

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
FALLS CHURCH, VIRGINIA**

File: D2000-060

Date: 08/31/01

IN THE MATTER OF

IRIZARRY, Alexis

Respondent

**IN ATTORNEY DISCIPLINE
PROCEEDINGS**

CHARGE: 8 C.F.R. § 3.102(e)(1)(2000)

Subject to final disbarment or suspension in the jurisdiction of any state, possession, territory, commonwealth or the District of Columbia, or in any Federal court in which the practitioner is admitted to practice.

ON BEHALF OF THE RESPONDENT

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ON BEHALF OF THE SERVICE

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DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

On August 24, 2000, the Supreme Court of Puerto Rico suspended respondent from the practice of law for a period of six months, citing several violations of the Puerto Rico Canons of

Specifically, respondent was found to be in violation of Canon 29, inappropriate conduct between attorneys while on trial, Canon 35, honesty and sincerity to fellow attorneys, and Canon 38, preserving honor and dignity of the profession.

As a consequence of this suspension, on December 1, 2000, the Office of General Counsel for the Executive Office for Immigration Review ("EOIR") initiated disciplinary proceedings against the respondent through the filing of a Notice of Intent to Discipline and petitioned for respondent's immediate suspension from practice before the Board of Immigration Appeals ("Board") and the Immigration Courts. Attached to this notice was the order of suspension from the Supreme Court of Puerto Rico, In re: Alexis Irizarry and Rosaura Gonzalez - Ricci, No. AB-1998-179.

On December 11, 2000, the Immigration and Naturalization Service ("Service") moved to join that petition and asked that the respondent be similarly suspended from practice before that agency.

On December 21, 2000, the Board ordered the respondent suspended from the practice of law before the Board, the Immigration Courts, and the Service.

Respondent, on January 29, 2001, filed a motion with the Board in opposition to the Service motion to join the Office of General Counsel, EOIR, in its petition for suspension. On February 5, 2001, the Board informed the respondent that it would forward respondent's motion to the Office of the Chief Immigration Judge, EOIR, for a hearing. No such hearing was requested by the respondent.

Before respondent's case was scheduled for a hearing, respondent, on May 29, 2001, submitted a copy of a resolution from the Supreme Court of Puerto Rico ordering his reinstatement as an attorney and notary public. On July 5, 2001 the Office of General Counsel, responding to what it described as respondent's "motion asking for reinstallation to the INS practice," stated that it did not oppose the respondent's reinstatement. The Office of the Chief Immigration Judge, EOIR, received a "motion asking for reinstallation" addressed to the Board, from the respondent 12 days later, on July 17, 2001.

II. Analysis

A. suspension

An attorney is subject to disciplinary sanctions pursuant to 8 C.F.R. §3.103 before an adjudicating official or the Board if it finds it to be in the public interest to do so. 8 C.F.R. §3.101 (2001). It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before the Board and the Immigration Courts when such person is subject to a final order of disbarment, suspension, or has resigned with an admission of misconduct in the jurisdiction of any state, possession, territory, commonwealth, the District of Columbia, or in any Federal court in which the practitioner is admitted to practice. 8 C.F.R. §3.102(a)(3)(e) (2001). Disciplinary sanctions may include suspension, including immediate suspension, from practice before the Board and the Immigration Courts or the Service, or before all three authorities. 8 C.F.R. §3.101(a)(2)

(2001).

A practitioner will be informed of any complaint leading up to the commencement of disciplinary proceedings against him in the form of a Notice of Intent to Discipline served by the Office of General Counsel of EOIR. 8 C.F.R. § 3.105(a) (2001). After service of the Notice of Intent to Discipline, the practitioner may file an answer and a request for a hearing. 8 C.F.R. § 3.105(c)(2) (2001). If no request for a hearing is made, the opportunity for such will be deemed waived. *Id.* Failure to file an answer shall constitute an admission of the allegations in the Notice of Intent to Discipline and no further evidence with respect to such allegations need be adduced. 8 C.F.R. § 3.105(d) (2001).

A copy of the Notice of Intent to Discipline shall be forwarded to the Office of the General Counsel of the Service. The Office may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before the Board or the Immigration Courts also apply to the practitioner's authority to practice to the Service. 8 C.F.R. § 3.105(b) (2001).

In the instant case, the Notice of Intent to Discipline alleges that the respondent has been suspended from the practice of law for six months by the Supreme Court of Puerto Rico. The Service properly filed a motion to join respondent's disciplinary action on December 12, 2000. Subsequent to this, respondent filed an answer, titled "Opposition to INS Motion," that requested the Board to reject the Service's joining of the motion for reasons not related to the allegations contained in the Notice of Intent to Discipline.

The Court first notes that the respondent's answer did not contain a request for a hearing. Therefore, the Court finds that the opportunity for a hearing is now waived. 8 C.F.R. § 3.105(c)(2) (2001). Further, respondent did not dispute the allegations contained in the Notice of Intent to Discipline. Respondent has, therefore, admitted to the allegations, insofar as they relate to respondent's suspension of practice for six months in Puerto Rico. 8 C.F.R. § 3.105(d)

Moving to the contents of the motion, the Court notes that the respondent makes only unsupported constitutional arguments related to administrative efficiency, due process, double jeopardy and jurisdiction. Respondent claims, "... my answer [is] as simple as possible since I have not had any time to do research work." As such, the Court finds respondent's opposition to be without merit and therefore grants the INS motion to join.

The Court further finds that the respondent is subject to a final order of suspension and it is therefore in the public interest to subject respondent to disciplinary sanctions. 8 C.F.R. § 3.101 (2001). The Court finds that respondent is suspended, *nunc pro tunc*, from practicing before the Immigration Court, the Board, and the Service from the time that the Supreme Court of Puerto Rico ordered his suspension to practice in that jurisdiction on August 24, 2000.

B. reinstatement

Upon notice to the Board, a practitioner who has been suspended will be reinstated to practice before the Board and the Immigration Courts and the Service, or before all three authorities, once the period of suspension has expired, provided that he or she meets the definition of attorney or representative as set forth in § 1.1(f). 8 C.F.R. § 3.107(a) (2001). If a practitioner cannot meet the definition of attorney the Board shall decline to reinstate the practitioner. Id.

Pursuant to 8 C.F.R. § 1.1(f) an "attorney" is defined as any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law. 8 C.F.R. § 1.1(f) (2001).

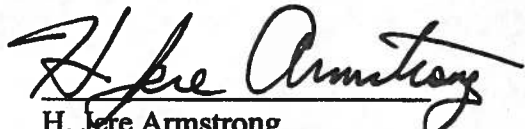
Respondent, in the instant case, has submitted documents tending to show that his suspension from practice has expired and that he is currently a member in good standing of the bar of the highest court in Puerto Rico. The Court, therefore, finds that the respondent has met the definition of "attorney." Id. As the respondent has met the definition of "attorney" the respondent should be entitled to reinstatement to practice before the Board, Immigration Courts and the Service. 8 C.F.R. § 3.107(a) (2001). However, as it is not within the jurisdiction of the Immigration Court to make such a reinstatement, the Immigration Court hereby forwards this matter to the Board with its recommendation that the respondent be reinstated before all three agencies.

ORDER

IT IS HEREBY ORDERED that the Service's Motion to Join in Disciplinary Action be GRANTED.

IT IS FURTHER ORDERED that the respondent be SUSPENDED from practice, *nunc pro tunc*, before the Immigration Court, the Board of Immigration Appeals, and the Service from August 24, 2000 until such time as the Board finds the respondent properly reinstated by the Supreme Court of Puerto Rico.

Date: August 31, 2001


H. Jere Armstrong
Deputy Chief Immigration Judge