UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF IMMIGRATION JUDGE

File No. D2010-124

In the Matter of	)	
	)	
NOEL PETER MPAKA CANUTE	)	IN DISCIPLINARY PROCEEDINGS
	)	
	)	
Respondent	)	
	)	
	)	

ON BEHALF OF RESPONDENT:
Richard M. Maltz, Esq.
488 Madison Avenue – 10th Floor
New York, NY 10022

ON BEHALF OF DHS:
Rachel A. McCarthy
Disciplinary Counsel
U.S. Citizenship and Immigration Services
Department of Homeland Security
70 Kimball Avenue, Room 103
S. Burlington, VT 05403

ON BEHALF OF EOIR:
Jennifer Barnes
Bar Counsel
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

FINAL ORDER OF DISCIPLINE

These disciplinary proceedings were commenced against Noel Peter Mpaka Canute on May 20, 2010 by U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security filing a Notice of Intent to Discipline (NID) (Exhibit 1). The Executive Office for Immigration Review, by its Disciplinary Counsel, joined these disciplinary proceedings on May 26, 2010.

On July 21, 2010, Respondent filed an answer, after the Board granted his request for additional time in which to do so, in which he admitted the allegations in paragraphs 1 through 22 in the NID, denied knowledge or sufficient information on which to form a belief as to the allegation in paragraph 23 in the NID and denied paragraphs 24 through 29 in the NID. Respondent also demanded a hearing.

The proceedings were transferred to the Office of the Chief Immigration Judge (OCIJ) and Immigration Judge Teofilo Chapa was assigned to preside as the adjudicating official (AO) in these proceedings. A pre-hearing telephonic conference was scheduled on February 25, 2010 that was continued as the parties informed AO Chapa that they were exploring the possibility of a resolution without a formal hearing.

The Court acknowledges receipt of the Consent to Entry of Final Order of Discipline ("Consent") executed by Respondent, his Attorney, and Disciplinary Counsel for USCIS, DHS. The terms of the Consent are incorporated as if fully set forth below and the Court accepts and approves of the terms of the Consent in its Final Order of Discipline in this matter.

The Court makes the following findings of fact:

1. Respondent is an attorney admitted to the practice of law in New York in 2005, currently in active status.
2. Between on or about 2005 and this date, Respondent filed numerous applications or petitions seeking immigration benefits for clients with USCIS.
3. Between on or about 2005 and this date, Respondent represented numerous aliens before the Immigration Courts, Executive Office for Immigration Review.
4. Respondent was admitted to the United States on December 28, 2000 as a nonimmigrant student (F1 visa).
5. On September 27, 2001, Respondent filed an I-539, Application to Extend or Change Non-immigrant Status, which was denied on July 23, 2002.
6. On November 4, 2003, an I-129, Petition for Non-Immigrant Worker (H1B visa) was filed with DHS in which the named beneficiary was the Respondent.
7. On April 26, 3004, the I-129 was approved by DHS providing Respondent permission to remain in the United States to work as a "Legal Administrator" for a specific employer from April 26, 2004 until September 1, 2006.
8. On October 4, 2006, a second I-129 was filed with DHS in which Respondent was named as the beneficiary.
9. On August 2, 2007, USCIS issued a "Notice of Decision" in which it denied the petition, leaving Respondent without lawful immigration status in the United States and warning of the consequences of remaining in the United States without authorization.
10. Beginning on or about November 28, 2007 and at least up to and including the date on which these proceedings were initiated by the filing of a NID, Respondent remained in the United States without authorization from DHS in violation of 8 CFR 214.1(a)(3)(ii).

11. Beginning on or about November 28, 2007 and at least up to and including the date on which these proceedings were initiated by the filing of a NID, Respondent engaged in employment in the United States without authorization from DHS in violation of 8 CFR 214(e).

WHEREFORE, having made the above-described findings of fact, the Court now makes the following conclusions of law:

The Court finds, by clear and convincing evidence, that Respondent's conduct violated Rule 1292.3(b), as set forth in Rule 1003.102, and that it is in the public interest to discipline him, in that:

1. Between on or about November 28, 2007 to at least up to and including the date on which these proceedings were initiated by the filing of a NID, Respondent knowingly, or with reckless disregard, engaged in employment as an attorney, including the representation of applicants and petitioners before DHS and EOIR, at a time when he did not have lawful status in the United States, in violation of U.S. immigration law; and

2. Between on or about November 28, 2007 to at least up to and including the date on which these proceedings were initiated by the filing of a NID, Respondent knowingly, or with reckless disregard, engaged in employment as an attorney, including the representation of applicants and petitioners before DHS and EOIR, at a time when he did not have authorization for employment from USCIS, in violation of U.S. immigration law.

The Court finds that Respondent has freely and voluntarily, withdrawn his request for a hearing as to the issue of the appropriate disciplinary sanction to impose in this proceeding as a result of his violations of the Rules of Professional Conduct for Practitioners as set forth in the NID.

The Court, having considered the entire record in this proceeding, the Consent to the Entry of a Final Order of Discipline, and the American Bar Association's Standards for Imposing Lawyer Sanctions (ABA Standards), issues the following order regarding disciplinary sanctions:

ORDER: The Court hereby indefinitely suspends the Respondent from practice before the Board, the Immigration Courts, and the DHS, effective July 14, 2010.

FURTHER ORDER: The respondent is directed to promptly notify in writing, any clients with cases currently pending before the Board, the Immigration Courts or the DHS that he has been suspended from practicing before these bodies. Respondent shall maintain records to evidence compliance with this order.

FURTHER ORDER: The respondent is also directed to notify Disciplinary Counsel, USCIS, DHS and EOIR Disciplinary Counsel of any further disciplinary action against him.

FURTHER ORDER: The respondent is also directed to notify Disciplinary Counsel, USCIS, DHS and EOIR Disciplinary Counsel of any change in his immigration status and any change in his authorization for employment from USCIS, DHS.

FURTHER ORDER: The respondent may petition the Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. §1003.107(b) as more fully described in the Consent document. In order to be reinstated, the respondent must demonstrate that he meets the definition of an attorney, as set forth in 8 C.F.R. §1.1(f), including, but not limited to, the following:

a. Respondent must demonstrate that he is eligible to practice law in and in good standing in New York and in any other jurisdiction in which he is admitted to practice in "active" status;
b. Respondent must demonstrate that he has lawful immigration status in the United States and that he has current authorization for employment issued by USCIS, DHS;
c. If Respondent's lawful immigration status is not that of lawful permanent residence, he must provide DHS Disciplinary Counsel and EOIR Disciplinary Counsel, at least thirty days prior to the expiration of his lawful immigration status, with a copy of his application for an extension or change of his immigration status;
d. If the authorization for employment, if any, granted to Respondent is time-limited, he must provide DHS Disciplinary Counsel and EOIR Disciplinary Counsel, at least thirty days prior to the expiration of his time-limited employment authorization, with a copy of his application for extension of employment authorization.

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

SO ORDERED.

March 14, 2011
Date

Teofilo Chapa
Adjudicating Official