

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2022] NZIACDT 3

Reference No: IACDT 021/21

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **IL**
Complainant

AND **APURVA KHETARPAL**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 10 February 2022

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: No appearance

PRELIMINARY

[1] The complainant, IL, was in New Zealand on a work visa and instructed the adviser, Ms Apurva Khetarpal, to renew the visas of herself and her family. The adviser committed numerous breaches of her professional obligations.

[2] A complaint by the complainant against Ms Khetarpal to the Immigration Advisers Authority (the Authority) has been referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It is alleged that she has breached the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] In accordance with Ms Khetarpal's usual practice, she has refused to engage with the disciplinary process.

BACKGROUND

[4] The complainant, a national of India, was in New Zealand on a work visa, expiring on 26 May 2019. Her husband and son, the latter having been born in New Zealand, were here on temporary visas.

[5] Ms Khetarpal, a licensed immigration adviser, was a director of Ivisas Ltd, of Auckland. This company is now in liquidation. Her licence had been cancelled on 16 February 2016. On appeal to the District Court, it issued an interim order on 22 March 2016 allowing her to practice subject to supervision, including a condition that she inform her clients that she was providing advice pursuant to an interim order. That interim order ceased to have effect on 31 January 2020.

[6] In about April 2019, the complainant engaged the adviser for the renewal of the family's visas. Immigration New Zealand (Immigration NZ) received the following applications from Ms Khetarpal:

- (1) For an essential skills work visa for the complainant on 26 May 2019.
- (2) For a student visa for the son on 26 May 2019.
- (3) For a work visa (partnership) for the husband on 27 May 2019.

[7] On 11 July 2019, the immigration officer sent an email to Ms Khetarpal seeking further information concerning the complainant's visa application. Ms Khetarpal responded on 17 July 2019.

[8] On 2 August 2019, Immigration NZ wrote to Ms Khetarpal raising concerns regarding the complainant's work visa application. It was noted that the job offer did not substantially match the relevant ANZSCO occupation as a chef, but matched the occupation of cook. Furthermore, her income appeared to be less than the minimum threshold. Accordingly, the complainant might not meet the requirements of the immigration instructions.

[9] Immigration NZ wrote another letter to Ms Khetarpal on the same day advising that the son may not meet the relevant immigration instructions as the dependent child of a work visa holder, since the complainant's income did not meet the minimum threshold.

[10] On 6 August 2019, the complainant sent an email to Ms Khetarpal confirming a telephone conversation requesting the latter not to undertake any further action on her file, as she had found another "lawyer" to handle the matter.

[11] An immigration officer sent an email to the complainant's new immigration adviser on 8 August 2019 advising that a visa had been issued for the complainant and her son. The application for the son had been lodged under the wrong visa category, so it had been replaced with a visitor visa.

[12] On 8 August 2019, the complainant was issued with an essential skills work visa and the son with a visitor visa. A work visa was then issued for the husband on 14 August 2019.

[13] The complainant sent an email to Ms Khetarpal on 10 December 2019 outlining in detail her complaint about the services received from Ms Khetarpal.

[14] Ms Khetarpal responded by email on 11 December 2019 acknowledging receipt of the complainant's email and stating that she would respond in detail the following day. The complainant requested responses on 9 and 14 January 2020, but Ms Khetarpal did not reply.

COMPLAINT

[15] On about 28 January 2020, the complainant made a complaint against Ms Khetarpal to the Authority. She alleged negligence since her husband's visa was not lodged on time, which meant he became unlawful in New Zealand and therefore unable to work for more than a month. Nor did Ms Khetarpal disclose that she was being supervised by another adviser, nor did she provide a written agreement.

[16] The Authority wrote to Ms Khetarpal on 3 March 2020 informing her of the complaint and requiring the client file. The adviser replied on 3 March 2020 saying she would comply with the requirement within the deadline. From March to September 2020, the Authority exchanged emails with Ms Khetarpal about obtaining the file, but it was never received by the Authority.

[17] The Authority sent a letter to Ms Khetarpal on 30 September 2021 outlining the grounds of complaint and requesting an explanation. Ms Khetarpal did not respond, despite a reminder on 18 October 2021.

Complaint filed in the Tribunal

[18] The Registrar filed a complaint (8 November 2021) in the Tribunal alleging negligence on the part of Ms Khetarpal or alternatively breaches of the identified provisions of the Code:

- (1) failing to advise the complainant that her salary did not meet the threshold in immigration instructions required to support a dependent student visa and failing to file an application in the correct visa category for the son, thereby lacking due care, in breach of cl 1;
- (2) failing to inform the complainant about the District Court order regarding her licence status, in breach of cl 3(a);
- (3) failing to inform the complainant and obtain her instructions concerning Immigration NZ's email of 11 July 2019, in breach of cl 2(e);
- (4) failing to provide the complainant with a written agreement, in breach of cl 18(a); and
- (5) failing to provide to the Authority the client file, in breach of cl 26(e).

JURISDICTION AND PROCEDURE

[19] 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.

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

[21] 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

[22] 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

[23] 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

[24] 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

[25] The Tribunal has received from the Registrar the statement of complaint (8 November 2021), with supporting documents.

[26] There are no submissions from either the complainant or Ms Khetarpal.

ASSESSMENT

[27] 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.

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].

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

Client Care

2. A licensed immigration adviser must:

...

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

...

Legislative requirements

3. A licensed immigration adviser must:

- a. if operating in New Zealand, act in accordance with New Zealand law

...

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

File management

26. A licensed immigration adviser must:

...

- e. maintain each client file for a period of no less than 7 years from closing the file, and make those records available for inspection on request by the Immigration Advisers Authority

...

(1) *Failing to advise the complainant that her salary did not meet the threshold in immigration instructions required to support a dependent student visa and failing to file an application in the correct visa category for the son, thereby lacking due care, in breach of cl 1*

[28] It is apparent from Immigration NZ's letter of 2 August 2019 that the complainant's income did not meet the criterion set out in the relevant immigration instructions to support a dependent on a student visa. Ms Khetarpal has chosen not to contest the allegation that she did not advise the complainant of this. There has been a lack of due care by her, in breach of cl 1 of the Code.

[29] An email from an immigration officer on 8 August 2019 stated that Ms Khetarpal had filed the son's application under the wrong visa category. Ms Khetarpal has chosen not to contest this allegation. There has been a lack of due care by her, in breach of cl 1.

(2) *Failing to inform the complainant about the District Court order regarding her licence status, in breach of cl 3(a)*

[30] Ms Khetarpal's licence as an immigration adviser was restored on an interim basis by the District Court on 22 March 2016.⁸ One of the conditions was that she advise each client in writing that she was providing immigration advice pursuant to an interim order of the court and subject to a supervision agreement. The complainant alleges Ms Khetarpal did not inform her. Ms Khetarpal has chosen not to contest the allegation. She has acted contrary to the order of the District Court and therefore contrary to New Zealand law, in breach of cl 3(a) of the Code.

(3) *Failing to inform the complainant and obtain her instructions concerning Immigration NZ's email of 11 July 2019, in breach of cl 2(e)*

[31] It is alleged by the complainant that Ms Khetarpal did not inform her of Immigration NZ's email of 11 July 2019 requesting further information until after Ms Khetarpal had responded.

[32] The failure to take instructions on the email is technically a breach of cl 2(e) of the Code, but there is no allegation Ms Khetarpal's reply on 17 July 2019 was inadequate. That being the case, the breach is not material. This head of complaint is dismissed.

(4) *Failing to provide the complainant with a written agreement, in breach of cl 18(a)*

[33] The complainant alleges that Ms Khetarpal did not provide a written client services agreement. Ms Khetarpal has chosen not to contest this allegation. She has breached cl 18(a) of the Code.

(5) *Failing to provide to the Authority the client file, in breach of cl 26(e)*

[34] The Authority wrote to Ms Khetarpal on 3 March 2020 requiring the complainant's client file. Despite reminders, it was never received by the Authority. Ms Khetarpal has chosen not to contest this allegation. She has breached cl 26(e) of the Code.

OUTCOME

[35] I uphold the complaint. Ms Khetarpal has breached cls 1, 3(a), 18(a) and 26(e) of the Code.

⁸ *Khetarpal v Immigration Advisers Authority* [2016] NZDC 4864.

SUBMISSIONS ON SANCTIONS

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

[37] A timetable is set out below. This is the fifth complaint against Ms Khetarpal upheld by the Tribunal. Her licence has been cancelled and she is currently prevented from reapplying for a licence until 24 September 2023. Her attitude to the disciplinary process will also be taken into account. The parties are asked to specifically address whether she should be prevented from reapplying for a licence for a further period. Any request for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim.

Timetable

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

- (1) The Registrar, the complainant and Ms Khetarpal are to make submissions by **Thursday 3 March 2022**.
- (2) The Registrar, the complainant and Ms Khetarpal may reply to submissions of any other party by **Thursday 17 March 2022**.

ORDER FOR SUPPRESSION

[39] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.⁹

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

[41] The Tribunal orders that no information identifying the complainant is to be published other than to Immigration NZ.

D J Plunkett
Chair

⁹ Immigration Advisers Licensing Act 2007, s 50A.