

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2020] NZIACDT 39

Reference No: IACDT 025/19

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

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

**BETWEEN** **IK**  
Complainant

**AND** **YING TIAN (aka TINA QIN)**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

---

**DECISION**  
**Dated 23 September 2020**

---

**REPRESENTATION:**

Registrar: Self-represented  
Complainant: N Mitchell, counsel  
Adviser: No appearance

## **PRELIMINARY**

[1] Ms Ying Tian (aka Tina Qin), the adviser, acted for IK, the complainant, who sought a student visa. The application was unsuccessful. There were numerous failures by Ms Tian in her relationship with the complainant and her record keeping.

[2] The complainant made a complaint against Ms Tian to the Immigration Advisers Authority (the Authority). It was referred to the Tribunal by the Registrar of Immigration Advisers (the Registrar). The Registrar alleges Ms Tian's conduct amounts to negligence, a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act), and also breaches the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] Ms Tian has chosen not to respond to the complaint.

## **BACKGROUND**

[4] Ms Tian, a licensed immigration adviser, is a director of Abstract Solution Limited, of Auckland. She has been licensed since May 2009.

[5] The complainant, a national of China, engaged Ms Tian in about February 2017 to seek a student visa for him. He was then in New Zealand on a visitor visa.

[6] On 7 April 2017, Ms Tian lodged a student visa application for the complainant.

[7] Immigration New Zealand wrote to Ms Tian and the complainant on 1 May 2017 advising that the latter had insufficient funds for his maintenance and accommodation. Nor had he completed all the questions on the form, so further information was required.

[8] On about 2 May 2017, Ms Tian sent further information to Immigration New Zealand.

[9] On 11 May 2017, Immigration New Zealand wrote to Ms Tian declining the student visa application. It was not satisfied the complainant had sufficient funds. One of the financial documents provided had not been translated into English, so it could not be assessed. As his interim visa had expired, he was unlawfully in New Zealand as from that day, 11 May, and was liable for deportation.

[10] As Ms Tian did not inform the complainant of the outcome of the application or its consequences in terms of his immigration status, on numerous occasions he texted or telephoned her asking if there was any news. She would give such replies as; she could not find any person, she would let him know shortly, she would make enquiries, her

cellphone had trouble, she would tell him that afternoon, she would call him later, her family member was ill, or nobody answered her call. The dates of these communications are not clear.

[11] On 12 May 2017, Ms Tian lodged a request for a discretionary student visa for the complainant under s 61 of the Immigration Act 2009. For an unknown reason, her covering letter was dated 16 March 2017. Further information was sent by Ms Tian to Immigration New Zealand on 18 May 2017.

[12] Immigration New Zealand declined the s 61 request on 6 June 2017 in a letter sent to Ms Tian. No reason was given, nor was one required to be given. The letter advised that the complainant was unlawfully in New Zealand and had to leave, otherwise he was liable for deportation.

[13] As Ms Tian did not inform the complainant of the outcome of the application or its immigration consequences, he continued to text or telephone her seeking news of the applications. She continued her practice of claiming not to know.

[14] The complainant engaged his present counsel, Ms Mitchell, in January 2019. She contacted Immigration New Zealand and was informed of the decline of the complainant's visa applications and his unlawful status.

[15] Counsel contacted Ms Tian on multiple occasions requesting evidence that the complainant had been informed of the decline of the student and s 61 visa applications, but she did not provide any evidence.

## **COMPLAINT**

[16] On about 21 March 2019, the complainant made a complaint against Ms Tian to the Authority. His counsel, in her letter of that date, alleged among other matters that Ms Tian did not inform the complainant of the outcome of the student or s 61 visa applications. Counsel pointed out that the Tribunal had already upheld a similar complaint against Ms Tian.<sup>1</sup>

[17] On 7 June 2019, the Registrar and an investigator attended the premises of Ms Tian and requested the complainant's file, which was handed over.

[18] The investigator sent an email to the complainant's counsel on 31 July 2019 referring to the lack of any record of communications between the complainant and Ms Tian in the latter's files. Counsel was asked to provide evidence of any such

---

<sup>1</sup> *Xu v Tian* [2018] NZIACDT 42 & 49.

communications. On 15 August 2019, counsel produced copies of telephone call logs and text messages.

[19] In response to further questions from the investigator, counsel said on 27 September 2017 that the complainant did not sign any contract with Ms Tian and that he paid her a total of \$24,000, including school fees. Apart from \$7,000 transferred by the bank on 16 February 2017, the remainder was paid to Ms Tian in cash.

[20] The Authority wrote to Ms Tian on 22 October 2019 informing her of the details of the complaint and inviting her explanation. She provided no substantive response to the Authority.

#### *Complaint referred to the Tribunal*

[21] The Registrar referred the complaint to the Tribunal on 19 December 2019, alleging that Ms Tian's conduct satisfies the statutory ground of negligence and breaches the following provisions of the Code:

(1) Negligence—

- 1.1 failing to inform the complainant that his student visa application had been declined and he was unlawfully in New Zealand;
- 1.2 failing to inform the complainant that a subsequent s 61 request for a student visa had been refused;
- 1.3 failing to record any communications with the complainant;
- 1.4 failing to provide the complainant with a written agreement for her services;
- 1.5 failing to provide the complainant with invoices for her services and disbursements; and
- 1.6 failing to provide the complainant with receipts for cash payments.

(2) Alternatively—

- 2.1 failing to conduct herself with diligence and due care in giving advice and updates to the complainant, in breach of cl 1;
- 2.2 failing to provide the complainant with a written agreement for her services, in breach of cl 18(a);

- 2.3 failing to provide the complainant with invoices for fees and disbursements, in breach of cl 22;
- 2.4 failing to provide the complainant with receipts for cash payments, in breach of cl 23;
- 2.5 failing to confirm in writing to the complainant when applications were lodged and to make on-going timely updates, in breach of cl 26(b); and
- 2.6 failing to maintain a well-managed filing system which included copies of all written communications and records of material oral communications with the complainant, in breach of cl 26(a)(iii) and (d).

## **JURISDICTION AND PROCEDURE**

[22] 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.

[23] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>2</sup>

[24] 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>3</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>4</sup>

[25] 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>5</sup>

---

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

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

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

<sup>5</sup> Section 50.

[26] The sanctions that may be imposed by the Tribunal are set out in the Act.<sup>6</sup> The focus of professional disciplinary proceedings is not punishment but the protection of the public.<sup>7</sup>

[27] 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>8</sup>

[28] The Tribunal has received from the Registrar the statement of complaint (19 December 2019), with a file of paginated supporting documents.

[29] Counsel for the complainant advised the Tribunal on 24 January 2020 that her client was happy with the statement of complaint and did not wish to file a statement of reply.

[30] There is no statement of reply nor any submissions from Ms Tian.

[31] No party requests an oral hearing.

## **ASSESSMENT**

[32] 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.

### **Written agreements**

18. A licensed immigration adviser must ensure that:
  - a. when they and the client decide to proceed, they provide the client with a written agreement

...

### **Invoices**

22. A licensed immigration adviser must, each time a fee and/or disbursement is payable, provide the client with an invoice containing a full description of the services the fee relates to and/or disbursements that the invoice relates to.

### **Receipts**

---

<sup>6</sup> Section 51(1).

<sup>7</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).

<sup>8</sup> *Z v Dental Complaints Assessment Committee*, above n 7, at [97], [101]–[102] & [112].

23. A licensed immigration adviser must, each time a payment is received in cash from the client, provide the client with a receipt, clearly indicating which invoice(s), if applicable, the receipt relates to.

#### **File management**

26. A licensed immigration adviser must:
- a. maintain a hard copy and/or electronic file for each client, which must include:
    - ...
    - iii. copies of all written communications (including any file notes recording material oral communications and any electronic communications) between the adviser, the client and any other person or organisation
    - ...
  - b. confirm in writing to the client when applications have been lodged, and make on-going timely updates
    - ...
  - d. maintain a well-managed filing system
    - ...

[33] I propose to assess first whether the various provisions of the Code have been breached.

*2.1 Failing to conduct herself with diligence and due care in giving advice and updates to the complainant, in breach of cl 1*

[34] The particular allegation at item 2.1 duplicates that at 2.5 and need not be reviewed.

*2.2 Failing to provide the complainant with a written agreement for her services, in breach of cl 18(a)*

[35] For each successive visa application made, Ms Tian was required to enter into a separate written client agreement with the complainant, or at the very least a new addendum to an existing agreement.

[36] Ms Tian has produced no agreement for either the student or s61 visa applications.

[37] Item 2.2 of the complaint is upheld. Ms Tian has breached cl 18(a) of the Code.

2.3 *Failing to provide the complainant with invoices for fees and disbursements, in breach of cl 22*

2.4 *Failing to provide the complainant with receipts for cash payments, in breach of cl 23*

[38] The complainant's counsel informed the Authority by email on 27 September 2017 that the complainant paid Ms Tian a total of \$24,000, including school fees. Some was paid in cash.

[39] There is corroborative evidence in the form of the complainant's bank statements which show a number of payments through the banking system to "Abstract". For example, on 16 February 2017, \$7,266 was paid by the complainant to Abstract.<sup>9</sup> There is evidence of bank transfers to Abstract amounting to \$1,011 in March and April 2017.<sup>10</sup> There is also evidence that Ms Tian paid Immigration New Zealand's student visa fee of \$250 on behalf of the complainant.<sup>11</sup>

[40] The obligation to provide an invoice is not just for fees, but for disbursements also. Since Ms Tian was paid partially in cash, she was also required to provide receipts.

[41] Ms Tian does not deny that payments were made to her, including in cash, and that she issued no invoices and no receipts.

[42] The particulars of the complaint at 2.3 and 2.4 are upheld. Ms Tian has breached cls 22 and 23 of the Code.

2.5 *Failing to confirm in writing to the complainant when applications were lodged and to make on-going timely updates, in breach of cl 26(b)*

2.6 *Failing to maintain a well-managed filing system which included copies of all written communications and records of material oral communications with the complainant, in breach of cl 26(a)(iii) and (d)*

[43] Ms Tian's file produced to the Authority had no record of any communication with the complainant. She told the Registrar on 7 June 2019 on an inspection of her premises that she did not keep any record of communications with the complainant.

---

<sup>9</sup> Registrar's supporting documents at 322-323.

<sup>10</sup> Registrar's supporting documents at 315, 317.

<sup>11</sup> Registrar's supporting documents at 289.

[44] The complainant was able to provide copies of some texts and transcripts of calls between the two of them, including in December 2018 and January 2019. They show that the complainant did not know what had happened to the immigration applications. Ms Tian gave vague and evasive answers to queries from the complainant as to the status of his visa applications.

[45] The complainant's counsel says she telephoned Immigration New Zealand on 17 January 2019 to find out what had happened to the student visa application. The agency informed her that the complainant's visitor visa had expired on 8 March 2017 and that both subsequent applications had been refused. A file note made by the immigration officer confirms this enquiry.

[46] I find that the complainant was not advised in writing that the applications had been lodged. I accept his evidence that he was not advised at all of the decline of the student visa or discretionary visa applications or of his unlawful status. Ms Tian has produced no evidence that she told him this critical information.

[47] Nor did Ms Tian have a record of her advice (written or oral) to the complainant concerning any application, including no file note or written confirmation to him of oral advice that must have been given from time to time. Ms Tian clearly had a poorly maintained filing system.

[48] There is no denial from Ms Tian of any of these particulars of the complaint.

[49] Items 2.5 and 2.6 of the complaint are upheld. Ms Tian has breached cl 26(a)(iii), (b) and (d) of the Code.

[50] Having upheld the second head of complaint, there is no need to assess the alternative first complaint of negligence.

## **OUTCOME**

[51] I uphold items 2.2 to 2.6 of the complaint. Ms Tian has breached cls 18(a), 22, 23, 26(a)(iii), (b) and (d) of the Code.

## **SUBMISSIONS ON SANCTIONS**

[52] As the complaint has been upheld, the Tribunal may impose sanctions pursuant to s 51 of the Act. Ms Tian's refusal to engage with the Authority or the Tribunal in addressing the complaint aggravates the sanctions.

[53] Two similar complaints to the Tribunal against Ms Tian have previously been upheld.<sup>12</sup> Sanctions for this complaint will take into account both those complaints. As three complaints have now been upheld, the Tribunal will consider removing Ms Tian from the profession for a period and/or preventing her from holding a full licence for a period, including whether any conditions should be attached to any such sanction. Parties are requested to address this in their submissions. Ms Tian is urged to seek legal advice, or at the very least engage with the Tribunal even at this stage of the complaint process.

[54] A timetable is set out below. Any request that Ms Tian undertake training should specify the precise course suggested. Any requests 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 basis of the claim.

#### *Timetable*

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

- (1) The Registrar, the complainant and Ms Tian are to make submissions by **14 October 2020**.
- (2) The Registrar, the complainant and Ms Tian may reply to submissions of any other party by **28 October 2020**.

#### **ORDER FOR SUPPRESSION**

[56] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>13</sup>

[57] There is no public interest in knowing the name of Ms Tian's client.

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

---

D J Plunkett  
Chair

---

<sup>12</sup> *Xu v Tian* [2018] NZIACDT 42 & 49, *Y(O)R v Tian* [2020] NZIACDT 23 & 36.

<sup>13</sup> Immigration Advisers Licensing Act 2007, s 50A.