EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

IN THE DISTRICT COURT
AT MANUKAU

CRI-2017-092-005597
[2018] NZDC 7557

NEW ZEALAND POLICE
Prosecutor

v

MOHAMMED IDRIS HANIF
Defendant

Hearing	16-18 April 2018, 20 April 2018
Appearances:	Ms Carr and Ms Skadiang for the Prosecutor Mr Khan for the Defendant
Judgment:	30 April 2018

DECISION OF JUDGE G F HIKAKA

Introduction

[1] The defendant faced five charges alleging that he supplied information to an immigration officer knowing that it was false or misleading in a material respect, namely, information about the reasons for three separate individuals' visits to New Zealand and their applications for visitor visas. The charges are pursuant to s 342(1)(b) Immigration Act 2009 with a maximum sentence of $100,000 fine or seven years imprisonment.

[2] On behalf of the prosecution, evidence was heard from the three individuals who had been granted visitor visas, an Immigration officer who had worked for Immigration NZ (INZ) in various roles since 1971, and the officer in charge of the case, [the officer]. [Complainants 1 and 2's] evidence was heard with the assistance

of a Fijian interpreter. [Complainant 3] had a Fijian Indian interpreter available to him but she had very little input. As a group I will refer to [names deleted] as the complainants.

[3] On behalf of the defence, evidence was heard from the defendant and an [immigration officer], , who along with the officer in charge, interviewed the defendant and about 80 other individuals involved in an investigation of human trafficking.

[4] The burden to prove the charges rests on the prosecution. The standard of proof required is beyond reasonable doubt.

Background

[5] [Complainant 1], a 42 year old crab fisherman, [Complainant 2], a 39 year old farmer and [Complainant 3], a 25 year old student (now an electrician), responded to advertisements published in Fiji offering work opportunities in New Zealand. To fund the application and travel, [Complainant 1 and 2] borrowed large sums of money from relations or their local village.

[6] They all dealt with either Deo or Ram travel agencies in Suva and usually spoke with women they knew as Sanjana, or her New Zealand based sister, Gita.

[7] They were all told that an application would be made for a visitor visa as it was difficult to obtain a work visa but that a work visa could be obtained once they were in New Zealand. [Complainant 3] was told that he could work on a visitor visa. They paid considerable sums of money for the visas and travel before leaving Fiji. For example, [Complainant 3]paid a total of $8,000.00.

[8] They were all granted temporary visitor visas and arrived on different dates. They were met at the airport by Gita and her husband Mr Faroz Ali. They all ended up staying at the home of Mr Ali, his wife and family.

[9] In the case of [Complainant 1 and 2], the day after arrival in New Zealand, they began working as gib fixers in the construction industry for Mr Ali. [Complainant 3]

initially went by bus to Te Puke and then to Tauranga to work on fruit farms. There was no such work. On Gita's advice, he returned to Auckland by bus and started working for Mr Ali.

[10] Close to when their temporary visitor visas were to expire, the complainants were taken by Mr Ali to the defendant's home office premises in Mangere.

[11] Thereafter, on or about the dates referred to in the charging documents, the defendant supplied information to INZ regarding reasons for the applicants' visit to New Zealand in respect of applications for visitor visas.

[12] The complainants arrived in New Zealand at different times, had no connection with each other in Fiji other than responding to advertisements for work in NZ and dealing with Sanjana and Gita. They had applications for visitor visas in their name filed in New Zealand by the defendant in different months of 2014 ([Complainant 3] in January and February, [Complainant 2] in March and September and [Complainant 1] in June).

[13] The complainants worked for Mr Ali at commercial and residential construction sites doing gib fixing. Mr Ali and Gita appeared in photographs at various building sites with various workers wearing what appeared to be work uniforms with "Gibset" on the chest of the work top.

[14] Mr Ali was convicted and sentenced to imprisonment on 16 December 2016. Charges he pleaded guilty to included aiding and abetting the complainants to breach conditions of their visa and exploitation of workers unlawfully in New Zealand. He was found guilty by a jury of charges including trafficking in human beings by deception.

[15] The defendant had known Mr Ali for about 10 years and described him as "sort of a client" but did not know his work. Mr Ali paid the defendant for his services.

Agreed facts

[16] Twenty six documents relating to the proceedings were admitted into evidence pursuant to s 9 Evidence Act 2006. Within those documents were the applications for visitor visas and correspondence between the defendant and INZ. The agreed facts combined with evidence heard (including admissions by the defendant) laid a clear evidential foundation which established beyond reasonable doubt, three of the four elements of the charges, namely;

a) The defendant supplied information to an immigration officer on the dates alleged in the charging documents (admitted);

b) The information was false or misleading (they were working);

c) The information was false and misleading in a material respect[1], namely that each of the complainants sought a visitor visa for a variety of recreational reasons including, visiting family, friends and farms, mountains and other tourist destinations, or for a holiday (when in fact the reason was to work).

Issue

[17] The fourth element of the charges and the only one at issue, is whether the defendant supplied that information knowing that it was false or misleading in the relevant material respect. Credibility was at issue.

Complainants

[18] The complainants' clear intentions were to work in New Zealand. In Fiji they answered an advertisement for work in New Zealand. They maintained that position at all times in their evidence and that they expected to be able to work either as part of a visitor visa or on a work visa obtained while working in New Zealand.

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[1] *Sidhu v Ministry of Business, Innovation and Employment* (2014) NZHC 2841 Moore J 14 November 2014 at [93] defined "Material information" as "information that was likely to influence immigration officer's decision in considering the applicant's application for a New Zealand visa".

[19] [Complainant 3's] evidence was that he had not travelled to New Zealand in the past and was told that he could work on a visitor's visa. When the time his temporary visa was close to expiring in January 2014, he signed a blank application and went with Mr Ali to the defendant's home office. He stayed in the work van while Mr Ali took his application into the home office. He thought he was going to get a work visa. This was the January application. He did not meet the defendant on that occasion.

[20] When the visa granted in January was close to expiring, he went to the defendant's home office with Mr Ali. [Complainant 2] was with them but he stayed in the van while [Complainant 3] went inside. When [Complainant 3] left the defendant's office, [Complainant 2] went inside. [Complainant 3] said this visit was after work and he was wearing his work clothes and "was all over dust".

[21] Photographs of workmen were produced. [Complainant 3] was in one of the photographs wearing his work clothes. The work top he was wearing had the word "Gibset" in large letters on the chest. Gibset was the name of Mr Ali's gib-fixing business.

[22] He said that the defendant discussed about getting a second extension, then applying for a student visa and then carrying on in New Zealand and working. Those discussions were about his visa.

[23] [Complainant 3] said he had not seen the information in the application forms that relate to the charges or the defendant's cover letters. -He did not give the information regarding the reason for the application to the defendant. He said that it was quite clear he was working for Mr Ali.

[24] [Complainant 2] was told that a work visa would be processed for him when he got to New Zealand. His evidence was that he did not tell the defendant what to put in the application form and did not tell the defendant to later withdraw an application. Regarding the reason for the application, [Complainant 2] said he told the defendant that he only reason he wanted to stay longer in New Zealand was to

work. He said the defendant told him he was putting down that he wanted to visit other parts of New Zealand.

[25] [Complainant 1] application was mostly filled out by Gita – she told him she knew how to fill out the application. The application was delivered to the defendant by Mr Ali and [Complainant 1] on their way to work in the morning. [Complainant 1] said that Mr Ali and the defendant discussed [Complainant 1's] work, what he was doing and that he had improved a lot. [Complainant 1]signed the declaration in front of the defendant but amendments to a phone number within the form had been signed in front of Gita. The reasons for applying for the visitor visa included seeing mountains, seeing skiing and visiting Rotorua. [Complainant 1] gave evidence that Gita put all that information in the application and that he didn't even know mountains and didn't even know Rotorua.

Defendant's Position

[26] The defendant submitted there was no case to answer as there was no evidence of the defendant's involvement prior to the complainants' first visit to New Zealand and once in New Zealand, the "visit" (as per the charges) was over. That submission was rejected as each visitor visa is for a discrete period of time covered by the application. On that basis, a "visit" is for each discrete period of time applied for. Support for that is found in the application itself which notes that a visitor application can be made while living in Auckland.

[27] The defendant's defence is that he simply wrote in the applications what he was told by the applicants and had no knowledge of whether they were working or not and, as they wanted to apply for visitor visas, it would have been insulting to ask if they were working. His evidence was that if the applicants said he had knowledge of them working, they were lying.

[28] The defendant conducted his legal practice from his home office in Mangere. He has worked as a lawyer doing mostly immigration work since 1992.

[29] He acknowledged that he filled in the applications of [Complainants 3 and 2] but that the application of [Complainant 1] was already mostly completed when he first saw it. He acknowledged that he filed the relevant documents with INZ on or about the dates referred to in the charging documents. He described the process he normally follows whenever people attend his home office wanting assistance to apply for visas.

[30] That process involved him going through the application with the applicant. He would ask the applicant for the information required to complete the application, and would write the answers on the application. He would then hand the application to the applicant to check that everything he'd written down was correct. Once he received confirmation that the information was correct, he would have the applicant sign the application in front of him. In [Complainant 1's]case, he said he had [Complainant 1] confirm that everything in the application was OK and when [Complainant 1] confirmed it was, he had him sign the application. He was particular about ensuring that applicants signed the application in front of him.

[31] Thereafter he would type a cover letter to INZ concerning the application, usually paraphrasing the reasons for the application. He would often, but not always, read the cover letter to the applicant. Thereafter he would post or deliver the cover letter, application and required fee of $165.00 to INZ.

[32] The defendant charged $150.00 for his services.

[33] The defendant denied that he knowingly supplied misleading information to an immigration officer. His position was that he simply wrote down what the applicants told him regarding their reasons for the applications for visitor visas. In fact his evidence was that it would have been insulting to ask the complainants if they were working. If someone was a visitor, the defendant expected them to be visiting New Zealand so he wouldn't ask any unnecessary or irrelevant questions.

[34] He accepted that his bank statements showed the movement of application fees of $165.00 to INZ and receipts from INZ in response. He accepted that there was no record of his fees within his bank account because he was paid cash and had spent the

money. He acknowledged that personal and business financial transactions are recorded in the same bank account.

[35] His evidence was that he made no comments regarding whether the complainants were working and he treated them as visitors.

[36] The defendant introduced evidence which was not put to the complainants. The evidence was that the complainants may have been given "immunity" so that they would be able to return to New Zealand and have a good record with INZ. They lied to save their own back and they had a grudge against Mr Ali.

[37] That evidence was to support the defendant's belief that the complainants were lying, had probably colluded and/or were coached and given "immunity" or offered inducements to give evidence.

[38] The suggestion that the complainants had been induced, or as put by the defendant, given "immunity" was put to [the immigration officer] and clearly rejected.

[39] The only evidence that could be considered as giving rise to collusion between the complainants was from [Complainant 1] when he said that the workers had talked about pay and conditions amongst themselves. It is a reasonable inference that those discussions would have touched on immigration matters as well. Particularly in view of evidence that on one occasion Mr Ali visited their building site to warn of a likely visit by immigration officials.

Decision

[40] I found no weight in the suggestion of inducements to the complainants or indeed collusion amongst them. It is reasonable to infer that any grudge they may have had against Mr Ali dissipated once he was sentenced to a lengthy term of imprisonment. There was no evidence at all of them lying as a result of an inducement or of being coached.

[41] When all the evidence was considered, I preferred the evidence of the complainants to the evidence of the defendant. The thoroughness of the investigation process and the evidence presented relating to it was also persuasive.

[42] [Complainant 3] in particular presented a narrative of events which was compelling in its clarity. I accept that he met the defendant in his work clothes and that he had obviously been working. I also accept that there had been a discussion between the defendant and Mr Ali in the presence of, and at times including [Complainant 1], and that it revolved around work and work performance. I accept that all the complainants had little or no knowledge of what the defendant was doing with INZ on their behalf.

[43] In those circumstances, to supply information that reasons for visitor visas were to visit or take part in a number of other sightseeing activities, was clearly false and misleading.

[44] I am satisfied beyond reasonable doubt that the defendant knowingly supplied information to an immigration officer that was false or misleading in material respects, namely, information about the reasons for visiting New Zealand for applications for visitor visas.

[45] The prosecution having proven the charges to the required standard, I find the defendant guilty of all charges.

G F Hikaka
District Court Judge