

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2020] NZIACDT 45

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

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 14 October 2020**

REPRESENTATION:

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

INTRODUCTION

[1] Mr Cheng (Jeff) Zheng, the adviser, acted for TTD, the complainant, who sought a student visa. 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. Furthermore, when Immigration New Zealand found out about the resignation, Mr Zheng sent a letter of explanation to the agency which said, amongst other things, that the complainant had decided to study in this country only after arriving here. There was an issue as to whether this was true.

[2] A complaint to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It was upheld in a decision issued on 7 September 2020 in *TTD v Zheng*.¹

[3] It is now for the Tribunal to determine the appropriate sanctions.

BACKGROUND

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

[5] Mr Zheng, a licensed immigration adviser at the relevant time, is a director of New Zealand Integrity Investments Limited, of Auckland. His licence expired on 3 September 2020.

[6] The complainant, a national of China, made contact with Mr Zheng in September 2018 about studying in New Zealand. He advised her and her husband to come on visitor visas first and then to seek student visas. A Chinese travel agency assisted them to obtain visitor visas.

[7] Mr Zheng continued to advise the complainant on the visitor visas and their proposed student visas. She and her husband signed a client agreement with Mr Zheng on 30 September 2018 concerning applications for student visas for them both.

[8] The complainant resigned from her position at the employer as from 2 November 2018.

¹ *TTD v Zheng* [2020] NZIACDT 37.

[9] Immigration New Zealand duly issued visitor visas to the complainant and her husband and they arrived in this country on 21 November 2018. They initially did some touring here.

[10] Following advice from Mr Zheng on the form and content of a leave letter from the complainant's employer, she obtained such a letter dated 7 December 2018. It stated that she had applied to continue her holiday for three months for the purpose of language training and she would then return to China. The company would keep her position open during her study. This was false, as the complainant had already resigned.

[11] When the complainant became aware that Immigration New Zealand had been informed of her resignation, she contacted Mr Zheng who then wrote a letter to the agency (dated 1 February 2019) acknowledging that she had resigned, but explaining that it was only after she had arrived in New Zealand that she had made the decision to study here.

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

Decision of the Tribunal

[13] The Tribunal found that the leave letter of 7 December 2018 was false, since it asserted that the complainant's position was being kept open, when in fact she had resigned.

[14] Mr Zheng's conduct in guiding the complainant in the compilation of the letter was found to be suspicious. Furthermore, he was a mobile and unreliable witness at the hearing, varying and apparently moulding his evidence to match contemporary documentation he was asked to explain.

[15] On the other hand, unlike the complainant, Mr Zheng had attended the hearing. Nor had the complainant provided any explanation for her absence, nor a statement as directed by the Tribunal.

[16] As proof of dishonesty required cogent evidence, it could not be established that Mr Zheng was being untruthful when he said he did not know that the complainant had resigned until she informed him on 1 February 2019. It had not therefore been established that Mr Zheng knew the leave letter of 7 December 2018 was false, at the time he filed it with Immigration New Zealand.

[17] The Tribunal, however, concluded that Mr Zheng had given a false explanation to Immigration New Zealand on 1 February 2019 when he said that the complainant had decided to study only when she was in New Zealand. That decision had been made and Mr Zheng engaged for the purpose of a student visa while she was in China and therefore prior to coming to New Zealand. Additionally, Mr Zheng's evidence to the Tribunal as to when he had sent the 1 February 2019 letter to the complainant was untruthful. It was not until after the hearing, in the face of contrary evidence from the Authority, that he conceded the complainant's correct version of that event (that she was not given the letter until after it had been uploaded by Mr Zheng to Immigration New Zealand).

[18] Mr Zheng was therefore found to have been dishonest in falsely advising Immigration New Zealand on 1 February 2019 that the complainant had decided to remain here to study only after her arrival. He had also breached cl 31(b)(iii) of the Licensed Immigration Advisers Code of Conduct 2014 (the Code) in failing to terminate his instructions rather than send a letter with untrue information to Immigration New Zealand.

SUBMISSIONS

Submissions from the Registrar

[19] Ms Brown, counsel for the Registrar, in her submissions (dated 17 September 2020) notes that this is Mr Zheng's first appearance before the Tribunal. He was found to have provided false information to Immigration New Zealand in order to mislead the agency into believing the complainant had decided to study after her arrival in New Zealand when it had been her original intention to study here. He had also been a mobile and unreliable witness at the hearing, had not admitted any wrongdoing or shown any remorse.

[20] The Registrar submitted that the appropriate sanctions would be:

- (1) censure;
- (2) an order preventing Mr Zheng from reapplying for any licence for a period of up to 12 months from the date the order is made; and
- (3) an order for payment of a penalty in the vicinity of \$3,000.

Submissions from the complainant

[21] There are no submissions from the complainant.

Submissions from Mr Zheng

[22] In his submissions (dated 1 October 2020), Mr Zheng admits that the statement made to Immigration New Zealand in the letter of 1 February 2019 (that the complainant had made the decision to study while in New Zealand) was “incomplete”. He should have fully stipulated that the couple had long decided to study overseas and were “90% sure that they will stay in NZ to study”. However, due to the urgency in replying to Immigration New Zealand, he neglected to include the full spectrum of their decision-making process.

[23] Furthermore, Mr Zheng admits that he sent the 1 February 2019 letter to the complainant only after it had been uploaded to Immigration New Zealand. However, the content had been verbally agreed by her before it was sent. It was his mistake not to send the letter to her for her approval before uploading it and he will learn from this mistake.

[24] According to Mr Zheng, the contradictory evidence he gave to the Tribunal on two matters was due to his confusion in defending himself at the hearing. His statements were wrong but not deliberately so.

[25] Mr Zheng contends that his conduct does not bear the hefty sanction of prohibition for up to 12 months as sought by the Registrar. According to him, the adviser appointed to replace him made the same statement to Immigration New Zealand that he did (that the complainant decided to study after she reached New Zealand). It would not be appropriate to discipline him but not her or others, including a lawyer, who made the same statement. Nor would the proposed prohibition be aligned with some of the Tribunal’s earlier decisions (which are discussed later).

[26] Mr Zheng also points out that in six years of practising, he has acted in more than 600 cases, resulting in a positive contribution to the New Zealand education and immigration sectors. The sanction of prohibition would deprive him of his livelihood and harm the already fragile and troublesome education sector.

[27] Mr Zheng says he would voluntarily take the refresher course in New Zealand Immigration Advice, if no prohibition is sanctioned.

JURISDICTION

[28] The Tribunal's jurisdiction to impose sanctions is set out in the Immigration Advisers Licensing Act 2007 (the Act). Having heard a complaint, the Tribunal may take the following action:²

50 Determination of complaint by Tribunal

After hearing a complaint, the Tribunal may—

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

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

51 Disciplinary sanctions

(1) The sanctions that the Tribunal may impose are—

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

² Immigration Advisers Licensing Act 2007.

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

3 Purpose and scheme of Act

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

[31] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:³

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

...

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

...

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

[32] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the profession itself.⁴

[33] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.⁵

³ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee*, above n 3, at [151].

⁵ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

[34] The most appropriate penalty is that which:⁶

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

DISCUSSION

[35] Mr Zheng has been found to have been dishonest in providing a false explanation to Immigration New Zealand as to when the complainant decided to study here. There was a reason for this. It was to justify the change of visa sought by the complainant, as Immigration New Zealand are suspicious of such changes since they cast into doubt the expressed intention of the original visa under which the traveller arrived in this country.

[36] It was further found that Mr Zheng had breached cl 31(b)(iii) of the Code in failing to terminate his instructions rather than send a letter (dated 1 February 2019) with untrue information to Immigration New Zealand.

[37] Additionally, Mr Zheng was found to be an unreliable and untruthful witness. He repeated the untruthful story about the timing of the decision to study. He was also untruthful about when he sent the letter of 1 February 2019 to the complainant and therefore whether he had her approval for the letter prior to sending it. His evidence was changeable in the face of documents or other evidence he was asked to explain. Mr Zheng says he was confused, due to the age of the events. I do not accept this. These events were not very long ago. Whether Mr Zheng had approval for the content of the letter was evidence of some importance and he would have thought about the timing of sending the letter to her, prior to the hearing.

⁶ *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51] and *Katamat v Professional Conduct Committee* [2012] NZHC 1633, [2013] NZAR 320 at [49].

[38] Mr Zheng now belatedly concedes that his letter of 1 February 2019 was “incomplete”. It is not merely incomplete. It falsely states that the decision to study was made in New Zealand. The complainant had decided to do so prior to her arrival and had instructed and paid Mr Zheng for a student visa before departing China. There is no fulsome admission of wrongdoing from him. He does not acknowledge that he breached any professional obligation. He expresses no apology, nor any remorse for his conduct. I cannot be confident he has learned any lesson from the complaint or the disciplinary process.

[39] It is noted that this is Mr Zheng’s first appearance before the Tribunal.

Caution or censure

[40] I agree with the Registrar that Mr Zheng should be censured. A caution would not reflect the seriousness of his misconduct.

Suspension, cancellation or preventing relicensing

[41] Mr Zheng’s licence has expired. The Registrar contends that Mr Zheng should be prevented from reapplying for any licence for up to 12 months.

[42] Mr Zheng has been found to have been dishonest in that he falsely advised Immigration New Zealand that the complainant had decided to study only after her arrival in this country. This is exacerbated by his untruthful evidence to the Tribunal. He has made no apology or expressed any remorse.

[43] Mr Zheng contends that other advisers and a lawyer made essentially the same claim (that the decision to study was made in New Zealand) that he did. It would therefore be inappropriate to discipline only him by a “hefty” sanction.

[44] Mr Zheng does not identify the statements by the others, except that of Ms He, a licensed adviser, who wrote to Immigration New Zealand on 10 May 2019. Ms He, however, disclosed the earlier consideration by the couple of student visas. While in one paragraph of her letter she suggests the decision was made in New Zealand (at [19]), it is clear from earlier passages that consideration of studying (if not the decision) had been made in China before coming here (at [6]–[9]). Mr Zheng made no mention whatsoever in his letter of any thought being given to studying here, prior to departing China.

[45] In his submissions, Mr Zheng refers to the Tribunal's decision in *FBN v Broadway*.⁷ Ms Broadway had been found to have been dishonest in presenting to the Authority a client agreement bearing a signature forged by Ms Broadway herself. Her licence had already been cancelled by the Registrar. The Tribunal directed that she be prevented from applying for a licence for eight months. In addition, she was ordered to pay a financial penalty of \$3,500.

[46] Mr Zheng also refers to the decision in *Registrar v Ryan*.⁸ This has to be considered in conjunction with *Singh v Ryan*.⁹ Mr Ryan was found to have acted for many clients who had obtained work and/or residence visas as a result of false employment offers from companies controlled by Mr Ryan himself. He had already surrendered his licence by the time of the Tribunal's sanctions decision. Mr Ryan was prevented from reapplying for any licence for two years, the maximum period. In both cases, he was also fined \$10,000, the maximum financial penalty.

[47] I note also the Tribunal's recent decision in *KBN v Wharekura*.¹⁰ Mr Wharekura was found to have been dishonest, in creating two fake emails purportedly from the Minister of Immigration, which he had provided to his client. He was suspended for nine months, as well as fined \$6,500.

[48] There is also the Tribunal's decision in *NJUM v Vole*.¹¹ Mr Vole was found to have been dishonest, since he had failed to disclose to Immigration New Zealand the true date of the client's marriage. He had also presented a false document to Immigration New Zealand (in his capacity as a Justice of the Peace, he had certified as a true copy a document he had not actually sighted). Mr Vole was suspended for six months and ordered to pay a penalty of \$2,500, described by the Tribunal as light but appropriate given Mr Vole's circumstances.

[49] As helpful as the Tribunal's earlier decisions are, none are identical to Mr Zheng's wrongdoing or his circumstances. There are admissions of wrongdoing and expressions of remorse in some cases, but not from Mr Zheng. The periods of suspension or prohibition must also be considered as part of the totality of sanctions in each case.

[50] An adviser should be deprived of his or her livelihood only where other less restrictive sanctions would not adequately protect the public or reflect the seriousness of the wrongdoing. I conclude that is the case here. Mr Zheng lied to Immigration New Zealand in order to assist his client to obtain a change of visa. As I am not satisfied he

⁷ *FBN v Broadway* [2019] NZIACDT 77.

⁸ *Registrar v Ryan* [2020] NZIACDT 13.

⁹ *Singh v Ryan* [2020] NZIACDT 14.

¹⁰ *KBN v Wharekura* [2020] NZIACDT 15.

¹¹ *NJUM v Vole* [2020] NZIACDT 22.

has learned any lesson, the protection of the public also requires that he be removed from the profession for a period, albeit not for a long period. Mr Zheng will be prevented from applying for any licence for six months from today's date.

Financial penalty

[51] The Registrar submits that Mr Zheng should be directed to pay a financial penalty of \$3,000.

[52] Having regard to the level of penalty in the Tribunal's earlier decisions and to Mr Zheng's loss of income as a result of the prohibition for six months (though in fact, he is not practising at the moment anyway), I conclude that the financial penalty should be \$3,500.

OUTCOME

[53] Mr Zheng is:

- (1) censured;
- (2) prevented from applying for any licence for six months from today's date; and
- (3) ordered to immediately pay to the Registrar \$3,500.

ORDER FOR SUPPRESSION

[54] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹²

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

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

D J Plunkett
Chair

¹² Immigration Advisers Licensing Act 2007, s 50A.