SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-238
District Docket No. XIV-2008-0466E

IN THE MATTER OF	
JOSE LUIS DEL CASTILLO SALAMANCA	
AN ATTORNEY AT LAW	

Decision

Argued: September 16, 2010

Decided: October 28, 2010

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

David A. Abrams appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), based on respondent's guilty plea and criminal conviction in Connecticut for document fraud, in violation of 18 U.S.C. §2 and §1546(a). The OAE believes that a two-year suspension, retroactive to

October 2, 2008, the date of respondent's temporary suspension in New Jersey, is appropriate. We agree with the OAE.

Respondent was admitted to the New Jersey bar in 1993. He has no prior discipline. On October 2, 2008, he was temporarily suspended from the practice of law in New Jersey.

On December 6, 2006, a six-count indictment in the United States District Court for the District of Connecticut (USDC) charged respondent with filing false applications to obtain employment-related visas for alien employees, on behalf of a business that respondent owned and operated and that had retained him as counsel. Respondent was charged with three counts of aiding and abetting and document fraud, in violation of 18 U.S.C. §2 and §1546(a), and three counts of aiding and abetting and false statements, in violation of 18 U.S.C. §2 and §1001.

On May 9, 2008, respondent pleaded guilty to one count of the indictment, charging him with document fraud, in violation of 18 U.S.C. §2 and §1546(a). Also on May 9, 2008, respondent appeared before the Honorable Robert N. Chatigny, Chief Judge, USDC, for the entry of his plea. At that hearing, respondent entered into a Stipulation of Offense Conduct, which set forth the facts of his crime.

Specifically, in March 2001, respondent owned and operated a restaurant in Hartford, Connecticut, known as "Mamacita's." Through the restaurant, respondent submitted several applications for alien employment, also known as ETA-750s. An ETA-750 application is the first step in the process of obtaining an employment-based visa. It is required of alien workers seeking legal work status and is submitted to the U.S. Department of Labor for adjudication.

In part A of an ETA-750 application, the employer represents, under penalty of perjury, that there is a specific job to fill, the nature, location, terms and minimum requirements of the job, and the name, address, and immigration status of the alien who will fill the job. In part B of the form, the alien makes similar representations about his or her immigration status, qualifications for the job, and the like.

Once the ETA-750 is approved by the U.S. Department of Labor, the prospective employer may file an Immigration Petition for Alien Worker, also known as an I-140 petition, with the U.S. Citizenship and Immigration Service (CIS). The I-140 petition is necessary for the alien to obtain lawful permanent residency status in the United States.

On April 30, 2001, respondent knowingly caused to be prepared, and submitted, false ETA-750s on behalf of Justyna Ochocinska, for a waitress position at Mamacita's, and on behalf of Simone Campos, for a foreign food specialty cook position at Mamacita's. Respondent knew, when he filed the applications, that they contained false declarations: a false assertion that he represented Ochocinska; false information about the job offer being communicated to, and accepted by, Ochocinska; and false statements about Campos' work experience and qualifications. Respondent did so, despite having certified, under penalty of perjury, that the information was true and correct.

On June 4, 2002, respondent knowingly caused to be prepared, and submitted to the CIS in St. Albans, Vermont, a fraudulent I-140 petition, including supporting documents, for Campos' position at Mamacita's. Respondent knew at the time that the petition contained a fraudulent or false claim and statement of material fact about Campos' work experience and qualifications. Respondent attached to the petition the previously obtained, fraudulent, ETA-750. Respondent did so, despite having certified that the information was true and correct.

On June 20, 2002, respondent knowingly caused to be prepared, and filed with the U.S. Department of Labor, another false ETA-750 for Campos, regarding a waitress position at Mamacita's, and a fraudulent ETA-750 for Kataizyna Zmijewski, for a waitress position at that restaurant. Respondent knew, when he filed the applications, that they contained material falsehoods, including false statements about their work experience and qualifications, and false information about the job offer communicated to and accepted by Zmijewski. Respondent did so, despite having certified, under penalty of perjury, that the information was true and correct.

Also on June 20, 2002, respondent knowingly caused to be prepared, and filed with the U.S. Department of Labor, a similarly false ETA-750 on behalf of Agata Gozdziewski, for a waitress position at Mamacita's. Respondent knew, when he filed the application, that it contained false declarations, a false assertion that respondent represented Gozdziewski, false information about the job offer being communicated to and accepted by Gozdziewski, and false statements about her work experience and qualifications. Respondent did so, despite having certified, under penalty of perjury, that the information was true and correct.

On September 10, 2008, Judge Chatigny sentenced respondent to confinement for one year and a day, and two years of supervised release thereafter. He also ordered respondent to pay a $15,000 fine and a $100 special assessment. During sentencing, the judge commented:

> I have considered whether your record of prior good works warrants a downward departure, and I find that it does not. I value the contributions you have made. I consider them important, but in my opinion, they are not so extraordinary as to warrant a departure below the otherwise applicable sentence.
>
> In addition, the seriousness of the offense would justify, in my opinion, a sentence at a higher point in the range, and thus your record of prior good works can be taken into consideration in sentencing you to a lower point within the range.
>
> With regard to the nature and circumstances of the offense, a plea agreement includes a stipulation of offense conduct which sets forth in detail the agreed upon instances in which you submitted fraudulent documents to the Department of Labor in connection with immigration applications. These submissions

took place over a period of several years and involved several different applications.

[OAEb6,Ex.F24.][1]

Thus, the court was not moved by any mitigating factors to give respondent special consideration at sentencing.

Following a review of the record, we determine to grant the OAE's motion for final discipline.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's criminal conviction constitutes a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The sanction imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as

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[1] "OAEb" refers to the OAE's July 13, 2010 brief to us.

respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46. Discipline is imposed even when the attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

Attorneys convicted of crimes involving falsified immigration documents have received long-term suspensions or have been disbarred. See, e.g., In re Biederman, 134 N.J. 217 (1993) (eighteen-month suspension imposed on attorney criminally convicted of assisting ten Philippine nationals to enter the country with fraudulent United States passports; the attorney's misconduct did not directly relate to the practice of law); In re Vargas, 170 N.J. 255 (2002) (three-year suspension for attorney who falsified INS notices of approval from prior clients by changing the names on the documents; thereafter, the attorney submitted the false documents to the INS to illegally obtain residency status for new clients; the attorney initially lied to investigators that a paralegal had falsified the documents, before admitting that he had falsified them); In re Silverblatt, 142 N.J. 635 (1995) (three-year suspension imposed on attorney who obtained employment authorization for ten aliens by falsely stating on immigration forms that the aliens were in

the country for political reasons); In re Brumer, 122 N.J. 294 (1991) (three-year suspension imposed [reciprocally, based on Florida's three-year suspension] on attorney who filed false labor certificates in order to assist at least twenty seven foreign nationals in obtaining permanent resident visas); and In re Saint Preux, 197 N.J. 26 (2008) (disbarment for attorney who falsified hundreds of immigration notices of approval from prior clients by changing the names on the documents; the attorney submitted the false documents to the INS to illegally obtain residency status for new clients and lied to investigators that a paralegal had falsified the documents, amassing several hundred thousands of dollars in fees during a federal amnesty period; the attorney showed no remorse and claimed that "every attorney" was doing the same thing during that time).

Respondent's misconduct was not so serious as to warrant disbarment. Here, only a handful of fraudulent documents were filed, as opposed to hundreds of fraudulent asylum requests in Saint-Preux.

On the one hand, respondent's misconduct warrants a suspension longer than the eighteen months meted out in Biederman. Unlike respondent, attorney Biederman was not engaged in the practice of law when he accompanied ten Philippine

immigrants, each of whom held a phony U.S. passport, on a flight from Singapore to the United States. Biederman did not procure the phony passports, but furnished the immigrants with instructions for their trip and tips on how to appear American, when they faced customs officials upon their supposed re-entry into this country.

On the other hand, the three-year suspension cases are distinguishable as too severe, in that they contain aggravating factors not present here. Specifically, in Vargas, the attorney initially lied to disciplinary investigators that a paralegal in his office had forged the falsified immigration documents. Only later did he admit that he was responsible for the falsifications. In Silverblatt, relying on the attorney's false documents, the government issued employment documents for ten different immigration clients, whereas here, that appears to have happened only once, when the CIS granted Campos' petition. Finally, in Brumer, in addition to falsifying documents, the attorney advised his clients to forego work or to flee in order to avoid the immigration authorities, an element not present in this matter.

In mitigation, respondent has no disciplinary history since his 1993 bar admission. We note also that he complied with his duty to promptly notify the OAE of his conviction and sentence.

In view of all of the above, we find that the OAE-recommended two-year suspension, retroactive to respondent's temporary suspension (October 2, 2008), is the appropriate sanction in this case.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jose Luis Del Castillo Salamanca
Docket No. DRB 10-238

Argued: September 16, 2010

Decided: October 28, 2010

Disposition: Two-year suspension

Members	Disbar	Two-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				

Julianne K. DeCore
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Chief Counsel