

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 18

Reference No: IACDT 003/17

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **IMMIGRATION NEW ZEALAND
(DARREN CALDER)**
Complainant

AND **MARAJ AHMED**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 2 April 2019

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: Self-represented

PRELIMINARY

[1] It is alleged that Mr Ahmed, the adviser, uses unlicensed staff within his office to perform immigration work that only a licensed adviser is allowed to perform. Furthermore, he has effectively delegated client engagement to his staff. Mr Ahmed says the staff only undertake permissible clerical work and he was involved with the client at all key stages of the process.

[2] The essential issues to consider are whether the staff stepped beyond the boundary of clerical work and whether it is enough that Mr Ahmed is involved at key stages of the process.

BACKGROUND

[3] Mr Maraj Ahmed is a licensed immigration adviser, based in Pakistan. He is a director of ISAS Consultants (ISAS).

[4] The narratives below are not a complete history of each client's immigration application managed by ISAS.

Mr AA

[5] ISAS were instructed by Mr AA on behalf of himself and his family, who sought residence in New Zealand.

[6] Immigration New Zealand sent a letter addressed to Mr AA, courtesy of Mr Ahmed, by email on 20 November 2015. It was sent to the generic email address of ISAS. The letter acknowledged a resident visa application of 16 October 2015 from Mr AA and his family. Immigration New Zealand said it was not satisfied that all Mr AA's work experience was relevant to the immigration criteria. It was a detailed letter concerning various periods of employment and Mr AA's qualifications. He was given an opportunity to respond.

[7] On 22 November 2015, Mr S, an employee of ISAS described as a case coordinator, replied by email to Immigration New Zealand's letter of 20 November 2015. Mr S said the letter had been forwarded to Mr AA and they were waiting for his feedback.

[8] On 27 November 2015, Mr S provided a substantive reply to Immigration New Zealand by email. He sent documents which he stated supported the claim that Mr AA

was performing the substantial part of the job role defined for his position. The email drew attention to certain documents.

Mr BB

[9] On 9 September 2015, Mr T of ISAS, a case officer, sent an email to Mr BB, a client of ISAS. It advised him how to prepare for an interview. It was copied to Mr Ahmed. It commenced with the following message:

THIS EMAIL IS BEING SENT TO YOU ON BEHALF OF MR MARAJ AHMED
IAA LICENCE NO. 201001434.

[10] On 3 December 2015, Immigration New Zealand sent an email to Mr S concerning the residence application of Mr BB. The immigration officer requested confirmation as to whether Mr Ahmed was the only person providing immigration advice on the application. It was noted that the cover letter had not been signed by him and that Mr Ahmed's details had been filled out by another person. Surprise was also expressed at the number of outstanding "aspects requested" in comparison with previous applications from ISAS.

[11] Mr S responded by email on the same day confirming that Mr Ahmed was the only person who could give immigration advice and that all the other staff worked under his supervision. Mr Ahmed had prepared and signed the application before his departure for New Zealand, but the cover letter had been signed by Mr S. The quality of the application was due to the lack of cooperation from the client in providing timely information.

[12] The file shows that for a period from about 15 December 2015, Mr Ahmed engaged in substantive communications with both Immigration New Zealand and Mr BB.

[13] On 12 July 2016, Mr T sent Mr BB an email referring to a telephone discussion they had and requesting certain documents. Mr T advised as to Immigration New Zealand's processing time and the period available for travel once the visa was issued. He was also sent a blank template certificate (dated 12 July 2016), customised for Mr BB, for Mr BB's employer to complete.

Mr CC

[14] Between 25 March and 28 April 2014, there was an exchange of emails between Mr CC, a client of ISAS, and Mr U of ISAS. It largely concerned obtaining information from Mr CC so ISAS could assess his case for New Zealand or Australian

skilled migration. Mr U sent him a form in order to gather information to discuss his case with Mr Ahmed. Mr CC then raised queries which Mr U said he would discuss with Mr Ahmed. This was followed by a discussion between Mr CC and Mr U. An unknown employee, presumably Mr U, told Mr CC by email on 25 March 2014 that he would discuss his query with Mr Ahmed.

[15] On 31 March 2014, Mr U confirmed to Mr CC in an email that he met the basic requirements for New Zealand skilled migration. On 1 April 2014, Mr Ahmed wrote to Mr CC referring to their discussion and advising as to his eligibility for residence. There were then further exchanges between Mr CC and Mr U regarding documentation. There is evidence that this was expected to lead to a telephone call with Mr Ahmed, but there is no record of such a discussion.

[16] On 18 August 2015, Mr T sent a lengthy letter by email to Mr CC. He advised him how to prepare for an upcoming interview with Immigration New Zealand, how to find a job and what general research about New Zealand needed to be undertaken. It commenced with the following message:

THIS EMAIL IS BEING SENT TO YOU ON BEHALF OF MR MARAJ AHMED
IAA LICENCE NO. 201001434.

[17] Immigration New Zealand started sending email communications to the adviser's own email address, rather than to the ISAS generic company address. On 5 January 2016, in an email concerning Mr CC sent to Mr Ahmed at his own email address, Immigration New Zealand noted that he had failed to respond by the deadline to an email sent directly to him on 11 December 2015. Immigration New Zealand said it would expect him to check emails sent to him on the address available from the Immigration Advisers Authority (the Authority).

[18] Mr Ahmed responded by email on 6 January 2016 from his own email address. He asked Immigration New Zealand to use the ISAS generic address as this was the address used by his residence team. His own address was used by "new clients' enquiry by me". Mr Ahmed informed Immigration New Zealand that he would advise Mr CC to provide certain additional documents.

[19] On 20 January 2016, Mr T sent Mr CC by email two blank template certificates (dated 19 January 2016), customised for Mr CC, to be completed by Mr CC's bank.

[20] Mr CC sent Mr T an email on 26 February 2016 setting out the contact details of his employers, which Mr T on-forwarded to Immigration New Zealand the following day, adding details of his new employment.

Mr DD

[21] According to Immigration New Zealand, there was a testimonial on the ISAS website which stated (*verbatim*):

[Mr DD]

ICT Professional

I am senior IT Professional. My experience with ISAS was excellent. Before finalised ISAS as my immigration consultant, I did extensive research on immigration consultants and found only ISAS as reliable and honest. My case was handle by [Mr T] and [Mr S]. They are very corporative. In my case, there was so many ups and down were occurred but ISAS handle all these obstacles professionally.

[22] Mr DD had a discussion with Mr Ahmed on 26 January 2014. On the same day, Mr Ahmed wrote to Mr DD referring to that discussion and confirming his eligibility for residence.

Mr EE

[23] There was an email exchange between Mr EE, a client, and Mr U from 14 July to 6 August 2014.

[24] It started with Mr EE sending his CV for review. Mr U replied that he required further information, which was sent piecemeal by Mr EE. On 17 July 2014, an unknown employee of ISAS confirmed to Mr EE that he met the basic requirements for being a skilled migrant to New Zealand.¹ Mr U discussed the application with Mr EE on 19 July 2014. Mr U then wrote referencing their discussion, advising fees and stating that he would arrange a meeting with the licensed adviser. This appears to be an “online meeting”, which was arranged for 26 July 2014 at 12:00 pm. No record of this meeting has been provided to the Tribunal.

[25] An agreement between ISAS and Mr EE was sent to him by an employee of ISAS on 6 August 2014. It was signed by Mr EE and dated 7 August. There is no signature or date in the place where Mr Ahmed was supposed to sign.

[26] On 27 August 2014, Mr T sent Mr EE an email thanking him for instructing ISAS and sending a detailed list of documents needed. It was copied to Mr Ahmed. The email stated:

THIS EMAIL IS BEING SENT TO YOU ON BEHALF OF MR MARAJ AHMED
LICENSED NZ IMMIGRATION ADVISER (IAA LICENCE NO.20100 1434)

¹ It is not from Mr Ahmed’s email address.

COMPLAINT

[27] A complaint against Mr Ahmed was lodged with the Authority by Immigration New Zealand (Mr Carley) on an unknown date. It alleged that Mr Ahmed was committing an offence by employing or contracting as immigration advisers people who were neither licensed nor exempt from licensing. Nor was he complying with his obligation to act in accordance with the relevant licensing legislation.

[28] The Authority wrote to Mr Ahmed on 18 August 2016 seeking his full client files from Messrs BB, CC, DD and EE. It is assumed they were provided by him.

[29] The Authority wrote to Mr Ahmed on 14 December 2016 formally advising him of the complaint and setting out the details. In brief, Immigration New Zealand had raised concerns that its officers dealt with staff of his company who were not licensed, in particular Messrs S and T. The client files seen by the Authority included emails sent by unlicensed staff containing immigration advice. The staff also appeared to have undertaken the initial client engagement process and to have been the contact person for clients throughout the process. He was requested to provide a written explanation.

[30] Mr Ahmed responded to the complaint by letter to the Authority on 10 January 2017. He agreed that unlicensed staff were engaged in direct communication with the clients and Immigration New Zealand, but they were never involved in providing immigration advice on their own. Their role was just to send and receive information to and from the client, the authorities and the adviser. There was no email correspondence giving the impression that any instruction or advice within the definition of immigration advice had been provided by unlicensed staff on their own or that they had acted beyond a clerical role.

[31] According to Mr Ahmed, there was no restriction in the legislation or the profession's code against unlicensed staff communicating on behalf of the adviser. He took a holistic view of his business and it was unavoidable that staff communicated with clients at a level permitted by the law. Since he averaged 80 to 110 visa applications every year, he needed a team to accomplish the work in an efficient and professional manner to meet the deadlines on each application. Unlicensed staff could be actively involved in giving and taking information from clients or the authorities to avoid any delay in the process, but their communication would be on his behalf.

[32] As for the unlicensed employees appearing to be the contact person, Mr Ahmed pointed out that skilled migrant applications involved a lot of clerical work. The staff did educate the clients in letters containing immigration advice, but they specifically

mentioned that the advice was provided by the licensed adviser. There might have been some careless instances in a few messages but these were all inadvertent. Mr Ahmed sent with his letter a table identifying the various steps in a residence process, stating whether it was performed by an employee or the adviser and therefore categorising it as clerical or advice work.

[33] The Registrar of Immigration Advisers (the Registrar), the head of the Authority, filed a statement of complaint with the Tribunal on 20 January 2017. He has referred to the Tribunal the following possible breaches of the Code of Conduct 2014 (the Code):

- (1) failing to personally obtain and carry out the client's informed lawful instructions, in breach of cl 2(e); and
- (2) allowing unlicensed individuals to provide immigration advice contrary to the licensing legislation, in breach of cls 1 and 3(c).

JURISDICTION AND PROCEDURE

[34] The grounds for a complaint to the Registrar made against an immigration adviser or former immigration adviser are set out in s 44(2) of the Immigration Advisers Licensing Act 2007 (the Act):

- (a) negligence;
- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour; and
- (e) a breach of the Code of Conduct.

[35] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.²

[36] The Tribunal must hear complaints on the papers but may in its discretion request further information or any person to appear before the Tribunal.³ It has been established to deal relatively summarily with complaints referred to it.⁴

² Immigration Advisers Licensing Act 2007, s 45(2) & (3).

³ Section 49(3) & (4).

⁴ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

[37] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.⁵

[38] The sanctions that may be imposed by the Tribunal are set out in the Act.⁶ It may also suspend a licence pending the outcome of a complaint.⁷

[39] It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.⁸

[40] The Tribunal has received from the Registrar the statement of complaint (20 January 2017) and supporting documents.

[41] Mr Ahmed sent a statement of reply (dated 19 March 2017), with supporting documents. It will be considered later in the assessment section. Mr Ahmed does not request an oral hearing.

[42] The complainant has provided an “Assessment of Response”, which is undated but was received by the Tribunal on 4 April 2017. It is a response to Mr Ahmed’s statement of reply.

ASSESSMENT

[43] The Registrar relies on the following provisions in the Code:

General

1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

Client Care

2. A licensed immigration adviser must:

...

- e. obtain and carry out the informed lawful instructions of the client,

...

⁵ Section 50.

⁶ Section 51(1).

⁷ Section 53(1).

⁸ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [101]–[102] & [112].

Legislative requirements

3. A licensed immigration adviser must:

...

- c. whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.

[44] The obligations set out in the Code are personal to the licensed immigration adviser and cannot be delegated.⁹

[45] The second head of complaint will be assessed first.

(2) *Allowing unlicensed individuals to provide immigration advice contrary to the licensing legislation, in breach of cls 1 and 3(c)*

[46] The second head requires identifying the work which must be exclusively performed by licensed advisers.

General principles

[47] The Tribunal has adversely commented in previous decisions on the practice which developed in the immigration advisory industry of what is known as “rubber stamping”.¹⁰

[48] Typically, this occurs where a licensed immigration adviser uses agents sometimes from another country to recruit the clients, prepare the immigration applications and send them to the licensed adviser to sign off and file with Immigration New Zealand. There is little, if any, direct contact between the licensed adviser and the client.

[49] The practice is illegal. A person commits an offence under the Act if he or she provides “immigration advice” without being licensed or exempt from licensing.¹¹ A person employing as an immigration adviser another person who is neither licensed nor exempt also commits an offence.¹² A person may be charged with such an offence even where part or all of the actions occurred outside New Zealand.¹³

⁹ Sparks at [29], [32], [34] & [47].

¹⁰ *Stanimirovic v Levarko* [2018] NZIACDT 3 at [4], [36]–[38]; *Immigration New Zealand (Calder) v Soni* [2018] NZIACDT 6 at [4], [50]–[61].

¹¹ Immigration Advisers Licensing Act 2007, s 63.

¹² Section 68(1).

¹³ Sections 8 & 73.

[50] The statutory scope of “immigration advice” is very broad:¹⁴

7 What constitutes immigration advice

- (1) In this Act, **immigration advice**—
- (a) means using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward; but
 - (b) does not include—
 - (i) providing information that is publicly available, or that is prepared or made available by the Department; or
 - (ii) directing a person to the Minister or the Department, or to an immigration officer or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or
 - (iii) carrying out clerical work, translation or interpreting services, or settlement services.
- (2) To avoid doubt, a person is not considered to be providing immigration advice within the meaning of this Act if the person provides the advice in the course of acting under or pursuant to—
- (a) the Ombudsmen Act 1975; or
 - (b) any other enactment by which functions are conferred on Ombudsmen holding office under that Act.

[51] The exclusion from the scope of “immigration advice” relevant here is subs (1)(b)(iii) concerning clerical work, translation or interpretation services.

[52] “Clerical work” is narrowly defined in the Act:¹⁵

clerical work means the provision of services in relation to an immigration matter, or to matters concerning sponsors, employers, and education providers, in which the main tasks involve all or any combination of the following:

- (a) the recording, organising, storing, or retrieving of information:
- (b) computing or data entry:
- (c) recording information on any form, application, request, or claim on behalf and under the direction of another person

[53] Persons who are not licensed (or exempt) are permitted to undertake clerical work. In essence, such a person can do no more than retrieve and then record or organise information, enter data on a computer database or hard copy schedule, or

¹⁴ Section 7.

¹⁵ Section 5, “clerical work”.

record information on a form or other like document under the direction of another person, who will be the licensed adviser or the client or a person exempt from licensing.

[54] Activities which do not meet the narrow definition of clerical work but which involve the use of immigration knowledge or experience to advise or assist another person on an immigration matter, “whether directly or indirectly”, amount to providing immigration advice. That is the exclusive domain of the licensed adviser.

[55] However, the boundary between clerical work and immigration advice is a grey area. There needs to be a certain reality concerning the exigencies of work in a busy immigration practice. Furthermore, the statute does not require a direction from the adviser or client where the information is being retrieved or organised. Nor does recording information require a direction, unless it is onto a form or application or the like. Even where a direction is required, I do not consider that an adviser must give an employee a direction in respect of every piece of information being recorded on every document. Nor do I consider that the adviser directing the recording of information on the form or application needs to be physically present every time an employee does so.

[56] The activities of “retrieving”, “organising” and “recording” of information, permitted as clerical work, could all occur at essentially the same time or within the same event. For example, an employee could on his or her own retrieve client information from multiple sources and record it in a letter to Immigration New Zealand. On its face, that is allowed. If it is recorded on a form or application, there must be a direction. That direction could be a general delegation, whether formal or informal, whether written or oral, to that employee who is regarded by the adviser as competent to retrieve information provided by the client and record it on a document. None of this would give rise to a breach of the Act, subject to one overriding caveat.

[57] The qualification is that if any form of judgement utilising immigration knowledge or experience is required in selecting the appropriate information or in phrasing the communication to Immigration New Zealand or the client in which the information is being recorded, the letter or form would amount to impermissible immigration advice. The use of immigration knowledge or experience in exercising judgement means the conduct is no longer merely retrieving, organising and/or recording.

[58] Immigration applications in particular are lengthy documents with a great deal of information and supporting documentation. They should therefore be completed by an adviser, as selecting some of the information or phrasing it to fill out certain answers to the questions on the form is likely to involve knowledge or experience in immigration.

The adviser's personal responsibility for applications and indeed for the client's overall relationship in the ongoing presentation of an application to Immigration New Zealand has been made clear by the High Court:¹⁶

The system for preparing and presenting applications to Immigration New Zealand depends on the involvement of licensed advisers whose competence and obligations to comply personally with the Code provide an important assurance as to the accuracy of the information that Immigration New Zealand will rely on.

[59] It is the same with letters to Immigration New Zealand. Recording information in a letter does not require a direction in order to be classified as clerical work, but a substantive letter is likely to involve more than just retrieving and recording information. It will utilise the immigration knowledge and experience of the author to select and phrase the information being given to Immigration New Zealand or the client. Letters should therefore also be authored by the adviser.

[60] There is another well recognised principle relating to professional disciplinary regimes which I need to keep in mind in reviewing the work undertaken by Mr Ahmed's staff. It is that conduct violating professional rules must reach a certain threshold as to its gravity in order to attract a sanction for the purpose of protecting the public.¹⁷ However, the threshold for the imposition of a penalty is not unduly high. In other words, such regimes are not concerned with minor breaches of standards.

Mr Ahmed's response to the complaint

[61] Mr Ahmed says in his statement of reply (19 March 2017) that he would personally "meet/speak" with every client to understand their circumstances and assess their eligibility. In his view, this was the key stage for skilled migrant applications. The rest of the work was receiving information. He had to have staff to do this as he was not sure how he could handle the volume of clients without properly delegating work to them.

[62] According to Mr Ahmed, he had a well-defined process of interviewing clients at the engagement stage in order to get their instructions. He was directly involved with the clients at all key steps in the application. There was nothing in the client communications showing staff using their knowledge and experience or making enquiries for any assessment. Their role was "mostly" to retrieve information from the clients, as confirmed at the time of his engagement interview with them. It was co-ordinating work.

¹⁶ *Sparks* at [51].

¹⁷ *Liston v Director of Proceedings* [2018] NZHC 2981 at [42]–[44].

[63] Mr Ahmed considered that “except few, most” of the communications were in accordance with advice he had received from the Authority. He admitted that staff may have worked beyond the performance of clerical work on some occasions. There might be lapses in the contents of one or two emails, but not a “number of emails”. For “most of the times”, the employees worked under the statutory definition of clerical work.

[64] This brings me to the specific activities performed by Mr Ahmed’s staff.

Whether the staff perform only clerical work

[65] I do not regard the following activities undertaken by Mr Ahmed’s staff as going beyond clerical work or, if they do, as crossing the threshold justifying a disciplinary process if done on isolated occasions:

- (i) sending communications to clients attaching client agreements (for signature) and a copy of the Code;
- (ii) forwarding to the client communications or decisions from Immigration New Zealand without comment, whether or not the client’s comments or documents in response were sought at the same time;
- (iii) requests to the client for listed documents or forwarding a checklist of documents/information needed or identifying the documents missing from a response to a checklist previously sent and then requesting the missing documents, including comments on the print quality of copies previously sent or whether originals were needed (provided the checklist was a standard template from Immigration New Zealand or the adviser or followed a discussion with the adviser, and was not compiled by the employee);
- (iv) requests to the client for further information in order to complete an initial assessment (provided the assessment is undertaken by the adviser);
- (v) requesting the client to provide a description of a past job;
- (vi) seeking from the client and then advising Immigration New Zealand of the contact details of the client’s current/past employers (providing this does not involve assessing whether certain jobs meet the immigration criteria);

- (vii) sending the client the contact details of Immigration New Zealand's panel physician;
- (viii) requesting the client to provide an update of progress in obtaining certain documents;
- (ix) communication between the client and employees as to the fees and bank account details of the adviser's company;
- (x) advising a client what documents had to be signed, by whom and of the place of signature;
- (xi) analysing a client's passport and creating a travel history sent to the client for comment;
- (xii) passing onto the client advice from the adviser;
- (xiii) advising the client of Immigration New Zealand's usual processing time;
- (xiv) the mere receipt of information/documents from the client;
- (xv) any communication from the client to the adviser which has been copied to the employee, or any communication from the client to the employee which has been copied to the adviser;
- (xvi) requests made to Immigration New Zealand for extensions of time to respond to concerns expressed by the agency or to provide documents;
- (xvii) liaising between the client and Immigration New Zealand as to a suitable date for an interview;
- (xviii) acknowledging receipt of a letter from Immigration New Zealand and advising the agency it has been forwarded to the client for comment; and
- (xix) drafting correspondence to Immigration New Zealand for review and signature by the adviser.

[66] The above list of what is acceptable, or at least not worthy of disciplinary action, is not exhaustive.

[67] A particularly grey area is forwarding on to Immigration New Zealand information or documents received from the client. The difficulty here is that such activity will usually involve the use of immigration knowledge or experience to assess

whether the client's response meets the immigration criteria or any concerns expressed by Immigration New Zealand. A covering communication to Immigration New Zealand doing anything other than listing the documents attached is likely to amount to immigration advice.

[68] Communications from the employee to Immigration New Zealand therefore have to be assessed on a case-by-case basis as to whether they are merely clerical work, but it would be best practice for an adviser not to permit staff to liaise with Immigration New Zealand at all. The presentation of the application to the agency, over the entire duration of its processing, is critical and should be exclusively managed by the adviser. Furthermore, the application form should either be filled out by the adviser or every entry checked by him or her if filled out by an employee.

[69] An adviser is not being professional, diligent or exercising due care in offloading to staff the critical task of liaising with Immigration New Zealand.¹⁸ So, while there may be no breach of cl 3(c) of the Code if no judgement is exercised in writing any communication and all the work is clerical, this could nonetheless amount to a breach of cl 1. It could also amount to a breach of cl 2(e), the obligation to obtain and carry out the client's instructions, but that will be assessed later under the first head of complaint.

[70] Returning to cl 3(c) and whether staff communications are contrary to the Act, it is only isolated instances of the above communications (to the extent they are not clerical) which would not justify disciplinary action. Of course, for those communications which are clerical, their volume does not matter. Any number would not breach cl 3(c) of the Code.

[71] In respect of the second head of complaint, I therefore discount the types of communications listed above. I decline to identify and count the specifically non-clerical ones and to determine whether the incidents are isolated and therefore acceptable. This is because it is evident that Mr Ahmed's employees have been responsible for more substantive communications.

Mr AA

[72] On 27 November 2015, Mr S sent an email to Immigration New Zealand answering a concern expressed by the agency as to whether certain periods of Mr AA's employment met its criteria. He attached a number of documents and drew attention to particular documents. It was asserted in the email that Mr AA performed the substantive role as defined for the job of ICT business analyst.

¹⁸ Clause 1 of the Code.

[73] While I accept Mr Ahmed's contention that he interviewed every client, personally confirmed the eligibility of every client and was involved directly with every client from time to time, including Mr AA, there is no evidence this particular communication was directed by Mr Ahmed. It is not clerical work, but immigration advice. Mr S would have exercised judgement utilising his immigration knowledge and experience in asserting that Mr AA had performed the substantive role defined for a certain job. A broad general delegation to the employee to manage certain types of communication with Immigration New Zealand could not cover such a specific assertion. That required a specific direction from Mr Ahmed.

Mr BB

[74] On 12 July 2016, Mr T sent an email to Mr BB referring to their telephone discussion and seeking a number of documents, including a letter from his employer. Attached was a blank template certificate, customised for Mr BB, for the employer to complete. Advice was given in the email regarding Immigration New Zealand's processing time and the period in which Mr BB could travel to New Zealand.

[75] The contents of the email are either clerical work or are not of sufficient gravity to warrant disciplinary action, but the certificate customised for Mr BB's employer is plainly immigration advice. There is no evidence Mr Ahmed customised the document.

Mr CC

[76] On 18 August 2015, Mr T emailed a lengthy letter to Mr CC advising him how to prepare for an upcoming interview with an immigration officer. I discount the template 'mantra' that it was being sent on behalf of Mr Ahmed. Where Mr Ahmed is copied a communication, whether or not the mantra is used, I accept the act of copying at face value as being evidence of his personal involvement in the subject matter of the communication. But Mr Ahmed was not copied into this particular communication and there is no other evidence of his involvement with Mr CC at this time.

[77] On 20 January 2016, Mr T sent Mr CC two blank certificates customised for Mr BB, for Mr BB's bank to complete. There is no evidence Mr Ahmed was involved in deciding whether they were needed or in drafting them or customising an existing template.

[78] The letter of advice as to how to prepare for an interview and the certificates amount to immigration advice.

Mr EE

[79] On 17 July 2014, an unknown employee of ISAS sent an email to Mr EE advising that he met the basic requirements for the skilled migrant category. Emails immediately before and after this email are all from/to Mr U of ISAS. They show that Mr EE's proposed application was then discussed between Mr EE and Mr U on 19 July 2014.¹⁹ I acknowledge that the emails appear to show that Mr Ahmed was expected to discuss the proposed application with Mr EE on 26 July 2014, though there is no record of the discussion. Nonetheless, it must have taken place as, on 6 August 2014, Mr Ahmed wrote to Mr EE referring to their discussion and confirming his eligibility for residence in New Zealand.

[80] Mr U's email of 17 July 2014 amounts to immigration advice and there is no evidence Mr Ahmed was responsible for this advice to Mr EE. The evidence shows Mr Ahmed first engaged with Mr EE's file on about 26 July 2014.

Conclusion on second head of complaint

[81] In respect of Messrs AA, BB, CC and EE, the staff of ISAS have given immigration advice. This is contrary to the Act and they have possibly committed offences.

[82] It is apparent from Mr Ahmed's response to the Authority and his statement of reply filed in the Tribunal that he has always been aware of the issue as to the boundary between clerical work and immigration advice. Mr Ahmed believes it is necessary for him to engage only at what he regards as key stages of the client engagement process and Immigration New Zealand's processing of the application. In particular, he knows he must be involved at an early (but not the beginning) stage when eligibility is confirmed.

[83] It is not clear to me who compiled the immigration applications in respect of those clients, so I make no finding that was done by the staff. What is clear is that most of the engagement with Immigration New Zealand and overwhelmingly the engagement with the client was undertaken by the staff. It is Mr Ahmed's mode of conducting his business that has allowed staff to perform substantive immigration services in their communications with the client and Immigration New Zealand. It is not enough for him to be involved at what he regards as key stages of the transaction. It is not enough that "most of the times" the staff only undertake clerical work as defined.²⁰

¹⁹ For example, the email of 21 July 2014 from Mr EE to Mr U – see Registrar's supporting documents at 174.

²⁰ Statement of reply form (19 March 2017) at 6, item 3.

He must be personally involved throughout the process, otherwise there is the risk of staff being responsible for substantive communications as occurred here.

[84] The communications set out above are not minor and cross the disciplinary threshold.

[85] Mr Ahmed has facilitated the unlawful conduct of the staff. He knew what they were doing. He has engaged in a form of rubber stamping. This is a breach of cl 3(c) of the Code. It follows that he has not been professional and diligent, which is a breach of cl 1 of the Code. It is not for me to assess whether he has committed the offence of employing unlicensed persons as immigration advisers.

(1) *Failing to personally obtain and carry out the client's informed lawful instructions, in breach of cl 2(e).*

[86] In respect of Messrs AA, BB, CC and EE, Mr Ahmed delegated the bulk of the engagement process with the client to his staff. The same can be said of communications with Immigration New Zealand.

[87] I accept that there is evidence Mr Ahmed was involved at some of the key stages for each of those clients. The files sent to the Tribunal do not show involvement at all the key stages for all those clients. He says he met and/or spoke to every client and personally assessed their eligibility. While there is evidence from emails of Skype or "online meetings" (which I assume are Skype or similar) being scheduled, there is no record of those discussions in the files presented to the Tribunal.²¹

[88] Nonetheless, I have accepted that Mr Ahmed was engaged with all his clients when the client's eligibility was confirmed and from time to time throughout the process.

[89] However, that is not enough. For the purpose of compliance with cl 2(e), Mr Ahmed must personally "obtain" and then "carry out" the client's instructions. No Code obligation can be delegated to the extent Mr Ahmed has here. The adviser must from the beginning to the end take charge of the client engagement process (obtaining instructions) and the presentation of the application to Immigration New Zealand (carrying out the instructions).

²¹ I may not have the complete files, but the Code requires a written record of such discussions – see cl 26(a)(iii).

[90] While the adviser can delegate the less important clerical work, he or she cannot delegate the bulk of the engagement with the client, nor of correspondence with Immigration New Zealand.²² It is not material that Mr Ahmed is a successful adviser with a high volume of work. In order to comply with cl 2(e), he will have to either decline instructions or employ licensed advisers.

[91] I have seen very little of Mr Ahmed's file concerning Mr DD, but the testimonial previously on the ISAS website corroborates the accusation that Mr Ahmed routinely delegates the bulk of client communications to his staff.

Conclusion on first head of complaint

[92] I find that Mr Ahmed did not obtain and carry out the bulk of the client's lawful instructions, in breach of cl 2(e) of the Code. This was the case for Messrs AA, BB, CC and EE.

OUTCOME

[93] I uphold the complaint against Mr Ahmed.

SUBMISSIONS ON SANCTIONS

[94] As the complaint has been upheld, the Tribunal may impose sanctions pursuant to s 51 of the Act.

[95] A timetable is set out below. Any requests that Mr Ahmed undertake training should specify the precise course suggested. Any request for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim.

Timetable

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

- (1) The Authority, Immigration New Zealand and Mr Ahmed are to make submissions by **26 April 2019**.
- (2) The Authority, Immigration New Zealand and Mr Ahmed may reply to the submissions of any other party by **10 May 2019**.

²² Sparks at [29], [32], [34] & [47].

ORDER FOR SUPPRESSION

[97] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.²³

[98] There is no public interest in knowing the names of Mr Ahmed's clients.

[99] The Tribunal orders that no information identifying the clients is to be published other than to the parties.

D J Plunkett
Chair

²³ Immigration Advisers Licensing Act 2007, s 50A.