



IN RE: VANTHAN R. UN

NO. BD-2014-094

S.J.C. Judgment Accepting Resignation As A Disciplinary Sanction entered by Justice Cordy on October 17, 2014, with an effective date of November 16, 2014.¹

SUMMARY²

The matter came before the Board of Bar Overseers and the Court on the respondent's affidavit of resignation pursuant to Supreme Judicial Court Rule 4:01, § 15. In the affidavit, the respondent acknowledged that sufficient evidence existed to warrant findings that the material facts summarized below could be proved by a preponderance of the evidence.

The respondent was admitted to practice on December 29, 1995. The respondent had extensive experience in the practice of immigration law.

In April 2007, a client sought the services of the respondent to file an I-751 petition to remove conditions on residency; the approaching deadline for submission was December 9, 2007. The client informed the respondent that she was still married to her husband and did not want to divorce him, but that she did not know where he was. The client paid the respondent his fee of \$3,500 in installments, and he was paid in full by October 3, 2007.

On December 1, 2007, the client signed the I-751 petition, prepared by the respondent and his staff under his supervision, and paid the filing fee. However, the respondent did not review the petition with the client and she did not read it. The respondent knowingly falsely checked box (d) on the I-751 form representing that the client had entered her marriage in good

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

² Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

faith, but the marriage was terminated through divorce or annulment. As the respondent knew, the client was not divorced and had no intention of getting divorced.

The respondent failed to file the I-751 petition until April 2008, well past the deadline. The respondent also failed to inform the client that he had filed her I-751 petition late.

In March 2009, the client engaged a private detective to locate her husband. In April 2009, the investigator located the client's husband, who was incarcerated in federal prison. The client immediately informed the respondent that she had found her husband.

In June 2009, the respondent prepared a second I-751 petition to reflect a joint filing based on the client's marriage to a U. S. citizen. However, the respondent failed to file the second I-751 petition before the client's scheduled I-751 interview with UCSIS in June 2009.

In June 2009, the respondent and the client appeared for her scheduled I-751 interview before the USCIS. USCIS requested evidence from the client of her divorce. The client informed USCIS that she was not divorced and did not intend to divorce her husband. The USCIS interviewer informed the client and the respondent that the petition would be denied because she was not divorced. The respondent attempted to file the second I-751 petition at the interview, but his request was denied.

In July 2009, the respondent filed the second I-751 petition on behalf of the client, indicating that the basis for the petition is her marriage to a U.S. citizen. However, the respondent failed to submit a written explanation establishing good cause for his failure to timely file the I-751 petition and a written request that USCIS excuse the late filing of the petition.

In August 2009, the U.S. Department of Homeland Security and USCIS issued a notice of termination of conditional status to the client and copied the respondent because she had failed to provide evidence of a divorce at the June 2009 interview and did not qualify for a waiver. As a result of the denial of her I-751 petition, the client was removable from the United States because her permanent resident status was terminated as of December 9, 2007.

In October 2009, the respondent and the client appeared for a master calendar hearing before the Immigration Court for deportation proceedings. The respondent requested a continuance of the hearing to allow time for the adjudication of the second I-751 petition. The Immigration Court allowed the motion.

In January 12, 2010, the respondent filed a motion to terminate proceedings with the Immigration Court, stating that the second I-751 petition was still pending before USCIS.

By notice to the respondent dated January 13, 2010, USCIS denied the client's second I-751 petition on the grounds that the petition was filed late and there was no written explanation for the failure to timely file the I-751 petition nor a written request that USCIS excuse the late filing of the petition as required by Title 8 Code of Federal Regulations, § 216.4(a) (6). The respondent then told the client that he was going to file a third I-751 petition, and he charged her \$545 for a third I-751 filing fee. However, the respondent never filed a third I-751 petition and has not to date returned the \$545 advanced by the client for the filing fee.

In February 2010, the Immigration Court denied the respondent's motion to terminate the proceedings, but continued the case to February 1, 2011, to allow for the adjudication of the I-751 petition. The respondent failed to inform the Immigration Court that USCIS had denied the second I-751 petition.

In January 2011, the respondent filed a motion to continue the hearing with the Immigration Court. In this motion, the respondent knowingly, falsely represented to the Court that the I-751 petition was still pending. By order, the Immigration Court granted the motion to continue to December 13, 2011, but required that any future motion be filed thirty days before the next scheduled hearing, and include evidence that the petition is still pending.

In November 2011 and again in September 2012, the respondent filed motions to continue with the Immigration Court, falsely representing that the I-751 petition was still under review. On September 18, 2012, the master hearing was held and the Immigration Court ordered the client's case closed because the I-751 petition had been pending for too many years.

In October 2012, the Department of Homeland Security issued a memorandum to re-calendar the client's removal proceedings on the grounds that the client's I-751 petition had been denied in 2009, and there were no petitions pending before USCIS. The Immigration Court set a new hearing date for removal proceedings to December 18, 2012.

In November 2012, the client terminated the respondent's representation and engaged new counsel. New counsel filed extensive evidence in support of the jointly filed I-751 petition.

By his conduct, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3, 3.3(a), and 8.4(c), (d) and (h).

The respondent was previously disciplined for similar misconduct in immigration matters. See *Matter of Un*, 26 Mass. Att'y Disc. R. 698 (2010) (public reprimand), and *Matter of Un*, BD-2011-111 (November 9, 2011) (three-month suspension stayed on conditions for one year).

On September 19, 2014, the respondent filed an affidavit of resignation. Bar counsel recommended the affidavit be accepted as a disciplinary sanction.

On October 9, 2014, the Board of Bar Overseers voted to recommend to the Supreme Judicial Court that the affidavit of resignation be accepted as a disciplinary sanction. On October 17, 2014, the Supreme Judicial Court for Suffolk County accepted the affidavit of resignation as a disciplinary sanction, effective thirty days after the entry of the judgment.