

Falls Church, Virginia 22041

File: D2016-0024

Date: JUN 16 2016

In re: MARGARITA MKRTCHYAN, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

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

ON BEHALF OF RESPONDENT: Robert G. Berke, Esquire

The respondent will be disbarred from practice before the Board of Immigration Appeals ("Board"), the Immigration Courts, and the Department of Homeland Security ("DHS").

On February 1, 2016, the respondent was convicted, on the basis of a guilty plea, of obstruction of court orders, a misdemeanor violation of 8 U.S.C. § 1509, in the United States District Court for the Central District of California. She was placed on two years' probation, subject to conditions. On March 14, 2016, the Disciplinary Counsel for the DHS petitioned for the respondent's immediate suspension from practice before that agency. The Disciplinary Counsel for the Executive Office for Immigration Review (Disciplinary Counsel for EOIR) then asked that the respondent be similarly suspended from practice before the Board of Immigration Appeals and the Immigration Courts. We granted the petition for immediate suspension on March 31, 2016.

The respondent filed a timely answer to the Notice of Intent to Discipline on April 11, 2016. The respondent denies that she was convicted of a serious crime, within the meaning of 8 C.F.R. § 1003.102(h), which makes her subject to summary disciplinary proceedings under 8 C.F.R. § 1003.106(a).

The respondent argues that absent a certified record of conviction there is no conclusive evidence that she committed the crime as alleged by the Disciplinary Counsel for DHS (Respondent's Answer, at 4-5). The Disciplinary Counsel for DHS correctly argues, however, that the "Judgment and Probation/Commitment Order" concerning the respondent's conviction, which was attached to the Petition For Immediate Suspension, was indeed certified as required by 8 C.F.R. § 292.3(c)(3). Disciplinary Counsel for DHS' "Motion for Summary Adjudication," at 2.¹ The February 16, 2016, certification of the Deputy Clerk of the United States District

¹ The respondent filed an opposition to the Disciplinary Counsel for DHS' "Motion for Summary Adjudication."

Court, Central District of California, appears on the back of the last page of the "Judgment and Probation/Commitment Order."²

The respondent also argues that she was not convicted of a serious crime within the meaning of 8 C.F.R. § 1003.102(h), based on the evidence presented by the DHS, and therefore she should not face discipline by the Board (Respondent's Answer, at 5-8). That is, the "Judgment and Probation/Commitment Order" notes that the respondent pled guilty to "obstruction of court order in violation of 18 U.S.C. § 1509 as charged in Count 1 of the Information," but the indictment included with the Petition For Immediate Suspension references violations of 18 U.S.C. § 1505 (Respondent's Answer, at 5-8). However, as the Disciplinary Counsel for DHS states, the Indictment was attached to its filings in error. Rather, as the Disciplinary Counsel for DHS explains, a "First Superseding Information" should have been attached, and is included with the DHS motion (Disciplinary Counsel for DHS' "Motion for Summary Adjudication," at 1, Exh. 1). The First Superseding Information shows that the respondent was charged with a violation of 18 U.S.C. § 1509.

The regulations make a person subject to summary disciplinary proceedings under 8 C.F.R. § 1003.106(a) where she has been convicted of a "serious crime" within the meaning of 8 C.F.R. § 1003.102(h). The regulatory definition of "serious crime" includes a misdemeanor "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..." 8 C.F.R. § 1003.102(h).

The statute under which the respondent was convicted, 18 U.S.C. § 1509, entitled "Obstruction of court orders," states that "[w]hoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined under this title or imprisoned not more than one year, or both." As the Board stated in *Matter of Espinoza*, 22 I&N Dec. 889, 892 (BIA 1999), "In general, the obstruction of justice offenses listed in 18 U.S.C. §§ 1501-1518 have as an element interference with the proceedings of a tribunal or require an intent to harm or retaliate against others who cooperate in the process of justice or might otherwise so cooperate."³ A

² The Disciplinary Counsel for DHS acknowledges that the certification may not have been visible on the copy of the judgment provided to the respondent. Disciplinary Counsel for DHS' "Motion for Summary Adjudication," at 2.

³ The issue in *Matter of Espinoza, supra*, was whether Espinoza's conviction for misprision of a felony constituted an offense related to the obstruction of justice, which was distinguished from crimes brought under 18 U.S.C. §§ 1501-1518. Disciplinary Counsel for DHS' "Motion for Summary Adjudication," at 3. Therefore, the Board's conclusion that Espinoza's conviction for misprision of a felony did not amount to an offense relating to obstruction of justice is inapposite to the respondent's conviction, despite the respondent's arguments to the contrary. Respondent's Answer at 7; Disciplinary Counsel for DHS' "Motion for Summary Adjudication," at 3.

conviction under 18 U.S.C. § 1509 thus categorically constitutes a crime which involves interference with the administration of justice, as described in 8 C.F.R. § 1003.102(h). See Disciplinary Counsel for DHS' "Motion for Summary Adjudication," at 2-3.

The respondent argues that the crime of "obstruction of justice" requires that there must be a judicial proceeding pending (Respondent's Answer at 6). In *Matter of Valenzuela Gallardo*, 25 I&N Dec. 838 (BIA 2012), however, the Board held that an offense is one "relating to obstruction of justice," within the meaning of the Immigration and Nationality Act concerning aggravated felonies, if it includes the critical element of an affirmative and intentional attempt, motivated by a specific intent, to interfere with the process of justice, irrespective of the existence of an ongoing criminal investigation or proceeding.

Where a respondent is subject to summary disciplinary proceedings based on pleading guilty to a serious crime, the regulations provide that the attorney "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, or with one or more of the exceptions set forth in 8 C.F.R. § 1003.103(b)(2)(i) through (iii)." See 8 C.F.R. § 1003.106(a). Where no such showing is made, 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); Disciplinary Counsel for DHS' "Motion for Summary Adjudication," at 4. We find it appropriate to issue a final order on the government's charges.

As explained above, the respondent has not established that there is a material issue of fact in her case, and her request for a hearing in this matter is denied. We agree that disbarment is an appropriate sanction, in light of the respondent's conviction of a serious crime, within the meaning of 8 C.F.R. § 1003.102(h). Accordingly, we disbar the respondent from practice before the Board, the Immigration Courts, and the DHS. As the respondent is currently under our March 31, 2016, order of suspension, we will deem the respondent's disbarment to have commenced on that date.

Under the terms of 8 C.F.R. § 1003.107(b), the respondent may petition for reinstatement after one year has passed, provided that she meets the regulatory definition of attorney and shows by clear and convincing evidence that she possesses the moral and professional qualifications required to appear before the Board, the Immigration Courts, and the DHS, and that her reinstatement would not be detrimental to the administration of justice.

ORDER: The Disciplinary Counsel for DHS' Motion for Summary Adjudication is granted.

FURTHER ORDER: We disbar the respondent from practice before the Board, the Immigration Courts, and the DHS. The disbarment is deemed to have commenced on March 31, 2016.

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

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

FURTHER ORDER: As discussed, the respondent may petition for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107(b).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order becomes effective immediately. 8 C.F.R. § 1003.105(d)(2).

A handwritten signature in black ink, appearing to read "C. M. B.", is written above a horizontal line.

FOR THE BOARD