
- [8] The first ground of complaint relates to clauses 2(e) and 3(c) of the 2014 Code. The substance of this complaint was that there is a prohibition on licensed immigration advisers using unlicensed staff to deliver professional services. The Registrar considered that the evidence indicated that Mr Bharani had never engaged with the applicant; his staff did that and, accordingly, he was in breach of the prohibition. Furthermore, the declaration that he had done so on the application submitted to Immigration New Zealand breached the legislative requirement to provide accurate information.
- [9] The second ground of complaint relates to Clause 18(a) of the 2014 Code. It requires a written agreement which must include particular information. The Authority had written to the adviser after receiving the complaint, requiring him to deliver his full client file. In response, he had only sent the documentation Immigration New Zealand received with the application. It did not include a written agreement relating to professional services. The Registrar, accordingly, considered that it appeared Mr Bharani had failed to have a written agreement which complied with the 2014 Code.
- [10] The third ground of complaint relates to clause 26 of the 2014 Code. It requires that a licensed immigration adviser must maintain a client file. The requirement is, in essence, for a conventional client file, including copies of all communications with the client and third parties, and evidence of the safe return of the client's original documents. As the Registrar had requested Mr Bharani to provide a copy of his client file, and he had failed to do so, the Registrar inferred that he did not maintain a file in accordance with the 2014 Code.

## Responses

- [11] The applicant was not a party to the complaint which was brought by Immigration New Zealand through its officer. The complainant and the Registrar essentially supported the complaint, in a manner consistent with the statement of complaint.
- [12] Mr Bharani, notwithstanding his failure to produce the material at the time the Registrar requested it, produced documents that he claimed amounted to a written agreement. He claimed that he appropriately engaged with the applicant by telephone, and the personnel in the Indian office effectively provided only administrative services. He accepted that his record keeping may not have been ideal, but considered that in all the circumstances it was adequate.

## Discussion

### *The facts*

- [13] As there was a conflict in the factual position between the complainant and Mr Bharani, the Tribunal conducted an oral hearing. Mr Bharani gave evidence in person and Mr Kumar, who works in Mr Bharani's office in India, gave evidence via telephone link. The applicant called the immigration officer who reported that the applicant had said Mr Bharani did not have any dealings with him. She too gave evidence via telephone link from India. In terms of the material evidence, the statement from the immigration officer was entirely hearsay, reporting what the applicant had said to her. She did not provide any evidence to establish that there were any reasons for the applicant being unavailable to give evidence.
- [14] At the outset, I note that Mr Bharani gave two explanations material to how he addressed his professional obligations in this matter. One of them was his inexperience. He said he had limited experience, and has since gained a better understanding of proper professional practices, particularly relating to record keeping. The second point was that Mr Bharani said this matter concerned a very simply instruction. In this case, his client knew he wanted a visitor visa; so the task was uncomplicated, with a modest fee.
- [15] Both Mr Bharani and Mr Kumar said there had been at least two telephone conversations in which Mr Bharani had engaged with the applicant. They both maintained that Mr Bharani had provided the necessary advice, and instructions staff in the office in India, who only delivered administrative services as directed by Mr Bharani.
- [16] Mr Bharani and Mr Kumar identified two documents in the form of affidavits, one of which Mr Bharani said was his agreement for the provision of professional services. The other was an acknowledgement that all documents provided with the application for a visitor visa were genuine. The applicant had apparently executed both affidavits.
- [17] I have no reason to reject the evidence given by Mr Bharani and Mr Kumar. It is in conflict with the hearsay account the immigration officer gave regarding what the applicant said. I can place little or no weight on what the applicant is reported to have said. There are obvious questions that arise, such as whether the applicant may have failed to understand who Mr Bharani was

when speaking to him on the telephone. Counsel for the complainant suggests that it was unlikely that the applicant would have any motivation to falsely report who provided assistance. However, this matter involves a potentially serious finding, and when two witnesses have provided plausible sworn testimony, subject to cross examination, and that evidence is not demonstrably inconsistent with the contemporaneous written record, there is no justification for disbelieving the testimony. I can only speculate as to the reliability of what the applicant reported, in the absence of hearing from him.

- [18] Accordingly, I will evaluate the grounds of complaint on the basis that the evidence given by Mr Bharani and Mr Kumar is true.

### **The use of unlicensed personnel**

- [19] The restrictions on using unlicensed personnel are well established. In *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376, the High Court recently traversed some of the principles. It is not necessary to discuss the details in any depth before discussing the merits in this case.
- [20] The ground of complaint in this case is that Mr Bharani had no contact with the applicant by telephone, or any other form of communication. If that were true then plainly he would be in breach of the 2014 Code, in accordance with the principles in the *Sparks* case. Furthermore, the declaration Mr Bharani completed on the immigration application would be false. As I have found on the evidence there was substantial contact between Mr Bharani and the applicant, this ground of complaint cannot be upheld.
- [21] However, it is important to be precise as to the grounds of complaint, and the conclusion that I have reached.
- [22] The Registrar alleged:

The adviser was required to obtain and carry out the client's informed lawful instructions and ensure that all immigration advice was provided by a licensed adviser. It appears the adviser may have relied on an unlicensed individual to interview the client, assess his immigration options and obtain and carry out his instructions.

- [23] It was not a ground of complaint that the instructions which Mr Bharani took were inadequate. Accordingly, I reach no view on that matter. I do, however, observe that Mr Bharani's perception that this was only a visitor visa and, accordingly, a simple matter, was a significant error of judgement. One of the documents that Mr Bharani produced is an affidavit apparently sworn by the applicant. The affidavit is an acknowledgement that false documents would not be provided. While "only a visitor visa", this matter was in fact a serious immigration instruction, which could have had potentially life-changing effects for the applicant and his wife if mishandled. The applicant's wife was in New Zealand; potentially, she was pursuing an immigration pathway with a view to residence in New Zealand. The consequences of providing false information (there is no suggestion that any false information was in fact provided) had the potential to create a complete bar to immigration for the applicant and his wife. An affidavit was not a proper way of

transferring liability from the professional adviser to the client, as Mr Bharani appeared to think was the case. Mr Bharani had a serious professional obligation to fully explore his client's circumstances and make sure that his client truly understood the real significance of any step that he was taking, including understanding the importance of the information he was providing to Immigration New Zealand. Obtaining "lawful instructions" in this case was no trivial matter. However, I have found that Mr Bharani did take instructions; but I am not in a position, or required, to assess the adequacy of them.

- [24] Accordingly, I am satisfied I must dismiss the ground of complaint that that Mr Bharani breached clauses 2(e) and 3(c) of the 2014 Code by using unlicensed personnel to provide his professional services.

### **The obligation to have a written agreement**

- [25] When the statement of complaint was first lodged, Mr Bharani had not produced anything in the nature of a written agreement. The Registrar drafted the statement of complaint on that basis. For the reasons discussed, I accept that the affidavit produced by Mr Bharani as an agreement for the provision of professional services is a genuine document. It appears to have some of the characteristics of a written agreement in accordance with the 2014 Code; the document identifies the applicant and says he is going to apply for a tourist visa for New Zealand through the company managing Mr Bharani's office in India. It records the fee already paid, and the further fee to be paid after obtaining the visa.
- [26] Clauses 18 and 19 of the 2014 Code provide a set of requirements relating to written agreements for the provision of immigration advice by a licensed immigration adviser. Some key elements are:
- [26.1] All parties must sign the agreement;
  - [26.2] A name and licence number of the licensed immigration adviser providing the advice is to be set out;
  - [26.3] There is to be written authority from the client for the adviser to act on the client's behalf;
  - [26.4] The likely disbursements are to be set out;
  - [26.5] The refund policy is to be set out;
  - [26.6] A record that a copy of the summary of Licensed Professional Advisers Professional Responsibility has been provided and explained to the client is to be set out; and
  - [26.7] A record establishing that a copy of the Advisers Internal Complaints Procedure has been provided is also to be included in the agreement.
- [27] The affidavit Mr Bharani relies on as a written agreement does not comply with any of those provisions, and arguably fails to meet some other requirements.

- [28] Accordingly, I am satisfied Mr Bharani failed to comply with Clause 18(a); he failed to provide the applicant with a written agreement that complied with the 2014 Code. However, I do accept that rather than being considered and deliberate non-compliance, Mr Bharani's inexperience may have contributed to this grossly deficient compliance with the requirement of the 2014 Code.

### **File management**

- [29] Clause 26 of the 2014 Code has a very prescriptive requirement to maintain a full record of client engagements. In addition to the requirement in Clause 26(a) to preserve the documentation, the clause requires thorough record keeping. Clause 26(b) requires confirmation in writing to a client when applications have been lodged, with timely updates. Clause 26(c) requires confirmation in writing to the client of the details of all material discussions with the client. Significantly, the clause also requires that a licensed immigration adviser deliver the file to the Registrar of the Authority on request. In this case, the request was a statutory one, and when made, Mr Bharani provided none of the client information, only what had been delivered to Immigration New Zealand. However, the statement of complaint does not include the failure to deliver a copy of the file to the Registrar. That is notwithstanding that Mr Bharani did ultimately produce some additional documentation. As the grounds of complaint were not amended, I make no findings regarding that aspect.
- [30] There can be no doubt Mr Bharani was required to "confirm in writing to the client the details of all material discussions with the client", and his evidence is that he had at least two such discussions and did not keep records or confirm the discussions in writing. For the reasons discussed, those conversations were important ones, and the lack of records could have had serious adverse consequences. Accordingly, this is not a case where Mr Bharani could claim he was not required to have a file; he was required to keep a range of other documents as well pursuant to clause 26(a) of the 2014 Code.
- [31] Mr Bharani completely failed to maintain proper records of his professional engagement with his client; inevitably, I must find that he breached Clause 26(a) of the 2014 Code. His engagement required him to have records that would have constituted a client file, and he had no client file. It follows he failed to "maintain a hard copy and/or electronic file" for the applicant.

### **Decision**

- [32] The Tribunal upholds the complaint pursuant to s 50 of the Act. Mr Bharani breached the 2014 Code in the respects identified; those being grounds for complaint pursuant to s 44 of the Act.

### **Submissions on sanctions**

- [33] The Tribunal has upheld the complaint; pursuant to s 51 of the Act the Tribunal may impose sanctions.
- [34] The Authority and the complainant have the opportunity to provide submissions on the appropriate sanctions. Whether they do so or not, Mr Bharani is entitled to provide submissions.

**Timetable**

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

[35.1] The Authority and the complainant are to provide any submissions within 10 working days of the issue of this decision.

[35.2] Mr Bharani 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.

[35.3] The complainant and the Authority may reply to any submissions made by Mr Bharani within 5 working days of him filing and serving those submissions.

**Order prohibiting publication of the applicant's name or identity**

[36] As the applicant was not a party to this complaint, he has not had the opportunity to comment on publication of his identity. Accordingly, the Tribunal orders that the applicant's name and any information that may identify him shall not to be published.

[37] The Tribunal reserves leave for the applicant, complainant, Registrar and Mr Bharani to apply to vary this order.

[38] The order does not prevent the applicant disclosing this decision to his professional adviser or any authority he considers should have a copy of the decision, or Mr Bharani disclosing the decision to any barrister or solicitor of the High Court in New Zealand in its original form for the purpose of obtaining legal advice.

**DATED** at Wellington, 6 April 2017

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**G D Pearson**  
Chair