

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 47

Reference No: IACDT 027/17

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **HES**
Complainant

AND **HEMA BEN PAREKH (SINGH)**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 19 July 2019**

REPRESENTATION:

Registrar: J Perrott
Complainant: Self-represented
Adviser: Self-represented

INTRODUCTION

[1] The Tribunal upheld this complaint against Ms Parekh, the adviser, in a decision issued on 29 May 2019 in *HES v Parekh*¹. It found that Ms Parekh had been negligent and had breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code). In particular, she failed to advise the complainant that visa applications for her husband based on marriage had no realistic chance of succeeding.

BACKGROUND

[2] The narrative leading to the complaint is set out in the decision of the Tribunal upholding the complaint and will only be briefly summarised here.

[3] Ms Parekh is a licensed immigration adviser. She is a director of Destination New Zealand Immigration Ltd.

[4] The complainant is a Fijian-born New Zealand citizen who has lived in this country since 2000. She developed an online relationship with a citizen of Pakistan living in that country.

[5] The complainant and her fiancé intended to marry on 12 March 2016 in New Zealand, so the complainant approached Ms Parekh on 6 January 2016 for assistance. She wished to bring her fiancé to New Zealand for a civil marriage to be followed by a cultural marriage.

[6] On 29 January 2016, Ms Parekh lodged with Immigration New Zealand an application for a visitor visa for her fiancé under the cultural marriage category. In the application, Ms Parekh recorded that the couple had met in person and that they had been living together in a genuine and stable relationship for 18 months.

[7] Immigration New Zealand declined the visitor visa application on 28 February 2016, because the couple had not met in person and had not satisfied the immigration requirements for a culturally arranged marriage.

[8] On 13 April 2016, Ms Parekh requested Immigration New Zealand to review the decline decision. It replied on 23 April 2016 declining a review, since the couple had not met each other, a minimum requirement of the criteria.

¹ *HES v Parekh* [2019] NZIACDT 36.

[9] On the advice of Ms Parekh, the complainant travelled to Pakistan and the couple were married there on 11 June 2016. She returned to New Zealand on 20 June 2017, having been overseas for just under two weeks.

[10] On 18 July 2016, Ms Parekh lodged another partnership visitor visa application for the (by now) husband, though it was not under the culturally arranged marriage category. It recorded that the husband was in Pakistan and wished to come to New Zealand to marry the complainant. Ms Parekh stated in the application that the couple had been living together in a genuine and stable partnership for 24 months.

[11] Immigration New Zealand declined the visa on 2 August 2016, as the couple had never lived together and there was insufficient evidence that the partnership was genuine and stable. In fact, they had only spent time together while on vacation.

[12] A complaint against Ms Parekh was lodged by the complainant with the Immigration Advisers Authority (the Authority) on 11 January 2017. She wanted to recover all her fees and financial losses, such as a deposit for a wedding reception.

[13] The Registrar of Immigration Advisers (the Registrar), the head of the Authority, referred the complaint to the Tribunal.

[14] In its decision on 29 May 2019, the Tribunal found that Ms Parekh had failed to advise the complainant that the visa applications had no realistic chance of succeeding. If she had done so, the complainant would not have proceeded with them. Ms Parekh should have told the complainant of this, but did not do so because she did not realise herself that the couple did not satisfy the immigration criteria for a cultural marriage. This amounted to negligence, a statutory ground of complaint. It was also a breach of cl 1 of the Code.

[15] Furthermore, Ms Parekh had no records of the advice given to the complainant, at many visits to Ms Parekh's office, being confirmed in writing to the complainant. This was a breach of cl 26(c) of the Code.

SUBMISSIONS

[16] Counsel for the Registrar, Mr Perrott, in his submission of 17 June 2019, contends that Ms Parekh should be:

- (1) cautioned or censured;

- (2) ordered to pay a penalty not exceeding \$10,000; and
- (3) ordered to refund all or part of the fees paid by the complainant.

[17] Mr Perrott submits that being able to assess a client's situation and apply for a suitable visa is a fundamental competency for an adviser.

[18] Mr Perrott points out that the Tribunal has previously upheld a complaint against Ms Parekh.² On 24 May 2012 in *Nair v Parekh*,³ the Tribunal imposed no sanctions where it had been found that Ms Parekh had inadequately communicated with her client. She had accepted there were shortcomings on her part and had taken substantial and appropriate remedial steps. Ms Parekh had also given her client a full refund of all fees and expenses.

[19] In her email to the Tribunal on 3 July 2019, the complainant refers to the counterclaim of \$ 36,760.14 previously made by her on 25 September 2017. This is alleged to be the cost resulting from Ms Parekh's mistakes, made up as follows:

Lost NZ wages	\$26,000.00
Apartment rental	\$ 4,440.00
Living costs	\$ 3,038.40
Airline ticket	\$ 721.74
Transportation	\$ 2,600.00
	\$36,760.14⁴

[20] These expenses arose from the complainant going to live in Pakistan with her husband for a period of 12 months in order to satisfy Immigration New Zealand's criteria. She seeks reimbursement for the airfare, her expenses in Pakistan for 12 months and her lost New Zealand wages for the same period.

[21] In addition, the complainant seeks a refund of the fees paid to Ms Parekh of \$1,350.

[22] In her submissions of 20 June 2019, Ms Parekh apologises for her inadvertent breaches of the Code. She explains that she did not intend to hurt anyone or play around with their feelings. She had tried her best to obtain a positive result. She always put her clients first. She understood that it was the relationship with both her clients and Immigration New Zealand that was the key to carrying on her role as an adviser.

² Another complaint against her dismissed by the Tribunal has not been taken into account.

³ *Nair v Parekh* [2012] NZIACDT 23.

⁴ The figures do not add up to \$36,760.14, but these are the figures that have been given.

According to Ms Parekh, she has an impeccable rate of approvals with Immigration New Zealand. In respect of the Code breaches, she could assure the Tribunal she had made significant changes to avoid such a situation happening again. In her letter, Ms Parekh sets out the record keeping changes made in her office to prevent a repeat of the breach.

[23] Ms Parekh said she would be happy to refund the fees paid and any other amount that the Tribunal thought fair and reasonable. However, the amount claimed by the complainant appeared to be excessive, but she would let the Tribunal decide what sum was payable.

[24] In over 13 years of practice, Ms Parekh said she had “built over 7,000 client files”. She acted in the best interests of her clients and would continue to make significant changes to her practice in accordance with Immigration New Zealand’s policies and the Authority’s requirements.

JURISDICTION

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

50 Determination of complaint by Tribunal

After hearing a complaint, the Tribunal may—

- (a) determine to dismiss the complaint:
- (b) uphold the complaint but determine to take no further action:
- (c) uphold the complaint and impose on the licensed immigration adviser or former licensed immigration adviser any 1 or more of the sanctions set out in section 51.

[26] The sanctions that may be imposed are set out at s 51(1) of the Act:

51 Disciplinary sanctions

- (1) The sanctions that the Tribunal may impose are—
 - (a) caution or censure:
 - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:

⁵ Immigration Advisers Licensing Act 2007.

- (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
- (d) cancellation of licence:
- (e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:
- (f) an order for the payment of a penalty not exceeding \$10,000:
- (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
- (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
- (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[27] In determining the appropriate sanction, it is relevant to note the purpose of the Act:

3 Purpose and scheme of Act

The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.

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

...It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.

...

The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

...

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

Lord Diplock pointed out in *Ziderman v General Dental Council* that the purpose of disciplinary proceedings is to protect the public who may come to a practitioner and to maintain the high standards and good reputation of an honourable profession.

[29] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the profession itself.⁷

[30] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.⁸

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

- (a) most appropriately protects the public and deters others;
- (b) facilitates the Tribunal's important role in setting professional standards;
- (c) punishes the practitioner;
- (d) allows for the rehabilitation of the practitioner;
- (e) promotes consistency with penalties in similar cases;
- (f) reflects the seriousness of the misconduct;
- (g) is the least restrictive penalty appropriate in the circumstances; and
- (h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

DISCUSSION

[32] I will consider the potentially appropriate sanctions in the order in which they are set out in s 51.

⁷ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee*, above n 6, at [151].

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

⁹ *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51] and *Katamat v Professional Conduct Committee* [2012] NZHC 1633, [2013] NZAR 320 at [49].

Caution or censure

[33] I accept that Ms Parekh is an experienced and diligent adviser who thought she was doing the best for her client. She made an error in assessing the client's prospects. There is no reason to believe this was anything other than an isolated incident. Censure would not be justified by the isolated incident of negligence or the failure to confirm in writing the advice given in the many visits the complainant made to her office. I note that the earlier complaint also concerned communications with her client, but it was not sufficiently serious to attract any sanction.

[34] Ms Parekh is cautioned.

Penalty

[35] Mr Perrott, on behalf of the Registrar, submits that it would be appropriate for the Tribunal to order a financial penalty at some level. I agree that competency in assessing eligibility for a visa is a fundamental skill of an adviser. I also accept there would be some merit to a penalty at a low level.

[36] However, in light of the complainant's circumstances and Ms Parekh's willingness to provide some compensation, I will not direct a penalty so as to maximise the monies available for compensation.

Refund

[37] The complainant paid Ms Parekh \$1,350 for her husband's visa applications. This money was wasted. If the complainant had been properly advised, she would never have instructed the applications to be made prior to their marriage and living together for a period. Accordingly, it is appropriate to direct that the fees be refunded.

Compensation

[38] The complainant has sought compensation of \$36,760.14. While the individual items are identified, the arithmetic is not accurate. However, that is not material given the level of compensation appropriate.

[39] The compensation sought is largely the expenses and lost wages of the complainant living in Pakistan. This is something she should have been advised by Ms Parekh to do at the beginning. It cannot therefore be said that Ms Parekh's negligence caused these expenses. In other words, they are expenses or lost wages which the complainant would have incurred or suffered anyway.

[40] The exception is the airfare of \$721.74. The complainant should have been advised to stay in Pakistan and live for a period with her husband on her first trip, rather than return to New Zealand and then find herself travelling back to Pakistan once the second visa application had failed. One of these two return airfares can be said to be wasted by Ms Parekh's failure to advise the complainant in the beginning that the application had little chance of success until they had married and lived together. I note also that a ticket price of just over \$700 is probably one-way, rather than a return ticket.

[41] I accept that it is appropriate to order some compensation. I suspect the complainant is struggling financially. However, as Ms Parekh correctly points out, the claim for compensation is excessive. There is no proper basis to direct Ms Parekh to reimburse the complainant's living expenses and lost earnings for 12 months in Pakistan. While I have some sympathy for the complainant's predicament, I hope she can understand that Ms Parekh cannot be blamed for Immigration New Zealand's requirement that she live in Pakistan with her husband for 12 months or so, to satisfy the criteria for a visa on marriage grounds.

[42] In the circumstances, I will award \$2,500 as reasonable compensation. It reflects a wasted return airfare and a small contribution to the complainant's other expenses and losses.

OUTCOME

[43] Ms Parekh is;

- (1) cautioned;
- (2) ordered to immediately refund to the complainant the sum of \$1,350; and
- (3) ordered to immediately pay to the complainant \$2,500 in compensation.

ORDER FOR SUPPRESSION

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

[2] There is no public interest in knowing the name of Ms Parekh's client, the complainant.

¹⁰ Immigration Advisers Licensing Act 2007, s 50A.

[3] The Tribunal orders that no information identifying the complainant is to be published other than to the parties and Immigration New Zealand.

D J Plunkett
Chair