



ALISON G. TOOMEY

Public Reprimand No. 2015-12

Order (public reprimand) entered by the Board on October 26, 2015.

SUMMARY¹

The respondent received a public reprimand for her neglect of an immigration matter.

In or about 2004, the client -- a citizen of Italy who was working lawfully in the United States under a *temporary* visa -- asked the respondent to help him obtain permanent residency via the labor certification process. The respondent accepted this assignment. Among other things, the respondent filed the client's Form I-485 with the United States Citizenship and Immigration Service (USCIS) seeking to adjust his status to permanent residency. Under the Immigration and Nationality Act, this Form I-485 would not be approved by USCIS if, during its pendency, the client engaged in any "unauthorized" employment for more than 180 days (the "180-day cutoff").

While the Form I-485 remained pending, the respondent filed a series of applications for employment authorization on behalf of the client. The applications, which were allowed, ensured that the client was authorized to work up and until November 3, 2010. As November 3, 2010, approached, however, the respondent failed to alert the client that his authorization was about to expire. She also failed to advise him to obtain a new authorization so as to avoid accruing any days of unauthorized employment towards the 180-day cutoff.

On November 3, 2010, the client's employment authorization expired. The respondent failed to inform the client that, going forward, he was not authorized to work in this country and that any day of continued employment would be counted towards the 180-day cutoff. Nor did she advise him to stop working so as to prevent the accrual of any more unauthorized work days.

Over the next few months, while his I-485 remained pending, the client worked without an employment authorization. In February of 2011, the client reached out to the respondent and asked for an update on the status of his case. In response, the respondent provided the client with a new application for employment authorization. She did not, however, advise the client that he was accruing days of unauthorized employment towards the 180-day cutoff or that, due to the 180-day cutoff, it was important to submit the new application as quickly as possible.

On April 12, 2011, the client, with the help of the respondent, filed a new application for employment authorization. Although the 180-day cutoff was slated to expire in a few weeks (i.e., May 1, 2011), the respondent failed to ask USCIS for an expedited review of her client's application or otherwise note her client's interest in obtaining a new employment authorization as quickly as possible. USCIS ultimately approved the application, re-authorizing the client to work as of June 17, 2011. In total, between November 3, 2010, and June 17, 2011, the client had accrued 228 days of unauthorized employment.

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the board.

On November 29, 2012, USCIS denied the client's Form I-485. In its written decision, USCIS cited the client's 228 days of unauthorized work as the sole grounds for its decision. The respondent filed a motion to reconsider that decision; however, she failed to address the finding that her client had accrued more than 180 days of unauthorized work during the pendency of his Form I-485. In March of 2013, USCIS accordingly denied the motion.

As a result of the decision by USCIS to deny the motion to reconsider, the client no longer had the lawful ability to work or reside in the United States. However, due to problems with the receipt of mail at her office, the respondent did not receive a copy of the decision and, therefore, did not advise her client of it. Instead, she helped him file an application to renew his most recent employment authorization. When USCIS denied that application on the grounds that the client's Form I-485 had already been denied, the client asked the respondent for an explanation. In response, the respondent stated her misunderstanding that the motion to reconsider the Form I-485 was still pending. The client, with the help of the respondent, then filed another application for employment authorization. USCIS denied that application as well, citing the same grounds as before -- the client's Form I-485 had already been denied.

Over the next several months, the client again asked the respondent for more information on the status of the motion to reconsider and his Form I-485. In response, the respondent failed to take any meaningful action to obtain accurate information from USCIS about the status of her client's case. Instead, she reiterated her misunderstanding that USCIS had not yet decided the client's motion and that his Form I-485 was, therefore, still pending.

In or about July of 2014, the client terminated the respondent as his lawyer and retained new counsel. Shortly afterwards, the client's new counsel discovered that USCIS had denied the motion to reconsider and that the client's Form I-485 was, therefore, no longer pending. Afterwards, they filed a motion to reopen and reconsider the respondent's application for permanent residency citing the respondent's neglect.

The respondent's lack of competence and diligence in this matter violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 8.4(h), as in effect prior to July 1, 2015. Her failure to keep the client reasonably informed about the status of his matter also violated Mass. R. Prof. C. 1.4(a), as in effect prior to July 1, 2015.

This matter came before the Board of Bar Overseers on a stipulation of facts and joint recommendation for a public reprimand. The board accepted the parties' recommendation and, on September 21, 2015, voted to accept the stipulation and impose a public reprimand.