

Australian Immigration Law Services

From: "Australian Immigration Law Services" <sydney@australiavisa.com>
To: <Julia.Gillard.MP@aph.gov.au>
Cc: <carlise.wendy@abc.net.au>
Sent: Monday, 20 July 2009 1:50 PM
Subject: Complaint regarding DEEWR's Standard of Investigation

The Honourable Ms. Julia Gillard MP

Minister of DEEWR

Email: Julia.Gillard.MP@aph.gov.au

Fax:02 6273 4115

Dear Minister

Our office has been appointed to lodge a formal complaint on behalf of Mr. Brijesh Kumar regarding the quality of DEEWR's government department's office response to an investigation into his mistreatment at the hands of a registered training organization, Sterling College. This complaint today focuses upon the inadequacy of your department's conclusion into the investigation of Sterling College. We also openly challenge your department to provide a explanation on how such a response could be made by a government officer which clearly is designed to protect the education provider and grossly denies an overseas student due justice.

This mistreatment has caused Brijesh a significant emotional distress combined with a substantial financial loss.

As Sterling College is a CRICOS registered RTO it is governed by the Education Services for Overseas Students (ESOS) Act 2000. Your department is responsible for the oversight and compliance of education providers in Australia in relation to the ESOS Act 2000. It is understood that VETAB which originally received Brijesh's complaint against Sterling College referred the matter to your department to investigate if any breach of the ESOS Act 2000 had occurred. A response of this investigation was received by Mr. Kumar on the 12th May 2009. The response is reproduced below;

From: **ESOS Mailbox** <esosmailbox@deewr.gov.au>
Date: Tue, May 12, 2009 at 8:40 AM
Subject: RE: what is my fault??
To: brijesh bhardwaj <brijesh.sydney@gmail.com>

Dear Mr Kumar

We have investigated your complaint made against Sterling College regarding cancelling your CoE without notification.

Sterling College have provided evidence that you were advised of the re-enrolment procedure via email on 27 November 2008 and that you had been previously advised that enrolment matters must be directed to Student Services not the Director of Studies. The Director of Studies only dealt with academic matters not enrolment matters. Sterling College also sent four SMS messages to the mobile phone number registered with the College. The first two were reminders of enrolment week. The third SMS sent and delivered on Wednesday 21 January 2009 was a warning that you had not reenrolled and that your CoE was going to be cancelled and the final SMS sent and delivered on Friday 30 January 2009 was the advise that your CoE had been cancelled.

Taking into consideration the actions taken by Sterling College to attempt to contact you when you did not

reenrol you were given sufficient warning prior to the cancellation of your CoE and the College acted within the requirements of the National Code 2007.

I also note that you have now enrolled with another provider to complete your qualification.

Regards

Tanya

ESOS Mailbox | International Quality Branch

Australian Government Department of Education, Employment and Workplace Relations

.....

We can assume Tanya is in fact Ms. Tanya Taylor, Senior Case Officer, ESOS Provider Support & Compliance Unit. Firstly we must inform you that Ms. Taylor made no effort to contact the complainant Mr. Kumar before reaching her conclusion that the school abided by the National Code of Conduct 2007.

We will outline the facts of Mr. Kumar's circumstances leading up to his COE being cancelled and the events which unfolded afterwards. Then using the ESOS Act of 2008 and the official compliance Standards set by DEEWR we will analyse Ms. Taylors' response.

- 1) Mr. Kumar was given permission by the provider to complete his assessment early so he could return to his home country India to be married. He left Australia in November 2008.
- 2) The provider was fully aware that he had returned to his own country for the holiday break. They were also aware that he was getting married and that he also had full intention to complete the final remaining placements of his course so he could lodge his residency application. The provider was aware that he was not just a new student who may have been having difficulty with his course and perhaps was considering not to return. On the contrary they were well aware he was on the final stretch of his program with completion well within his grasp.
- 3) On the 2nd of January 2009 Brijesh sent an email to the education provider addressed to the Director of Studies of who he had prior communication with regarding him leaving Australia earlier last year to be married. In this email he outlined that his grandfather had died whilst he was home and he also suffered from ill health. These were significant compassionate circumstances. He outlined these circumstances were going to cause him to be delayed by two weeks to return to his course. He received no reply to his email.
- 4) On the 8th January 2009 concerned that he had not received a reply to his prior mail he sent a follow up email outlining again he would be delayed. He received no reply to this mail but he assumed it had been received and that the college would have contacted him if their was a problem with his slight delay in re-enrolment. Since Brijesh knew he had no more classes to attend to, (he had only his two practical placements to complete in order to qualify for his Diploma of Welfare which were still to be organized by the school) he saw no possible reason why the school would object to his short delay in re-enrolment. There were no classes he would miss by this delay.
- 5) Concerned that he would not be able to attend the school for the enrolment day Brijesh instructed his friend and fellow student of the school to enrol him by proxy and pay his fees.
- 6) His friend subsequently attended the college on the day and explained to the providers staff the circumstances Brijesh found himself in and requested to enrol him on his behalf and pay his fees. She was subsequently denied permission to enrol Brijesh stating he had to be here in person.
- 7) On the 16th February 2009 Brijesh returned to Australia and attended the school to enrol. He was then informed by the staff that his COE had been cancelled. It was the first time Brijesh had heard that his COE had been cancelled.
- 8) Brijesh then saw his education agent who made a number of submissions to the school on his behalf which over the follow month led to nothing. The school refused to enrol him again.
- 9) In April of this year Brijesh was forced to moved to Melbourne to start at his new education

provider. It now meant that not only that he had to move interstate he also would not be able to complete a Diploma until December 2009, some six months after he has due to finish.

Analysis of DEEW's Response via Ms. Tanya Taylor Senior Compliance Officer

- 1) Firstly, the ESOS Act refers to the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (The National Code 2007). Ms Taylor fails to identify any specific section of the code in her response to Mr. Kumar.
- 2) Standard 13 of the The National Code 2007 refers to the "*Deferring, suspending or Cancelling of the students enrolment*". Section 13.4 states "

The registered provider must inform the student of its intention to suspend or cancel the student's enrolment where the suspension or cancellation is not initiated by the student and notify the student that he or she has 20 working days to access the registered provider's internal complaints and appeals process as per Standard 8.1. If the student accesses the registered provider's internal complaints and appeals process, the suspension or cancellation of the student's enrolment under this standard can not take effect until the internal process is completed, unless extenuating circumstances relating to the welfare of the student apply.

Sterling College was aware that Mr. Kumar had left his course early in 2008 to attend his wedding in Bangladesh. The provider in fact arranged an assessment in advance so he could leave the school for holidays a few days earlier than scheduled. Sending an SMS to a person who is most likely overseas would not constitute a reasonable persons assessment that he/she has "been notified". Any reasonable person would be aware that SMS messages sent to a local mobile phone in Australia are not received in overseas countries. A reasonable and believable process would ensure that an education provider at least send emails or letters by post as forms of an official notification process. Ms Tanya acknowledges that the provider sent an email letter to Mr. Kumar outlining the enrolment process on the 27th November 2008. Doesn't Ms. Taylor find it odd that even more important letter such as warning of COE cancellation and the fact that a COE had been cancelled was sent by SMS and not by email again?

Any competent investigator would realize that emails leave trails of evidence that is difficult to falsify. We believe the college claims an SMS has been sent for there is no reliable evidence to prove a SMS had either been sent or not sent.

Section 13.4 clearly identifies that the student must be notified of the cancellation and most importantly "*notify the student that he or she has 20 working days to access the registered provider's internal complaints and appeals process as per Standard 8.1*". How does Ms Taylor propose that a simple SMS conveyed all of this information to Mr. Kumar in relation to his rights of being able to access an appeal process?

We point out quite simply, that no SMS message would be able to convey such information if indeed Mr. Kumar was in a position to receive the SMS, which he was not. By claiming to have sent the SMS the provider has breached their duty of care to the student by not giving him the opportunity to lodge an appeal of the cancellation with 20 days. The provider would have fully aware that a student even if they are overseas can initiate the appeal process. In case the provider is clearly guilty of unconscionable conduct by not sending an email notification of the cancellation. By using the fact an SMS was sent in order to comply with The National Code 2007, they effectively denied Brijesh any possibility of making an appeal within 20 days. Such behaviour by an education provider brings into serious question as to the motivation of such an act.

- 3) Ms. Taylor acknowledges that the education provider received the 2 notifications that Brijesh was not able to return to Australia in time for his scheduled enrolment day. This fact is important in relation to the comments above, Mr. Kumar was not in Australia and this was known to the provider but they continued to send SMS messages rather than emails. The account of the school sending SMS messages, taking these facts into account, is too ridiculous to believe as true.
- 4) If a student sends an email or perhaps a written post delivered letter to the Principle of the college,

would it be expected that the principle just discard such information in the rubbish bin because it should have been addressed to "Student Services"? Surely the education provider and all of its staff, from the Principle down, has a legal and moral obligation to ensure mail or information received is directed to the appropriate person. Is it possible Minister that will ignore the content of this fax because the fax number perhaps comes to your secretary or in fact because official complaints are meant to come via some other government office and not direct to you? I do not believe that you or any member of your department would do so. For Ms Taylor to support the providers incredible postulation that the mail was sent to the wrong person therefore it should be trashed or deemed invalid, is incomprehensible. Any reasonable person I am sure would agree. One must also keep in mind that we are not talking about a large educational institution, this is just a small vocational college which operates one a single floor.

5)

On the second of January Brijesh informed the provider of intention to be late for enrolment due to significant compassionate circumstances. The provider was obliged at this stage to consider the student may need to delay or perhaps even defer his enrolment. Such an action of the provider would have ensured Brijesh did not suffer due to a COE unfair cancellation. It states in section 13.2 of The National Code 2007; *The registered provider can only defer or temporarily suspend the enrolment of the student on the grounds of:*

- a. *compassionate or compelling circumstances (e.g. illness where a medical certificate states that the student is unable to attend classes), or*
- b. *misbehaviour by the student.*

6) Brijesh attended the providers enrolment section in Sydney on the 16th of February 2009, just 17 days after the cancellation of his COE according to Ms Taylor's email. He went with the intention of paying his fees and to continue his course and this was expressed to the staff at Sterling College. On this day he was informed for the first time his COE had been cancelled. Despite his pleading the staff told him they could not help him and he was told to leave and see his education agent. He was not given any cancelation letter nor was he given any information that he had just three days to lodge an appeal. If he had been given this information and had he lodged an appeal his COE would have been automatically reinstated until the appeal had been heard. Ms. Tanya mysteriously seems to overlook this fact. The college is again guilty of unconscionable conduct by not providing Brijesh the vital information which would have given him justice to lodge the appeal so he could continue his course. This is certainly not the way an education provider should act in order to comply with The National Code 2007.

There are more issues which could be raised here but it is sufficient to demonstrate that Ms. Tanya's investigation of the treatment of Brijesh Kumar is a disgrace to the decency of the Australian public. Her incredible conclusion and lack of any serious investigation, especially by not bothering to gain any information from the complainant suggests not only professional negligence but must raise the question why has she so blatantly sided with the education provider? What possibly could be her motivations?

It is hard to imagine a case which so blatantly denies a vulnerable international student who only wanted to complete his dream in a few months time by finishing his course.

As head of your department you must accept full blame for allowing your staff to be either completely incompetent or at worst has act deliberately contrary to the purpose of her role. This particular public servant it seems is responsible to oversee its compliance with the ESOS Act 2000. Given our office and now the public is aware how corrupt some education providers are in this country it would not be unimaginable the corruption has spread to sectors of the government which is responsible to oversee such providers and hence the power to determine whether they remain within the CRICOS system.

For the record I would also like to point out that on the 21st May 2009 I sent an email to Ms. Taylor outlining my concerns about corruption at Windsor College and supporting documentation supporting this claim. Ms. Taylor never even bothered to respond to this email. Please find this email attached in the fax sent to your office.

If an appropriate response is not received by your office by the end of this week we will be lodging a complaint with the Commonwealth Ombudsman. We will also be publishing this story of what happened to Brijesh at Sterling College in our email distributed newsletter IMMIGRATION NEWS which has over 6000 international students as direct subscribers. I am sure my readers would like to know an answer to the issues I have raised here as well.

Yours sincerely

Karl Konrad

Managing Director

Australian Immigration Law Services
Tel (02) 9279 1991
Fax (02) 9279 1994
E-mail: sydney@australiavisa.com
Website: www.australiavisa.com
Level 13, 37 York Street Sydney NSW 2000

CONFIDENTIALITY

This email and any attached files are intended for the named recipient(s) only and are confidential. Any views expressed in this message are those of the individual sender, except where the message states otherwise and the sender is authorized to state them to be the views of any such entity. This email is subject to copyright and no part of it may be reproduced in any manner without the written permission of the copyright owner. Australian Immigration Law Services (AILS) operates in accordance with the Privacy Act 1998 and is committed to handling any information in a strictly confidential manner. Australian Immigration Law Services is a registered business name used under license by AILS INTERNATIONAL PTY LTD which is the publisher of IMMIGRATION NEWS.