

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 49

Reference No: IACDT 015/18

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

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

**BETWEEN** **XN**  
Complainant

**AND** **YAN (RYAN) JI**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

---

**DECISION**  
**Dated 19 July 2019**

---

**REPRESENTATION:**

Registrar: Self-represented

Complainant: Self-represented

Adviser: Self-represented

## PRELIMINARY

[1] The primary allegation against Mr Ji, the adviser, is that he did not directly engage with his client at all, but left it to the staff of another company in a different country to do so. He therefore permitted unlicensed staff to do work that only a licensed adviser is permitted to perform. Any such conduct would be contrary to the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

## BACKGROUND

[2] Mr Yan (Ryan) Ji is a licensed immigration adviser. At the relevant time, he was an employee of NZ Business Migration, based in Auckland. He has since left that company and is a partner of NZ Immigration Consultancy.

[3] The complainant, [XN], a national of China, approached a branch of Globe Visa (Globe) in China in order to lodge an application for residence in New Zealand. Globe is a Chinese company. None of its employees are licensed immigration advisers.

[4] The agreement between the complainant and Globe, dated 2 September 2014, stated that the complainant appointed Globe as her agent for an application for residence under the investor category. A fee of RMB 60,000 (excluding third party fees) was payable. According to the complainant's undated statement filed in support of her complaint, she was also required to pay a fee of NZD 25,000 for a solicitor in New Zealand and RMB 80,000 for "the immigration application fee" and other expenses. She says in her statement that apart from the RMB 80,000 fee, the other fees were refunded when her visa application was declined by Immigration New Zealand.

[5] In her statement, the complainant says that Mr Ji of NZ Business Migration was appointed by Globe. She was told he was a solicitor in New Zealand.

[6] A client agreement between NZ Business Migration and the complainant was entered into. It identified Mr Ji as the immigration adviser. NZ Business Migration agreed to compile the complainant's application under the investor category. The complainant was required to pay service fees of NZD 17,000, with the total fees being NZD 21,585. It was signed by a person on behalf of NZ Business Migration and by the complainant on 30 October 2014.<sup>1</sup>

---

<sup>1</sup> The translated English version of the agreement shows the agreement to be unsigned, but what appears to be a copy of the original Chinese agreement shows the complainant signed it (see Registrar's supporting documents at 83 & 87).

[7] It is common ground that at no time did Mr Ji engage with the complainant. There were no discussions or communications directly between the two of them at any time.

[8] All the complainant's communications concerning the residence application were with Globe employees, who in turn communicated through unlicensed employees of NZ Business Migration with Mr Ji.

[9] According to Mr Ji, he had earlier received an email from a director at NZ Business Migration on 13 April 2014 containing an expression of interest for the complainant under the investor category. He checked that the information complied with the requirements of Immigration New Zealand and eventually lodged it with the agency on 5 November 2014. It was selected on 3 December 2014 for an invitation to apply, which was duly completed and lodged by Mr Ji on 13 March 2015.

[10] Immigration New Zealand sent three letters to the complainant, care of Mr Ji, requiring further information. Mr Ji says he passed them onto another employee of NZ Business Migration. He states that "we" drafted the responses which were promptly sent to Immigration New Zealand.<sup>2</sup>

[11] Immigration New Zealand declined the application for residence by letter dated 24 June 2016 sent by email to Mr Ji at 3:59 pm. Mr Ji then emailed the letter to another employee at NZ Business Migration at 4:52 pm on the same day, expecting it to be promptly sent via Globe to the complainant. The complainant says she received it from Globe bearing the date 12 July 2016 on about that date. Mr Ji says the date must have been altered by someone at NZ Business Migration or Globe, as he did not do that.<sup>3</sup>

[12] There exists in the supporting documents sent to the Tribunal a copy of Immigration New Zealand's decline letter dated 12 July 2016. This was the version of the letter sent to the complainant.

[13] An appeal against the decline of residence was filed in the Immigration and Protection Tribunal (IPT) by the complainant's new counsel, Mr Chen, on 19 August 2016. The IPT advised Mr Chen on 23 August 2016 that it was not lodged in time and could not therefore be accepted.

[14] Mr Ji left NZ Business Migration at the end of 2016 to set up his own immigration consultancy.

---

<sup>2</sup> Mr Ji's letter to the Authority dated 24 May 2017 at [7].

<sup>3</sup> At [15] & [22].

## COMPLAINT

[15] A complaint against Mr Ji was lodged with the Immigration Advisers Authority (the Authority) by the complainant on about 11 May 2017. She said that she had filed an appeal with the IPT, but it had not been accepted as it was out of time. She alleged that the date of the letter of decline had been changed by the adviser from 24 June to 12 July 2016. She sought compensation and costs.

[16] The complainant provided an undated statement to the Authority. She said she entered into an agreement with a Globe company. That company advised it had appointed a New Zealand solicitor, Mr Ji, to act for her. She did not sign an agreement with him. At no time did she meet or communicate with Mr Ji, apart from a video conference in July 2016 after the residence application was declined. All her communications had been with Globe.

[17] On 24 May 2017, Mr Ji replied to the Authority's request to inspect his file. He set out what happened in relation to the complainant's application. He advised that NZ Business Migration had a partnership with Globe and that he was not allowed direct contact with any client without permission. All the communications were through the staff of NZ Business Migration. He denied altering the date of the decline letter, as he had sent that letter to a fellow employee at 4:52 pm on the day it was emailed to him, expecting it to be promptly forwarded to the complainant. He was no longer an employee of NZ Business Migration.

[18] The Authority formally notified Mr Ji of the complaint and sought his explanation on 22 February 2018.

[19] Mr Ji replied to the Authority by email on the same day. He agreed with the grounds of complaint. He noted that it was similar to another one against him before the Authority arising out of his time at NZ Business Migration. He had left that company because of "these issues" and had established his own immigration consultancy.

[20] Mr Ji told the Authority that he was no longer subject to anyone's direction and was fully compliant with the Code. He was open to any random inspection of his practice by the Authority. Mr Ji added that he had also become a director of the New Zealand Association of Migration and Investment and attended all the relevant professional development events to ensure that such a breach did not occur again. He wanted to participate in the Authority's reference group, so that he could ensure that other young licensed advisers did not repeat the mistakes that he had made.

[21] On 22 March 2018, Mr Ji sent an email to the Authority stating that he was instructed in no uncertain terms that, as an employee of NZ Business Migration, its clients were not his clients. The agreements were therefore between the directors of NZ Business Migration and the client. He said he was glad his days at NZ Business Migration were behind him. He was now in control of his practice and complied with the Code. All written agreements were now between him and the client.

*Complaint referred to Tribunal*

[22] The Registrar of Immigration Advisers (the Registrar), the head of the Authority, filed a statement of complaint with the Tribunal on 27 March 2018. He has referred to the Tribunal the following possible breaches of the Code by Mr Ji:

- (1) failing to take personal responsibility for client engagement, obtaining informed instructions or establishing the client relationship, thereby allowing unlicensed individuals to provide services only a licensed immigration adviser can provide, in breach of cls 1, 2(e) and 3(c); and
- (2) failing to ensure that a written agreement was provided to the clients, in breach of cl 18(a).

**JURISDICTION AND PROCEDURE**

[23] 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.

[24] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.<sup>4</sup>

---

<sup>4</sup> Immigration Advisers Licensing Act 2007, s 45(2) & (3).

[25] 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>5</sup> It has been established to deal relatively summarily with complaints referred to it.<sup>6</sup>

[26] 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>7</sup>

[27] The sanctions that may be imposed by the Tribunal are set out in the Act.<sup>8</sup> The focus of professional disciplinary proceedings is not punishment but the protection of the public.<sup>9</sup>

[28] 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>10</sup>

[29] The Tribunal has received from the Registrar the statement of complaint, dated 27 March 2018, together with supporting documents.

[30] There were no submissions from the complainant.

[31] Mr Ji produced a statement of reply, dated 5 April 2018. He admits all breaches in the complaint. He has now left NZ Business Migration and runs his own practice. Mr Ji says he is now compliant with the Code.

## **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.

---

<sup>5</sup> Section 49(3) & (4).

<sup>6</sup> *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

<sup>7</sup> Section 50.

<sup>8</sup> Section 51(1).

<sup>9</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).

<sup>10</sup> *Z v Dental Complaints Assessment Committee* 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:

...

- c. whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.

### **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

(1) *Failing to take personal responsibility for client engagement, obtaining informed instructions or establishing the client relationship, thereby allowing unlicensed individuals to provide services only a licensed immigration adviser can provide, in breach of cls 1, 2(e) and 3(c)*

[33] It is acknowledged by Mr Ji that he had no direct engagement whatsoever with the complainant at any relevant time. Communication was through an employee of NZ Business Migration who in turn communicated with people at Globe who then communicated with the complainant. This practice of farming out client contact to unlicensed people with the adviser merely dealing with Immigration New Zealand is known in the industry as “rubber stamping”.

### *General principles*

[34] Typically, this occurs where a licensed immigration adviser uses agents sometimes from another country or even the adviser’s own staff to recruit the clients, prepare the immigration applications and send them to the licensed adviser to sign off and file with Immigration New Zealand. There is little, if any, direct contact between the licensed adviser and the client.

[35] The practice is illegal. A person commits an offence under the Act if he or she provides “immigration advice” without being licensed or exempt from licensing.<sup>11</sup> A person employing as an immigration adviser another person who is neither licensed nor exempt also commits an offence.<sup>12</sup> A person may be charged with such an offence even where part or all of the actions occurred outside New Zealand.<sup>13</sup>

[36] The statutory scope of “immigration advice” is very broad:<sup>14</sup>

## 7 What constitutes immigration advice

(1) In this Act, **immigration advice**—

(a) means using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward; but

(b) does not include—

(i) providing information that is publicly available, or that is prepared or made available by the Department; or

(ii) directing a person to the Minister or the Department, or to an immigration officer or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or

(iii) carrying out clerical work, translation or interpreting services, or settlement services.

(2) To avoid doubt, a person is not considered to be providing immigration advice within the meaning of this Act if the person provides the advice in the course of acting under or pursuant to—

(a) the Ombudsmen Act 1975; or

(b) any other enactment by which functions are conferred on Ombudsmen holding office under that Act.

[37] The exclusion from the scope of “immigration advice” potentially relevant is subs (1)(b)(iii) concerning clerical work, translation or interpretation services.

---

<sup>11</sup> Immigration Advisers Licensing Act 2007, s 63.

<sup>12</sup> Section 68(1).

<sup>13</sup> Sections 8 & 73.

<sup>14</sup> Section 7.

[38] “Clerical work” is narrowly defined in the Act:<sup>15</sup>

**clerical work** means the provision of services in relation to an immigration matter, or to matters concerning sponsors, employers, and education providers, in which the main tasks involve all or any combination of the following:

- (a) the recording, organising, storing, or retrieving of information:
- (b) computing or data entry:
- (c) recording information on any form, application, request, or claim on behalf and under the direction of another person

[39] Persons who are not licensed (or exempt) are permitted to undertake clerical work. In essence, such a person can do no more than retrieve and then record or organise information, enter data on a computer database or hard copy schedule, or record information on a form or other like document under the direction of another person, who will be the licensed adviser or the client or a person exempt from licensing.

[40] Activities which do not meet the narrow definition of clerical work but which involve the use of immigration knowledge or experience to advise or assist another person on an immigration matter, “whether directly or indirectly”, amount to providing immigration advice. That is the exclusive domain of the licensed adviser.

[41] In *Immigration New Zealand (Calder) v Ahmed* [2019] NZIACDT 18, the Tribunal set out the principles applicable to distinguishing clerical work from immigration advice.<sup>16</sup>

[42] The obligations in the Code, including cl 2(e) requiring the adviser to take or carry out the client’s instructions, are personal to the adviser and cannot be delegated.<sup>17</sup>

#### *Application of principles in Mr Ji’s practice*

[43] It is obvious that the work of advising the complainant what visa she needed given her circumstances, as well as what documents and information were required by Immigration New Zealand to support the application and to respond to the letters requiring further information, was all done by unlicensed people. It is clear that this work of the unlicensed staff of Globe and/or NZ Business Migration falls within the definition of immigration advice under the Act. It has all been undertaken in the name of Mr Ji, as he is the only person who can lodge the application with Immigration New Zealand apart from the complainant herself.

<sup>15</sup> Section 5, definition of “clerical work”.

<sup>16</sup> *Immigration New Zealand (Calder) v Ahmed* [2019] NZIACDT 18 at [55]–[59], [65]–[70].

<sup>17</sup> *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [29], [32], [34] & [47].

[44] Mr Ji has failed to directly obtain instructions from the complainant. He has therefore breached cl 2(e) of the Code. His conduct in permitting unlicensed people, in his name, to work with the complainant in advising her and obtain the necessary information and documents, is contrary to the Act. He is therefore in breach of cl 3(c) of the Code.

[45] While it adds nothing to the breaches of cls 2(e) and 3(c), it is unprofessional for an adviser to offload the bulk of the immigration work in this way to unlicensed and therefore unqualified people in another company in a different country. Mr Ji is therefore also in breach of cl 1 of the Code.

[46] These professional violations are admitted by Mr Ji.

(2) *Failing to ensure that a written agreement was provided to the clients, in breach of cl 18(a)*

[47] The complainant had two written agreements. The first was with Globe. It is not relevant to Mr Ji's professional obligations. More importantly, she had an agreement with NZ Business Migration. It identifies Mr Ji as the licensed immigration adviser, but is not signed by him.

[48] It is contended by the Registrar that Mr Ji was a party to the agreement, but did not sign it. Hence, it is alleged he was in breach of cl 18(a) of the Code.

[49] I do not agree. The Code does not require that the adviser be a party to the agreement or that he or she sign it. While that would be best practice, the Code only requires that the agreement name the adviser and contain a written authority from the client allowing the adviser to act on his or her behalf.<sup>18</sup>

[50] I appreciate that Mr Ji has admitted violating the obligation to ensure there existed a written agreement, but that will be in reliance on the Registrar's mistaken belief that the adviser must be a party who has signed it. This head of complaint is dismissed.

## **OUTCOME**

[51] The complaint against Mr Ji is upheld. He is in breach of cls 1, 2(e) and 3(c) of the Code.

---

<sup>18</sup> Code of Conduct 2014, cls 19(a) and (b); *HES v Parekh (Singh)* [2019] NZIACDT 36 at [39]–[42].

## SUBMISSIONS ON SANCTIONS

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

[53] A timetable is set out below. Any requests that Mr Ji 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.

### *Timetable*

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

- (1) The Registrar, the complainant and Mr Ji are to make submissions by **13 August 2019**.
- (2) The Registrar, the complainant and Mr Ji may reply to submissions of any other party by **27 August 2019**.

## ORDER FOR SUPPRESSION

[55] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>19</sup>

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

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

---

D J Plunkett  
Chair

---

<sup>19</sup> Immigration Advisers Licensing Act 2007, s 50A.