

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2023] NZIACDT 22

Reference No: IACDT 016/22

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **OT**
Complainant

AND **GENOVEVA EVELYN RAMOS**
Adviser

SUBJECT TO SUPPRESSION ORDER

**DECISION
(Sanctions)
Dated 27 June 2023**

REPRESENTATION:

Registrar: Self-represented
Complainant: A Foley, counsel
Adviser: P Moses, counsel

INTRODUCTION

[1] The complainant, OT, engaged the adviser, Genoveva Evelyn Ramos, to obtain residence. Ms Ramos failed to make the application, in breach of her professional obligations.

[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 partially upheld in a decision issued on 24 April 2023 in *OT v Ramos*.¹ Ms Ramos was found to have breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code), a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act).

[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 earlier decision and will only be briefly summarised here.

[5] The complainant and his wife are nationals of Brazil who were living in New Zealand.

[6] Ms Ramos, a licensed immigration adviser, is a director of Sunrise Immigration Services Ltd, of Auckland.

[7] Ms Ramos had previously acted for the complainant on work visas. She sent him an email on 27 December 2021 stating that she would lodge a residence application for him and his wife in March. This concerned the 2021 RV instructions of Immigration New Zealand (Immigration NZ). They signed her consulting agreement on about 21 February 2022. The fee was \$4,460, which the complainant paid. Ms Ramos never made the application.

[8] On 5 August 2022, Ms Ramos discovered her mistake. She sent an email to the complainant apologising and advising she would do everything to lodge the application. Immigration NZ advised on 8 August 2022 that the policy had closed. She sought the intervention of the Minister of Immigration on 15 August 2022, acknowledging her negligence. It is not known how the Minister responded.

[9] The complainant's present counsel was instructed on about 18 August 2022.

¹ *OT v Ramos* [2023] NZIACDT 13.

[10] On 19 August 2022, Ms Ramos refunded the fee of \$4,460.

Decision of the Tribunal

[11] It was found by the Tribunal that Ms Ramos had:

- (1) Failed to exercise due care in ensuring the residence application was lodged as instructed, in breach of cl 1 of the Code.
- (2) Failed to provide a new or amended written agreement for seeking Ministerial intervention, in breach of cl 18(a).
- (3) Failed to confirm in writing material discussions, in breach of cl 26(c).

SUBMISSIONS

From the Registrar

[12] In her submissions (17 May 2023), Ms Issar of the Registrar's office, noted that the real gravamen of the wrongdoing was Ms Ramos' failure to exercise due care in ensuring the residence application was lodged as instructed. This reflected a service failure in the delivery of a critical duty of an adviser.

[13] The gravity of the misconduct is real and appreciable. It had an impact on the complainant. While the success of any application can never be guaranteed, the complainant nonetheless lost the chance of what may have been a unique and seriously advantageous opportunity. The gravity of the loss is expressed in the complainant's state of disappointment, significant shock and distress. The service failures were significant given the adverse impact on the complainant and his wife. It was a one-off residence opportunity for which they were eligible.

[14] It is acknowledged that Ms Ramos has accepted responsibility for her misconduct by apologising for her mistake, making a full refund and by making admissions throughout the disciplinary process.

[15] The misconduct can be categorised as at least moderate or "high low", in terms of gravity.

[16] This is the fourth complaint upheld against Ms Ramos. She has now had several opportunities to learn from the disciplinary action, yet she has continued to appear before the Tribunal.

[17] The Registrar submits the appropriate sanctions would be:

- (1) Censure.
- (2) An order for payment of a penalty in the vicinity of \$4,000.
- (3) An order that Ms Ramos complete the LAWS 7015 professional practice paper offered by Toi Ohomai Institute of Technology (Toi Ohomai) at its next intake.

[18] The Registrar produces information concerning the completion by Ms Ramos in 2016 of the Graduate Certificate in New Zealand Immigration Advice and the content of the current LAWS 7015 paper.

From the complainant

[19] There are submissions (dated 27 March 2023 but sent to the Tribunal on 17 May 2023) from Mr Foley, counsel for the complainant. It is submitted that the misconduct of Ms Ramos was very serious and harmful to the complainant and his wife. It is more likely than not that they would have been granted residence should the application have been made, as the complainant was eligible for residence. As a result, significant sanctions should be imposed.

[20] Ms Ramos should be required to undertake further training at Toi Ohomai. She failed to have sufficient systems in place to ensure the application was lodged on time, as well as failed to produce and maintain updated documentation.

[21] It is contended by Mr Foley that the licence of Ms Ramos should be suspended for at least six months. While a severe sanction, it may be used as a last resort. Ms Ramos has acted in a way that is likely to damage the reputation of the profession. The public should be protected from advisers who have been negligent.

[22] Ms Ramos should also pay compensation of \$13,450 to the complainant for the losses arising directly from her conduct, as well as the emotional distress she has caused the complainant and his wife who are now precluded from applying for residence for the foreseeable future.

[23] The Tribunal is able to award modest sums where losses or expenses have arisen directly from an adviser's wrongdoing.² It is also able to award modest sums in

² *Zhang v Chen* [2019] NZIACDT 11 at [68]; *KIT v Zhu* [2019] NZIACDT 46 at [35]; and *NLT v Coetzee* [2020] NZIACDT 7 at [47].

appropriate cases for the anguish and distress of wrongdoing leading to serious consequences.³ In the *Gibson* case, the Tribunal awarded \$2,000. It said:⁴

It is understandable that the complainant and his wife should have been distressed by their failure to obtain residence because their professional adviser had not answered a letter. In addition, Ms Gibson's communications with them were wholly inadequate.

[24] In *Tian*, the Tribunal awarded compensation of \$5,000 for emotional distress.⁵ In that case, the complainant's status had become unlawful due to the adviser's actions, so there was a higher degree of emotional distress. It is submitted that \$4,000 would be appropriate.

[25] It is submitted by Mr Foley that the following sanctions ought to be applied:

- (1) Censure.
- (2) Licence suspension for at least six months,
- (3) Further training.
- (4) Compensation of \$13,450.

[26] There are submissions (31 May 2023) from Mr Foley replying to those of Mr Moses (17 May 2023).

[27] Counsel disputes that Ms Ramos acted responsibly following the discovery of her misconduct. Additionally, her attempts to rectify her misconduct amounted to a short and insufficient Ministerial request and an out-of-time paper application duly rejected by Immigration NZ.

[28] It is submitted that Ms Ramos' misconduct was not a mistake in the nature of an oversight or human error, as described by Mr Moses, counsel for Ms Ramos. The Tribunal has determined that a mistake may be attributable to excusable human error in the event that it is a mistake that a "competent, reasonable, prudent, diligent practitioner" could make.⁶ This was not such an error. It was a fundamental failure in her obligations, arising from negligence.

³ *TQ v Gibson* [2022] NZIACDT 23 at [34].

⁴ At [35].

⁵ *TA v Tian* [2022] NZIACDT 19 at [69].

⁶ *DMX v Guich* [2020] NZIACDT 19 at [53].

[29] As for the adverse effect of publicity, it is difficult to determine the effect that publication of a further complaint on the Tribunal's database would have on Ms Ramos' business, given the decisions concerning the earlier complaints.

[30] It is readily apparent that Ms Ramos has been unable to learn from previous mistakes and complaints. She has shown a consistent lack of awareness regarding her obligations. It is submitted that further training is therefore required. Furthermore, as it does not appear she has learned from those previous complaints and continues to breach her obligations under the Code, she should be suspended from practice while further training is undertaken.

[31] Mr Foley notes the submission of Mr Moses that the claim of \$13,450 for compensation be considered together with the financial penalty. Mr Foley contends these matters should be considered separately. While they both involve a pecuniary obligation on Ms Ramos, the nature of each obligation is fundamentally different. One is compensatory for the complainant's losses and the other is punitive. In the unlikely event that the Tribunal determines them together, it is submitted that priority should be given to compensation for the complainant's losses and future expenses.

[32] Mr Foley filed further submissions (also dated 31 May 2023) with the Tribunal, responding to those of Mr Moses (31 May 2023) concerning compensation.

[33] It is submitted that Ms Ramos is downplaying the emotional distress experienced by the complainant and his wife in describing their reaction as one of disappointment. In his statement (2 September 2022), the complainant noted that since becoming aware of Ms Ramos' failure to lodge their application, they have not been able to sleep well, were psychologically shaken, and their performance at work and ability to concentrate on personal matters had decreased. They have suffered genuine and significant emotional distress.

[34] It is also disputed that there was no guarantee the application would have succeeded. Put simply, it was in effect guaranteed they would have been granted residence had the application been lodged in time. They were fully eligible under the 2021 RV instructions. They were denied a one-off chance to be granted residence. This caused significant emotional distress.

[35] A statement (31 May 2023) from the complainant's wife has been produced to the Tribunal. When she found out the application had not been made, she experienced several days of stress, anxiety, uncertainty and frustration. Since being told Ms Ramos had forgotten to apply and the deadline had passed, not a day has gone by when she has not thought about it. During these months they have had to pause their lives. She

cannot start her studies because her visa only allows study for three months annually. Her husband cannot change companies because his visa is linked to his current employer.

[36] According to the complainant's wife, it is very frustrating and distressing to live in this uncertainty. They avoid their friends because they do not want to talk about it. Everyone they know received residence under the policy. It causes her sadness, stress and anxiety. This has caused them irreparable damage. The whole process has been long, painful, emotionally draining and cost them time and money.

[37] At the request of the Tribunal, Mr Foley provided further submissions (13 June 2023) and supporting evidence regarding the legal costs claimed.

From the adviser

[38] There are submissions (17 May 2023) from Mr Moses. The Tribunal's decision is acknowledged by Ms Ramos. Indeed, she had accepted her key error (the failure to lodge the application) as soon as it became apparent to her. She has acted responsibly since recognising her conduct fell below the expected standard. She advised the complainant, apologised, offered to rectify the matter without extra charge, filed a Ministerial request and took responsibility for the delayed application, as well as refunded her professional fee.

[39] Ms Ramos acknowledges that a formal censure is likely.

[40] There is no contest that a financial penalty is required. However, the fine of \$4,000 sought by the Registrar is greater than appropriate. In broadly similar cases (an oversight or repeated oversights), the fines have been between \$500 and \$1,000. It is appreciated that two factors may weigh towards a heavier penalty, namely this being the fourth complaint upheld and the consequences for the complainant. A fine of \$2,000 would therefore be commensurate with the gravity of the conduct of Ms Ramos.

[41] In setting the level of the fine, it is appropriate for the Tribunal to look at all aspects 'in the round', including any award of compensation. The publication of Ms Ramos' name on a readily searchable database is also likely to adversely affect her practice. This is a very significant sanction in its own right.

[42] It is contested that further training is required. Ms Ramos overlooked a single application. This was not because she lacked any understanding of her obligations. Nor was it because she lacked adequate systems to carry out her work. It was because she was extraordinarily busy in the context of the 2021 RV instructions. No additional formal

training is required to remind Ms Ramos of her professional obligations under cls 1, 18(a) and 26(c) of the Code. She is fully familiar with them and has taken steps to ensure that in the future her workload is manageable. The complaint has itself been a very potent reminder of her obligations.

[43] As for the submission that Ms Ramos' licence should be suspended, it is appreciated that the complainant is most frustrated and wants to see her seriously punished. Suspension is not required to protect the public because the seriousness of her errors do not require such a drastic step.

[44] In respect of the previous complaints, the last one against Ms Ramos in 2020 was towards the lower end of the spectrum and did not even result in a fine. The earlier complaints were in 2014 and 2015, a significant time ago.

[45] There are further submissions (31 May 2023) from Mr Moses replying to the complainant's claim for compensation. Counsel contends that the complainant will have to satisfy the Tribunal, on the balance of probabilities, that the claimed losses were caused by Ms Ramos' breach of her professional obligations. The Tribunal is required to assess evidential sufficiency. There is also the question of causation to be considered.

[46] There is also an issue as to whether the claim is for "reasonable" compensation. This suggests a requirement to mitigate losses.

[47] As for the claim of \$4,000 for emotional distress, this is not a routine sanction awarded to every complainant whose complaint is upheld. It is contested that \$4,000 would be reasonable in light of the Tribunal's practice. In *Lawlor*, only \$2,000 was awarded, yet the adviser had lied to the client.⁷ Ms Ramos acknowledges how disappointed the complainant will have been since his intended residence application was not considered by Immigration NZ. There was, however, no guarantee it would have succeeded. An award for emotional distress is not intended as compensation for an inability to obtain residence. It is questionable whether any amount for emotional distress is appropriate.

[48] The complainant has also sought \$5,000 for legal costs relating to two Ministerial requests. Yet, there is no evidence these costs have been incurred. Equally problematic is that there is no sensible basis for two requests to the Minister.

[49] The complainant has additionally sought \$4,450 for legal representation and Immigration NZ's fees for future temporary visa applications for him and his wife. It is

⁷ *WS v Lawlor* [2023] NZIACDT 16.

unclear whether these expenses will be incurred. The work is uncomplicated and may not justify legal fees. It is doubtful whether such costs are reasonable.

JURISDICTION

[50] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following actions:⁸

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.

[51] 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:

⁸ Immigration Advisers Licensing Act 2007.

- (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[52] 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.

[53] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:⁹

...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 *Zideman 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.

[54] 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 collective reputation and public confidence in the profession itself.¹⁰

[55] 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.¹¹

⁹ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] and [151].

¹⁰ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 and 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; and *Z*, above n 9, at [151].

¹¹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

[56] The most appropriate penalty is that which:¹²

- (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

[57] The Tribunal upheld three heads of complaint against Ms Ramos. The most serious was her failure to lodge a residence application in accordance with a special one-off residence policy, an application she had been instructed to make.

[58] Mr Moses correctly describes the failure as an oversight, though it had serious consequences for the complainant and his wife. While the couple remain lawfully in New Zealand, thanks to their current counsel, they do not have residence and appear not to have a pathway to such status under current policies. Irrespective of her workload, Ms Ramos should always be aware of a deadline for a residence application and have systems in place which draw such deadlines to her attention. Her failure, while an oversight, cannot therefore be dismissed as an excusable human error.

[59] The Registrar describes the impact on the complainant as the loss of a chance. Mr Moses says there was no guarantee any residence application would have succeeded. Mr Foley contends otherwise. He says the couple was eligible for residence under the 2021 RV instructions and they were effectively guaranteed residence. The Tribunal agrees with Mr Foley that any timely application is likely to have succeeded.

¹² *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].

[60] In addition to that serious failure, Ms Ramos breached two provisions of the Code as to the required paperwork. That description does not make the breaches trivial, but they were not nearly as grave as her lack of care in overlooking the residence application.

[61] A significant factor in assessing sanctions is that this is the fourth complaint upheld by the Tribunal against Ms Ramos.

[62] In the first complaint, Ms Ramos gave unsatisfactory advice, failed to enter into a new written agreement and used funds for an unauthorised purpose (she used funds held in a client account for her own purposes when there was a dispute about her fees).¹³ This occurred between 2009 and 2012. She breached a number of provisions of the then 2010 Code. The sanctions were:

- (1) Censure.
- (2) Training – completion of the Graduate Certificate in NZ Immigration Advice at the Bay of Plenty Polytechnic (now Toi Ohomai).
- (3) Penalty of \$4,000.
- (4) Refund and compensation to the client of \$7,500.

[63] In the second complaint, Ms Ramos did not attend to the disclosure requirements for commencing a professional relationship, did not have a written agreement, did not set out her fees before commencing work and failed to act with due care and professionalism (failing to respond to a letter from Immigration NZ leading to the decline of an application).¹⁴ She had assisted a client for a nominal fee, as the chair of a community organisation. This occurred during 2012. She was found to have breached some provisions of the 2010 Code. The sanctions were:

- (1) Censure.
- (2) Penalty of \$1,000.

[64] In the third complaint upheld, Ms Ramos failed to make file notes or provide written confirmation to the client of immigration advice supplied and she failed to advise that a visa application was lodged.¹⁵ This occurred in 2018. Again, her failings amounted to breaches of the Code. The Tribunal upheld the complaint but took no further action.

¹³ *Saul v Ramos* [2014] NZIACDT 48, [2014] NZIACDT 114.

¹⁴ *Juan v Ramos* [2015] NZIACDT 48, [2016] NZIACDT 3.

¹⁵ *GQ v Ramos* [2020] NZIACDT 8.

[65] This brings the Tribunal to consideration of the sanctions for the current complaint.

Caution or censure

[66] Given the disciplinary history of Ms Ramos and reflecting the consequences for the complainant and his wife, the Tribunal hereby censures Ms Ramos.

Training

[67] The Tribunal agrees with Mr Moses that no further training is required. The primary failing was one of oversight, not any lack of knowledge on the part of Ms Ramos of her obligations. The complaint process and the Tribunal's decision will itself have reminded her of the importance of those provisions of the Code infringed. The Tribunal suspects Ms Ramos did have an inadequate 'bring up' system in place to alert her to the deadline, but again the complaint process and the Tribunal's decision will have reminded her of the need for such a system. Ms Ramos has acknowledged her wrongdoing.

[68] The earlier complaints are either too old or minor to be relevant to the question of any current training needs. It is noted that Ms Ramos completed the Graduate Certificate, then the full qualification in 2016, as directed in the first complaint upheld.

Suspension

[69] The complainant seeks suspension of the licence of Ms Ramos for at least six months. It is not a sanction supported by the Registrar. It is opposed by Ms Ramos who says it is not required to protect the public because the seriousness of her errors do not justify such a drastic step.

[70] Depriving a professional person of their ability to earn a livelihood in their chosen profession is a last resort. The Tribunal is required to impose the least restrictive penalty which is appropriate.¹⁶ It is not justified here. There was an oversight with one client. Ms Ramos acknowledged it from the outset. The earlier complaints, as noted above, are too old or minor to be material in deciding whether her licence should be suspended. Her licence will not be suspended.

Financial penalty

[71] The Registrar submits that a penalty of about \$4,000 would be appropriate.

¹⁶ *Liston*, above n 12.

[72] While the complainant makes no submissions on an appropriate fine, he seeks substantial compensation. Mr Foley contests the relevance of compensation in assessing the penalty, but the Tribunal may have regard to the totality of the financial consequences imposed by way of sanctions in assessing the level of the fine. The compensation, assessed below, is therefore taken into account. Priority will be given to compensating the complainant.

[73] Mr Moses says a fine of \$2,000 would be commensurate with the gravity of Ms Ramos' conduct.

[74] The Tribunal notes the disciplinary history of Ms Ramos and particularly the level of financial penalty imposed on her in the past (\$4,000 and \$1,000).

[75] The Tribunal agrees with Mr Foley that the consequences of adverse publicity from uploading the Tribunal's decisions on its database is not likely to be material, given the poor disciplinary history of Ms Ramos already apparent from the database.

[76] While having significant consequences for the complainant and his wife, the offending here was not of itself serious. Having regard to Ms Ramos' acknowledgment of her wrongdoing, her disciplinary history and giving priority to compensating the complainant, the fine will be \$2,500. This is lower than would otherwise be justified, largely as a result of the compensation awarded.

Compensation

[77] The Tribunal has a discretion to order reasonable compensation. The loss or expense must be attributable to the adviser's misconduct.¹⁷ It must be caused by or relate to or arise from the wrongdoing upheld by the Tribunal.

[78] The Tribunal can also award modest damages for emotional distress, though it does not do so routinely.¹⁸

[79] The compensation must be "reasonable" in the circumstances. The Tribunal's sanction is intended as an expedient remedy where it is already seized of the matter in the disciplinary context. Full compensation is not awarded by the Tribunal. Instead, in an appropriate case it directs that a contribution be made by the errant adviser. If a complainant seeks full compensation, there is a parallel remedy in the general courts (or

¹⁷ See the Tribunal's decisions correctly cited by Mr Foley at n 2 above.

¹⁸ *Ikbarieh v Hammadih* [2014] NZIACDT 111 at [41]–[42]; *Unnikrishnan v Goldsmith* [2017] NZIACDT 22 at [30]–[31]; and *DD v Pabellon* [2023] NZIACDT 2 at [37].

Disputes Tribunal) which is more appropriate. The general courts require greater rigour in the proof of causative loss.

[80] It is noted that Ms Ramos has already refunded her fee of \$4,460.

[81] The complainant has claimed \$13,450, a substantial sum, broken down as follows:

Legal costs – Ministerial request	\$ 4,000
Legal costs – complaint	\$ 1,000
Legal costs – future work visa/complainant	\$ 2,000
Application fee – future work visa	\$ 750
Legal costs – future work visa/wife	\$ 1,000
Application fee – future work visa/wife	\$ 700
Emotional distress	\$ 4,000
	\$13,450

[82] The complainant seeks \$5,000 for his legal costs to date, including \$1,000 for the complaint.

[83] The Tribunal accepts that the complainant is entitled to recover the costs of legal representation in an endeavour to rectify the negligence of Ms Ramos and resolve the immigration predicament of the complainant and his wife. Mr Foley has explained why it was necessary to make two Ministerial requests. The request of 2 March 2023, produced to the Tribunal, is thorough and thoughtful. The fee of \$4,000 for both requests is reasonable.

[84] As for \$1,000 legal costs for the complaint, the Tribunal has no statutory power to award costs to a successful party in the Tribunal. It does not award costs for complaints. While counsel's services were no doubt helpful to the complainant, a lay person can make a complaint and the Authority has its own investigators to undertake the investigation.

[85] The complainant also seeks \$4,450 for future legal costs and Immigration NZ's fees. It is unfortunate that the Ministerial requests were not successful and it is understandable that the couple want to remain in New Zealand, but there must be a limit to Ms Ramos' obligation to meet the complainant's legal and immigration expenses on an ongoing basis. It is the choice of the couple to remain here and incur such future costs. The Tribunal does not regard it as reasonable for Ms Ramos to reimburse any future costs.

[86] Mr Moses correctly points out that compensation for emotional damages is not routinely awarded, as every immigration application, notably residence, whether successful or not, is stressful for the parties. However, this is an appropriate case to award such compensation. The statements of the complainant (2 September 2022) and his wife (31 May 2023) show real frustration, sadness and anxiety. This situation bears some resemblance to that in *Gibson* where the client also failed to obtain residence, as Mr Foley notes.¹⁹ In that case though, the client had less chance of a successful grant. There is an unsurprising high degree of anxiety here. A young couple made New Zealand their home and were likely eligible for residence, as contended by Mr Foley. Unfortunately, it would seem there is no current pathway for them. An award of \$4,000 (\$2,000 for each), as sought, will be made.

[87] The total compensation awarded is therefore \$8,000.

OUTCOME

[88] Ms Ramos is:

- (1) Censured.
- (2) Ordered to pay the Registrar a penalty of \$2,500 within one month.
- (3) Ordered to pay the complainant compensation of \$8,000 within one month.

ORDER FOR SUPPRESSION

[89] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.²⁰

[90] There is no public interest in knowing the name of Ms Ramos' client, the complainant.

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

D J Plunkett
Chair

¹⁹ *TQ v Gibson*, above n 3.

²⁰ Immigration Advisers Licensing Act, s 50A.