IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2759 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 96 DB 2019
	:	
v.	:	Attorney Registration No. 69549
	:	
EPHRAIM TAHIR R. MELLA,	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 12th day of February, 2021, upon consideration of the Report and Recommendations of the Disciplinary Board and the parties' responses, the Petition for Review is denied. Ephraim Tahir R. Mella is suspended from the Bar of this Commonwealth for one year and one day, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board. *See* Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 02/12/2021

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	: :	No. 96 DB 2019
v.	:	Attorney Registration No. 69549
EPHRAIM TAHIR R. MELLA Respondent	: :	(Philadelphia)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On May 10, 2019, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Respondent, Ephraim Tahir R. Mella. The Petition charged Respondent with violations of the Rules of Professional Conduct and Code of Federal Regulations related to his representation of clients in immigration law matters. Respondent filed an Answer on June 21, 2019, denying that his conduct violated any Rule of Professional Conduct or provision of the Code of Federal Regulations.

Due to the expected protracted nature of the matter, by Order dated July 22, 2019, the Board appointed Special Master Carl D. Buchholz, III, Esquire to conduct a disciplinary hearing.

Following a prehearing conference held on August 23, 2019, the Special Master conducted hearings on September 24, 2019; September 25, 2019; September 26, 2019; October 7, 2019; October 8, 2019; October 9, 2019; October 28, 2019; November 6, 2019[1]; and November 14, 2019.

In its case in chief, Petitioner offered into evidence, without objection, exhibits ODC-1; composite exhibit ODC-2, consisting of exhibits ODC-2A through ODC-2F; ODC-3A; ODC-3C; ODC-3D; ODC-3F; ODC-4 through ODC-50; ODC-52 through ODC-68; ODC-70 through ODC-73; and ODC-76. ODC-3E and ODC-74 were admitted over Respondent's objections. Petitioner presented the testimony of William A. Stock, Esquire, as an expert in the field of immigration law; Oliver C. Inslee, Esquire; Marcia Binder Ibrahim, Esquire; Anna LoPiccolo; Elmer Gutierrez Lopez; Miguel Guzman Solano; Myrna Munoz Romero; Jose Naula Loja; and Anna Paciorek, Esquire.

Respondent, who was represented by counsel, offered into evidence, without objection, exhibits R-1 through R-4; R-25; R-28; R-31 through R-38; and R-40. Exhibit R-39 was admitted over Petitioner's objection. Respondent testified on his own behalf and presented the testimony of Jason Dzubow, Esquire, as an expert in the field of immigration law; Maritza Rios; Antonio Capistrano, Esquire; and Khody Detwiler, as an expert in the field of forensic document examination.

[1] Oral argument was held on this date regarding choice of law; no evidence was received on November 6, 2019.

Following the Special Master's determination that there was a *prima facie* violation of at least one of the alleged rules in the Petition for Discipline, Petitioner offered into evidence composite exhibit ODC-69, consisting of exhibits ODC-69A through ODC-69D; and ODC-75, which were admitted over Respondent's objections. Respondent presented no evidence in mitigation.

On December 20, 2019, Petitioner filed a Brief to the Special Master and recommended that Respondent be disbarred. On February 3, 2020, Respondent filed a Brief to the Committee and recommended that the Special Master find no rule violations.

By Report filed on May 20, 2020, the Special Master concluded that Respondent violated the Rules of Professional Conduct and recommended that he be suspended for a period of one year and one day.

On June 3, 2020, Petitioner filed a Brief on Exceptions to the Special Master's Report and contends the Master erred in not recommending disbarment. On June 12, 2020, Respondent filed a Brief on Exceptions to the Special Master's Report and requested oral argument before the Board. Respondent contends the Master erred in finding violations of the rules and requests that the Board conclude that he did not commit misconduct.

Respondent filed a Brief Opposing Exceptions on June 23, 2020 and Petitioner filed a Brief Opposing Exceptions on June 25, 2020.

A three-member Board panel held oral argument on July 17, 2020.

The Board adjudicated this matter at the meeting on July 23, 2020.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106 is vested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent, Ephraim Tahir R. Mella, was born in 1966, was admitted to practice law in the Commonwealth of Pennsylvania in 1993, and maintains his office at 1814 Callowhill Street, Floor 1, Philadelphia, PA 19130.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

4. Respondent has no history of professional discipline.

5. Respondent was born in Manilla, Philippines, and at the time of the hearing was 53 years old. N.T., 10/8/19, at 52.

6. Respondent graduated from the University of the Philippines in 1987, with a B.A. in economics, earning a Dean's Medal. N.T., 10/8/19, at 56-57.

7. Respondent attended the Ateneo de Manila Law School from 1987-1991, before moving to the United States and graduating from Rutgers-Camden Law School after taking an additional 24 credits. N.T., 10/8/19, at 57.

8. In addition to his admission in Pennsylvania in 1993, Respondent is also admitted to practice law before the United States Supreme Court, the United States Court of Appeals for the Third, Fourth, Sixth, Seventh and Ninth Circuits, and the United States District Courts for the Eastern and Middle Districts of Pennsylvania. N.T., 10/8/19, at 60.

9. In 2001, Respondent naturalized as a United States citizen. N.T., 10/8/19, at 60.

10. Respondent is married to his wife of twenty years and has five children (one of whom is disabled, and two of whom are adopted), and is the sole financial support for his family. N.T., 10/8/19, at 62, 63.

11. Since 1993, Respondent has focused his practice in the area of immigration law. N.T., 10/8/19, at 60-61.

12. During the relevant 2012 to 2015 time period, in any given year, Respondent's firm handled 1,000 to 1,500 cases. N.T., 10/8/19, at 81-82.

13. Respondent has twenty-three employees: six attorneys (three of whom speak Spanish); twelve paralegals (ten of whom speak Spanish); and five front office staff (three of whom speak Spanish). This is the same general employee makeup as in the relevant 2012 to 2015 time period. N.T., 10/8/19, at 67.

14. Respondent can understand and speak basic Spanish, but nonetheless utilizes a member of his staff as an interpreter when meeting with Spanish-speaking clients. N.T., 10/8/19, at 84-85; 10/7/19, at 183-85.

15. During the relevant 2012-2015 time frame, one of the legal services Respondent provided to non-United States citizen clients seeking lawful status in the United States was Asylum/Cancellation of Removal (COR). Respondent estimated that

his firm handled 500 to 1,000 Asylum/COR cases per year during the time frame in question. N.T., 10/8/19, at 81-82.

16. Respondent relies on his firm's attorneys and paralegals to assist him in his practice, and has established protocols regarding the handling of Asylum/COR cases, which protocols begin at client intake and continue throughout the representation. N.T., 10/8/19, at 75, 82. These protocols were in effect during the time period in question.

17. Respondent's firm's attorneys and paralegals are trained in these protocols when they begin employment with Respondent's firm. N.T., 10/8/19, at 48, 74-76.

18. A prospective client that comes to Respondent's firm fills out a "PC sheet, which is a potential client sheet. It is what the receptionist gives to potential clients who initially enter" Respondent's office. N.T., 10/8/19, at 179. The top portion of the PC is filled out by the prospective client with basic biographical information. *See, e.g.*, R-1, R-2.

19. Respondent explained: "At the intake process, other than their names, date of birth, where they're from, the year of entry .... [the attorney inquires of the prospective client]: Have you ever been caught by immigration? .... Any encounters with the police? .... Have you ever been the victim of crime? How many children do you have? Are you married? Do your kids have any medical conditions? You don't have to put everything in [the PC] because it's just an intake note." N.T., 10/8/19, at 98-99.

20. The information elicited on the PC is sought from the potential client "to determine what the case is all about .... does he have no other relief other than asylum/ cancellation of removal?" N.T., 10/8/19, at 100.

21. At the intake, the information provided by the prospective client is taken "at face value" and generally, no documentation is sought from the clients at the intake process. N.T., 10/8/19, at 100-01.

22. As Respondent explained:

> "But do I ask for the particular document at the beginning? Not necessarily. I would ask them if they could produce a document like that in the future, because we'll need it. And, typically, we need it like a year later, not tomorrow." (N.T., 10/8/19, at 102).

> "Before an individual calendar hearing, which would be several years later, you would have to update all your documentation. To save everybody time, and for expediency, we will get the papers as soon as we need them.... in the asylum COR process, the COR comes way after the asylum application is processed. And during that period between 2012 to 2015, it invariably took years for an asylum application to be processed. Do I need the documentation now? No. I ask them, if you have them give them to me. If you don't have them, just make sure you can get them when I need them." (N.T., 10/8/19, at 106-07).

23. Before making a recommendation to a client to pursue Asylum/COR, Respondent's protocols require that "each and every time" the attorney must "assess the pros and cons of placing a client into that specific process." N.T., 10/8/19, at 129.

24. Respondent's protocols further require that the attorney discuss with the client the potential risks to the client in affirmatively submitting an Application to the United States Citizenship and Immigration Service ("USCIS"), and tell each client the following regarding the risk of deportation:

> You tell them there are three possible outcomes here. .... You win, you get the green card. You lose, you get a voluntary departure, which, for all intents and

> purposes, you get deported. There was a middle ground, administrative closure .... You could get your work permit this whole time, be legal while your case is pending or administratively closed, and usually that means *ad infinitum*." (N.T., 10/8/19, at 130-31).[2]

25. Respondent's protocols require that recommending a client pursue Asylum/COR is only appropriate where no other options are available to the client to be legal in the United States. N.T., 10/8/19, at 139. Respondent explained:

> if they had [another option], this would be the last thing I would do. If they had another option, I would do that option [rather] than this one … This, I say to all of my clients, is something you have to contemplate because it's very dangerous, and the reward is worth it if we win. By the way, we win most of our cases; but, occasionally, you don't – you don't win a case. And that's where they need to understand that I'm not the one making the decision. It's the judge who does, and they need to talk to their family about this. (N.T., 10/8/19, at 139).

26. When a client retains Respondent's firm to pursue Asylum/COR, the client signs a Fee Agreement, in English or Spanish, which is three pages long, and signs a separate Standard Warning in Cancellation of Removal, set forth in both English and Spanish ("Standard Warning"). N.T., 10/8/19, at 9192, 146-47.

27. The third page of the Fee Agreement contains an "Affidavit of Immigration Client," in which the client explicitly confirms their acknowledgement that the "Immigration and Nationality Act ... severely punishes an alien who, by fraud or willfully

[2] Respondent explained "administrative closure" as follows: "Administrative closure gives the individual the right to be legal - or the privilege to be legal in the United States during the term of the administrative closure, which is normally *ad infinitum*. During that time, he would be able to renew his work permit and do everything that a resident could do except travel in and out of the country." N.T., 10/8/19, at 132.

misrepresenting a material fact, seeks to procure" immigration benefits, that their "attorney has explained these provision", and that "any and all statements ... shall be the full and complete truth." *E.g.*, ODC-11 at 3.

28. The Standard Warning explicitly states in all capital letters as follows:

> THIS CERTIFIES THAT THE LAW OFFICES OF TAHIR MELLA, P.C. HAS EXPLAINED THE RISKS INVOLVED IN APPLYING FOR CANCELLATION OF REMOVAL AND ALL APPLICATIONS SIMILAR TO IT OR NECESSARY FOR THIS CASE TO GO FORWARD. THIS INCLUDES BUT IS NOT LIMITED TO THE POSSIBILITY OF DETENTION, AND OF COURSE, THE POSSIBILITY OF LOSING THE CASE AND BEING ORDERED TO DEPART THE UNITED STATES. (*E.g.*, ODC-71 at 177).

29. Respondent put the Standard Warning in writing for clients to sign at the time of retention starting in 1997 or 1998. N.T., 10/8/19, at 145-46.

30. All pages of the Fee Agreement/Standard Warning are signed by the client in the attorney's presence. N.T., 10/8/19, at 147. Typically, the client signs first. N.T., 10/8/19, at 91-92.

31. In most cases, Respondent signs the Fee Agreement. However, when Respondent is not present and another attorney from Respondent's firm presents the Fee Agreement/Standard Warning to the client, that other attorney signs the Fee Agreement on behalf of the firm. N.T., 10/8/19, at 95-96.

32. Respondent stated:

> "I always do this. Here is the fee agreement. First, second, third pages. Here is your name. Here is what we're going to do for you. Here is the amount that we agreed on. Here is the payment plan. I need your signatures here, here, and here. And please take time to read it … usually they're very hard workers, and

> they're very circumspect about spending money, about signing this or that without them understanding. It is very, very uncommon for someone to sign something without reading it… We explain to them, and if they don't understand something that's in their language, they ask." (N.T., 10/8/19, at 92-93).

33. In cases in which Respondent handles the potential client intake, Respondent first reviews the Fee Agreement/Standard Warning with the client, "and then the paralegal, and then the attorney who would take the case." N.T., 10/8/10, at 147.

34. After a client retains Respondent's firm, Respondent assigns the case to an attorney in his office. N.T., 10/8/10, at 68-69.

35. Because of the complexities involved in an Asylum/COR case, Respondent does not assign Asylum/COR cases to new, recently employed/barred attorneys in his office. N.T., 10/8/19, at 70-71. Respondent explained: "Even the most astute and most experienced attorneys could make mistakes in Asylum/COR cases because there's just so – it's very complicated." N.T., 10/8/19, at 70.

36. Respondent's protocols require that before proceeding with Asylum/COR for a client, the assigned attorney must confirm that the Standard Warning has been signed by the client. N.T., 10/8/19, at 147 ("we have specific instructions, without [a signed Standard Warning] we do not process these cases.").

37. One of the most important protocols Respondent utilizes in his practice on each case are the Case Status Notes, which are electronically entered by the attorneys and paralegals as they perform services on the case. *See* N.T., 10/8/19, at 77 (the Case Status Notes are not "meant to be a diary. It's just meant to memorialize some, if not most, of the items that an attorney or paralegal would need to see the progress of

a case. And that's why they're not as exhaustive … Not everything is in there, but you'd have a very good overview of the case when you look at it.").

38. "Whoever is involved in the case or whoever has any encounter with the client that's significant or potentially significant" has the ability to make entries on the Case Status Notes, which entry includes a notation of the initials of the person making the entry. N.T., 10/8/19, at 117, 118.

39. Respondent has a lot of confidence in his staff, especially the senior members. N.T., 10/8/19, at 73. Although Respondent "supervises" all of the attorneys and paralegals, N.T., 10/8/19, at 65, it is not physically possible for Respondent to "double-check every single thing that each of them does." N.T., 10/8/19, at 82. However, Respondent testified that when he "need[s] to be personally involved, I'm personally involved." N.T., 10/8/19, at 83.

40. After a client retains Respondent's firm to pursue Asylum/COR, the client is given a questionnaire in English or Spanish (labeled "Cuestionario" in Spanish), which is

> meant to elicit biographic information, and not information about hardship or what your asylum claim is. If you take a look at the I-589 [Application for political asylum, withholding of removal], there's a lot of spaces in there that has to do with biographic information. .... These questionnaires are supposed to help the paralegal populate the areas of the 1-589 where this biographic information needs to go. (N.T., 10/8/19, at 109-10).

41. The firm's paralegals then use the questionnaire to complete the 1-589 Asylum Application. N.T., 10/8/19, at 71, 72, 110, 149.

42. In representing a client in Asylum/COR, Respondent's firm is not actually trying to obtain asylum on behalf of the client. N.T., 10/8/19, at 149 ("it's just a method of getting into cancellation of removal, we don't have to waste our time, the client's time, and much less the court's time.")

43. Respondent's expert, William Stock, Esquire, testified that Asylum/COR was a practice used by "some" of the immigration bar. N.T., 9/24/19, p. 159.

44. Accordingly, for the purposes of Asylum/COR, Respondent prepares a "bare bones" 1-589 application that lacks specificity. N.T., 10/8/19, at 152. Respondent explained the rationale for doing so: "Because that is what is - all that's necessary to file an asylum claim with the view of applying for cancellation of removal in the future." N.T., 10/8/19, at 160. "Cancellation of removal is typically the only manner in which an individual could get a green card in this country if he doesn't have the requisites for other types of immigration [relief] such as being married to a U.S. citizen or being a victim of a crime. …" N.T., 10/8/19, at 12.

45. The I-589 Asylum Application contains a section where the client must answer the question: "Do you fear harm or mistreatment if you return to your home country"; and then explain why. *E.g.*, ODC-65 at 5.

46. Respondent testified that if he were truly seeking to obtain asylum on behalf of a client, he would not use a "bare bones" I-589 asylum application. N.T., 10/8/19, at 161.

47. The standard I-589 application contains the word "asylum" no less than twenty times in the ten-page document, including in bold letters at the top of the form. *See e.g.*, ODC-13.

48. The standard I-589 application at the signature page contains significant and lengthy warnings regarding any misrepresentations in the application, and requires the signing client to acknowledge these warnings and further confirm that all of the information contained in the application is correct. This page alone contains the word "asylum" no less than six times. *See, e.g.*, ODC-13 at 9.

49. The word "asylum" is the same, or substantially similar, in English and Spanish. N.T., 9/25/19, at 159-160.

50. Respondent does not personally review all the I-589 forms that are submitted on the client's behalf. N.T., 10/8/19, at 150 ("I do not … review every 589 unless I'm required to do it by an associate who says, I have a problem with this, or I have a problem with that, or unless I'm doing the asylum case myself, which I occasionally do.").

51. Subsequently, the clients for whom 1-589 Asylum Applications were submitted without an attorney's signature, receive from the USCIS an "Acknowledgement of Receipt" of the 1-589. Through the "Acknowledgement of Receipt" the USCIS specifically advises the client that: "Your complete Form 1-589 asylum application was received and is pending .... You may remain in the U.S. until your asylum application is pending." *See* R-32, R-33.

52. The "Acknowledgement of Receipt" contains the word "asylum" no less than four times on the post-card sized document alone. *See* R-32, R-33.

53. Respondent explained the significance of receiving the Acknowledgement of Receipt as follows:

> The first and obvious one is that they received our application, and it's now pending. The second is the client knows we did file it already because **it says right**

> **there, receipt acknowledged, asylum application. No matter what language you read it, asylum is asilo or some basic form.** Third, of course, there's a clock in immigration where if a hundred days have passed since immigration has received your asylum application, and you haven't been referred to an immigration judge yet or the application hasn't been denied, then you can apply for employment authorization document or EAD, normally called a work permit.
>
> . . .
>
> When an individual does not have a work permit, he is illegal in the United States, and has no proof of legality. He cannot get a Social Security number. He cannot get a driver's license.
>
> . . .
>
> There's just so many advantages of having a work permit, not the least of which, it give stability to the client, and that's what my job is. … Peace of mind because he's legal. He's not looking over his shoulder because immigration or the cops are going to pull him over. He's getting the job that he feels he can do, making money for his family, paying taxes to the government. (N.T., 10/8/19, at 156-159 (emphasis added).)

54. Maritza Rios began her employment with Respondent in 2011 as a secretary, and after approximately four years became Respondent's front staff supervisor. N.T., 10/7/19, at 182-83.

55. Ms. Rios is fluent in English and Spanish. N.T., 10/7/19, at 179-80.

56. Ms. Rios has been providing translating services to Respondent since "day one" of her employment with Respondent, and has served as a translator/interpreter for Respondent with prospective clients over one thousand times. N.T., 10/7/19, at 183-184.

57. Respondent's Senior Associate, Antonio Capistrano, Esquire began full time employment with Respondent's firm in 2008. N.T., 10/8/19, at 10.

58. As part of his practice, Attorney Capistrano represents clients in Asylum/COR, and maintains a full case load, consisting mostly of deportation defense cases. N.T., 10/8/19, at 10.

59. When Attorney Capistrano advises a client contemplating Asylum/COR, he never guarantees a percentage of success, despite the fact that clients frequently ask that he do so. N.T., 10/8/19, at 20.

60. Attorney Capistrano has never observed anyone at Respondent's firm guarantee a percentage chance of success on Asylum/COR. N.T., 10/8/19, at 20.

Matter of Jose Antonio Naula Loja and Luz Victoria Castro Sumba

Stipulated Facts:

61. On May 26, 1997, Jose Antonio Naula Loja (hereinafter "Jose") and Luz Victoria Castro Sumba were married. Stip. 111.

62. In or about January of 2000, Jose entered the United States without inspection. Stip. 112.

63. In or about April of 2000, Ms. Castro Sumba entered the United States without inspection. Stip. 113.

64. Jose and Ms. Castro Sumba have a U.S. citizen daughter. Stip. 114.

65. In or before June of 2013, Respondent met with Jose at which time, *inter alia*, Jose advised that he and Ms. Castro Sumba had a U.S. citizen daughter. Stip. 115.

66. On or about June 3, 2013, Respondent met with Jose and Ms. Castro Sumba. Stip. 116.

67. On June 3, 2013, Respondent entered into a fee agreement with Jose and Ms. Castro Sumba, pursuant to which Respondent would pursue Cancellation on their behalves in exchange for a legal fee in the amount of $17,000.00. Stip. 117.

68. Jose was not in removal proceedings in June of 2013. Stip. 118.

69. Ms. Castro Sumba was not in removal proceedings in June of 2013. Stip. 119.

70. On or about July 2, 2013, Respondent submitted an I-589 on Jose's behalf to USCIS. Ms. Castro Sumba was included as a derivative beneficiary on this I-589. Stip. 121.

71. The 1-589 Respondent submitted on Jose's behalf represented that Jose had last left Ecuador in January of 2000. Stip. 122.

72. The 1-589 Respondent submitted on Jose's behalf represented that Jose had most recently entered the United States in January of 2000. Stip. 123.

73. The 1-589 Respondent submitted on Jose's behalf represented that "[Jose] believe[s] if [he] go[es] back with [his] family [they] could experience mistreatment because [they]'ve been out for over ten years." Stip. 124.

74. The 1-589 Respondent submitted on Jose's behalf indicated that it was being filed more than one year after Jose's last arrival in the United States because "Ecuador [was] not a sa[f]e place [f]or e[x]patriates." Stip. 125.

75. On or before January of 2014, Respondent submitted I-765 Applications for Employment Authorization (EAD) to USCIS on behalf of Jose and Ms. Castro Sumba for them to get working papers. Stip. 132.

76. On or about January of 2014, these I-765s were approved. Stip. 133.

77. These I-765s were based on the I-589s that Respondent had previously submitted on behalf of Jose and Ms. Castro Sumba. Stip. 134.

78. In or about June of 2015, Jose submitted a request to USCIS to withdraw the 1-589 that Respondent submitted on his behalf. Stip. 147.

79. USCIS administratively terminated this 1-589. Stip. 148.

80. On or about September 3, 2015, Jose and Ms. Castro Sumba were served with Notices to Appear in removal proceedings. Stip. 149.

81. By letter to Respondent dated September 25, 2015, Jose:

a. advised that he had recently learned that Respondent had applied for asylum on his behalf;

b. indicated that Respondent had never explained to him that Respondent intended to apply for asylum on Jose's behalf;

c. terminated Respondent's representation; and

d. requested that Respondent refund his legal fees and provide a detailed accounting of all earned legal fees. Stip. 150.

82. By Order dated March 1, 2016, Jose's removal proceedings were administratively closed. Stip. 152.

83. By Order dated March 1, 2016, Ms. Castro Sumba's removal proceedings were administratively closed. Stip. 153.

Additional Findings:

84. Jose Loja credibly testified at the disciplinary hearing.

85. Jose testified that he and his wife left the United States in 2009 to return to Ecuador and did not come back to the United States until 2011, which would

have made them ineligible until at least 2021 for the Cancellation of Removal process. N.T., 9/24/19, p. 61, 103; N.T., 9/2/6/19, p. 15; 8 U.S.C. §1229b (b) (1). Respondent admitted in response to paragraph 6 of Petitioner's Request for Statement of Respondent's Position regarding Jose and Ms. Castro Sumba that "this is what the client had advised us during consultation" ODC-71, p. 154, para. 6.

86. A review of the Questionnaire (ODC-33A and 33B) filled out by Jose and Ms. Castro Sumba, apparently on June 3, 2013 (ODC–31), reveals that Jose wrote that he had last entered the United States in "01/2000" in Arizona with no subsequent departures or reentries. ODC-33A, p. 2, para. 15(C)(1). However, based on Respondent's admission, the evidence supports a finding that from the beginning of the representation, Respondent was aware that his clients returned to Ecuador in 2009 and reentered the United States in 2011.

87. The notes of Respondent's meeting with Jose on December 10, 2012, discloses that Jose advised Respondent that he had one U.S. child with "no meds." R-3.

88. Based upon the information provided by Jose and his wife at the meeting with Respondent and his staff on December 10, 2020 (R-3), and at their meeting with his staff on June 3, 2013, and the information provided in the Questionnaires, (ODC-33A, ODC–33B), there was no good faith basis for Respondent to pursue Cancellation of Removal on their behalves since, although they did have a U.S. dependent child, there was absolutely no evidence to establish any "exceptional and extremely unusual hardship" deportation would have caused for their child.

89. Although the I-589 clearly stated that Jose believed he would experience mistreatment if he returned to Ecuador and that it was not a safe place, Jose

credibly testified at the disciplinary hearing that he did not tell Respondent or Respondent's staff that he feared to return to Ecuador. N.T., 9/26/19, pp. 30-32.

90. Jose executed the signature page on an I-589 Application for Asylum for himself and his wife on June 3, 2013 (ODC–31, ODC-35, p. 9), and Jose and Ms. Castro Sumba reportedly received confirmation of receipt of the Asylum Application by the USCIS on or about July 11, 2013, and called Respondent's office to advise him of the receipt of Asylum Application notice. ODC–31; ODC-35, p. 9.

91. Although the I-589 Application filed on behalf of Jose and Sumba was prepared by Respondent's office, it was submitted as a "pro se" Application allegedly by Jose.

92. Although Respondent's "Standard Warning in Cancellation of Removal Cases" was signed by Jose on behalf of himself and his wife on June 3, 2013, purportedly acknowledging the risks that were involved with pursuing the Cancellation of Removal process, i.e., being subject to deportation if the Application was not granted or if Administrative Closure was not obtained (ODC-71, pp. 177-178), based upon the information provided by Jose and Ms. Castro Sumba at the meetings with Respondent and his staff on December 10, 2012 (R-3), and on June 3, 2013, and the information provided in the Questionnaires (ODC-33A, ODC–33B), there was no recognizable basis to obtain Cancellation of Removal on their behalves and this fact was not explained to Jose and Ms. Castro Sumba so they could have fully understood the risks inherent in the Cancellation of Removal process.

93. Respondent's legal expert, Jason Dzubow, Esq., admitted:

> But . . . if the person is not eligible for cancellation, and you're filing an asylum for the purpose of going to court

to seek cancellation, that's incorrect. (N.T., 10/7/19, p. 135).

94. Respondent charged $17,000.00 for pursuing the Asylum/Cancellation of Removal process for Jose and Sumba. Although there was no expert testimony that the fee that was charged was in fact excessive for the work performed in the Asylum/COR process that was undertaken by Respondent on behalf of Jose and Ms. Castro Sumba, the record shows that they were statutorily ineligible until 2021, so that any fee was improper.

Matter of Maria Loja Castro

Stipulated Facts:

95. In or about January of 1999, Maria Rosa Loja Castro entered the United States without inspection. Stip. 154.

96. Ms. Loja Castro has a U.S. citizen daughter. Stip. 155.

97. On or about July 21, 2014, Respondent met with Ms. Loja Castro, at which time, *inter alia*, Ms. Loja Castro advised that she had been living in the United States for more than ten years and that she had a U.S. citizen daughter. Stip. 156.

98. Respondent entered into a fee agreement with Ms. Loja Castro pursuant to which Respondent would provide "Representation in Immigration Proceedings" in exchange for a nonrefundable legal fee in the amount of $11,500.00. Stip. 157.

99. On July 21, 2014, Ms. Loja Castro paid Respondent $3,500.00. Stip. 158.

100. Ms. Loja Castro was not in removal proceedings in July of 2014. Stip. 159.

101. Respondent intended to pursue Cancellation on Ms. Loja Castro's behalf. Stip. 160.

102. On August 7, 2014, Ms. Loja Castro paid Respondent $450.00. Stip. 161.

103. On or about August 22, 2014, Respondent submitted an I¬589 on Ms. Loja Castro's behalf to USCIS. Stip. 162.

104. The 1-589 Respondent submitted on Ms. Loja Castro's behalf represented that "[Ms. Loja Castro is] very afraid of returning to [her] country because it has become a very violent place." Stip. 163.

105. The 1-589 Respondent submitted on Ms. Loja Castro's behalf represented that it was being filed more than one year after Ms. Loja Castro's last arrival in the United States because "[Ms. Loja Castro] did not know the rules about filing this application." Stip. 164.

106. On September 9, 2014, Ms. Loja Castro paid Respondent $450.00. Stip. 165.

107. On October 21, 2014, Ms. Loja Castro paid Respondent $450.00. Stip. 166.

108. On November 24, 2014, Ms. Loja Castro paid Respondent $350.00. Stip. 167.

109. On December 12, 2014, Ms. Loja Castro paid Respondent $350.00. Stip. 168.

110. On January 23, 2015, Ms. Loja Castro paid Respondent $350.00. Stip. 169.

111. On February 23, 2015, Ms. Loja Castro paid Respondent $350.00. Stip. 170.

112. In or before March of 2015, Respondent submitted an I-765 (for employment authorization) on Ms. Loja Castro's behalf to USCIS. Stip. 171.

113. On March 27, 2015, this 1-765 was approved. Stip. 172.

114. This 1-765 was based on the 1-589 that Respondent had previously submitted on Ms. Loja Castro's behalf. Stip. 173.

115. By letter to Respondent dated June 4, 2015, Ms. Loja Castro:

a. advised that she had recently learned that Respondent had applied for asylum on her behalf without her knowledge;

b. terminated Respondent's representation;

c. requested that Respondent refund her unearned legal fees; and

d. requested a detailed accounting of all earned legal fees to date.

Stip. 174.

Additional Findings:

116. Maria Loja Castro did not testify at the disciplinary hearing.

117. The evidence established that Ms. Loja Castro advised Respondent at their meeting on July 21, 2014, that she had come to the United States from Ecuador around 1999, she was married to an EAD holder, that she had one U.S. citizen child and no criminal record. R-4.

118. The evidence also established that Ms. Loja Castro executed Respondent's "Standard Warning In Cancellation of Removal Cases" which set forth

some of the possible risks involved in Respondent's "Cancellation of Removal" process including deportation. ODC–71, p. 310.

119. Respondent admitted that he intended to pursue his standard "TM Style Cancellation of Removal" process on behalf of Ms. Loja Castro. N.T., 10/9/19, pp. 270-71.

120. The evidence also established that Respondent's staff prepared and filed an I-589 Application for Asylum on behalf of Ms. Loja Castro stating that she "did not file in the first year because I did not know the rules about filing this application" (ODC–56, p. 8), and that she was "very afraid of returning to my country because it has become a very violent place." (ODC–56, p. 5).

121. There is no evidence that Ms. Loja Castro did not make those representations to Respondent or his staff.

122. Respondent admitted that he did not intend to prevail on Ms. Loja Castro's I-589 Application for Asylum. N.T., 10/9/19, p. 114.

123. Respondent admitted that Ms. Loja Castro's I-589 Application for Asylum was filed as "pro se" when in fact it was prepared and filed by Respondent's paralegal. 10/9/19, p. 165-66; ODC-53, 8/22/14; ODC-56, p. 9.

124. Ms. Loja Castro's I-765 was filed as "pro se" when it was prepared and filed by Respondent's paralegal. ODC-3, 2/23/15; ODC-57A.

125. Ms. Loja Castro subsequently received her EAD work permit on April 6, 2015, based upon the filing of an I-589 Asylum Application. ODC-57B; N.T., 10/7/19, p. 34.

126. The I-589 Application for Asylum filed on Ms. Loja Castor's behalf by Respondent subsequently resulted in the federal government initiating removal

proceedings against Ms. Loja Castro, but Respondent's representation was terminated by Ms. Loja Castro before he could pursue Cancellation of Removal on her behalf. N.T., 10/7/19, p. 20; Stip. 174.

127. Ms. Loja Castro subsequently retained Anna Paciorek, Esquire to represent her in the removal proceedings. N.T., 10/7/19, p. 18.

128. On June 7, 2016, Ms. Loja Castro was granted Administrative Closure. ODC-61.

129. Administrative Closure provides temporary relief from deportation to Ms. Loja Castro, but the removal proceeding may be reopened at any time. N.T., 10/7/19, p. 39.

130. Ms. Paciorek testified that although Ms. Loja Castro's evidence in support of cancellation was not "strong," Ms. Loja Castro may have been eligible for a Cancellation of Removal. (N.T., 10/7/19, p. 32).

Matter of Julio Lopez Calderon

Stipulated Facts:

131. In or about 2003, Julio Cesar Lopez Calderon entered the United States without inspection. Stip. 82.

132. Mr. Lopez Calderon has two U.S. citizen daughters. Stip. 83.

133. Mr. Lopez Calderon left the United States in December of 2006 and returned in April of 2007, again without inspection. Stip. 84.

134. On or about March 21, 2011, Respondent met with Mr. Lopez Calderon. Stip. 85.

135. On March 21, 2011, Respondent entered into a fee agreement with Mr. Lopez Calderon pursuant to which Respondent would pursue Cancellation on Mr.

Lopez Calderon's behalf in exchange for a nonrefundable legal fee in the amount of $9,000.00. Stip. 86.

136. Mr. Lopez Calderon was not in removal proceedings in March of 2011. Stip. 87.

137. On March 21, 2011, Mr. Lopez Calderon paid Respondent $3,500.00. Stip. 88.

138. On October 2, 2012, Mr. Lopez Calderon paid Respondent $500.00. Stip. 89.

139. On October 15, 2012, Mr. Lopez Calderon paid Respondent $3,000.00. Stip. 90.

140. On January 8, 2013, Mr. Lopez Calderon paid Respondent $500.00. Stip. 91.

141. In or about January of 2013, Respondent submitted an I-589 Application for Asylum on Mr. Lopez Calderon's behalf to USCIS. Stip. 92.

142. The I-589 Respondent submitted on Mr. Lopez Calderon's behalf represented that Mr. Lopez Calderon's only entry into the United States was in 2003. Stip. 93.

143. The I-589 Respondent submitted on Mr. Lopez Calderon's behalf represented that "things in Mexico are not good, [it] is very dangerous for everyone but mostly for families who lived in the USA." Stip. 94.

144. The 1-589 Respondent submitted on Mr. Lopez Calderon's behalf represented that it was being filed more than one year after Mr. Lopez Calderon's last arrival in the United States "because the situation in Mexico has changed now." Stip. 95.

145. In or about February of 2013, Mr. Lopez Calderon received an Asylum Interview Notice advising that he was scheduled for an interview at a USCIS Asylum Office in Lyndhurst, New Jersey, on March 13, 2013. Stip. 96.

146. Respondent advised Mr. Lopez Calderon not to attend this interview because the plan was to go "right to court." Stip. 97.

147. Mr. Lopez Calderon failed to appear for the scheduled interview. Stip. 98.

148. On or about June 12, 2013, Mr. Lopez Calderon was served with a Notice to Appear in removal proceedings. Stip. 99.

149. On July 1, 2013, Mr. Lopez Calderon paid Respondent $1,500.00. Stip. 100.

150. On April 3, 2014, Mr. Lopez Calderon paid Respondent $500.00. Stip. 101.

151. On or about July 9, 2013, Rollyn Malig, an associate with Respondent's law firm, submitted an EOIR-42B (Cancellation of Removal) on Mr. Lopez Calderon's behalf. Stip. 102.

152. This EOIR-42B disclosed the fact that Mr. Lopez Calderon had left the United States in December of 2006 and returned in April of 2007. Stip. 103.

153. This EOIR-42B represented that Mr. Lopez Calderon had entered the United States in "03/2000." Stip. 104.

154. On or about August 5, 2013, Ms. Malig submitted an I-765 on Mr. Lopez Calderon's behalf. Stip. 105.

155. The 1-765 that Ms. Malig submitted on Mr. Lopez Calderon's behalf for working papers indicated that Mr. Lopez Calderon's last entry into the United States was in March of 2000. Stip. 106.

156. On September 26, 2013, the 1-765 Ms. Malig submitted on Mr. Lopez Calderon's behalf was approved. Stip. 107.

157. In or about September of 2013, Mr. Lopez Calderon received an EAD (employment authorization). Stip. 108.

158. By letter to Ms. Malig dated May 23, 2014, Marcia Binder Ibrahim, Esquire, requested a copy of Mr. Lopez Calderon's case file. Stip. 109.

Additional Findings:

159. Mr. Lopez Calderon did not testify at the disciplinary hearing.

160. Mr. Lopez Calderon signed Respondent's "Standard Warning In Cancellation of Removal Cases" which set forth some of the possible risks involved in Respondent's "Cancellation of Removal" process including deportation. ODC - 1, p. 343.

161. In some of Respondent's file documents relating to Mr. Lopez Calderon, Calderon's original date of entry into the United States is noted as 2000 (ODC-47, p. 5, #19), while other documents indicate it was 2003. (ODC-41, p. 1). The Stipulation of the Parties, No. 82, states Mr. Lopez Calderon's entry was 2003.

162. Respondent's paralegal, Elisa Landaverde, specifically noted on January 8, 2013, that she was going to use the entry date of 2003 on the I-589 Application for Asylum (ODC–42, p. 2), although the EOIR-42B Application for Cancellation Removal filed on July 12, 2013, contained an original entry date of "03, 2000." (ODC–47, p. 5, #19).

163. Neither of these dates matter, as during Mr. Lopez Calderon's initial meeting with Respondent in March 2011, he disclosed he had been caught reentering the United States in 2007 (ODC-41) and that in answering the "Spanish Questionnaire for Application of Cancellation" (ODC–43), Mr. Lopez Calderon answered in response to Question 19 that he had departed from the United States in December 2006 and had not returned until April 2007. (ODC–43, p. 12 of "Spanish Questionnaire"). Also, see Stipulation of the Parties, No. 84. ODC-41, p. 3; ODC-71, pp. 312-313 (11a & b) and 324 (11A).

164. Despite this departure from December 2006 to April 2007 that would have made Mr. Lopez Calderon ineligible for Cancellation of Removal under any circumstances until 2017 (8 U.S.C. §1229b(b)(1)(A); N.T.,9/24/19, pp., 61,103; N.T., 9/26/19, p. 15), Respondent and his staff proceeded to actively pursue the Cancellation of Removal process for Calderon.

165. The I-589 stated that Mr. Calderon feared harm if he returned to Mexico and that he filed his Application more than one year after he last arrived in the United States because the situation in Mexico had changed. There is no evidence to show that Mr. Lopez Calderon did not make these representations to Respondent or his staff.

166. The filing of Mr. Lopez Calderon's I-589 Application for Asylum was not intended to be pursued on its merits but, in accordance with Respondent's Asylum/COR process, would be withdrawn prior to a hearing in order to initiate the removal process.

167. Mr. Lopez Calderon's I-589 Application for Asylum was filed as "*pro se"* on January 18, 2013, even though it was prepared and filed by Respondent's staff. ODC-41, p. 2; ODC-45 p. 10.

168. The I-589 Application for Asylum filed by Respondent prompted the initiation of removal proceedings by the federal government against Calderon. N.T., 9/24/19, p.232.

169. In response to the removal proceedings initiated by the federal government against Mr. Lopez Calderon, Ms. Malig filed an EOIR-42B Application for Cancellation of Removal with the USCIS on July 12, 2013. ODC-47A.

170. In the EOIR-42B Application for Cancellation filed by Respondent's office on behalf of Mr. Lopez Calderon, Ms. Malig noted in response to Question 23 that Mr. Lopez Calderon had left the United States in December 2006 and did not return until April 2007. ODC-47A, p. 2.

171. The foregoing admission in the EOIR-42B Application, which was noted in Mr. Lopez Calderon's response to Question 19, page 12, in the "Spanish Questionnaire for Application for Cancellation" that Calderon filled out when he retained Respondent, would have rendered Calderon ineligible for Cancellation of Removal until 2017. Immigration Judge Morley specifically noted this at the Master Calendar Hearing held on Calderon's Cancellation of Removal Hearing on March 20, 2014. ODC-41, p. 4.[3]

172. Respondent's expert Jason Dzubow, Esq., testified that Respondent's pursuit of Cancellation of Removal on Calderon's behalf was wrong and improper:

Mr. White:

> Q. Sir, the fact that Mr. Lopez Calderon was ineligible for cancellation of removal until at least April of 2017, does that change your conclusion in any way

[3] Although the "Spanish Questionnaire" is not dated, the information regarding Calderon's 12/06-4/07 departure clearly should have been known by Respondent before Respondent filed Calderon's I-589 Application for Asylum, initiating the Cancellation of Removal process.

regarding Mr. Mella's pursuit of cancellation of removal in this matter?

Jason Dzubow:

He wouldn't be eligible for cancellation.

. . .

If I was testifying about whether that applicant was eligible for cancellation and should have been filing a cancellation application, I would say no. If they are ineligible, obviously, they should not try and file that application. (N.T., N.T., 10/7/19, p. 133, lines 11-24; p. 134, lines 1-3).

Mr. White:

Q. Is it a common practice to do so on behalf of someone who is not eligible for cancellation of removal?

Jason Dzubow:

No.

Mr. White:

Q. Are you aware of anybody that does that?

Jason Dzubow:

I do not know of anyone who has done that. Well, there would be no sense. (N.T., 10/7/19, p. 134, lines 10-18).

. . .

But in this case, like if you were filing – if the person is not eligible for cancellation, and you're filing an asylum

for the purposes of going to court to seek cancellation, that's incorrect. (N.T., 10/7/19, p. 135, lines 5-10).

. . .

Mr. White:

Q. Sir, this is a copy of the fee agreement that Mr. Mella entered into with Mr. Lopez Calderon. Can you tell from that document what Mr. Lopez Calderon engaged Mr. Mella to pursue? (N.T., 10/7/19, p. 135, lines 21-24; p. 136, line 1)

. . .

Mr. White:

Q. Can you tell from that exhibit what services Mr. Lopez Calderon engaged Mr. Mella to pursue?

Jason Dzubow:

I mean, it appears a cancellation of removal for Julio. (N.T., 10/7/19, p. 137, lines 1-6).

. . .

Mr. Wright:

Q. So he would not be eligible for cancellation of removal then?

Jason Dzubow:

Assuming all of those facts as you've laid them out, then it seems like he would not be. (N.T., 10/7/19, p. 138, lines 14-18)

. . .

Mr. White:

> Let me rephrase. Would an immigration practitioner pursuing the course of action Mr. Mella is pursuing have an obligation to evaluate the evidence available to the applicant to demonstrate their continuous physical presence?

Jason Dzubow:

> Yes, I think so. (N.T., 10/7/19, p. 139, lines 19-24; p. 140, line 1).

173. Although there was no expert testimony that the fee Respondent charged Mr. Lopez Calderon to purse the "TM Style Cancellation" process was "excessive," the Cancellation of Removal process was not even achievable due to ineligibility, so that any fee was improper.

Matter of Miguel Guzman Solano and Myrna Munoz Romero

Stipulated Facts:

174. In or about February of 1996, Myrna Munoz Romero entered the United States without inspection. Stip. 176.

175. In or about March of 2004, Miguel Angel Guzman Solano entered the United States without inspection. Stip. 177.

176. On April 12, 2014, Ms. Munoz Romero and Mr. Guzman Solano were married. Stip. 178.

177. Ms. Munoz Romero and Mr. Guzman Solano have a U.S. citizen son who suffers from microcephaly. Stip. 179.

178. On or about May 19, 2014, Respondent met with Ms. Munoz Romero and Mr. Guzman Solano at which time, *inter alia*, they advised that they each had been

living in the United States for more than ten (10) years and that they had a U.S. citizen son who suffered from a mental disorder diagnosed as microcephaly. Stip. 180; R-2; ODC-2.

179. Respondent entered into a fee agreement with Ms. Munoz Romero and Mr. Guzman Solano, pursuant to which Respondent would provide "Representation of Immigration" in exchange for $17,250.00 in legal fees. Stip. 181.

180. On May 19, 2014, Ms. Munoz Romero and Mr. Guzman Solano paid Respondent $3,500.00, in partial satisfaction of Respondent's legal fee. Stip. 182.

181. Respondent intended to pursue Cancellation on behalf of Ms. Munoz Romero and Mr. Guzman Solano. Stip. 183.

182. Ms. Munoz Romero was not in removal proceedings in May of 2014. Stip. 184.

183. Mr. Guzman Solano was not in removal proceedings in May of 2014. Stip. 185.

184. On June 6, 2014, Respondent submitted I-589s on behalf of his clients to USCIS. Stip. 186.

185. The 1-589 Respondent submitted on Mr. Guzman Solano's behalf represented that "[Mr. Guzman-Solano] fear[s] going back to [his] home country because there are many active cartels and is [sic] not safe anymore." Stip. 187.

186. The 1-589 Respondent submitted on Mr. Guzman Solano's behalf represented that it was being filed more than one year after Mr. Guzman Solano's last arrival in the United States because "the situations in [his] country have worsened." Stip. 188

187. The 1-589 Respondent submitted on Ms. Munoz Romero's behalf represented that "[Ms. Munoz Romero] fear[s] going back to [her] home country because there are many active cartels and is [sic] not safe anymore." Stip. 189.

188. The 1-589 Respondent submitted on Ms. Munoz Romero's behalf represented that it was being filed more than one year after Ms. Munoz Romero's last arrival in the United States because "the situations in [her] country have worsened." Stip. 190.

189. On June 23, 2014, Ms. Munoz Romero and Mr. Guzman Solano paid Respondent $450.00. Stip. 191.

190. On July 22, 2014, Ms. Munoz Romero and Mr. Guzman Solano paid Respondent $450.00. Stip. 192.

191. On August 25, 2014, Ms. Munoz Romero and Mr. Guzman Solano paid Respondent $450.00. Stip. 193.

192. On September 23, 2014, Ms. Munoz Romero and Mr. Guzman Solano paid Respondent $450.00. Stip. 194.

193. On October 20, 2014, Ms. Munoz Romero and Mr. Guzman Solano paid Respondent $450.00. Stip. 195.

194. On November 17, 2014, Ms. Munoz Romero and Mr. Guzman Solano paid Respondent $450.00. Stip. 196.

195. On or about November 26, 2014, Respondent submitted I-765 Applications for Employment Authorization s to USCIS on behalf of Ms. Munoz Romero and Mr. Guzman Solano. Stip. 197.

196. On or about January 22, 2015, the I-765s that Respondent submitted on behalf of Ms. Munoz Romero and Mr. Guzman Solano were approved. Stip. 198.

197. These I-765s were based on the I-589s that Respondent had previously submitted on behalf of Ms. Munoz Romero and Mr. Guzman Solano. Stip. 199.

198. In or about May of 2016, Ms. Munoz Romero and Mr. Guzman Solano submitted requests to USCIS to withdraw the 1-589s that Respondent submitted on their behalves. Stip. 200.

199. USCIS administratively terminated these I-589s. Stip. 201.

200. By letter to Respondent dated May 18, 2016, Ms. Munoz Romero and Mr. Guzman Solano:

a. advised that they had recently learned that Respondent had applied for asylum on their behalves without their knowledge; and

b. terminated Respondent's representation.

Stip. 202.

201. Respondent did not respond to Ms. Munoz Romero and Mr. Guzman Solano's May 18, 2016 letter. Stip. 203.

202. By letter to Ms. Munoz Romero dated August 30, 2016, Respondent advised that Ms. Munoz Romero had a Master Calendar Hearing scheduled for October 17, 2016, and that, if she had not retained new counsel, she should contact Respondent's office and schedule an appointment. Stip. 204.

Additional Findings:

203. Mr. Guzman Solano and Ms. Munoz Romero testified at the disciplinary hearing.

204. Mr. Guzman Solano and Ms. Munoz Romero initially met with Respondent on May 15, 2014, to discuss "a way to become legal." R-2; N.T., 9/25/19, p. 86; p. 139.

205. At that initial meeting, Respondent advised Mr. Guzman Solano and Ms. Munoz Romero that there "was a possibility they could become legal through our son who is sick." N.T., 9/25/19, p. 86; p. 139-140.

206. Mr. Guzman Solano and Ms. Munoz Romero returned to Respondent's office on May 19, 2014, and agreed to retain Respondent for a "TM Style Cancellation" and executed a fee agreement for Respondent to represent them in "Immigration Representation" for a fee of $17,250.00. ODC-62; ODC-63.

207. At the meeting with Respondent on May 19, 2014, Respondent advised his clients that he was going to seek "Cancellation of Removal" on their behalf. N.T., 10/8/19, pp. 179-183; ODC-62.

208. At the meeting with Respondent on May 19, 2014, Respondent advised his clients that the Cancellation of Removal process would involve the filing of Applications for Asylum which would then be withdrawn to initiate the Cancellation of Removal process.

209. When Mr. Guzman Solano and Ms. Munoz Romero met with Respondent and paralegal Giselle Cruz on May 19, 2014, they also executed Respondent's "STANDARD WARNING IN CANCELLATION OF REMOVAL CASES." ODC-71, pp. 139-140.

210. In an apparent effort to discredit Respondent's credibility, Mr. Guzman Solano testified that although it is his signature on page 1 of the Fee Agreement

(ODC-63), it is not his signature on page 2 or page 3 of the Fee Agreement. N.T., 9/25/19, pp. 110-112, 116.

211. Mr. Guzman Solano also testified that it is his wife's signature on the bottom of page 1 of the Fee Agreement (ODC-63), but not her signature on page 2. N.T., 9/25/19, p. 112.

212. Ms. Munoz Romero, however, testified that it was her signature and Solano's signatures on pages 1 and 2 of the Fee Agreement, but she denied it was her signature on the "Immigration Client Affidavit" on page 3 of the Fee Agreement. N.T., 9/25/19, p. 151-152.

213. In addition, Mr. Guzman Solano denied that it was his signature on the "STANDARD WARNING IN CANCELLATION OF REMOVAL CASES." ODC-71, p. 140; N.T., 9/25/19, pp. 119-120.

214. Although Ms. Munoz Romero testified that it appeared to be her signature on the "STANDARD WARNING IN CANCELLATION OF REMOVAL CASES" (ODC-71, p. 139), and that it appeared to be Mr. Guzman Solano's signature on the "STANDARD WARNING IN CANCELLATION OF REMOVAL CASES" (ODC-71, p. 140), she denied that either of them signed the "WARNING." N.T., 9/25/19, p. 155-56.

215. Respondent presented the testimony of handwriting expert Khody Detwiler, who reviewed the signatures of Mr. Guzman Solano and Ms. Munoz Romero on all three pages of the original Fee Agreement (ODC-63) and concluded that the signatures on all three pages were those of Solano and Romero. N.T., 10/8/19, pp. 63-64.

216. Further, Mr. Detwiler reviewed the signatures on the original "STANDARD WARNING IN CANCELLATION OF REMOVAL CASES" and also

concluded that they were Mr. Guzman Solano's and Ms. Munoz Romero's signatures. ODC-71, pp. 139-140; N.T, 10/28/19, pp. 63-64.

217. The testimony and opinions of handwriting expert Mr. Detwiler are credible and Mr. Guzman Solano's and Ms. Munoz Romero's testimony regarding their signatures on the Fee Agreement and the "WARNINGS" was not credible.

218. On June 2, 2014, Mr. Guzman Solano and Ms. Munoz Romero returned to Respondent's office to execute the I-589 Applications for Asylum that Respondent's office had prepared for their signatures. ODC-62.

219. The explanation given on both Applications prepared by Respondent's office for filing the Applications for Asylum more than one year after their entry into the United States was stated to be "THE SITUATIONS IN MY COUNTY HAVE WORSENED." ODC-65A, p. 8, #5; 65B, p. 8, #5.

220. Both Applications for Asylum prepared by Respondent's office also represented that Mr. Guzman Solano and Ms. Munoz Romero "FEAR GOING BACK TO MY HOME COUNTRY BECAUSE THERE ARE MANY ACTIVE CARTELS AND IT IS NOT SAFE ANYMORE." ODC-65A, p. 5, "B"; 65B, p. 5, "B."

221. Mr. Guzman Solano credibly testified at the disciplinary hearing that he never told Respondent he was afraid to return to his home country. N.T. 9/25/19, pp. 91-92.

222. Ms. Munoz Romero credibly testified at the disciplinary hearing that she did not tell Respondent she was afraid to return to her home country. N.T. 9/25/29, p. 146.

223. Despite concerns regarding the veracity of Mr. Guzman Solano and Ms. Munoz Romero, the explanations for filing the Applications more than one year after

the clients' entry into the United States were not true and were not made by either Mr. Guzman Solano or Ms. Munoz Romero, but were assertions made by Respondent's staff.

224. Despite concerns regarding the veracity of Mr. Guzman Solano and Ms. Munoz Romero, the alleged fears of Mr. Guzman Solano and Ms. Munoz Romero in returning to Mexico set forth in the Applications for Asylum were not true and were not made by either Mr. Guzman Solano or Ms. Munoz Romero, but were assertions made by Respondent's staff. N.T., 9/25/19, pp. 91-92; p, 146.

225. Even though the Applications for Asylum were prepared and filed by Respondent's staff, the applications were submitted by Respondent's office as "pro se." ODC-65A; ODC-65B.

226. On June 23, 2014, Mr. Guzman Solano and Ms. Munoz Romero came to Respondent's office with I-589 Receipt Notices which acknowledged receipt of their I-589 Applications for Asylum. ODC–62.

227. The Receipt Notices had been sent to Mr. Guzman Solano and Ms. Munoz Romero at their home residence and specifically referenced receipt of their "Form I-589 Asylum Application." R-33.

228. As of June 23, 2014, if not sooner, both Mr. Guzman-Solano and Ms. Munoz Romero knew that Respondent's office had submitted Applications for Asylum on their behalf.

229. On or about November 14, 2014, Respondent's paralegal Giselle Cruz prepared I-765 Applications for Employment Authorization for Ms. Munoz Romero and Mr. Guzman Solano based on the I-589 Applications for Asylum. ODC-62.

230. On November 17, 2014, Mr. Guzman Solano and Ms. Munoz Romero came to Respondent's office and signed their I-765 Applications "*pro se.*" ODC-66A; 66B.

231. On December 8, 2014, Mr. Guzman Solano and Ms. Munoz Romero came to Respondent's office with their I-765 Receipt Notices for the Applications for Employment Respondent's paralegal had filed for them. ODC-62.

232. Ms. Guzman Solano and Ms. Munoz Romero subsequently received work permits.

233. Respondent had a factual and evidentiary basis to seek Cancellation of Removal on behalf of his clients based on their ten-year continuous residence in the United States and having a U.S. citizen child with serious medical needs.

234. Petitioner's immigration expert, William Stock, Esquire admitted that the fact that Mr. Guzman Solano and Ms. Munoz Romero had a child born in the United States who was mentally disabled "might be a sufficient reason to meet the extreme and exceptional unusual hardship standard" required for Cancellation of Removal. N.T., 9/24/19, p. 145.

Matter of Elmer Gutierrez Lopez

Stipulated Facts:

235. In or about January of 1999, Elmer Gutierrez Lopez entered the United States without inspection. Stip. 4.

236. Mr. Gutierrez Lopez has three United States citizen children. Stip. 5.

237. Mr. Gutierrez Lopez cannot read English. Stip. 6.

238. In or about June of 1999, Mr. Gutierrez Lopez began working at Pho Ha, a restaurant. Stip. 4.

239. Mr. Gutierrez Lopez was not authorized to accept employment in the United States in June of 1999. Stip. 8.

240. In or about March of 2011, Respondent met with Mr. Gutierrez Lopez and Stephanie Ngo from Pho Ha, at which time they discussed the possibility of Mr. Gutierrez Lopez obtaining permanent residency through his employment with Pho Ha. Stip. 9.

241. On March 15, 2011, Respondent entered into a fee agreement with Mr. Gutierrez Lopez, pursuant to which Respondent would represent Mr. Gutierrez Lopez in connection with “Labor Cert/I-140/Consular Process” in exchange for a legal fee in the amount of $11,500.00. Stip. 10.

242. On or before January 15, 2013, Respondent or his staff asked Mr. Gutierrez Lopez to pay $1,012.50 for newspaper advertisements of a job listing in connection with the labor certification process. Stip. 11.

243. On or about April 5, 2013, Respondent submitted, on behalf of Pho Ha, an ETA Form 9089, Application for Permanent Employment Certification (the “PERM”") to the United States Department of Labor, Employment and Training Administration (hereinafter “ETA”) regarding Mr. Gutierrez Lopez's position. Stip. 12.

244. Mr. Gutierrez Lopez was not authorized to accept employment in the United States at any time in or before April of 2013. Stip. 13.

245. In response to item 8 of Section J of the PERM, which asked for Mr. Gutierrez Lopez’s class of admission at the time he entered the United States,

Respondent indicated that Mr. Gutierrez Lopez entered the United States as “EWI” (entered without inspection). Stip. 14.

246. In response to item 23 of Section J of the PERM, which asks “[i]s the alien currently employed by the petitioning employer,” Respondent indicated that Pho Ha employed Mr. Gutierrez Lopez. Stip. 16.

247. In response to item 6 of Section K, subsection (a), of the PERM, Respondent indicated that Pho Ha had employed Mr. Gutierrez Lopez since June 15, 1999. Stip. 17.

248. In response to items 6 and 8 of section H of the PERM, Respondent indicated that a requirement for Mr. Gutierrez Lopez's position with Pho Ha was twelve months of experience as a restaurant cook and that no alternate experience was acceptable. Stip. 18.

249. On February 7, 2014, the PERM was denied. In its Denial Reason, the ETA cited the fact that Pho Ha had hired Mr. Gutierrez Lopez at a time when he did not meet the minimum requirements for the position, which suggested that the requirements listed in the PERM did not represent Pho Ha’s actual minimum requirements for this position. Stip. 19.

250. On or about February 24, 2014, Respondent met with Mr. Gutierrez Lopez, at which time Respondent advised, *inter alia*, that:

a. The PERM had been denied because “Pho Ha had failed to follow through”;

b. Mr. Gutierrez Lopez could no longer obtain legal permanent residency through his employment with Pho Ha; and

c. Mr. Gutierrez Lopez may have another way of obtaining legal permanent residency, for which Respondent would begin working on his behalf in exchange for $1,300.00.

Stip. 20.

251. On February 24, 2014, Respondent entered into a fee agreement with Mr. Gutierrez Lopez pursuant to which Respondent would provide "Representation in Immigration Proceedings" in exchange for a nonrefundable legal fee in the amount of $4,500.00. Stip. 21.

252. Mr. Gutierrez Lopez was not in removal proceedings in February of 2014. Stip. 22.

253. On February 24, 2014, Mr. Gutierrez Lopez paid Respondent $1,300.00. Stip. 23.

254. Respondent intended to pursue Cancellation of Removal on Mr. Gutierrez Lopez's behalf. Stip. 24.

255. In or about May of 2014, Respondent submitted an I-589, Application for Asylum and for Withholding of Removal on Mr. Gutierrez Lopez's behalf to the USCIS. Stip. 25.

256. The 1-589 Respondent submitted on Mr. Gutierrez Lopez's behalf represented that "the harm [Mr. Gutierrez Lopez] fear[s] is from the different gangs that run in Guatemala, no one is safe from the gangs." Stip. 26.

257. The 1-589 Respondent submitted on Mr. Gutierrez Lopez's behalf represented that it was being filed more than one year after Mr. Gutierrez Lopez's last

arrival in the United States because "[Mr. Gutierrez Lopez] ha[d] learned that human conditions in Guatemala have worsen [sic] since [he] left." Stip. 27.

258. In or before December of 2014, Respondent submitted a Form I-765, Application for Employment Authorization to USCIS on Mr. Gutierrez Lopez's behalf. Stip. 28.

259. In or about December of 2014, this 1-765 was approved. Stip. 29.

260. This 1-765 was based on the 1-589 that Respondent had previously submitted on Mr. Gutierrez Lopez's behalf. Stip. 30.

261. In or about June of 2015, Mr. Gutierrez Lopez submitted a request to USCIS to withdraw the 1-589 that Respondent submitted on his behalf. Stip. 31.

262. On or about July 2, 2015, Mr. Gutierrez Lopez was served with a Notice to Appear in removal proceedings. Stip. 32.

263. By letter to Mr. Gutierrez Lopez dated September 11, 2015, Respondent advised, *inter alia*, that:

a. a Master Calendar Hearing had been scheduled in Mr. Gutierrez Lopez's removal proceedings for October 13, 2015;

b. Mr. Gutierrez Lopez had an unpaid balance of $3,000.00; and

c. Mr. Gutierrez Lopez's balance "must be paid before [his] scheduled Master Calendar Hearing (MCH) on October 13, 2015."

Stip. 33.

264. By letter to Respondent dated September 22, 2015, Mr. Gutierrez Lopez:

a. advised that he had recently learned that Respondent had applied for asylum on his behalf;

b. indicated that Respondent had not explained to him that applying for asylum was part of Respondent's immigration strategy for his case;

c. terminated Respondent's representation; and

d. requested that Respondent refund his legal fees and provide a detailed accounting of all earned legal fees.

Stip. 34.

265. By letter to Mr. Gutierrez Lopez dated October 6, 2015, Respondent advised, *inter alia*, that:

a. Mr. Gutierrez Lopez had only paid Respondent $1,500.00;

b. Mr. Gutierrez Lopez was in breach of his contract with Respondent's office;

c. Respondent's legal fee is nonrefundable; and

d. Respondent would appear at Mr. Gutierrez Lopez's October 13, 2015 Master Calendar Hearing, at which time Respondent would withdraw his appearance.

Stip. 35.

Additional Findings:

266. Mr. Gutierrez Lopez credibly testified at the disciplinary hearing.

267. The "Labor Cert/I-140/Consular Process" which Respondent agreed to pursue on behalf of Mr. Lopez for a fee of $11,500.00 (ODC–5), would have required

Mr. Lopez to appear at an embassy or consulate in Guatemala in order to obtain an immigrant visa. ODC-3A at 28; N.T., 9/24/19, p. 70-73.

268. In March 2011, when Mr. Lopez engaged Respondent to pursue an employment-based-immigration visa, Mr. Lopez was ineligible to adjust his status to legal permanent residency from within the United States because, *inter alia*, he had entered the United States without inspection. 8 U.S.C. § 1255(a); ODC-2E at 313; ODC-3A. pp. 28-30; N.T., 9/24/19, pp. 71-73.

269. However, a foreign national who has accrued one year or more of unlawful presence in the United States becomes inadmissible for ten (10) years if they leave the United States in order to obtain "Consular Process." 8 U.S.C. 1182(a)(9)(B)(i)(II); ODC-2F at 135; ODC-3A at 28; N.T. Vol. 1, pp. 70-73.

270. In March 2011, when Mr. Lopez engaged Respondent for "Labor Cert/I-140/Consular Process," Mr. Lopez had accrued more than one year of unlawful presence in the United States and, therefore, could not leave the United States to apply for and obtain "Consular Process" without becoming inadmissible for ten (10) years. 8 U.S.C. 1182(a)(9)(B)(i)(II); ODC-2F at p. 135; ODC-3A at 28, 30; N.T., 9/24/19, pp. 70-73.

271. Respondent did not inform Mr. Lopez that he would not be able to return to the United States for at least ten years if he left the country in order to apply for "Consular Process." ODC-5; N.T., 9/25/19 at 20-21; N.T., 10/9/19, pp. 18-21.

272. Mr. Lopez did not have any experience as a restaurant cook when he was initially hired by his employer, Pho Ha, in 1999 and, therefore, as noted in Respondent's office's status notes dated "3/25/11," this lack of experience was

"DEFINITE DENIAL TRIGGER" for a Permanent Employment Certification ("PERM"). ODC-4; N.T. 9/25/19, p. 50; R-28 at 1-2.

273. Even if Mr. Lopez had initially advised Respondent that he had prior experience as a cook before being hired by Pho Ha, and could provide proof of his prior experience as a cook, Respondent's staff knew as early as "3/25/11" that Mr. Lopez had not provided the necessary proof of his prior experience as a cook but nevertheless proceeded with pursuing the "Labor Cert/I-140/Consular Process" on his behalf. ODC-4.

274. Further, Respondent's staff continued to document the lack of proof of Mr. Lopez' prior experience as a cook:

> 3/12/13 …; Notes: 1. he only has QUALIFYING experience despite repeated reminders and warnings. Experience with current employer does not constitute being qualified for position – that was made clear to them in the beginning. This is a DEFINITE denial/audit trigger. We need PRIOR experience which he indicated he will give. If none is provided, LC will be denied. (ODC-4).

275. Even though Respondent's office knew Mr. Lopez did not have proof of the required prior 12 months of experience as a cook, Respondent's office prepared and Respondent executed and filed the PERM on April 4, 2013. ODC–9.

276. On February 7, 2014, the PERM was denied due to the fact that Pho Ha had hired Mr. Lopez at a time when he did not meet the minimum requirements for the position:

> Because the employer is willing to hire an employee who did not meet the job requirements, prior to being hired as a restaurant cook by the employer, as listed in Section H on ETA Form 9089, those requirements cannot represent the employer's actual minimum requirements for the job opportunity. (ODC–10, p. 3).

277. Even if Mr. Lopez had had 12 months prior experience as a restaurant cook before being hired by Pho Ha, he would have had to return to Guatemala for "Consular Process" to obtain an immigrant visa, and he would have been inadmissible for ten (10) years to return to the United States. 8 U.S.C. 1255(a); 8 U.S.C. 1182(a)(9)(B)(i) (II); N.T., 9/24/19, pp. 70-73; N.T.,10/9/19, p. 131.

278. Although there was no expert testimony that the $11,500.00 fee Respondent charged Mr. Lopez and/or his employer for "Labor Cert/I-140/Consular Process" was excessive, the fee was improper simply because Respondent could not obtain a Labor Certificate for Mr. Lopez that would have allowed Lopez to remain and work in the United States under any circumstances under the facts of his case.

279. Respondent's representation of both Mr. Lopez and Pho Ha was a waivable conflict and both Mr. Lopez and Pho Ha were aware of Respondent's dual role.

280. Although Mr. Lopez' employer, Pho Ha, was required to pay for Respondent's legal services in connection with seeking a Labor Certification on behalf of Mr. Lopez, and although there were some questions raised as to who actually paid the Respondent's legal fees, Mr. Lopez or his employer, there is not sufficient evidence to show that Respondent knew his legal fees and expenses were not being paid by Pho Ha. N.T., 9/25/19, p. 11; N.T., 10/8/19, pp. 258-259.

281. Respondent claimed that his pursuit of the "Labor Certification" for Mr. Lopez for a fee of $11,500.00, which Mr. Lopez was not eligible for, was justified because Respondent was "hopeful the 245(i) process would come back." However, the 245(i) process, which eliminated the requirement of returning to the home country for 10

years, was not the law at that time and has not been the law for approximately two decades. N.T., 10/8/19, pp. 244-45.

282. Subsequent to Mr. Gutierrez Lopez' agreement to retain Respondent to pursue the Asylum/COR, Mr. Lopez signed Respondent's "STANDARD WARNING IN CANCELLATION OF REMOVAL CASES" purporting to acknowledge the risks, including possible deportation, in the Cancellation of Removal process. ODC–71, p. 283.

283. Mr. Lopez testified he was willing to take "certain chances" of deportation "to be in the country legally." N.T., 9/25/19, pp. 35-36.

284. Although Mr. Lopez denied knowing that the Cancellation of Removal process being pursued on his behalf would require the filing of an I-589 Application for Asylum, Mr. Lopez executed the Signature Page on the I-589 Application for Asylum. ODC–13, p. 9.

285. Respondent's paralegal's status note for 11/4/14 regarding Mr. Lopez disclosed that Mr. Lopez "received something and as always [t]he don't know what it is." ODC-4, p. 9.

286. The I-589 Application for Asylum stated that Mr. Gutierrez Lopez feared harm or mistreatment from gangs if he returned to Guatemala. There is no evidence to show that Mr. Gutierrez Lopez did not make this statement.

287. Although the I-589 Application for Asylum was prepared by Respondent's staff, it was submitted to the USCIS as a "pro se" Application of Lopez. ODC-13, p. 9.

288. On October 15, 2014, Respondent's office prepared an I-765 Application for Employment on Mr. Lopez' behalf, based upon the I-589 Application for

Asylum that Respondent's office had previously filed on Mr. Lopez' behalf, and Mr. Gutierrez Lopez received the EAD work papers.

289. After terminating Respondent's services, Mr. Lopez obtained a T Nonimmigrant Visa (victim of a human trafficking) through successor counsel, a remedy Respondent was unaware of and never sought to pursue. N.T., 10/7/19 at 14-17; ODC-74, pp. 97-99.

Matter of Luis P. Naula Loja

Stipulated Facts:

290. In or about July of 2001, Luis P. Naula Loja (hereinafter "Luis") entered the United States without inspection. Stip. 36.

291. Luis has a U.S. citizen son. Stip. 37.

292. In the fall of 2011, Respondent met with Luis, at which time, *inter alia:*

a. Luis advised that he had been living in the United States for more than ten years;

b. Luis advised that he had a U.S. citizen son with "no meds"; and

c. Luis advised that he had previously been arrested for Driving Under the Influence and completed the Accelerated Rehabilitative Disposition program.

Stip. 38; ODC-18, p. 1.

293. On January 16, 2012, Respondent entered into a fee agreement with Luis, pursuant to which Respondent would pursue Cancellation on Luis' behalf in exchange for a legal fee in the amount of $11,500.00. Stip. 39.

294. On January 16, 2012, Luis paid Respondent $500.00. Stip. 40.

295. Luis was not in removal proceedings in January of 2012. Stip. 41.

296. On February 7, 2012, Luis paid Respondent $1,100.00. Stip. 42.

297. By check number 420 dated February 7, 2012, Luis paid Respondent $1,900.00. Stip. 43.

298. On March 12, 2012, Luis paid Respondent $250.00. Stip. 44.

299. On or about March 21, 2012, Respondent submitted an I-589 on Luis' behalf to USCIS. Stip. 45.

300. The 1-589 Respondent submitted on Luis' behalf represented that "lately there's been a lot of influence from the FARC rebels into the country." Stip. 46.

301. The 1-589 Respondent submitted on Luis' behalf represented that it was being filed more than one year after Luis' last arrival in the United States because "[Luis] didn't know there was a deadline to file." Stip. 47.

302. On April 3, 2012, Luis paid Respondent $250.00. Stip. 48.

303. On July 5, 2012, Luis paid Respondent $500.00. Stip. 49.

304. On July 10, 2012, Luis was served with a Notice to Appear in removal proceedings. Stip. 50.

305. On July 19, 2012, a Master Calendar Hearing was held in Luis' removal proceedings, at which time:

a. Joseph Zurita, an attorney with Respondent's law firm, appeared on Luis' behalf;

b. Mr. Zurita withdrew the 1-589 that Respondent had filed on Luis' behalf; and

c. Mr. Zurita advised the court of his intention to file a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents on Luis' behalf.

Stip. 51.

306. In or before September of 2012, Respondent submitted a 1-765 Application for Employment Authorization on Luis' behalf. Stip. 52.

307. On September 6, 2012, Luis paid Respondent $500.00. Stip. 53.

308. On or about September 20, 2012, the 1-765 that Respondent submitted on Luis' behalf was approved. Stip. 54.

309. On November 20, 2012, Luis paid Respondent $750.00. Stip. 55.

310. On January 17, 2013, a Master Calendar Hearing was held in Luis' removal proceedings, at which time:

a. Oliver Inslee, an attorney with Respondent's law firm, appeared on Luis' behalf;

b. Mr. Inslee filed an EOIR-42B on Luis' behalf;

c. The Honorable Steven Morley instructed Mr. Inslee to obtain evidence that Luis had entered the United States at least as early as July of 2002; and

d. An individual calendar hearing was scheduled for December 3, 2013.

Stip. 56.

311. On March 8, 2013, Luis paid Respondent $500.00. Stip. 57.

312. On May 21, 2013, Luis paid Respondent $500.00. Stip. 58.

313. On July 5, 2013, Luis paid Respondent $1,000.00. Stip. 59.

314. On August 29, 2013, Luis paid Respondent $1,000.00. Stip. 60.

315. In or before September of 2013, Respondent submitted a 1-765 on Luis' behalf seeking a renewal EAD. Stip. 61.

316. On or about September 3, 2013, the 1-765 that Respondent submitted on Luis' behalf was approved. Stip. 62.

317. On November 8, 2013, Luis paid Respondent $2,000.00. Stip. 63.

318. On December 3, 2013, an individual calendar hearing was held in Luis' removal proceedings, at which time Mr. Inslee and a trial attorney from Immigration and Customs Enforcement entered into an agreement whereby Luis would withdraw his EOIR-42B and accept Voluntary Departure on August 7, 2014. Stip. 64.

319. In or before January of 2014, Respondent submitted a 1-765 on Luis' behalf seeking a renewal EAD. Stip. 65.

320. On or about January 9, 2014, this 1-765 was approved. Stip. 66.

321. On April 18, 2014, Luis paid Respondent $500.00. Stip. 67.

322. On July 24, 2014, Luis paid Respondent $250.00. Stip. 68.

323. On August 7, 2014, a Master Calendar Hearing was held in Luis' removal proceedings, at which time:

a. Mr. Inslee attempted, unsuccessfully, to reopen Luis' EOIR-42B;

b. Judge Morley gave Luis the option of either accepting Voluntary Departure or being subject to a removal order;

c. Mr. Inslee advised Luis to decline Voluntary Departure because he could appeal the subsequent removal order;

d. Luis declined Voluntary Departure; and

e. Luis was ordered removed.

Stip. 69.

324. On November 5, 2014, Respondent filed a Motion to Reopen in Luis' removal proceedings, asserting, *inter alia,* that "[Luis] withdrew his Application for Cancellation of Removal . . . in light of the fact that the Immigration Judge had already indicated that the application would be denied based on the evidence of record." Stip. 70.

325. By Order dated November 21, 2014, the Motion to Reopen was denied (hereinafter the "November 21, 2014 Order"). Stip. 71.

326. On November 28, 2014, Luis paid Respondent $500.00. Stip. 72.

327. On or about December 18, 2014, Julio Navarro, an attorney with Respondent's law firm, filed a Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge with the Board of Immigration Appeals (hereinafter the "BIA"), appealing the November 21, 2014 Order (hereinafter the "BIA Appeal"). Stip. 73.

328. In or before January of 2015, Respondent submitted a 1-765 on Luis' behalf seeking a renewal EAD. Stip. 74.

329. On January 12, 2015, Luis paid Respondent $500.00. Stip. 75.

330. On or about January 28, 2015, the 1-765 that Respondent submitted on Luis' behalf was approved. Stip. 76.

331. On or before February 6, 2015, Luis was detained by Immigration and Customs Enforcement. Stip. 77.

332. On or about February 6, 2015, Mr. Navarro filed a Form 1-246, Application for a Stay of Deportation or Removal with Immigration and Customs Enforcement on Luis' behalf. Stip. 78.

333. This application was granted pending the resolution of the BIA Appeal. Stip. 79.

334. On or about February 17, 2015, Respondent filed a brief in support of the BIA Appeal, asserting, *inter alia,* that "[Luis] withdrew his Application for Cancellation of Removal… in light of the fact that the Immigration Judge had already indicated that the application would be denied based on the evidence of record." Stip. 80.

335. By Opinion and Order dated April 27, 2015, the BIA affirmed the November 21, 2014 Order and denied the BIA Appeal. Stip. 81.

Additional Findings:

336. Luis did not testify at the disciplinary hearing.

337. Luis signed Respondent's "STANDARD WARNING IN CANCELLATION OF REMOVAL" cases, purportedly acknowledging "THE POSSIBILITY OF LOSING THE CASE AND BEING ORDERED TO DEPART THE UNITED STATES." ODC-71, p. 212.

338. Although the I-589 Application for Asylum was prepared by Respondent's staff, it was filed as a pro se application. ODC-18, p. 1; ODC-22, p. 9.

339. Respondent admittedly had no intention of pursuing Luis' I-589 Asylum Application on its merits and intended that it would be withdrawn prior to being acted upon in order to initiate the Cancellation of Removal proceedings. N.T., 9/24/19, p. 188; N.T., 10/9/19, pp. 138-139, 146.

340. On April 16, 2012, Luis contacted Respondent's office and advised them that he had received his I-589 Interview Notice. ODC-18, p. 1.

341. Respondent's office advised Luis that the Asylum Application interview was a "NO GO." ODC-18, p. 1.

342. On June 14, 2012, Respondent's paralegal Elisa Landaverde checked the EOIR computer system and saw that a Master Calendar Hearing for Luis' removal from the United States had been scheduled for July 19, 2012, before Immigration Judge Morley. ODC-18, p. 1.

343. On June 25, 2012, Respondent's staff sent Luis a "Cancellation Questionnaire" to fill out, which date was after Luis had been placed in removal proceedings. N.T., 9/24/19, pp. 227-28: ODC-18; OC-20.

344. On July 10, 2012, Oliver Inslee, Esquire, an attorney in Respondent's law firm, noted that this was a "TM Style Cancellation case" in which Respondent's office would withdraw the I-589 Application for Asylum, concede removability, and then seek Cancellation of Removal. ODC-18, p. 3; N.T., 9/24/19, p. 188.

345. In his Status Notes of July 10, 2012, Attorney Inslee expressed his apparent concern regarding the chances of obtaining Cancellation of Removal for Luis when he noted "Hmm. Looks like he only has one U.S. Child." ODC-18, p. 2.

346. In order to succeed on the Cancellation of Removal Application, Luis would need to establish ten years continuous presence in the United States and "an exceptional and extremely unusual hardship" to his U.S. child if Luiz was deported. N.T., 9/24/19, p. 191.

347. A Master Calendar Hearing for Luis' Cancellation of Removal Application was scheduled for January 17, 2013. ODC-18, p. 2.

348. It was too late after the initial Master Calendar Hearing on July 19, 2012, when Attorney Zurita withdrew Luis' Application for Asylum and nominated Cancellation of Removal (COR) as the relief being sought for Respondent, to terminate the removal process that the USCIS had initiated against Luis.

349. On or about July 26, 2012, Respondent's office prepared an EOIR-42B Application for Cancellation of Removal for Luis. ODC-18, p. 2.

350. At that time, Attorney Inslee noted that Luis had a DUI arrest that had not been expunged and, although "[t]echnically not a conviction, but, as we all know, for immigration purposes this doesn't matter." ODC-18, p. 2.

351. On July 27, 2012, the EOIR-42B Application for Cancellation of Removal of Luis was mailed by Respondent's office to the USCIS. ODC-18, p. 2.

352. The EOIR-42B that Attorney Inslee submitted on behalf of Luis failed to include evidence that Luis had maintained continuous presence in the United States for ten or more years and failed to explain why there was no evidence being submitted as to the required ten years of continuous presence. ODC-18, p.5, 11/19/13, 12/3/13; N.T. 9/24/19, pp.203-208.

353. On October 12, 2012, Respondent's staff sent out a request for documents to support Luis' Cancellation of Removal Application, after Luis has already been placed in removal proceedings. N.T., 9/24/19, p. 228; ODC-18, p. 3.

354. On January 7, 2013, Attorney Inslee noted "I feel that this is a very weak case at present." ODC-18, p.2.

355. On January 11, 2013, Attorney Inslee met with Luis to update the EOIR-42B Application for Cancellation of Removal in preparation for the Master Calendar Hearing and specifically noted "this will be a bare bone submission, but client cannot provide more." ODC-18, p. 3.

356. Following the Master Conference Hearing before Judge Morley on January 17, 2013, Attorney Inslee specifically noted "there is a lot of work to do on this if a merits hearing is going to be worthwhile." ODC-18, p. 4.

357. On July 9, 2013, Attorney Inslee noted that "this is a fairly poor COR case… I am requesting PD [Prosecutorial Discretion] for him." OCD-18, p. 4.

358. Attorney Inslee admitted "it was a bad case with no evidence." R-27.

359. On October 28, 2013, Attorney Inslee sent a letter to the Department of Homeland Security ("DHS") requesting "a grant of prosecutorial discretion" for Luis. OCD-27.

360. Prosecutorial Discretion would have put the removal proceeding against Luis "on the shelf for the time being" and would have avoided a removal hearing and possible removal order. N.T., 9/24/19, pp. 201-202.

361. On November 19, 2013, Attorney Inslee again noted that Luis' Cancellation of Removal case "is not very strong." ODC-18, p. 5.

362. Attorney Inslee also noted on November 19, 2013, that he was going to call DHS to see about his request for Prosecutorial Discretion for Luis although noting there was only an "outside chance" for obtaining Prosecutorial Discretion because of Luis' DUI. ODC-18, p. 5.

363. In the time leading up to the Merits Hearing, Luis was not able to provide evidence that covered the missing dates needed to establish his ten years continuance presence in the United States. N.T., 9/24/19, pp. 198-199.

364. Attorney Inslee testified that there generally would be no evidence in a client's file to support Cancellation of Removal when Respondent would assign a "TM Style Cancellation" case to him and he would have to collect the evidence assuming it was available. N.T., 9/24/19, p. 192.

365. Attorney Inslee discovered the lack of evidence regarding Luis' ten years continuous physical presence in the United States after Luis had been placed in removal proceedings. N.T., 9/24/19, pp. 88, 193-194, 198-200.

366. Evidence of Luis' lack of ten years continuous physical presence in the United States could have been discovered before Respondent filed the I-589 Application for Asylum, beginning the "TM Style Cancellation" and subjecting Luis to deportation. N.T., 9/24/19, p. 200.

367. Attorney Inslee also discovered the lack of any "exceptional and extremely unusual hardship" that Luis' United States citizen son would suffer in the event of his deportation after Luis had been placed in removal proceedings. N.T., 9/24/19, pp. 199-200.

368. Petitioner's expert in immigration law, William Stock, Esquire, testified that in his opinion there was no evidence in Respondent's file to support Cancellation of Removal for Luis. N.T., 9/24/19, p. 88.

369. The lack of any "exceptional and extremely unusual hardship" that Luis' U.S. citizen son would suffer in the event of Luis' deportation could have been discovered before Respondent filed the I-589 Application for Asylum, beginning the "TM Style Cancellation" process. N.T., 9/24/19, pp. 199-200.

370. Respondent testified it was "not expedient" and a "duplication of efforts" to request the necessary documents to establish a client's necessary physical presence and "exceptional and extremely unusual hardship" to a qualifying relative at the outset of a case. N.T.10/7/19, pp. 106-108, 144.

371. According to Attorney Inslee's notes following the hearing, the attorneys conferenced the case with Judge Morley and Judge Morley reportedly

concluded that the evidence for Cancellation "is weak" and "has holes for presence that he [Luis] can't fix, and hardship is not at an acceptable level." ODC-18, p. 5; N.T., 9/24/19, pp. 198-199.

372. Attorney Inslee also noted that he could have demanded an additional hearing on the merits of Luis' Cancellation of Removal application, which Judge Morley indicated would be denied, or he could agree to withdraw Luis' EOIR-42B Application for Cancellation of Removal and the Department of Homeland Security would not object to the longest date possible for a final Merits Hearing at which time Luis would agree to Voluntary Departure. ODC-18, p. 5.

373. Attorney Inslee reported that he discussed the situation thoroughly with Luis at the Merits Hearing before Judge Morley on December 3, 2013, and that Luis decided at that time to agree to accept Voluntary Departure at the "longest date" possible for the next Merits Hearing, with an additional four months after that hearing to voluntarily depart. ODC-18, p. 5; N.T., 9/24/19, pp. 205-06.

374. Attorney Inslee testified that he believed that by giving Luis the option to take voluntary departure, Judge Morley "wanted to do the kind thing for Luis and avoid a Removal Order." N.T., 9/24/19, p. 205.

375. Attorney Inslee then withdrew Luis' EOIR-42B Application for Cancellation of Removal. N.T, 9/24/19, p, 206.

376. The next date for a merit hearing was scheduled for August 7, 2014. ODC-18, p. 5.

377. On July 28, 2014, Luis came to Respondent's office for a meeting with Respondent and Attorney Inslee. ODC-18, p. 6.

378. At that meeting, Respondent reported that "under no circumstances should we go for VD. We go for the merits, and Morley can chew us out if he wants." ODC-18, p. 6.

379. Respondent contends that Judge Morley improperly prejudged the case without going to the Merits. ODC-18, p. 6, 8/12/14.

380. However, at the time of this meeting with Luis on July 28, 2014, Attorney Inslee and Luis had already agreed to Voluntary Departure in return for allowing Luis to remain in the United States until four months after the hearing on August 7, 2014, so "going for the merits" was not a viable option. ODC-18, p. 5; N.T. 9/24/19, p. 206; Stip. 64.

381. On August 7, 2014, Attorney Inslee noted the following regarding Luis' agreement to accept Voluntary Departure:

> There is a problem here. The deal at the ICH on 12-3-13 was that Respondent [Luis] withdrew relief because he did not have proof of presence for a three yr gap and there was little hardship. It was a withdrawal in return for more time and made sense because the Judge was going to deny the petition. (ODC-18, p. 6).

382. According to Attorney Inslee's notes and testimony, Luis was unwilling to take the Voluntary Departure which he had previously agreed to and wanted to appeal if a removal order was entered by Judge Morley. ODC-18, p. 6.

383. Respondent charged Luis an additional $1,000.00 to pursue this appeal. ODC-30B; N.T., 9/24/19, pp. 90-92.

384. Luis was deported following denial of the appeal.

385. Even though Luis executed Respondent's "STANDARD WARNING IN CANCELLATION OF REMOVAL" cases, purportedly acknowledging "THE

POSSIBILITY OF LOSING THE CASE AND BEING ORDERED TO DEPART THE UNITED STATES" (ODC-71, p. 212), Respondent could not have properly and thoroughly explained the risks of pursuing a "TM Style Cancellation" on his behalf at that time because Respondent had not yet obtained sufficient information and/or evidence from Luis as to whether Luis would be able to establish the required 10 years continuous physical presence in the United States and an "exceptional and extremely unusual hardship" to his U.S. child if Luis was deported.

Additional Facts:

386. The testimony of the witnesses was credible, except as specifically noted in Finding No. 217.

387. Respondent failed to accept responsibility for his actions and did not demonstrate remorse.

388. Respondent's representation of former clients has been chastised in an Opinion of a three-judge panel of the United States Court of Appeals for the Third Circuit in ***Contreras v. Attorney General of the United States***, 665 F. 3d 578 (3d Cir. 2012).

389. In ***Contreras***, the plaintiffs were illegal alien residents who retained Respondent in 2001 to obtain employment-based permanent residency in the United States. Mr. and Mrs. Contreras were placed into removal proceedings and subject to deportation. In a final effort to avoid deportation, Mr. and Mrs. Contreras retained new counsel and filed an appeal to the United States Court of Appeals for the Third Circuit, seeking to reopen their deportation proceedings based on Respondent's alleged "ineffective assistance of counsel."

390. Respondent was not a named defendant or a party to the appeal in ***Contreras***. However, the Court noted:

> Unfortunately, the Contrerases' former immigration attorney, Tahir Mella (who was not appellate counsel before this Court) provided incompetent, and at times ethically questionable, representation throughout Margarito's visa petition process.
>
> . . .
>
> We cannot end our discussion on this point without further comment on Mella's representation before the start of the removal proceedings, even if it is not subject to due process scrutiny. Our review of the administrative record reveals instances of not only incompetence but also exploitation. For example, Mella required $1,000 from Margarito - two weeks' pay according to his pay stubs at the time-to file a motion to reconsider that Mella knew or should have known would be untimely.
>
> . . .
>
> The Contrerases deserved better. Mella's representation during the visa petition process fell well short of the decency and professionalism we expect from the immigration bar. 665 F.3d at 581, 586-587.

III. CONCLUSIONS OF LAW

The Petition for Discipline charged Respondent with violations of the Rules of Professional Conduct (RPC) and violations of the Code of Federal Regulations (CFR). In Respondent's Answer to Petition for Discipline, he admitted that Petitioner had standing to prosecute alleged violations of the RPC, and denied that Petitioner had standing to prosecute alleged violations of the CFR. Respondent's Answer, at ¶1. Thereafter, Respondent contended that only the CFR applied to his alleged misconduct, because Respondent's conduct at issue arose exclusively from his practice in the federal immigration system. After hearing argument on the issue of choice of law pursuant to RPC 8.5, the Special Master concluded in his Report that only the RPC apply to Respondent's conduct, as Respondent is a Pennsylvania-licensed lawyer; his sole office is in Pennsylvania; the misconduct in which Respondent engaged incurred in the jurisdiction of Pennsylvania; the clients were all residents of Pennsylvania; the mailings of the I-589 Asylum Applications occurred in Pennsylvania; and the consequences of any rule violations impacted residents of Pennsylvania. Respondent takes exception to the Special Master's conclusion.

Upon review, we conclude that the RPC and the CFR apply to Respondent's conduct.

RPC 8.5 governs disciplinary authority and choice of law. This rule is in place to guide choice of law decisions when there are conflicts between the professional conduct rules of different jurisdictions. *See* RPC 8.5(b), which "seeks to resolve…potential conflicts" between "more than one set of rules of professional conduct which impose different obligations." RPC 8.5, Cmt. 2-3.

Here, we find there is no conflict between the RPC and CFR provisions

charged in the Petition for Discipline; these rules and regulations are not inconsistent. Further, we note that there are Pennsylvania disciplinary matters which have applied to a respondent's conduct both the RPC and rules of other jurisdictions, including the CFR. *See*, ***Office of Disciplinary Counsel v. Sigang Li***, No. 18 DB 2020 (D. Bd. Order 2/21/2020) (respondent violated the RPC and the CFR); ***Office of Disciplinary Counsel v. Carol Chandler***, 10 DB 2010 (D. Bd. Rpt. 4/15/2011) (S. Ct. Order 8/17/2011) (respondent violated the RPC, CFR, and New Jersey RPC).

In further contrast to Respondent's position that the RPC do not apply to Respondent's conduct, Pennsylvania discipline case law establishes that the RPC apply to attorney misconduct before federal administrative agencies adjudicating immigration matters. *See*, ***Office of Disciplinary Counsel v. Douglas Andrew Grannan***, 197 DB 2016 (D. Bd. Rpt. 4/3/2019) (S. Ct. Order 7/9/2019); ***Office of Disciplinary Counsel v. Ann Adele Ruben***, No. 6 DB 2011 (S. Ct. Order 4/28/2011) (consent discipline); ***Office of Disciplinary Counsel v. Rubina Arora Wadhwa***, No. 99 DB 2005 (D. Bd. Rpt. 5/22/2007) (S. Ct. Order 8/30/2007); ***Office of Disciplinary Counsel v. Michael Levine***, No. 163 DB 2004 (D. Bd. Rpt. 2/13/2006) (S. Ct. Order 6/20/2006).

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. (Jose Loja/Luz Castro Sumba; Julio Lopez Calderon; Elmer Gutierrez Lopez; Luis Naula Loja)

2. RPC 1.2(a) – A lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client as is impliedly authorized to carry out the representation A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decisions, after consultation with the lawyer, as to a plea to be entered, whether to waive a jury trial and whether the client will testify. (Maria Loja Castro; Julia Lopez Calderon; Elmer Gutierrez Lopez; Luis Naula Loja)

3. RPC 1.4(a)(1) – A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules. (Elmer Gutierrez Lopez)

4. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished. (Maria Loja Castro; Julio Lopez Calderon; Elmer Gutierrez Lopez; Luis Naula Loja)

5. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. (Maria Loja Castro; Julio Lopez Calderon; Elmer Gutierrez Lopez; Luis Naula Loja)

6. RPC 1.5(a) – A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. (Jose Loja/Luz Castro Sumba; Julio Lopez Calderon; Elmer Gutierrez Lopez; Luis Naula Loja)

7. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established. (Jose Loja/Luz Castro Sumba; Julio Lopez Calderon; Elmer Gutierrez Lopez; Luis Naula Loja)

8. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. (Jose Loja/Luz Castro Sumba; Maria Loja Castro; Julio Lopez Calderon; Miguel Guzman Solano/Myrna Munoz Romero; Elmer Gutierrez Lopez; Luis Naula Loja)

9. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. (Jose Loja/Luz Castro Sumba; Maria Loja Castro; Julio Lopez Calderon; Miguel Guzman Solano/Myrna Munoz Romero; Elmer Gutierrez Lopez; Luis Naula Loja)

10. Petitioner failed to meet its burden to prove that Respondent violated RPC 1.7(a)(1); 1.7(a)(2); 5.1(a); 5.1(b);5.1(c)(2); 8.4(a); and 8.4(b).

By his conduct as set forth above, Respondent violated the following provisions of the Code of Federal Regulations:[4]

[4] Our conclusion that Respondent violated the CFR provisions in addition to the RPC does not, in our consideration, compel more severe discipline than the RPC violations standing alone.

1. 8 CFR 1003.102(a)(1) – An immigration practitioner shall be subject to disciplinary sanctions if he "[c]harges or receives, either directly or indirectly, [i]n the case of an attorney, any fee or compensation for specific services rendered for any person that shall be deemed to be grossly excessive."

2. 8 CFR 1003.102(c) – An immigration practitioner shall be subject to disciplinary sanctions if he '[k]nowingly or with reckless disregard makes a false statement of material fact or law, or willfully misleads, misinforms, threatens, or deceives any person, concerning any material and relevant matter relating to a case."

3. 8 CFR 1003.102(n) – An immigration practitioner shall be subject to disciplinary sanctions if he "[e]ngages in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process."

4. 8 CFR 1003.102(o) – An immigration practitioner shall be subject to disciplinary sanctions if he "[f]ails to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners."

5. 8 CFR 1003.102(p) – An immigration practitioner shall be subject to disciplinary sanctions if he "[f]ails to abide by a client's decisions concerning

the objectives of representations and fails to consult with the client as to the means by which they are to be pursued, in accordance with paragraph (r) of this section."

6. 8 CFR 1003.102(r)(1) – An immigration practitioner shall be subject to disciplinary sanctions if he "[f]ails to maintain communication with the client throughout the duration of the client-practitioner relationship….[i]n order to properly maintain communication, the practitioner should [p]romptly inform and consult with the client concerning any decision or circumstance with respect to which the client's informed consent is reasonably required."

7. 8 CFR 1003.102(r)(2) – An immigration practitioner shall be subject to disciplinary sanctions if he "[f]ails to maintain communication with the client throughout the duration of the client-practitioner relationship…In order to properly maintain communication the practitioner should: [r]easonably consult with the client about the means by which the client's objectives are to be accomplished."

IV. DISCUSSION

This matter is before the Board following the issuance of the Special Master's Report, wherein the Master recommended that Respondent be suspended for a period of one year and one day for misconduct during his representation of eight clients in six immigration matters. The parties took exception to the Report and recommendation and the Board heard argument on the issues. We note the parties' diametrically-opposed requests in this matter, as Petitioner seeks to have Respondent disbarred, while

Respondent maintains he did not engage in any misconduct. Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v. John Grigsby***, 425 A.2d 730, 732 (Pa. 1981). Based on the evidentiary record, we conclude that Respondent's exceptions are unfounded and that Petitioner met its burden to prove that Respondent engaged in ethical misconduct. For the reasons set forth herein, we recommend that Respondent be suspended from the practice of law for a period of one year and one day.

As shown by the evidence presented over eight days of hearing, Respondent consistently failed to represent his clients according to ethical standards of practice.

Preliminarily, we discuss our findings and conclusions as to the protocols and practices utilized by Respondent, referred to at times as "TM Style Cancellations," in immigration matters handled by Respondent's office between 2012 and 2015. TM Style Cancellations was a practice followed by Respondent in representing undocumented, non-legal resident clients seeking to obtain legal status to live and work in the United States, i.e. obtaining a "green card." The process employed by Respondent involved filing an I-589 Application for Asylum and Withholding of Removal on behalf of a client who was not in removal proceedings, in order to place the client into removal proceedings. A successful asylum applicant had to submit a Form I-589 Application for Asylum to the USCIS within one year after the date of arrival in the United States; ignorance of the one year deadline was not a valid exception to the deadline. ODC-3A at 17-19; N.T. 9/24/19, pp. 87-88; N.T. 10/7/19, pp. 161-162. An exception to the one year filing deadline was if the applicant could demonstrate that he or she was afraid to return to their native country

because of a well-founded fear of persecution or harm. 8 U.S.C. 1158 (b)(1)(A); ODC-3A, pp. 11-13; N.T. 9/24/19, pp. 50-53.

Once a client was placed in removal proceedings and before an immigration judge, Respondent would withdraw the Asylum Application and file an Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (EOIR - 42B) which could, in certain cases with recognizable qualifications, result in an immigration judge granting Cancellation of Removal and allowing the client to obtain a green card to legally remain in the United States and obtain work papers, driver's license, and a Social Security number. 8 C.F.R. 208.14(c)(1); N.T., 9/24/19, p. 59. In order to successfully obtain Cancellation of Removal, an applicant had to show ten years of continuous presence in the United States, and that deportation would result in "exceptional and extremely unusual hardship to a spouse, parent, or child" who was a legal permanent resident or a United States citizen. 8 U.S.C. 1229b(b)(1)(A); 8 U.S.C. 1229b(b)(1)(D); N.T., 9/24/19, pp. 61-63.

As the evidence shows and Respondent admits, Respondent never intended intend to seek asylum for the clients, but filed the Asylum Applications solely as a procedural trigger to have the cases referred to an immigration judge for removal proceedings against the clients. N.T. 9/24/19, p. 189; 10/8/19, p. 149; 10/9/19 pp. 71, 99, 113, 124, 146.

The Special Master found that the TM Style Cancellation process in and of itself was unethical. "Initially, the filing of an I-589 Asylum Application with no intention of seeking asylum was, in the Special Master's opinion, a violation of RPC 3.1, and 8.4(c) and (d)." Report of Special Master at p. 17. Respondent strongly argues that the Master erred in this finding, and contends that the Asylum/COR process was a recognized

process and a commonly utilized strategy and practice used by a significant number of other practitioners in the immigration bar.

Upon review, we conclude that our focus in the instant matter is on Respondent's specific actions while employing his TM Style Cancellation procedure and whether such actions as executed by Respondent were unethical. Within that scope, therefore, we make no broad conclusion that the TM Style Cancellation procedure, i.e. filing for asylum with no intention of seeking asylum, but to initiate removal proceedings, is per se unethical, and we find that evidence as to the use of such procedure among the immigration bar is immaterial to our consideration of Respondent's disciplinary matter.

Our examination of Respondent's actions during his pursuit of the TM Style Cancellation reveals ethical deficiencies. The evidence demonstrates that in the matters of Jose Loja and his wife Luz Castro Sumba[5], Miguel Guzman Solano, Myrna Munoz Romero, and Julio Lopez Calderon, Respondent or his staff with Respondent's knowledge, filed I-589 Applications for Asylum that contained misrepresentations. Respondent misrepresented on Jose Loja's application that Jose had a fear of returning to Ecuador because it was not safe and he and his family could experience mistreatment. In fact, Mr. Loja credibly testified at the disciplinary hearing that he never told Respondent he was afraid to return. N.T. 9/26/29, pp. 30-32. The Applications filed on behalf of Mr. Solano and Ms. Romero contained false statements that they each feared going back to their home country due to active cartels. Like Mr. Loja, Mr. Solano and Ms. Romero credibly testified at the disciplinary hearing and denied telling Respondent they were afraid. N.T. 9/25/19, pp. 91-92. 146. Mr. Calderon's I-589 stated that he last left Mexico

[5] Luz Castro Sumba was a derivative beneficiary on the I-589 Respondent submitted on behalf of her husband, Jose Loja.

in 2003, despite the fact that Mr. Calderon disclosed to Respondent and his staff in the initial office Questionnaire that he last left Mexico and entered the United States in April 2007. The statements on the Applications in these matters were false, and Respondent submitted them on behalf of his clients knowing they contained untrue statements, in violation of RPC 8.4(c).

The filing of an I-589 Application for Asylum enabled the applicant to submit an I-765 Application for Employment Authorization (EAD) to obtain temporary work papers. Petitioner contends that by obtaining EADs on the basis of I-589s that contained falsities, as described above, Respondent committed immigration fraud, a federal crime, in violation of U.S.C. 1546(a) ("[W]hoever knowingly…obtains, accepts or receives any…document prescribed by statute or regulation…as evidence of authorized stay or employment in the United States, knowing it…to have been procured by means of any false claim or statement,…[s]hall be fined under this title or imprisoned not more than…10 years."). Petitioner argues that Respondent's actions violated RPC 8.4(b), which prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as lawyer in other respects. Upon review, we conclude that Petitioner did not meet its burden to prove that Respondent committed a criminal act.

In all of the matters complained of herein, Respondent's staff filled out and prepared the I-589 Asylum Applications, yet the Applications were filed as "pro se." According to Respondent, this was done because in his experience it resulted in the client receiving quicker acknowledgement from the government that it received the I-589 Application. N.T. 10/8/19, at pp. 154-155. Respondent further testified it was "necessary" and not done to "hide our involvement" because his appearance would be entered at a later date. Nevertheless, Respondent admitted that "in retrospect, you know, I wouldn't

do that again." N.T. 10/8/29, at p. 155. Respondent's firm has ceased the practice of filing pro se applications. N.T. 10/9/19 at p. 85-86. We conclude that Respondent's practice of filing applications pro se that had been filled out by his office staff was dishonest, in violation of RPC 8.4(c).

Once the I-589 Application for Asylum was filed and the client was in removal proceedings, Respondent would withdraw that Application and seek Cancellation of Removal by filing the EOIR-42B. This involved some risk, because if the client did not have a sufficient factual and/or legal basis to support a Cancellation of Removal Application, then the client would be subject to deportation, a situation none of the clients faced at the time they retained Respondent. As Respondent's expert, Jason Dzubow, Esquire, acknowledged, it was critical to the success of a Cancellation of Removal Application that the information necessary to support such an application be obtained from the client at the outset of retaining Respondent, before the I-589 Application for Asylum was filed.

Although there was testimony from Respondent that the facts and information necessary to support a Cancellation of Removal Application could be developed after the Application for Asylum was filed, it was too late after the I-589 was filed to stop the removal process from proceeding if sufficient facts and information were not able to be established to convince an immigration judge to grant the Cancellation of Removal. The failure of Respondent or his staff to thoroughly investigate and determine the likelihood of successfully obtaining Cancellation of Removal for several of his client before filing the I-589 Application for Asylum and beginning the removal process was incompetent and a breakdown of the communication required between lawyer and client to ensure that the client's objectives would be accomplished and that the client was able

to make decisions. These actions constituted a violation of RPC 1.1, 1.2(a), 1.4(a)(2), and 1.4(b).

In several of the matters, Respondent's filings were frivolous, in violation of RPC 3.1, as he had no legal and factual basis to pursue the filing, as he had not gathered sufficient evidence to support the filings, as described above. In the matter of Jose Loja and Luz Castro Sumba, the EOIR-42B contained no facts or evidence to support the stringent "exceptional and extremely unusual hardship" to their U.S. child required by the cancellation of removal process, and in any event, the record showed that these clients were ineligible for the process until 2021, making the claims baseless. In the Julio Calderon matter, the EOIR-42B filed on his behalf stated that he had left the United States in December 2006 and did not return until April 2007, which on the face of the Application rendered Mr. Calderon ineligible for removal as he did not meet the ten-year requirement. In the Luis Naula Loja matter, the I-589 Application was filed before Luis filled out Respondent's office Questionnaire, meaning Respondent filed the Application with no knowledge of whether Luis could meet the stringent requirements for success. In fact, it was discovered later, and seemingly too late, that Luis lacked ten years of continuous presence in the United States and had no evidence of any "exceptional and extremely unusual hardship" to his U.S. citizen son. Luis was deported.

Another frivolous filing occurred in Elmer Gutierrez Lopez's matter. Mr. Lopez initially retained Respondent to pursue a labor certification process. At the time Respondent was retained in March 2011, the labor certification process required Mr. Lopez to appear at a consulate or embassy in Guatemala in order to obtain an immigrant visa. If Mr. Lopez had left the United States in 2011 to obtain the visa, he would have triggered the ten-year bar on readmission to the United States. Mr. Lopez testified at the

disciplinary hearing that he was never told of this requirement (a communications deficiency by Respondent) and there is no documentary evidence of Respondent's claim to have advised Mr. Lopez that he would not be able to return to the United States for ten years. N.T. 9/25/19, at pp. 20-21; N.T. 10/9/19, at pp. 18-21. Respondent, of course, was well aware of this onerous requirement, but attempted to justify his pursuit of the labor certification process through his hope that the "245(i)" process would become available, which would have alleviated the requirement that Mr. Lopez go to Guatemala. N.T. 10/8/19, at 245. However, the 245(i) process had not been the law for nearly two decades, and clearly it was not realistic for Respondent to expect that it would be revived in time to benefit his client.

In addition to the consular issue, another problem inherent in Mr. Lopez's labor certification process was that he needed experience as a restaurant cook when he was hired by his employer, and he had no such experience, which was clearly noted in Respondent's status notes on the matter. Nevertheless, the labor certification was submitted and ultimately denied on the basis of Mr. Lopez's lack of experience; Respondent misrepresented to Mr. Lopez that it had been denied because "[his employer] had failed to follow through." N.T. 9/24/19, pp.80-81. Based on the evidence of record, Respondent had no basis to file the permanent employment certification, as it was known to Respondent that Mr. Lopez did not have the work experience required. Thus, Respondent filed a certification that he knew could not prevail under the existing legal requirements.

In three matters, Respondent charged his clients excessive fees. In the Julio Calderon matter, Respondent charged $9,000 to pursue Cancellation of Removal,

which Respondent's own expert admitted the client was not eligible for, due to the date that Mr. Calderon had entered the country. In the Elmer Gutierrez Lopez matter, Respondent charged $11,500 to pursue the labor certification process, which Mr. Lopez was not qualified to obtain, and which would have required him to leave the United States for ten years. In the matter of Jose Loja and his wife Luz Castro Sumba, Respondent charged $17,000 for pursuing the TM Style Cancellation process, yet according to the record, Respondent knew that Jose and Ms. Castro Sumba were not eligible until 2021, as they had been in Ecuador between 2009 and 2011. We note that there was no expert testimony that the fee charged in each of the matters was excessive for the work performed; however, each case was unsupportable on the facts known to Respondent, and any fee charged therein violated RPC 1.5(a).

In these matters, Respondent's actions prejudiced the administration of justice in violation of RPC 8.4(d). In addition to generally wasting the resources of the government by filing frivolous documents, Respondent more specifically acted to prejudice the administration of justice. For example, during his representation of Julio Lopez Calderon, Respondent advised his client to fail to appear at the client's USCIS asylum interview because Respondent wanted to go "right to court." Stip. 97. In fact, Mr. Calderon followed his lawyer's instructions and did not appear for his interview, thereby needlessly wasting court resources and delaying the adjudicative process.

Having concluded that Respondent violated professional standards to which he was subject in his law practice, we turn to the appropriate discipline to address his misconduct. In looking at the general considerations governing the imposition of discipline, it is well-established that each case must be decided individually on its own unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***,

472 A.2d 186 (Pa. 1983). In order to "strive for consistency so that similar misconduct is not punished in radically different ways," ***Office of Disciplinary Counsel v Anthony Cappuccio***, 48 A.3d 1231, 1238 (Pa. 2012) (quoting ***Lucarini***, 472 A.2d at 190), the Board is guided by precedent for the purpose of measuring "the respondent's conduct against other similar transgressions." ***In re Anonymous No. 56 DB 94***, 28 Pa. D. & C. 4th 398 (1995). The Board is mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts, and deter unethical conduct. ***Office of Disciplinary Counsel v. Akim Czmus*****,** 889 A.2d 117 (Pa. 2005).

In recommending an appropriate sanction, the Board must consider the attendant aggravating or mitigating factors. The record reveals several aggravating factors and one mitigating factor.

Respondent has been chastised previously by the United States Court of Appeals for the Third Circuit for conduct similar to the conduct exhibited in the instant matter. Petitioner introduced the opinion in ***Contreras v. Attorney General of the United States***, 665 F. 3d 578 (3d Cir. 2012) (ODC-75) as aggravating evidence and the Special Master admitted the opinion over Respondent's objection. Respondent takes exception to the consideration of the opinion in determining the type of discipline to be imposed. Upon review, we conclude that the Special Master properly considered the opinion pursuant to Disciplinary Board Rule § 89.151, which broadly permits the receipt of evidence relevant and material on the issue of the type of discipline to be imposed.

In ***Contreras***, the plaintiffs were illegal alien residents who retained Respondent in 2001 to obtain employment-based permanent residency in the United States. During the course of Respondent's representation, Mr. and Mrs. Contreras were

placed into removal proceedings and subject to deportation. In an effort to avoid deportation, the Contrerases retained new counsel and filed an appeal to the United States Court of Appeals for the Third Circuit seeking to reopen their deportation proceedings based on Respondent's alleged "ineffective assistance of counsel."

Respondent was not a named defendant or party to the appeal. However, the Court reviewed Respondent's representation of his clients and made certain observations and conclusions. The Court noted that Respondent provided "incompetent, and at times ethically questionable, representation throughout Margarito's [Mr. Contreras's] visa petition process." The Court rebuked Respondent for his representation, concluding that it "fell well short of the decency and professionalism we expect from the immigration bar." 665 F.3d at 581, 586-587. Respondent failed to heed the Third Circuit's pointed criticism, as shown by his unprofessional representation in the instant matters. At the very least, these criticisms should have alerted Respondent to the necessity of evaluating his practice shortcomings and ensuring his procedures and protocols going forward met professional standards.

Respondent failed to acknowledge full responsibility for his improper conduct, although we note that he admitted that his practice of filing the I-589s pro se was not appropriate and he has ceased engaging in that practice. Consistent with his refusal to take responsibility, Respondent failed to demonstrate remorse. The record is devoid of any evidence that Respondent apologized for his actions or felt regret. It is well-established that a respondent's unrepentant attitude constitutes an aggravating factor. ***Office of Disciplinary Counsel v. John Kelvin Conner***, No. 29 DB 2018 (D. Bd. Rpt. 4/2/2019) (S. Ct. Order 6/20/2019) (citing ***Office of Disciplinary Counsel v. Thomas Allen Crawford, Jr.***, 160 DB 2014 (D. Bd. Rpt. 9/13/2017) (S. Ct. Order 11/4/2017).

Respondent has practiced law since 1993 without incident. A lack of prior discipline may serve to mitigate a respondent's misconduct. ***Office of Disciplinary Counsel v. Philip A. Valentino***, 730 A.2d 479, 483 (Pa. 1999). We recognize this mitigating factor and afford it due weight when determining the appropriate discipline. No other mitigating evidence was presented.

Our review of discipline matters revealed the following cases that are instructive in determining the appropriate sanction in this matter. A pattern of misconduct in immigration matters has resulted in license suspension. In the matter of ***Office of Disciplinary Counsel v. Douglas Andrew Grannan***, 197 DB 2016 (D. Bd. Rpt. 4/3/19) (S. Ct. Order 7/9/19), the Court suspended Grannan for one year and one day for his misconduct in five immigration matters and two personal injury matters. The misconduct involved incompetence, lack of diligence, failure to communicate, failure to return client files, and conduct prejudicial to the administration of justice. The Board noted that some clients' rights were jeopardized or lost due to Grannan's failure to present evidence or pursue arguments, and many of the clients retained new counsel in an attempt to remedy Grannan's wrongdoing. Board Report at p. 94. Like Respondent, Grannan did not express genuine remorse for his misconduct, did not show appreciation for his actions by demonstrating measures to remediate practice issues, did not offer any character evidence, and had no record of discipline in twenty years of legal practice.

In another matter involving immigration clients, ***Office of Disciplinary Counsel v. Ann Adele Ruben***, 6 DB 2011 (S. Ct. Order 4/28/11), the Court suspended Ruben on consent for one year and one day for her pattern of misconduct in seventeen separate immigration matters. Ruben's misconduct primarily concerned her failure to file labor certification applications on behalf of her clients, who were foreign employees of

companies. Ruben then misrepresented the status of the applications to the clients, and in some matters attempted to hide her inaction by giving the client a false Labor Department file number for an application that she had never filed. In some matters, Ruben filed petitions to continue the H-1B status of the clients, and in at least one matter, misrepresented the status in the petition. A number of clients had to depart the United States because their visa statuses expired due to Ruben's failure to file the labor certification applications with the Labor Department. While this misconduct was undoubtedly serious, arguably more so than the instant matter due to the sheer volume of wronged clients, Ruben presented weighty mitigation that her mental health disorder caused her misconduct.

In addition to the above-cited matters, we take note of a recent matter that involved similar facts to the instant matter. In ***Office of Disciplinary Counsel v. Sigang Li***, No. 18 DB 2020 (D. Bd. Order 2/21/20), the Board imposed a public reprimand for Li's misconduct in one immigration matter.[6] Therein, Li used a process similar to that utilized by the instant Respondent by filing with the USCIS an I-589 Application for Asylum and Withholding of Removal on behalf of his client. The Application stated that the client feared torture or kidnapping if she returned to her native country. This statement was false. The client, who was not in removal proceedings at the time she retained Respondent's services, did not understand that Li was filing for asylum as a method of placing her into removal proceedings and did not tell Li she feared return to her native country. Li did not explain his asylum process to his client and did not provide his client with a fee agreement. Like Respondent, Li had no prior discipline and had been practicing

[6] ***Li*** was an informal proceeding and was determined by a three-member review panel of the Board. Li did not request formal proceedings and accepted the public reprimand determination.

law for twenty-two years. The obvious difference between ***Li*** and the instant matter is the breadth of the misconduct; Respondent committed misconduct in six matters involving eight clients, compared to Li, who committed misconduct involving one client.

While there is always a range of discipline for similar types of misconduct due to aggravating and mitigating circumstances distinctive to each case, we find that generally, public discipline, primarily suspension, is imposed when an attorney engages in one or more of the types of misconduct present in this matter, including false statements in documents, charging excessive fees, frivolous filings, incompetence and communication infractions, and prejudicing the administration of justice *See* ***Office of Disciplinary Counsel v. Rubina Arora Wadhwa***, No. 99 DB 2005 (D. Bd. Rpt. 5/22/07) (S. Ct. Order 8/30/07) (nine month suspension for misrepresentation in a motion filed with the immigration court); ***Office of Disciplinary Counsel v. Paul J. McArdle***, No. 34 DB 2015 (D. Bd. Rpt. 9/2/16) (S. Ct. Order 11/22/16) (one year and one day suspension for filing multiple frivolous pleadings); ***Office of Disciplinary Counsel v. Charles A. Pascal, Jr.,*** No. 88 DB 2019 (D. Bd. Order 5/14/19 (public reprimand for charging an excessive fee when he took a case, did little work, and did not respond to the client's requests for information); ***Office of Disciplinary Counsel v. Marc D. Collazzo***, No. 165 DB 2010 (S. Ct. Order 10/30/10) (one year and one day suspension on consent for, among other misconduct, communications violations, dishonesty, and conduct prejudicial to the administration of justice).

These cases suggest that suspension is warranted and necessary to make Respondent aware of the very serious and regrettable nature of his violations. Upon this record, we conclude that Respondent is not fit to practice law. A one year and one day suspension removes Respondent from practice and thereby protects the public by

ensuring Respondent is not in a position to provide legal services until such time as he establishes that he recognizes and acknowledges his wrongdoing, shows remorse, and proves he is ready to return to the practice of law and perform his services as an attorney in a competent, ethical, and professional manner.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Ephraim Tahir R. Mella, be Suspended for one year and one day from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Christopher M. Miller, Member

Date: 10/07/2020