IN THE DISTRICT COURT
AT AUCKLAND

CRI 2013-004-002413

IMMIGRATION ADVISERS AUTHORITY

v

ALISON YANG

Hearing:	27 November 2013
Appearances:	Shona Carr for the Informant Paul Dacre QC for the Defendant
Judgment:	5 March 2014

RESERVED JUDGMENT OF JUDGE E M AITKEN

---

[1] The defendant is charged that between 4 July 2011 and 14 November 2011 she:

(a) held herself out as a person who provides immigration advice contrary to s 64(1) Immigration Advisers Licensing Act 2007 (the Act); and

(b) provided immigration advice (s 63(1)(a) of the Act)

being neither licensed to provide advice nor exempt from holding a licence under the Act, and knowing she was required to be licensed or exempt before so acting.

[2] There is no dispute that the defendant did not have a licence and was not exempt from holding one; there is also no dispute that she was aware of the licensing requirements. The issue for determination in these proceedings is whether, as a matter of fact and law, the defendant gave immigration advice and held herself out as someone providing such advice.

Background

[3] The defendant is the sole director of Sea Consultants and Investments Limited which is in the business of providing immigration advice about New Zealand. At the relevant time, the company employed one licensed immigration adviser, the defendant's son Yang (Giang).

[4] On 22 October 2010 the Immigration Advisers Licensing Authority sent a letter to the defendant explaining the requirements around people providing immigration advice and the requirement to be licensed. The defendant was not, and has never been, a licensed immigration adviser, and is not exempt from holding a licence.

[5] In July 2011 the defendant, on behalf of Sea Consultants, entered into a contract to produce a programme on radio frequency AM 936 to promote and advertise the products and services of Sea Consultants. Senior management at the radio station instructed the defendant that a licensed immigration adviser must be present during each broadcast.

[6] The programme was commonly referred to as the Sea Immigration Hotline. The programmes (as evidenced by the production of transcripts for four such programmes) commence with a promotion of Sea Consultants emphasising the company's experience as an immigration consultant company and that, in response to audience demand, Miss Fan has returned to the programme. The defendant is also known as Miss Fan. The format of the programme was to commence with a general discussion about a particular immigration topic and thereafter invite callers to telephone in with questions which Miss Fan would answer. On occasion she referred a matter to her son who was also present throughout the broadcasts

[7] The broadcasts ran from 14 July until 14 November 2011 every Monday night after the 7.00 pm news and concluded at 8.00 pm. The callers' questions usually concerned New Zealand immigration matters but could also include questions about New Zealand benefit entitlements, student fees and citizenships as well as, on occasion, queries about Australian migration. As noted, the majority of calls were answered directly by the defendant with a large number of callers specifically directing their questions to "Miss Fan".

[8] On four occasions, 5 September, 19 September, 26 September and 3 October 2011, the informant recorded these radio shows. The show was obviously conducted in Mandarin and a translated copy of the transcript was exhibited in the proceeding. No issue is taken with its content or the accuracy of translation. It is based on those transcripts and the evidence before the Court that the informant argues that both charges are proved.

[9] While most of the evidence is not in question, the defendant disputes the informant's claim that the charges are proved, primarily arguing (1) that there is no prima facie case; and (2) if there is a prima facie case, that the prosecution has failed to prove that the defendant provided immigration advice as it has failed to prove that the information she was conveying was not publicly available (in other words, the prosecution has failed to prove that she provided "immigration advice" within the meaning of the definition prescribed in s 7 of the Act).

The evidence

[10] As noted, the evidence is not materially in dispute. In short, it is accepted that the defendant:

(a) knew she could not give immigration advice or hold herself out to give such advice unless she was a licensed immigration adviser;

(b) is not a licensed immigration adviser and is not exempt from holding a licence;

(c) with her son participated in the four one-hour radio programmes by providing the responses as set out in the transcript.

[11] The defendant argues, however, that she did not give advice, did no more than provide information that was, at the time, "publicly available", and that she was not therefore giving "immigration advice" nor holding herself out to do so.

The No Case to Answer submission

[12] At the conclusion of the prosecution case the defendant submitted that there was no case to answer on the basis that the informant had failed to prove that the information contained in the defendant's various responses to the four radio shows was not "publicly available".

[13] With the consent of both counsel, I reserved my decision at that point in the interests of effective use of court time, the defence called evidence (a single witness, the defendant's son) and closed its case.

[14] Submissions were sought from both counsel on the no prima facie case issue and these have been received and considered.

[15] Section 7 of the Act provides:

> **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.

[16] The informant called no evidence as to what information was publicly available at the relevant time although Ms England, under cross-examination, gave evidence that there was an Immigration New Zealand website and an Operating Manual.

[17] In her various comments and responses during the four radio broadcasts, the defendant answers questions and expresses her opinion, often referring to various aspects of immigration policy. It is submitted that, because there is no evidence before the Court that such policy or general information was not publicly available, there was no case to answer as the prosecution has failed to prove that the defendant gave "immigration advice".

[18] The informant rejects this argument, claiming that the onus is on the defendant to prove any such information provided was information that was publicly available and that the defendant was, in effect, merely conveying such information. Alternatively, the informant argues that actual advice was given which went well beyond simply conveying any such publicly available information.

Decision on No Prima Facie case

The test

[19] The primary function of the Court, when considering an application of no case to answer, is to conduct an assessment of the sufficiency of the evidence. If the Court finds there is some evidence (not inherently incredible) which, if accepted as accurate, could establish each essential element of the alleged offence, then there will be a case to answer: *R v Flyger* [2000] 2 NZLR 721.

The Immigration Advisers Licensing Act 2007

[20] In response to concerns over the competency and practices of immigration advisers, Parliament enacted the Immigration Advisers Licensing Act 2007. Its purpose, as contained in s 3 is: to promote and protect the interests of consumers receiving immigration advice; to enhance New Zealand's reputation as a migration destination; and to regulate persons providing immigration advice. To this end the Act includes a licensing regime for persons providing immigration advice and makes it an offence for any person to provide immigration advice without a license, unless that person is exempt under s 11.

[21] The defendant is charged under ss 63(1)(a) and 64(1) of the Act:

> **63 Offence to provide immigration advice unless licensed or exempt**
>
> (1) A person commits an offence if the person—
>
> (a) provides immigration advice without being licensed to do so under this Act or exempt from the requirement to be so licensed, knowing that he or she is required to be licensed or exempt; or
>
> (b) provides immigration advice without being licensed to do so under this Act or exempt from the requirement to be so licensed.
>
> (2) For the purposes of subsection (1)(a), a person is deemed to know that he or she is required to be licensed or exempt if, at any time within the 12 months preceding the date of the alleged offence, that person had been informed of that fact in writing by the Registrar or a person appointed to the Authority.

> **64 Offence of holding out as immigration adviser unless licensed or exempt**
>
> (1) A person commits an offence who holds out that any person (including the person himself or herself) who is neither licensed under this Act to provide immigration advice, nor exempt from the requirement to be licensed to do so, provides immigration advice, knowing that the person is neither licensed nor exempt.
>
> (2) For the purposes of subsection (1), a person charged with an offence under this section is deemed to know that the person held out as providing immigration advice was neither licensed nor exempt if, at any time within the 12 months preceding the date of the alleged offence, the person charged had been informed of that fact in writing by the Registrar or a person appointed to the Authority.

[22] The term "immigration advice", as it appears in both offence provisions, is defined at s 7 of the Act; set out above at [17].

The Summary Proceedings Act 1957

[23] These proceedings were commenced on 1 March 2013, before the enactment of the Criminal Procedure Act 2011, and are therefore governed by the Summary Proceedings Act 1957 (SPA). Section 67(8) of the SPA provides:

> Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence in the enactment creating the offence, may be proved by the defendant, but, subject to the provisions of section 17 of this Act, need not be negatived in the information, and, whether or not it is so negatived, no proof in relation to the matter shall be required on the part of the informant.

The Elements of the Offences

[24] In accordance with s 67(8) of the SPA, the prosecution is not required to prove any exception, exemption, proviso, excuse, or qualification whether it does or does not accompany the description of the offence in the enactment creating the offence.

[25] The authors of *Adams on Criminal Law* explain at [SAX67.06]:

> The test to be applied in deciding whether a particular element of an offence is a form of exception is a question of construction, to be determined by looking at the form and the intrinsic character of the provision, and its real effect: *McFarlane Laboratories Ltd v Dept of Health* [1978] 1 NZLR 861.

...

> Among the other issues that the Court should have regard to in determining on whom the burden should lie, is the ease or difficulty that the respective parties would encounter in discharging the burden. When all the cases are analysed, those in which the Courts have held that the burden lies on the defendant are cases in which the burden can be easily discharged.

[26] In *Gorrie v R* [2007] NZCA 144 the Court of Appeal reaffirmed that the appropriate test to determine whether a provision is an exception of the type referred to in s 67(8) is that set out in *R v The Justices of County Cork* [1907] 2 IR 5 at 11:

> The test or dividing line appears to be this: does the statute make the act described an offence subject to particular exceptions, qualifications, etc, which where applicable make the prima facie offence an innocent act? Or does the statute make an act prima facie innocent an offence when done under certain conditions. In the former case the exception need not be negatived; in the latter, words of exception may constitute the gist of the offence.

[27] Sections 63 and 64 are clear that the prosecution must prove the defendant provided immigration advice (s 63) and held herself out as a person who provided immigration advice (s 64). The definition of immigration advice at s 7 includes both a description of the acts that will constitute the provision of immigration advice at subs (1)(a) and a list of exceptions to this at subs (1)(b):

> (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.

[28] In accordance with the test set out in *The Justices of the County Cork* the exceptions listed at s 7(1)(b) make the prima facie offence defined at s 7(1)(a) an innocent act and therefore need not be negatived by the prosecution. Rather, the defendant must prove on the balance of probabilities that his or her case falls within the exceptions listed.

[29] Other factors also support this analysis. Subsection (1)(b)(i) refers to publicly available information. I am in no doubt that it will be much easier to prove that information relevant to any particular proceedings is in the public domain or has been prepared or made available by the Department than to prove that it is not or has not been. As the prosecution submits, the latter would require a comprehensive knowledge of everything that has ever been publically disseminated from whatever source at any time – an enormous, unrealistic burden given the range of immigration policy, its numerous sources in terms of Operating Manuals and policy statements, and geographically, i.e. in New Zealand and in offices around the world. In contrast, if the defendant only provided information in the public domain or that had been prepared or made available by the Department, the Court can reasonably expect the defendant to be able to provide evidence both as to the source of that information and how s/he obtained it. Similarly, the defendant is unlikely to have any difficulty providing evidence on the exceptions at (ii) and (iii).

[30] For those reasons, I am satisfied that, pursuant to s 63, the prosecution must prove that between 4 July 2011 and 14 November 2011 the defendant provided immigration advice, pursuant to s 7(1)(a) in that she:

i. used or purported to use knowledge of or experience in immigration

ii. to advise, direct, assist or represent another person

iii. in regard to an immigration matter relating to New Zealand.

[31] With regard to s 64, the prosecution must prove that between 4 July 2011 and 14 November 2011 the defendant held herself out as a person who provides immigration advice, pursuant to s 7(1)(a): in that she:

i. held herself out as a person who used or purported to use knowledge of or experience in immigration

ii. to advise, direct, assist or represent another person

iii. in regard to an immigration matter relating to New Zealand.

Finding on No Prima Facie case

[32] The defence submission is rejected. It is not for the prosecution to prove that the information used by the defendant was publicly available – on the contrary it is for the defendant to prove this exception.

[33] On the evidence before the Court at the conclusion of the informant's case, there was evidence that the defendant provided immigration advice and held herself out as being someone permitted to provide such advice.

[34] While the Court is not required to give reasons for finding a case to answer, the reasons which follow obviously form a significant part of my reasons for reaching this conclusion.

Decision on substantive charges

Findings on the evidence

1. Section 63: providing information advice

[35] The essential question here is whether the informant has proved that the defendant provided immigration advice to callers. As noted above, this can be broken down into three questions:

(i) Did she use or purport to use her knowledge of or experience in immigration;

(ii) To advise, direct or assist another person;

(iii) In regard to an immigration matter.

[36] Relevantly "immigration matter" is defined in s 5 of the Act as follows:

Immigration matter means any matter arising under or concerning the application of the Immigration Act 2009 (including any regulations or instructions made under that Act); and includes—

(a) an application or potential application for a residence class visa, temporary entry class visa, or transit visa:

(b) a request or potential request for a special direction:

(c) a claim for recognition as a refugee or a protected person, and any related appeal or matter:

(d) a matter relating to immigration sponsorship:

(e) a matter relating to an immigration obligation:

(f) an appeal in relation to an immigration matter

[37] Or, as the defence submit, was she merely providing general publicly available information about immigration laws and policy?

[38] The words "advise, direct, assist or represent" in s 7 are not defined in the Act. While they need to be interpreted in accordance with the context and general purpose of the legislation, it is helpful also to note the Oxford dictionary definition.

[39] To that end the Oxford dictionary definition of the word "advise" means:

(i) To offer suggestions about the best course of action to someone;

(ii) To recommend;

(iii) To inform about a fact or situation in a formal or official way.

[40] The word "assist" is given a single definition of "to help, typically by doing a share of the work".

[41] Both words clearly have a very broad ambit in general usage and, in my view, within the context of this legislation particularly as both verbs are coupled with the phrase "whether directly or indirectly".

[42] The common usage of the words, covering as they do a broad scope of conduct, seem entirely consistent with the purpose of the Immigration Act which is, inter alia, to promote and protect the interests of consumers.

[43] Section 5 in its definition of immigration matters also invites a broad interpretation including as it does a non-exhaustive list of, effectively, examples of what might be included under the definition. However it is a broad definition meaning "any matter arising under or concerning the application of the Immigration Act ..."

[44] Adopting the common usage of the terms "advise" and "assist", the question might be rephrased as "Did the defendant, using her knowledge and experience of immigration matters, offer suggestions about the best course of action to someone, or help someone with any matter, concerning the application of the Immigration Act?"

[45] Without any doubt I am satisfied that she did. The unchallenged context of the four radio programmes put this, in my view, beyond doubt.

Use of immigration knowledge or experience

[46] Each programme commences with a promotional advertisement and introduction to Sea Consultants which is described as a "well known establishment with a history of over 10 years" in which it has gained "rich experience and has been offering services in immigration, student services, visa, applications for citizenship and other areas as well". It has "won a good reputation". The defendant "co-hosts and serves the audience with licensed immigration consultant Jerry". (See for example Tab 11, 3 October 2011 broadcast, show introduction.)

[47] The defendant "has a large team of supporters" in the company (see Tab 10, introduction 20 September 2011 show).

[48] The defendant is the sole director of Sea Consultants Limited. The company's business is to provide immigration advice about New Zealand. In her interview with an officer of the informant she claimed to have been involved in the

immigration industry since 1996 or 1997 "... I ... help people from that time to apply for visa or something ..." (p 8 of the interview transcript).

[49] The company is clearly involved in the business of providing immigration advice as, on her own admissions, is the defendant herself.

[50] There is no dispute that her son was present with her in all four programmes. There is no dispute that he is a licensed immigration consultant. However he plays very much a secondary role – it is clear from the transcript that it is the defendant who answers almost all of the questions from those who call in during the one-hour show. While at times she might refer a matter to her son (infrequently in each programme) there is nothing about the manner in which she answers the question that gives any suggestion that her son has been (1) consulted on the answer, or (2) provided her with advice or in fact the answer before it is conveyed to the caller. On the contrary, the defendant does most of the talking and responds to questions immediately it would seem.

Advising and assisting another in regard to an immigration matter

[51] It is clear from reading these transcripts that each of the four radio programmes is littered with instances of where the defendant offered suggestions about the best course of action to a caller or helped a caller with matters concerning the application of the Immigration Act. The following are but examples:

The 5 September 2011 interview

[52] The host introduces the topic for the day which is around those Chinese nationals in New Zealand with good jobs but who cannot meet the English language requirements to obtain visas under the general skills category. The host asks the defendant directly "Is it possible to find a way we can help them?"

[53] The defendant then gives lengthy advice – there is no other word for it – prefacing it with a statement of fact that it can be very difficult for chefs to find time to study English. She then goes on to "get a solution to solve their problem, enable them to get enough points and obtain status" by suggesting that they apply under the

Long Term Shortage Talent Migrant category. She then sets out the requirements of that category and, again, gives examples of different practical scenarios. (Tab 8, pp 1-3.)

[54] As noted, there is no other way to describe what the defendant is doing on this occasion other than conclude that she is giving direct immigration advice as to how someone in New Zealand who is unable to speak English to a point where they could necessarily meet the general skills category can nevertheless remain in this country lawfully.

[55] She goes on to offer assistance to those seeking to gain entry under the spousal category when she says "The important thing is how to prove it to Immigration NZ that your relationship is genuine and stable". This point, she says - i.e. the need for proof of a stable relationship – is very important. (Tab 8, p 4.)

[56] A caller wants to extend her visitor's visa to remain in New Zealand with her daughter who has permanent residency. She was told by the defendant that she must apply when she is in her home country (i.e. she cannot apply while in New Zealand). Whilst such a statement may be the mere repetition of policy, the defendant then goes on to offer suggestions as to the best course of action, i.e. she provides advice to the caller. Without any suggestion that the caller wishes to study English, the defendant suggests:

> **A.**
> Miss Fan: Let say if you don't want to go back and you also wish to study English here, you can, normally like your situation, children have PR, because of your situation, from your voice, your child is your only child, whether or not the only child, parents are always wanting to spend more time with their children, to due with this situation is to change to student visa. If you change to a visa to study language, you can have more time to be here to be with her. You can freely come and go after changing to student visa, this is also a solution.
> F: After expiry of 9 months, extend 3 months or immediately change to student visa?
> Miss Fan: If you really want to study, don't wait for 3 months, extend for 3 months, but it depends on individual needs.

[57] This elicits a further request for advice which is then given:

B.

Miss Fan: No. No work visa, if he wants to study language on student visa, it can only be each one pays own school fee, apply own visa. But if you study skill shortage list course, you can get work visa if you hold a student visa.

[58] This is a particularly blatant and clear instance of the defendant giving advice and assistance to a caller and even directing (as the term is meant under s 7) her to act in a way that she has not suggested she is either interested in or aware of when seeking initial advice.

The 19 September 2011 broadcast

[59] In this programme much time is spent on the situation where visas can be extended where, for example, parents are in New Zealand with children who have New Zealand residency but are awaiting the outcome of their own applications for residency. The defendant speaks at length about the issue, commenting at one point in the following way:

> In this particular situation, can the applicant with overdue visa stay in New Zealand lawfully? ... No, the answer is no. Your stay becomes unlawful because your visa is overdue. Your stay in turn can affect the outcome of your residency. You become an illegal overstayer.
>
> What can be done then? ... If your visitor visa is about due, don't wait till the last minute to take action. The normal practice is, if your parents wish to stay here in New Zealand permanently, of course they have lodged the application, if they intend to improve English and mix with society here, which in turn make them easy to take care of the third generation... They enjoy their life happily by attending language schools to learn English. By doing so, the benefits are, they have got their visa issues resolved ... The conclusion is that if your parents are here waiting for the outcome of residency under family sponsor category and their visa is about due then you are most welcome to Sea Consultants. We can help your parents get student visa so they can stay in New Zealand legally and happily while waiting for the outcome of residency.

[60] At the conclusion of that statement, after commercial breaks, the defendant's son Jerry states "Miss Fan mentioned just now, while parents are waiting for the outcome of residency on family sponsor category, <u>our</u> advice is ..." It would appear, therefore, that certainly the licensed immigration adviser on the show is of the view that the defendant has just provided advice.

[61] Another caller rings in, gives his or her circumstances and asks "What shall I do next?" The defendant elicits further information from the caller and then advises that person that the policy requires her parents to get an x-ray. (pp 7 and 8 of transcript).

[62] The fact that such policy may be readily available in the operating manual or is on the New Zealand website (and there was certainly no evidence that that is the case) does not convert the actions or conduct of the defendant from unlawful to lawful. The defendant is not simply making available publicly available information – she is applying her knowledge of policy to the caller's particular circumstances and giving advice or directions as to the next steps to take the process of permitting the caller's parents to remain lawfully in New Zealand.

The 26 September 2011 broadcast

[63] The defendant gives advice around a particular student visa (p 13 of the transcript).

[64] She actively assists a caller find a way for a 70 year old friend to remain in New Zealand with his daughter by, once again, advising him to obtain a student visa to study English:

> [Caller]: I have a friend who is over 70 years of age, his visa has expired and wanting to remain and accompany his daughter. What can he do?
>
> [Defendant]: Accompany his daughter, are you saying his visitor's visa expired?
>
> [Caller]: Correct.
>
> [Defendant]: He can change to student visa if he wishes to study here to improve his English, New Zealand Government welcomes it. His situation can change to student visa.

[65] She later gives lengthy advice about the importance of ensuring that work experience relates to the qualifications a particular immigration applicant is relying on to get a visa, including the following statement:

> Academic qualification is just the foundation, not a key factor. What is the key factor which is a job in New Zealand and the job must relate to your

> qualification or to your work experience. If you have this job, it would safeguard when apply for skilled migrant. ... So our conclusion is we repeatedly advise the overseas students that if you want skill migrate, remember this slogan that is "Qualification is foundation, work is the key factor".

[66] And still later, she advises listeners "If you are intending of getting work visa as soon as possible, do not miss those few months time" or they will lose the opportunity to get the visa as the rules change on 3 April the following year (see p 21 of the transcript).

The 3 October 2011 broadcast

[67] The defendant informs the caller that, to meet the New Zealand $30,000 annual income requirement, the Immigration Department has, in effect, no interest in the source of the fund just whether the income is lawful and is an after or before tax income (p 7 of the transcript at Tab 11.)

[68] She informs another caller that the New Zealand Government has released information around E visas – and that it is "advisable" to have an E visa finalised before departure.

[69] She tells a caller that, in the circumstances as described by that caller, the caller cannot sponsor his or her parents, but goes on, in response to the question "Are there any alternative options" to give one – in other words, she offers suggestions about the best course of action for this caller in his or her circumstances.

[70] She assists another caller with sponsorship issues under the family sponsor category, saying "I like to say that about the working holiday visa, to the young people the key factor now is the English requirement. If you have relatives or friends wanting to come to New Zealand on this visa, if he scored 5.5 he can get this visa, and works after coming here, this is very convenient, but it has to be 5.5 on IELTS".

Conclusion on the evidence

[71] These radio programmes commence with Sea Consultants' advertisement for its "Immigration and legal services", stressing its years of experience in, effectively, all fields of New Zealand immigration work.

[72] The defendant, called Miss Fan in the programmes, is there "at the audience request". Callers phone in with specific questions to their individual circumstances.

[73] Miss Fan answers those questions by explaining the policy and making explicit suggestions about how to achieve the end sought, usually how to remain in New Zealand lawfully for longer than the current visa entitles them to.

[74] There can be no doubt at all that on numerous occasions during the relevant period, the defendant is providing immigration advice and assistance using her knowledge and experience of immigration matters. That is self-evident from the transcript as set out in the examples above.

[75] Her son is present with her. As noted, he is a licensed immigration adviser. But he does not give advice, except infrequently when asked. The defendant does not ask him for advice before responding to callers. She does not seek his assistance at all in the examples given above. The fact of his presence alone does not assist the defendant in avoiding criminal liability.

[76] The evidence before me is overwhelming. I am satisfied that the informant has proved the charge beyond reasonable doubt.

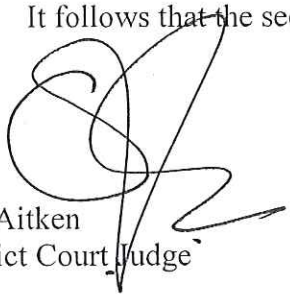
Section 64(1) charge: that the defendant held herself out as a person who provides immigration advice

[77] I am also satisfied that this charge is proved beyond reasonable doubt. Each programme commenced with the company's advertisement, as noted previously. Miss Fan, the defendant, is described as "co-hosting" the programme with "licensed immigration consultant Jerry".

[78] She refers frequently to her experience in the course of the programmes and in the course of giving advice. While on occasion she suggested a caller follow up with further inquiry at the company offices (the programme is, after all, an advertising slot) she frequently gives immigration advice to callers.

[79] Again, I am left in no doubt that given the way the company is described, the defendant's role in the company, her role in the broadcasts, the nature of the advice she provides over a range of topics, and the fact that she is accompanied by her son who is, on each occasion, described as a licensed immigration adviser, that the defendant both held herself out and intended to hold herself out as a person providing immigration advice.

[80] It follows that the second charge is also proved beyond reasonable doubt.



E M Aitken
District Court Judge