

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2020] NZIACDT 35

Reference No: IACDT 019/19

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **THE NEW ZEALAND
QUALIFICATIONS AUTHORITY
(HELEN SEAVOR-CROSS)**
Complainant

AND **OULU JIN**
Adviser

DECISION
Dated 7 August 2020

REPRESENTATION:

Registrar: Self-represented

Complainant: Self-represented

Adviser: No appearance

PRELIMINARY

[1] Mr Oulu Jin, the adviser, acted for a client (the client) who wished to obtain an international qualifications assessment from the New Zealand Qualifications Authority (NZQA). Ms Helen Seavor-Cross (the complainant) is an NZQA evaluator. The client had a genuine qualification, but Mr Jin fabricated an academic transcript. The forgery was discovered by the complainant.

[2] A complaint against Mr Jin was made by the complainant to the Immigration Advisers Authority (the Authority). The Registrar of Immigration Advisers (the Registrar), the head of the Authority, has referred it to the Tribunal. It is alleged that Mr Jin's conduct was dishonest or misleading, a ground for complaint under the Immigration Advisers Licensing Act 2007 (the Act). It is also contended that he breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] Mr Jin has not engaged with the Tribunal, but did admit to the Authority creating the false document which he said was done in order to help the client to obtain a speedy assessment.

BACKGROUND

[4] Mr Oulu Jin is a licensed immigration adviser and director of Oulu's Immigration Firm Limited, of Shanghai. At the material time, he was provisionally licensed but since May 2020, he has held a full licence. As a provisional licence holder, Mr Jin was supervised by a full licence holder. While he is based in Shanghai, his supervisor was based in New Zealand.

[5] The client, a national of China, was living in New Zealand and was an existing client of Mr Jin's supervisor. The client intended to make an Essential Skills work visa application and required an assessment by NZQA of his overseas qualification. Due to the supervisor's limited knowledge of such assessments, she referred the client to Mr Jin.

[6] A client agreement was entered into between Mr Jin and the client on 14 November 2018. A fee of \$600 was paid, in addition to NZQA's fees.

[7] On 16 November 2018, Mr Jin filed an assessment for qualification with NZQA on behalf of the client. It included a copy of a certificate in commercial cookery from a recognised Australian school, together with a "course content". The content document appeared on its face to be an academic transcript of the units achieved in obtaining the

qualification. He inserted the school's logo and also a footer, "The qualification is recognised within the Australian qualifications framework".

[8] In assessing the documents, the complainant noticed anomalies so contacted the school to verify the qualification. The school advised that the client did achieve the certificate, but that the content document was not an official school document and had been altered from a "record of results" document.

[9] The school's results document sent to the complainant by the school looked similar to the content document, but contained additional information such as the course dates and grades for each unit.

[10] On 28 November 2018, the complainant advised Mr Jin of certain anomalies in the transcript which the school had confirmed was not official and had been changed from their results record. His explanation was sought.

[11] Mr Jin replied on the same day apologising and accepting it was his fault. He said that he only had a digital copy of the certificate as the paper copy had not arrived. He had received no reply from the school. He went to the school website and found all the subject names, so listed them down in a course content to support the assessment. The school logo was then placed on it. His intention was to make it look prettier, nothing more. There was no benefit or motivation for him or the student to alter a genuine qualification. Mr Jin said he wanted to file the assessment as soon as possible by providing sufficient information at a time when the transcript was not available.

[12] Mr Jin telephoned the complainant, also on 28 November 2018, which led to her immediately sending an email to him summarising the conversation. The email recorded that Mr Jin had received the results document but had lost it. Since NZQA's process did not allow applications without complete documentation, he went on to the school's website and created the course content document. This included the school's logo to make it appear to be an official document. He had done this because his client had an immigration deadline and the application to NZQA needed to be made urgently.

[13] Mr Jin confirmed the complainant's understanding of his explanation in a reply email on 28 November 2018. The purpose of the content document was to "fill the column of transcript" so the application process could start. This would usually take two to three weeks and by then the paper transcript would have arrived. There was no specific purpose for the logo to be placed there and it was ridiculously stupid for him to do so. The client had wanted to urgently apply for a new visa.

[14] The complainant sent an email to the client on 3 December 2018 stating that his qualification was authentic, but the course content document was not from the school. Mr Jin had confessed that he had created it and included the logo to make it appear to be an official document. It was recommended that he remove Mr Jin as his agent in dealings with NZQA.

[15] On the same day, the client informed NZQA that Mr Jin was no longer instructed.

[16] The NZQA sent an assessment to the client on 13 December 2018.

COMPLAINT

[17] On 4 December 2018, the complainant made a complaint against Mr Jin to the Authority. It stated that Mr Jin had created a course content document using the school's logo, which had been placed there by him. This document had been filed with NZQA in place of the results document. He had admitted an error on his part. The creation of a false and misleading document in support of an application was being brought to the attention of the Authority.

[18] On 30 May 2019, Mr Jin sent the Authority the requested documents, together with a brief explanation. He advised that an email attaching the transcript had been deleted by him by mistake. As he was afraid to tell the client given that his mistake might jeopardise the client's visa status, he created a course content document by copying the contents from the school's website. He thought that the paper transcript would soon arrive and then he would upload it to NZQA's website. He admitted his wrongdoing and would take responsibility for his stupid behaviour.

[19] Mr Jin provided further information to the Authority on 31 May 2019.

[20] The Authority wrote to Mr Jin on 13 September 2019 formally advising him of the complaint and setting out the details. His explanation was invited.

[21] Mr Jin sent an explanation to the Authority on 20 September 2019. He said he had been practising for only 15 months at the time and had made some mistakes battling with the pressure. He did not have many applications resulting from a small number of clients. Nor did he have much experience in dealing with the situation. When his supervisor told him that the client needed the assessment done urgently and he lost the transcript, he panicked and did not know how to confront his supervisor.

[22] Mr Jin accepted that he had made a wrong decision. He did not deliberately provide a false or misleading document to NZQA and intended to use "this logoed course

content to get the NZQA application approved". The existence of the document did not change the outcome of the application. He had confessed to his supervisor and client and sincerely apologised to them. Furthermore, an additional session had been arranged with his supervisor to prevent it from happening in the future. Mr Jin realised the seriousness of his behaviour and had learned his lesson. In future, he would be more cautious and sophisticated.

[23] On 7 June 2019, Mr Jin's supervisor sent an email to the Authority explaining what she knew about the circumstances of the application. About two weeks after filing the application, Mr Jin had told her about filing the course content document because he had lost the transcript and was afraid to tell her. She had advised him to be honest with the client immediately, to explain the situation and to apologise. She had herself explained it to the client. The assessment report had subsequently been issued by NZQA.

[24] The supervisor told the Authority in her email that she had a serious discussion with Mr Jin about how to handle the situation the next time. While not agreeing with what he did, she respects the way he took responsibility for it. He admitted his wrongdoing to NZQA, to the client and to herself. He was willing to accept punishment for it. The supervisor noted that it was only the second year since Mr Jin had become a licensed adviser and he had learned his lesson.

[25] The Registrar filed a statement of complaint (4 October 2019) in the Tribunal. It alleges that Mr Jin's conduct was dishonest or misleading, a ground of complaint under the Act, and had breached the Code in the following respect:

- (1) placed a school logo and footer on a course content document he created to give it the appearance of an official school document and then filed it with NZQA, knowing it to be false, thereby being dishonest or misleading; or
- (2) alternatively, placed a school logo and footer on a course content document he created to give it the appearance of an official school document and then filed it with NZQA, knowing it to be false, in breach of cl 1 in relation to honesty, professionalism and acting with due care; or
- (3) alternatively, placed a school logo and footer on a course content document he created to give it the appearance of an official school document and then filed it with NZQA, knowing it to be false, thereby deliberately or negligently providing false or misleading documentation, in breach of cl 31(a).

JURISDICTION AND PROCEDURE

[26] 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 Act:

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

[27] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.¹

[28] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.² It has been established to deal relatively summarily with complaints referred to it.³

[29] 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.⁴

[30] The sanctions that may be imposed by the Tribunal are set out in the Act.⁵ The focus of professional disciplinary proceedings is not punishment but the protection of the public.⁶

[31] 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.⁷

[32] The Tribunal has received from the Registrar a statement of complaint (2 October 2019), together with paginated supporting documents.

¹ Immigration Advisers Licensing Act 2007, s 45(2) & (3).

² Section 49(3) & (4).

³ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

⁴ Section 50.

⁵ Section 51(1).

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

⁷ *Z v Dental Complaints Assessment Committee*, above n 6, at [97], [101]–[102] & [112].

[33] There are no submissions from the complainant or the adviser.

[34] No party has requested an oral hearing.

ASSESSMENT

[35] The Registrar relies on the following provisions of 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.

Applications

31. A licensed immigration adviser must:
 - a. not deliberately or negligently provide false or misleading documentation to, or deliberately or negligently conceal relevant information from, the decision maker in regard to any immigration matter they are representing, and

...

(1) *Placed a school logo and footer on a course content document he created to give it the appearance of an official school document and then filed it with NZQA, knowing it to be false, thereby being dishonest or misleading*

[36] In support of an application filed with NZQA on behalf of his client, Mr Jin created a document which was designed to look like an official school document. He inserted the school's logo and added a footer designed to make the document look authentic. His purpose was to speed up the client's application, which Mr Jin had been told was urgent.

[37] There is no suggestion that any of the details set out in the contents document are false. It is the form in which the contents have been presented which has been fabricated, not the contents themselves.

[38] The document is clearly false, as Mr Jin admits. Equally clearly, his conduct was both dishonest and misleading. It was designed to hoodwink NZQA into believing that it was an official document issued by the school.

[39] Mr Jin was not motivated by greed or seeking to acquire any benefit for himself or his client, beyond speeding up a process potentially slowed down by his mistake. However, this is not a defence or excuse for his unprofessional conduct, though it will be a relevant factor in mitigation when it comes to assessing sanctions.

Conclusion

[40] Mr Jin's behaviour in creating the false contents document and filing it with the NZQA was both dishonest and misleading. There is no need to assess the alternative heads of complaint.

OUTCOME

[41] The complaint is upheld. Mr Jin was dishonest and misleading, satisfying a ground of complaint under the Act.

SUBMISSIONS ON SANCTIONS

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

[43] A timetable is set out below. Any request that Mr Jin undertake training should specify the precise course suggested. Mr Jin is requested to advise the Tribunal what immigration practice qualifications he holds. Any request for the repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and the basis of the claim.

[44] As Mr Jin has been found to be dishonest, the Tribunal will consider suspending his licence for a period. The parties are requested to address this possible sanction.

Timetable

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

- (1) The Registrar, the complainant and Mr Jin are to make submissions by **7 September 2020**.
- (2) The Registrar, the complainant and Mr Jin may reply to the submissions of any other party by **21 September 2020**.