

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2020] NZIACDT 37

Reference No: IACDT 011/19

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

**BY** **THE REGISTRAR OF  
IMMIGRATION ADVISERS**  
Registrar

**BETWEEN** **TTD**  
Complainant

**AND** **CHENG ZHENG**  
Adviser

**HEARING:** 3 August 2020

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION**  
**Dated 7 September 2020**

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**REPRESENTATION:**

Registrar: M Brown, S Carr, counsel  
Complainant: No appearance  
Adviser: Self-represented

## **PRELIMINARY**

[1] Mr Cheng (Jeff) Zheng, the adviser, acted for TTD, the complainant, who sought a student visa. In support of the application, Mr Zheng produced to Immigration New Zealand a letter from the complainant's employer falsely stating that she had been granted leave to study in New Zealand and her position would be kept open. In fact, she had resigned.

[2] The complainant made a complaint against Mr Zheng to the Immigration Advisers Authority (the Authority), which has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It is alleged that Mr Zheng's behaviour is dishonest and misleading, a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act), and that he has breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] The essential issue is whether it has been proven that Mr Zheng knew that the complainant had already resigned, at the time he filed the leave letter with Immigration New Zealand.

## **BACKGROUND**

[4] Mr Zheng, a licensed immigration adviser, is a director of New Zealand Integrity Investments Limited, of Auckland.

[5] The complainant, a national of China, had previously visited New Zealand and decided she wished to study English here. She was working in China as a product specialist at the Chinese subsidiary of a foreign car manufacturer.

[6] In September 2018, the complainant's husband made contact with Mr Zheng about the couple studying in New Zealand. He advised them to come here on visitor visas first and then seek a student visa for the complainant.

[7] A Chinese travel agency assisted the complainant and her husband to obtain visitor visas.

[8] While the travel agency filed the visitor visa applications for the couple, the complainant communicated with Mr Zheng by text or voice call on WeChat (a Chinese telecommunications app), in relation to both their visitor applications and proposed student applications.

[9] Mr Zheng told the complainant on 18 September 2018 that it was necessary to have a leave letter “from [her] employer” for the student visa. It had to be an “approved leave letter”. She asked what he meant by that, given that she was going to resign and whether it would be fine if she resigned after getting the letter. He replied that she could resign so long as she had the letter. The complainant asked for a sample letter, which he agreed to send. At 8 pm on 18 September, the complainant asked Mr Zheng whether they could make the leave letter themselves. It is not clear whether his answer at 8:44 pm of “Yes” was to that question, or another question which had been asked at 8 pm.

[10] The exchange concerning the leave letter continued on 25 September 2018.

[11] On 30 September 2018, the complainant and her husband both signed a client agreement with Mr Zheng. He agreed to seek student visas for them. The fee for each of them was RMB 6,000, or RMB 12,000 in total (excluding the fee of Immigration New Zealand).

[12] Then, on 4 October 2018, Mr Zheng asked the complainant to send him a Word document on a blank piece of paper with the employer’s letterhead and its stamp. On an unknown date, Mr Zheng sent a sample leave letter to the complainant on a blank sheet of paper (without the employer’s letterhead) but using the employer’s stamp.

[13] The complainant paid Mr Zheng RMB 6,000 on 23 October 2018. It is not clear whether the fee of RMB 6,000 for the husband’s student visa was paid at the same time.

[14] The complainant resigned from her position at the employer as from 2 November 2018. The employer wrote to her on 9 November 2018 acknowledging her resignation.

[15] On 12 and/or 13 November 2018, Mr Zheng told the complainant that the format and signature of the leave letter should be the same as the one used for the visitor’s visa. He also advised her to date it 30 November or early December, and that a period of three months leave would be enough.

[16] On about 19 November 2018, the complainant sent Mr Zheng the draft letter to approve, to which he replied that it was “OK”.

[17] The complainant and her husband were issued visitor visas by Immigration New Zealand and arrived in this country on 21 November 2018. They initially did some touring here.

*Student visa application lodged*

[18] Mr Zheng lodged the complainant's student visa application on 21 January 2019 (form signed 10 January). She proposed to study English at an Auckland English language school. The application stated that she was employed at the foreign car company and would return to her work in China.

[19] In support of the student visa application, Mr Zheng filed a letter dated 7 December 2018 from the "Owner Advisor" of the branch of her employer where the complainant worked. It stated that she was a product specialist and had applied to continue her holiday for three months of language training. It was understood "she ought to return to China on schedule". The company would "keep her position" during her study in New Zealand. This is the false leave letter.

[20] Immigration New Zealand contacted the complainant's employer and was advised that she had resigned her position.

[21] The complainant became aware of the enquiry from Immigration New Zealand and contacted Mr Zheng. He told her on 1 February 2019 that he had written a letter to Immigration New Zealand, which was "the best solution". She asked him whether he had said in the letter what they had previously discussed. Mr Zheng replied that the details were not important. He would send the letter to her.

[22] In the letter of 1 February 2019 to Immigration New Zealand, Mr Zheng wrote:

1. The complainant originally had approval from her employer for a holiday from early November to the end of December 2018, but she decided to move house. As she had already maximised her holiday allowance, she had to resign in order to both shift house and then go on leave to New Zealand.
2. Her superior, who was also her friend, suggested she resign. She could then receive her bonus time and holiday pay. While she was travelling, she would be able to apply through her friend for the same position and then return after going back to China.
3. The complainant then applied to resign.
4. While she was travelling in New Zealand, she found the country was the perfect place to study, so she decided to stay longer and study English to help her work in China.

5. The complainant then obtained a letter from her colleague and friend, allowing her to extend her holiday. As her return to that previous employer was arranged at the local branch level, she could only obtain a leave letter signed by the friend and not the HR department.
6. Due to “HR reason”, the complainant might not go back to the company. The arrangement she had was not strongly reliable.

*Immigration New Zealand notifies leave letter false*

[23] On 12 February 2019, Immigration New Zealand wrote to the complainant stating that she appeared to have made a statement that was false or misleading. She had produced a letter from her employer stating that her position would be kept for her, but her employer had told the agency she had resigned. The complainant was invited to comment on this information.

*Complainant's explanation for fabricated letter*

[24] The complainant's then solicitor wrote to Immigration New Zealand on 25 February 2019. Mr Zheng had advised the complainant the leave letter was necessary for a student visa. She asked him how this was possible after her resignation. Mr Zheng then advised her to fabricate the letter and gave her a sample letter. She drafted it based on the sample and sent it to him for approval. He advised her of the date to insert on the letter. The complainant deeply regretted her conduct in obtaining a false and misleading letter. She did not intend to provide a false document to Immigration New Zealand. This was done only because she had been instructed by Mr Zheng and believed him to be an experienced and skilled adviser. The complainant had placed total reliance on him.

[25] According to the solicitor, the letter of 1 February 2019 written by Mr Zheng to Immigration New Zealand had not been approved by the complainant, though some of the contents had been discussed with her over the phone. The solicitor set out clarifications to that letter:

1. The statement that the complainant had maximised her holiday and had to resign in order to shift house and take a holiday, was input from Mr Zheng.
2. The statement that her friend suggested she resign and then reapply for the same position after returning to China, was input from Mr Zheng.

3. The paragraph about deciding in New Zealand to study was fabricated by Mr Zheng without the complainant's knowledge. It was completely misleading as the complainant's original intention was to come to New Zealand to study and not as a tourist.
4. The paragraph about not going back to the employer due to "HR reason" was fabricated by Mr Zheng without the complainant's knowledge.

[26] In conclusion, the solicitor advised that the complainant had made a complaint to the Authority against Mr Zheng. A character waiver was sought for the complainant.

[27] Immigration New Zealand wrote to the complainant on 26 February 2019. An assessment had concluded that she did not meet the good character requirements and would normally be ineligible for a visa. She had admitted that her previous immigration adviser had advised her to fabricate a leave letter, in order to provide evidence of a job to which she could return. While she said she did not intend to deceive Immigration New Zealand, her explanation was not credible. It was considered more likely that she had provided forged evidence in the process of applying for the visitor and student visas. Her comments were invited.

[28] The complainant's solicitor replied on 5 March 2019 to Immigration New Zealand's letter of 26 February 2019. It was accepted that the complainant had fabricated the leave letter. However, she had been the victim of an adviser who had given bad and incompetent advice which was the direct cause of the issues raised by the agency. It was very disturbing that Mr Zheng had advised her to deliberately provide false information to Immigration New Zealand.

[29] According to the solicitor, the complainant had done the right thing by complaining to the Authority in the hope this could assist her immigration case as she still wished to pursue studying in New Zealand. It was submitted that there were compelling reasons to waive the character criteria.

[30] The complainant's new immigration adviser, Ms Lucy He, wrote to Immigration New Zealand on 10 May 2019 seeking a reconsideration of the character assessment. It was Mr Zheng who, knowing of the complainant's desire to study, recommended that she apply offshore for a visitor visa and then onshore for a student visa. With the help of a local travel agency, she obtained a visitor visa in October 2018. In support of that visa, the complainant obtained the first leave letter dated 28 September 2018. The couple then arrived in New Zealand and travelled around the country. As she had

identified a weakness in her English, the complainant enrolled in an IELTS course in January 2019.

[31] According to Ms He, the student visa application was then prepared by Mr Zheng. He had already told them when they were in China that the complainant would need to provide a leave approval for the student application. When Mr Zheng was informed that she could not obtain such a letter because she intended to resign prior to coming to New Zealand, he insisted this was compulsory and, if necessary, the letter should be fabricated. Mr Zheng had described it as a procedural formality.

[32] The couple felt overwhelmed by the pressure and decided to fabricate the letter. They had blind faith in Mr Zheng as a professional, licensed adviser. Although the complainant drafted the fabricated letter, knowing it was false, she was under the impression that the letter was just a procedural formality.

[33] Ms He stated that on 12 November 2018, the complainant asked Mr Zheng what date should go on the letter. He gave her advice about the date. Mr Zheng was provided with the draft fabricated letter, which he approved on 19 November. The signed letter of 7 December 2018 was then sent by him to Immigration New Zealand in January 2019.

[34] Immigration New Zealand was further advised by Ms He that the complainant learned of the agency's enquiry on 1 February 2019 and spoke to Mr Zheng. He sent a letter of explanation to the agency that day, without her approval, though he later gave her a copy. Much of what was said was untrue.

[35] Ms He added that once the complainant received Immigration New Zealand's letter of 12 February 2019, she became aware Mr Zheng was acting outside the scope of his power and was unethical. She then consulted a lawyer and made a complaint to the Authority. At that time, the complainant was in the country on an interim visa and had completed the IELTS course with a very high mark.

[36] In her letter to Immigration New Zealand, Ms He went on to make submissions as to why the complainant was of good character and eligible for a character waiver. It was contended that she had no personal intention to deceive Immigration New Zealand. She had no understanding of the application process and was in a debilitated position due to her poor understanding of the English language and of her legal obligations.

[37] In support of Ms He's submission was a letter from the complainant to Immigration New Zealand (10 May 2019). She confirmed the truth of Ms He's explanation. Mr Zheng told her the leave approval letter was a formality and Immigration New Zealand would not check it or call the employer. He had told her she could quit her

job after obtaining the letter. On 25 September 2018, Mr Zheng had sent her the template leave letter with advice to date the letter three weeks after they arrived in New Zealand.

[38] According to the complainant's letter, on 1 February 2019 she was informed that Immigration New Zealand had become aware of her resignation. She immediately asked Mr Zheng why the employer had been contacted, when he had told her the letter was a formality only and nobody would look into it. The letter he wrote to the agency on 1 February contained facts made up by him. The complainant expressed her deep regret for providing Immigration New Zealand with an untrue leave letter and she apologised for this.

[39] Immigration New Zealand wrote to the complainant on 4 June 2019 advising that it had concerns as to whether she was a *bona fide* applicant. It had to be satisfied she had a genuine reason to study, had ties to her home country and had a genuine intent. She had resigned from her employment shortly before coming to New Zealand. Instead of departing before the expiry of her visitor visa, the complainant had decided to change her visa type to that of a student. The agency was concerned that she did not have incentives to return to China. Her comments were invited.

#### *Complainant withdraws visa application*

[40] On 18 June 2019, Immigration New Zealand wrote to the complainant confirming that she had withdrawn her student visa application.

### **COMPLAINT**

[41] Meanwhile, on about 18 February 2019, the complainant had made a complaint to the Authority. She stated that Mr Zheng had committed serious misconduct by advising her to provide a fraudulent and misleading document. Between 18 September and 13 November 2018, he advised her to manufacture a letter from her employer (being the letter of 7 December 2018) telling Immigration New Zealand that while in New Zealand for language training, the company would keep open her job in China. He taught her how to manufacture the letter and sent a sample letter to her. The complainant said she had totally relied on Mr Zheng to assist her with the student visa application.

[42] The documents sent in support of the complaint included a letter (dated 18 February 2019) from the regional manager of the complainant's employer. The manager had been impressed by the complainant and it was unfortunate when she resigned. The manager had confidence she would again be employed by the company

when she returned to China. The issue in relation to the complainant's visa stemmed solely from being misled by the migration agent. She was a person of integrity who deserved a chance of completing her studies in New Zealand.

[43] On being contacted by the Authority, Mr Zheng replied by email on 27 March 2019 denying the allegations in the complaint. He provided comments in the form of annotations marked on the printout of a text exchange between him and the complainant.

[44] The Authority wrote to Mr Zheng setting out particulars of the complaint on 13 June 2019 and invited his explanation.

*Explanation from Mr Zheng*

[45] Mr Zheng wrote to the Authority on 17 June 2019. He said that many lawyers and immigration advisers blame a client's predicament on fabricated documents manufactured by a former adviser. In his view, the complainant had very good English and understood every document she signed. The chat exchanges she had provided were neither complete nor accurate.

[46] When the complainant was made aware by her manager that Immigration New Zealand had contacted the head office, she told Mr Zheng that the letter had been signed by the manager, but not approved by the head office. She had insisted that the position was being kept open by her manager and that she could easily have been reinstated. As an experienced adviser, he doubted that he should keep representing her once he knew this, but felt that she had been the victim of a lengthy HR procedure. Furthermore, he thought she was telling the truth about being forced to resign, though would be reinstated by the local manager upon returning from New Zealand.

[47] According to Mr Zheng, it was the complainant who initially wanted to provide a false leave letter to support her visitor visa application. He declined and told her to go elsewhere. She then used the agent in China for the visitor visa. She came back to him and agreed to provide genuine leave letters. He then agreed to represent her for the student visa.

[48] Mr Zheng accepted that he had provided a sample letter for the visitor visa, but she had said it would be signed by her manager. Once she had that visa, he advised her to get a letter from her employer stating that she would not work for the employer but could retain the post without pay. She sent him the draft letter on 11 November 2018 and he approved it. This was not the letter which he provided as a sample.

[49] Then on 1 February 2019, the complainant called him to advise that the letter had been signed by her branch manager, not by the employer's head office. The manager was questioned by head office and asked why a leave letter had been written for someone who had resigned. The complainant then sent him (Mr Zheng) her resignation letter for the first time. He thought she was telling the truth about the resignation letter being only a formality. Mr Zheng said he decided to help her and drafted a letter to Immigration New Zealand. He should have terminated the service, but sympathised as her husband was a personal friend.

#### *Complaint filed in Tribunal*

[50] The Registrar filed a statement of complaint in the Tribunal on 24 July 2019, together with a paginated file of support documents. It alleges that Mr Zheng was dishonest and misleading, a ground of complaint under the Act, or alternatively breached cls 1, 31(a) and (b) of the Code, in the following ways:

- 1.1 facilitating the fabrication of a leave letter, in that he required a leave letter for the student visa application, provided a sample letter and the dates for the letter and approved the letter;
- 1.2 failing to terminate his services on 1 February 2019 when it appeared that the complainant was providing misleading information to Immigration New Zealand; and
- 1.3 advising Immigration New Zealand in the letter of 1 February 2019, that the complainant had decided when she was in New Zealand in January 2019 to apply for a student visa, yet Mr Zheng had been engaged in September 2018 to provide advice concerning a student visa.

#### **JURISDICTION AND PROCEDURE**

[51] 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.

[52] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>1</sup>

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

[54] 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.<sup>4</sup>

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

[56] 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.<sup>7</sup>

[57] The Tribunal has received the statement of complaint (24 July 2019) and supporting documents from the Registrar.

[58] There is a statement of reply (23 August 2019) from the complainant. Her only submission is to state that the grounds of complaint are correct and she has nothing to add.

[59] Mr Zheng filed a statement of reply (22 August 2019). According to him, the complainant had travelled to New Zealand with the intention of visiting and studying for three months. The decision to carry on with the plan to study more was made after she had studied for four weeks on a visitor visa, during which she developed a favourable attitude to this country.

[60] Mr Zheng said in his statement that the complainant had repeatedly told him that she could go back to her employer after completing her studies in New Zealand. The

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<sup>1</sup> Immigration Advisers Licensing Act 2007, s 45(2) & (3).

<sup>2</sup> Section 49(3) & (4).

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

<sup>4</sup> Section 50.

<sup>5</sup> Section 51(1).

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

<sup>7</sup> *Z*, above n 6, at [97], [101]–[102] & [112].

resignation letter was only, “HR policy for those who need to leave the company for a long period of time”. The complainant’s manager was aware of the leave letter. There was no misleading behaviour by him and no breach of the Code.

[61] The Tribunal issued a Minute on 10 June 2020 directing that the complaint be set down for a hearing. Certain directions were given as to the evidence, including a requirement for statements from the complainant and Mr Zheng. Neither party filed a statement.

[62] The complainant, who appears to reside in China, did not attend the hearing. Nor did she communicate with the Tribunal.

[63] Mr Zheng attended the hearing, as did Ms Brown and Ms Carr, both counsel for the Registrar. The Tribunal heard from Mr Zheng as the only witness.

#### *Evidence of Mr Zheng*

[64] Mr Zheng told the Tribunal that he was not aware that the leave letter of 7 December 2018 was false, in the sense that the complainant had already resigned from the company prior to obtaining the letter, until she told him of her resignation on 1 February 2019. It had always been his advice to her to obtain a genuine letter signed by her manager. She had earlier told him that if her stay in New Zealand was for more than one month, she would have to resign. He had advised her not to resign as she needed a leave letter to secure a visa. The complainant, however, went ahead and resigned, but he did not know that at the time he filed the leave letter with Immigration New Zealand.

[65] According to what the complainant told him on 1 February 2019 in their text and/or voice exchange, the leave letter of 7 December 2018 was actually signed by her local branch manager (who was also her friend). The complainant confirmed to him that the leave letter and company stamp (or seal) were not forged. The stamp was added by the complainant herself, but she had the authority to do that. She also told him that her return to the company after studying in New Zealand had been verbally authorised by the Head Office. Mr Zheng considers the contents of the letter to be genuine. The local manager would have accepted her back. However, its form could be considered suspicious as it was not approved (at least formally) by the Head Office.

[66] Mr Zheng acknowledges that he knew, at the time he sent the 1 February 2019 explanation letter to Immigration New Zealand, that she had resigned. But he makes

that clear in the letter itself. However, despite that, it remained her position that she could return to the employer if she wanted to and the manager had agreed to that.

[67] Turning then to the statement in that letter of 1 February that the complainant had decided while in New Zealand to study here, what happened was that she had commenced a study course of three months duration in the second month of her visit. She could not therefore complete her course without extending the visitor visa or obtaining a student visa. He advised her to obtain a student visa.

[68] It is Mr Zheng's evidence that it was not until the complainant had arrived in New Zealand and had done some touring that she decided what city and school in which to study. Certainly, she had thought about studying in New Zealand while in China, but it was not until arriving here and seeing the country and the people that she decided to go ahead with her study. Hence, the statement in his letter of 1 February that it was in New Zealand and not China where she had made the decision to study, was true.

[69] According to Mr Zheng, contrary to the complainant's allegation, he did obtain her prior approval for the 1 February 2019 letter sent to Immigration New Zealand. He sent it to her on that day and she agreed it without any changes.

[70] There was a text or voice exchange that day between Mr Zheng and the complainant at 5:36 pm to 5:43 pm. According to the English translation of the transcript filed by the Authority in the Tribunal, Mr Zheng informed the complainant that he had found the "best solution" and "have written a letter to INZ". He told the Tribunal that the English transcript (which had originally been produced by the complainant), is neither complete nor accurate. It is Mr Zheng's evidence that after that exchange, he sent her the letter of 1 February (in draft form). She replied at 5:53 pm saying "Yes" or "Great". He then uploaded it on to Immigration New Zealand's website sometime after 6 pm. Following the Tribunal's hearing, he would produce a professional translation of his exchange with the complainant.

#### *Further evidence and submissions*

[71] After the hearing, Ms Brown filed a statement from Ms Joy Lepaola Sunia Vaea (4 August 2020), an investigator with the Authority. She has access to Immigration New Zealand's electronic records which show that the letter of 1 February 2019 was submitted to the agency on that date at 5:18 pm. Ms Brown filed closing submissions on 27 August 2020.

[72] Mr Zheng sent the Tribunal a new and complete translation of his exchange with the complainant on 1 February 2019. He then sent closing submissions on 26 August 2020.

## **ASSESSMENT**

[73] 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
  - b. if they become aware that false or misleading documentation has been provided to, or that relevant information has been concealed from, the decision maker in regard to any immigration matter they are representing:
    - i. inform the client about the potential consequences of continuing to misrepresent themselves to the decision maker
    - ii. discuss with the client the ways the misrepresentation or concealment could be remedied, and
    - iii. should the client not consent to take action to remedy the situation, terminate their services to the client in writing.

*1.1 Mr Zheng was dishonest and misleading, or alternatively breached cls 1, 31(a) and (b) of the Code, by facilitating the fabrication of a leave letter, in that he required a leave letter for the student visa application, provided a sample letter and the dates for the letter and approved the letter*

[74] It is alleged by the Registrar, relying on the complainant's version of the events, that Mr Zheng advised her to obtain a leave letter, in support of her student visa application, and then coached her as to its contents, even going as far as to send her a sample letter.

[75] The leave letter of 7 December 2018 is false. The evidence before the Tribunal is that the signature and company stamp are genuine. It was issued by the local branch

manager, so I will accept it was authorised by the employer. However, it falsely asserts that the complainant's position was being kept open, omitting to disclose her resignation.

[76] Mr Zheng certainly did advise her that a leave letter was necessary for a student visa. Whether it is a requirement of Immigration New Zealand I do not know, but I accept that such a letter would be helpful in persuading the agency of an incentive (namely employment) for the complainant to return to China. Such advice is not evidence of any intent on his part to deceive the agency, irrespective of whether it is a mandatory requirement.

[77] It is also correct that Mr Zheng provided a sample letter, suggested a date range and approved the draft letter composed by the complainant. I agree that Mr Zheng appears to have been unduly involved in the compilation of the letter, but advice to his client as to what information the agency would expect in such a letter is also not, of itself, unusual. His request for a blank piece of paper with the company's letterhead and/or stamp is suspicious, but no more than that.

[78] The allegation as to whether Mr Zheng facilitated the fabrication of what was a false letter is entirely dependent on whether he knew, on 21 January 2019 (the date he sent the letter to agency), that she had resigned in November 2018 prior to the employer's letter of 7 December 2018.

[79] Mr Zheng says he did not know of her resignation until she told him on 1 February 2019. She sent him that day the employer's letter of 9 November 2018 confirming her resignation. He acknowledges that she had early in the process informed him of her intention to resign, but he says he counselled against this. He had advised her to get the manager's signature (in other words, to get an approved letter). I note that Mr Zheng's communications with the complainant on 18 September 2018 do appear, on their face, to seek a letter from the employer.<sup>8</sup> It is not clear whether he answered the complainant's question about creating the letter themselves.<sup>9</sup>

[80] The extent of Mr Zheng's conduct in guiding the complainant in the compilation of a letter to be written by her employer is suspicious. Furthermore, he was a mobile and unreliable witness at the hearing, varying and apparently moulding his evidence to match contemporary documentation that he was asked to explain. On the other hand, the complainant did not attend the hearing to give evidence. While she appears to live in China, she did not explain her absence nor provide a statement to the Tribunal as

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<sup>8</sup> Registrar's documents at 32–34.

<sup>9</sup> At 34.

directed. Mr Zheng did not provide a statement either, but at least he attended the hearing.

[81] Mr Zheng denies knowing on 21 January 2019 that the complainant had resigned in November 2018. The complainant did not attend the hearing to say otherwise. The contemporary documentary evidence is ambiguous. Proof of dishonesty requires cogent evidence.<sup>10</sup> The evidence does not establish that Mr Zheng is lying when he says he did not know she had actually resigned until 1 February 2019. If he was not dishonest, the alternative allegation that he breached the Code in the same way also remains unproven.

[82] The first head of complaint is dismissed.

*1.2 Mr Zheng was dishonest and misleading, or alternatively breached cls 1, 31(a) and (b) of the Code, by failing to terminate his services on 1 February 2019 when it appeared that the complainant was providing misleading information to Immigration New Zealand*

[83] The issue as to whether Mr Zheng should have terminated his engagement on about 1 February 2019, on knowing that the leave letter of 7 December 2018 produced earlier to Immigration New Zealand was false, is really about whether his explanatory letter of 1 February 2019 is also false. A professional person who had not participated in the earlier subterfuge would be expected to help a client remedy the consequences of providing false information to the agency. The mere fact that evidence filed by him turned out to be untrue does not require him to disengage with the complainant. What the situation on 1 February required from him was honesty in setting out her explanation to Immigration New Zealand. If she was not prepared to be honest, then he would have to terminate the engagement.

[84] The letter of 1 February 2019 acknowledges that the complainant had resigned. After all, it was plain to both Mr Zheng and the complainant that Immigration New Zealand already knew this.

[85] The complainant says much of the letter was made up by Mr Zheng without her knowledge. Whether that is true, I do not know, though she does appear to have retrospectively approved it (see later). However, as can be seen from the later analysis, the statement in the letter that the complainant had made the decision to study in this country only after arriving here, is false. Mr Zheng knew that. If that was the information that the complainant instructed him to provide to Immigration New Zealand, as Mr Zheng contends, then he should have terminated the instructions, rather than send the letter of

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<sup>10</sup> Z, above n 6.

1 February with that false statement. Mr Zheng has breached cl 31(b)(iii) of the Code. The second head of complaint is upheld.

1.3 *Mr Zheng was dishonest and misleading, or alternatively breached cls 1, 31(a) and (b) of the Code, by advising Immigration New Zealand in the letter of 1 February 2019, that the complainant had decided when she was in New Zealand in January 2019 to apply for a student visa, yet Mr Zheng had been engaged in September 2018 to provide advice concerning a student visa*

[86] Once the complainant was tipped off that Immigration New Zealand had become aware that the leave letter was false, she contacted Mr Zheng by text and/or voice call and discussed with him what explanation would be provided to the agency. According to the complainant, the letter of 1 February 2019 that Mr Zheng wrote to the agency was not approved by her and contained facts made up by him. He did not send it to her until after it had been sent to Immigration New Zealand.

[87] There is a dispute between the complainant and Mr Zheng as to whether the factual circumstances set out in the letter are true and whether they were discussed or approved by her.

[88] While I do not know the extent to which the contents of that letter of 1 February 2019 had come from the complainant, I reject Mr Zheng's evidence to the Tribunal that he sent the draft letter of 1 February to her for prior approval. He claims he sent it after his communications with her at 5:36 – 5:43 pm on that day and that she approved it at 5:53 pm, before he uploaded it to Immigration New Zealand after 6 pm. But Ms Vaea's statement proves that Mr Zheng filed the finalised letter of 1 February with the agency at 5:18 pm, before those communications with the complainant.

[89] The complainant does appear to have approved the letter at 5:53 pm, but that was the letter already provided to the agency. Even the new translation of the 1 February exchange between the two of them produced by Mr Zheng supports the complainant's assertion that she was not sent the letter until after the agency had it.

[90] Whatever had been discussed by them prior to uploading the letter to Immigration New Zealand, it was provided without the complainant's express approval. What he sent to her after his communications with her was the letter he had already given to Immigration New Zealand. I accept that she then appears to retrospectively approve it.

[91] Mr Zheng belatedly conceded in his closing submissions to the Tribunal, that the letter was not sent to the complainant until after it had been uploaded to Immigration

New Zealand. He did not though explain why he had told the Tribunal it had been sent to her first. This is an example of his unreliable and mobile evidence in the face of contradictory evidence.

[92] The following is the statement made in the letter which the Registrar says is false, or at least misleading:

**Brief study in NZ:**

During her holiday in NZ, ... She felt it is a perfect country to learn and study for English. Soon after she landed, [the complainant] decided to stay for a bit longer and to study some English to help her work better in China. She then obtained a letter from her colleague also a friend to allow her to extend her holiday ...

[93] The complainant had arrived in New Zealand on 21 November 2018 and the extended holiday letter being referred to was the leave letter dated 7 December 2018. Mr Zheng was therefore telling Immigration New Zealand that the complainant made the decision (to remain in New Zealand in order to study) after she had arrived and before obtaining the employer's leave letter of 7 December 2018. This was to justify the change of visa type sought by her, from the visitor visa she arrived on to the student visa she wished to obtain.

[94] In his evidence to the Tribunal, Mr Zheng maintained that the complainant made the decision to study while in New Zealand. This was not true. The complainant had made that decision before she obtained the visitor visa, let alone arrived here. It was the basis of her initial instructions to Mr Zheng in September 2018. Indeed, the strategy of obtaining a visitor visa first and then switching to a student visa was his, told to her while she was in China.

[95] It must be remembered that Mr Zheng had entered into a client agreement with the complainant on 30 September 2018 solely for the purpose of a student visa. Mr Zheng even recorded her occupation in the agreement as a student. The early communications between the two of them from 18 September primarily concern what was needed for a student visa. She had even paid him the fee of RMB 6,000 for a student visa on 23 October 2018, before her arrival in this country. I accept the complainant's statement that it was "completely misleading" of Mr Zheng to say she decided to study only once she was in New Zealand, as it was her original intention to come here to study and not as a tourist.<sup>11</sup>

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<sup>11</sup> Letter from the complainant's solicitor to Immigration New Zealand (25 February 2019) at [11](iii), Registrar's bundle at 99.

[96] At 1 February 2019, Mr Zheng knew the decision to study in New Zealand had been made before the complainant arrived here. He was endeavouring to hoodwink Immigration New Zealand into believing the decision to study, and hence the need to switch to a different visa, was made only after her arrival. The agency would otherwise be suspicious of whether she had been a genuine visitor on arrival. If so, the new type of visa sought was far more likely to be declined.

[97] I find that Mr Zheng provided false information to Immigration New Zealand on 1 February 2019 in order to mislead the agency. This satisfies the ground of complaint of dishonest or misleading behaviour under the Act.

[98] In light of this finding, there is no need to assess whether the same conduct amounts to a breach of the Code.

## **OUTCOME**

[99] Mr Zheng has breached cl 31(b)(iii) of the Code, in failing to terminate his instructions rather than send a letter with untrue information to Immigration New Zealand. Furthermore, he has been dishonest, in that he falsely advised Immigration New Zealand on 1 February 2019 that the complainant had decided after her arrival, to remain here to study.

## **SUBMISSIONS ON SANCTIONS**

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

[101] A timetable is set out below. Any request that Mr Zheng 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. As Mr Zheng has been found to be dishonest, the Tribunal will give consideration to removing him from the profession for a period of time and/or preventing him from reapplying for one or more types of licence. The parties are asked to address this.

### *Timetable*

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

- (1) The Registrar, the complainant and Mr Zheng are to make submissions by **29 September 2020**.

- (2) The Registrar, the complainant and Mr Zheng may reply to submissions of any other party by **13 October 2020**.

### **ORDER FOR SUPPRESSION**

[103] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>12</sup>

[104] There is no public interest in knowing the name of Mr Zheng's client.

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

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D J Plunkett  
Chair

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<sup>12</sup> Immigration Advisers Licensing Act 2007, s 50A.