

Falls Church, Virginia 22041

File: D2016-0313

Date: MAR 07 2018

In re: Gloria Dora SAUCEDO, ACCREDITED REPRESENTATIVE

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

ORDER CONCERNING NOTICE OF INTENT TO DISCIPLINE

ON BEHALF OF DHS: Catherine M. O'Connell, Disciplinary Counsel

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF RESPONDENT: Mark S. Rosen, Esquire

The respondent's partial accreditation to represent individuals before the Department of Homeland Security (DHS) as an accredited representative, which was granted on September 9, 2015, will be withdrawn, effective March 27, 2017.

I. PROCEDURAL HISTORY AND ARGUMENTS

The respondent became an accredited representative of Hermandad Mexicana Transnacional on September 9, 2015.¹ On August 25, 2016, she entered a plea of nolo contendere to engaging in the unauthorized practice of law in violation of section 6126(a) of the California Business and Professional Codes (Cal. Bus. & Prof. Code § 6126(a)). The Superior Court of California, County of Los Angeles, accepted the plea on the same date and found the respondent guilty of this offense.

Consequently, on December 6, 2016, the Disciplinary Counsel for the Department of Homeland Security (Disciplinary Counsel for the DHS) petitioned for the respondent's immediate suspension from practice before that agency. The Disciplinary Counsel for the DHS charged that the respondent had been convicted of a "serious crime" as defined in 8 C.F.R. § 1003.102(h) and was therefore subject to immediate suspension pursuant to 8 C.F.R. §§ 292.3(c) and 1003.103(a)(4). The Disciplinary Counsel for the Executive Office for Immigration Review then asked that the respondent be similarly suspended from practice before the Board and the Immigration Courts.

¹ Our order dated September 9, 2015, indicates that the respondent's organization only requested that she be accredited to practice before the Department of Homeland Security ("DHS"). Accordingly, we only granted her partial accreditation. The respondent was never accredited to practice before the Board of Immigration Appeals (Board) or the Immigration Courts.

The respondent, through her attorney, filed an answer and opposition to the petition for immediate suspension, the Notice of Intent to Discipline, and the motion for reciprocal discipline (Respondent's Answer and Opposition, December 3, 2016). The respondent also filed a declaration and a declaration from her attorney in support of her answer (Respondent's Decl., December 15, 2016). In her documents, the respondent argued that her offense was not a serious crime as defined in 8 C.F.R. § 1003.102(h). She asserted that the plea bargain she entered in her criminal case specified that the only crime she committed was counseling immigration applicants "in the manner that she has done for 25 years" (Respondent's Answer at 2). She stated that she never held herself out as an attorney and she never appeared before any courts; she only provided standard immigration consulting which included an initial discussion regarding eligibility for relief and advice regarding which form to use, where to go, and when (Respondent's Answer at 2; Respondent's Decl. at 3). She claimed that her actions were not morally wrong but were wrong only because she was not yet approved as an accredited representative (Respondent's Answer at 3).

The respondent also requested a hearing regarding the charges in the Notice of Intent to Discipline, and she pointed out that her conviction is on appeal. Accordingly, she noted that summary disciplinary proceedings could not be concluded at that time (Respondent's Answer at 1, 4-5).

The Disciplinary Counsel for the DHS filed a response to the respondent's answer and opposition (DHS Response, December 27, 2016). In this response, the Disciplinary Counsel for the DHS contended that the respondent's offense qualified as a serious crime under 8 C.F.R. § 1003.102(h). The Disciplinary Counsel for the DHS noted that the respondent misrepresented to the public that she was authorized to provide immigration legal advice for many years before she became an accredited representative, based on her conviction under Cal. Bus. & Prof. Code § 6126(a). Also, the Disciplinary Counsel for the DHS maintained that her crime involved misrepresentation, deceit or dishonesty. The Disciplinary Counsel for the DHS also pointed out that the respondent's acts constituted "practice" or "preparation constituting practice" as defined in 8 C.F.R. § 1.2 (DHS Response at 1-2).

In adjudicating the petition for immediate suspension, we agreed with the Disciplinary Counsel for the DHS that the evidence before us provided a sufficient basis for immediately suspending the respondent from practice as an accredited representative. *See* 8 C.F.R. §§ 1003.103(a)(1), (2) and (4) (discussing grounds for immediate suspension and including no requirement that a conviction be final to support immediate suspension). Accordingly, we granted the petition on March 27, 2017, and suspended the respondent from practice as an accredited representative before the DHS. We further stated that we would not rule on the Notice of Intent to Discipline and the respondent's challenges to that filing, including her request for a hearing, until the parties notified us that the respondent's conviction was final. 8 C.F.R. § 1003.103(b) (stating that summary disciplinary proceedings "shall not be concluded until all direct appeals from an underlying criminal conviction shall have been completed").

On October 23, 2017, the Disciplinary Counsel for the DHS filed a motion for entry of a final order (DHS Motion). In the motion, the Disciplinary Counsel for the DHS states that, on August 29, 2017, the Appellate Division of the Superior Court, State of California, County of Los

Angeles, affirmed the respondent's conviction (DHS Motion at 1). The Disciplinary Counsel for the DHS therefore argues that the summary disciplinary proceedings can be concluded. Further, the Disciplinary Counsel for the DHS argues that there are no material issues of fact in dispute regarding the basis for discipline in this case. The Disciplinary Counsel for the DHS therefore maintains that summary disciplinary proceedings are appropriate, and that we should impose the recommended discipline on the respondent (DHS Motion at 1-2). The respondent has not replied to this motion.

II. ANALYSIS

When a respondent is subject to summary disciplinary proceedings based on a conviction for a serious crime, the regulations provide that the respondent "must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings" 8 C.F.R. § 1003.106(a) (2017). If a respondent does not make this showing, the Board is to retain jurisdiction over the case and issue a final order. *Id.*; *Matter of Salomon*, 25 I&N Dec. 559, 560 (BIA 2011).

The respondent has not made a prima facie showing that there is a material issue of fact in dispute regarding the basis for summary discipline in her case. As we noted above, the respondent claims that her California offense is not a "serious crime" for the purposes of 8 C.F.R. § 1003.102(h). The respondent also appears to dispute that she engaged in the "practice of law." She agrees that she provided immigration services for many years before she received accreditation to do so, and she agrees with the facts set forth in the Stipulated Plea Agreement in her state case, but she appears to contend that her actions did not qualify as "practicing law."

An offense is a "serious crime" for the purposes of 8 C.F.R. § 1003.102(h) if it is a felony or if it is a "lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, dishonesty, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime." 8 C.F.R. § 1003.102(h). The respondent's offense was a misdemeanor. We therefore must determine if its elements place it within the crimes covered by 8 C.F.R. § 1003.102(h).

Cal. Bus. & Prof. Code § 6126(a) states that "[a]ny person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor." California does not have pattern jury instructions for this offense. *People v. Starski*, 7 Cal. App. 5th at 218. The Stipulated Plea Agreement from the respondent's California proceedings, however, indicates that the elements of the offense in her case were: (1) engaging in the practice of law and (2) not being an active member of the California State Bar or otherwise entitled to practice law. *See* Stipulated Plea Agreement at 2.

As we noted above, the respondent signed the stipulated plea agreement in her state court proceedings and pled no contest to a violation of Cal. Bus. & Prof. Code § 6126(a). The Superior Court of California, County of Los Angeles, accepted the plea and found her guilty of this offense. On August 29, 2017, the Appellate Division of the Superior Court, State of California, County of Los Angeles, affirmed the respondent's conviction. The respondent therefore pled no contest to and was convicted of engaging in the unauthorized practice of law.

We do not have the authority to look behind the record of conviction in her case or to readjudicate her guilt or innocence.² *See, e.g.*, 8 C.F.R. § 1003.102(h) (stating that a plea or verdict of guilty or a conviction after a plea of *nolo contendere* is deemed to be a conviction within the meaning of this section); *cf. Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (the Board may not entertain collateral attacks or look behind a conviction to readjudicate the guilt or innocence of an alien). Further, the definition of "practicing law" used by the California courts is consistent with the definitions of "practice" or "preparation constituting practice" as defined in 8 C.F.R. § 1.2. *See People v. Starski*, 7 Cal. App.5th at 229; 8 C.F.R. § 1.2.

Accordingly, there is no material issue of fact as to whether the respondent engaged in the practice of law, despite the respondent's claims to the contrary. Further, the respondent's offense of engaging in the unauthorized practice of law is precisely the type of offense our disciplinary regulations were intended to combat. We therefore agree with the Disciplinary Counsel for the DHS that this offense is necessarily a "serious crime" as defined in 8 C.F.R. § 1003.102(h).

Based on the foregoing, the respondent has not established that there is a material issue of fact in dispute in her case. Summary proceedings therefore are appropriate, and the respondent's conviction provides a proper basis for taking disciplinary action against her. 8 C.F.R. § 1003.106(a); 8 C.F.R. § 1003.103(b). Further, the proposed sanction of disbarment, or, more correctly, removal as an accredited representative before the DHS, is appropriate in light of the respondent's offense. We therefore will honor the proposed discipline and will withdraw the respondent's accreditation as an accredited representative before the DHS. As the respondent is currently under our March 27, 2017, order of suspension, we will deem the withdrawal of her accredited status to have commenced on that date.

ORDER: The Board withdraws the respondent's accreditation as an accredited representative before the DHS, effective March 27, 2017.

FURTHER ORDER: The respondent is instructed to maintain compliance with the directives set forth in our prior order.

FURTHER ORDER: The respondent is instructed to notify the Board of any further disciplinary action against her.

² The regulations do authorize us to consider whether disciplinary proceedings lacked due process or were based on a clear "infirmity of proof", but the current proceedings are not based on a final order of discipline from another jurisdiction. *See* 8 C.F.R. § 1003.103(b)(2)

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FURTHER ORDER: The Board directs that the contents of this notice be made available to the public, including at Immigration Courts and appropriate offices of the DHS.

A handwritten signature in cursive script, appearing to read "L. M. S.", positioned above a horizontal line.

FOR THE BOARD

Falls Church, Virginia 22041

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DISSENTING OPINION: Hugh G. Mullane

I respectfully dissent.

The respondent was convicted of a misdemeanor. While a misdemeanor may constitute a serious crime within the meaning of 8 C.F.R. § 1003.2(h), I am not prepared to conclude that all convictions under section 6126(a) of the California Business and Professional Codes constitute a serious crime. Furthermore, I conclude that the regulation requires a circumstance-specific analysis. While there may be some statutes for which we can conclude that every conviction is serious or that no conviction is serious, that is not the case here. In my view, the respondent has met her burden of establishing that a hearing is warranted in her case. Accordingly, I would refer the respondent's case for the appointment of an adjudicating official. *See* 8 C.F.R. § 1003.106(a) (stating that, if the Board determines that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, the Board "shall refer the case to the Chief Immigration Judge for the appointment of an adjudicating official").



HUGH G. MULLANE