STATE OF MINNESOTA

IN SUPREME COURT

A21-0339

Original Jurisdiction — Per Curiam

In re Petition for Disciplinary Action Against Jason Alexander Nielson, a Minnesota Attorney, Registration No. 0395101

Filed: July 13, 2022
Office of Appellate Courts

Susan M. Humiston, Director, Timothy M. Burke, Sr. Assistant Director, Office of Lawyers Professional Responsibility, Saint Paul, Minnesota, for petitioner.

Jason A. Nielson, Minneapolis, Minnesota, pro se.

S Y L L A B U S

1. The referee's findings and conclusions that respondent committed misconduct in two client matters by failing to properly explain the legal issues so that the client could make informed decisions, failing to provide the client with information about the case status, and providing false and misleading information to the client were not clearly erroneous.

2. Respondent failed to establish that his due process rights were violated.

3. A 30-day suspension, followed by 1 year of probation, is the appropriate discipline for respondent's misconduct.

Suspended.

O P I N I O N

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action against respondent Jason Alexander Nielson, alleging various acts of professional misconduct. We appointed a referee. After conducting an evidentiary hearing, the referee found that in two client matters, Nielson failed to properly explain the legal issues so that the client could make informed decisions, and that in one matter, he failed to inform the client about the status of her case. The referee further found that in one of these matters, Nielson provided false and misleading information to the client, and in the other matter—working through a paralegal—he also provided false and misleading information to the client. The referee found three aggravating factors and no mitigating factors. Based on these findings and conclusions of professional misconduct, the referee recommended that Nielson be publicly reprimanded, precluded from taking new clients for 45 days, and placed on probation for 1 year.

Nielson challenges the referee's findings and conclusions, argues that the proceedings violated his due process rights, and contends that the recommended discipline is too severe. The Director, in turn, contends that the recommended discipline is too light and asks us to suspend Nielson. We conclude that the referee's findings and conclusions that Nielson committed misconduct are not clearly erroneous and that Nielson's due process rights were not violated. But we also conclude that, considering the facts and circumstances of this case, the referee's recommended discipline is not sufficient to protect the public, protect the legal profession, and deter future misconduct. Instead, the

appropriate discipline for Nielson's misconduct is a 30-day suspension, followed by 1 year of probation.

FACTS

Nielson was admitted to practice law in Minnesota in 2013, after having been admitted to practice law in New York in 2005. He is currently a partner at Igbanugo Partners Int'l Law Firm, PLLC ("IP Firm"), having joined the firm as an associate in 2012. His practice has focused almost exclusively on immigration law. The misconduct here arises from two client matters between 2013 and 2015. We address the facts of these matters in turn.

M.D. Matter

M.D. is from Mexico and came to the United States in 1987 as an undocumented immigrant without legal status. Her primary language is Spanish. M.D. has four U.S. citizen daughters; her oldest is A.I.M.

In September 2013, M.D. consulted with H.I., founding partner of the IP Firm, about retaining the firm to adjust her status to become a lawful permanent resident. Nielson was not present for the initial consultation. The meeting resulted in a fee agreement for $9,500. The fee agreement stated that the purposes of the representation were a "Form I-130, Petition for Alien Relative" and "Form I-601A Waiver." This agreement was signed by H.I. on behalf of the IP Firm. A month later, another agreement adjusted the fee to $8,000 based on financial hardship. Nielson was present for the consultation that resulted in the second agreement.

What federal immigration law requires is not in dispute. An I-130 Petition for Alien Relative Form is the first step for a foreign national in obtaining legal status in the United States through a Permanent Resident Card (Green Card). A U.S. citizen or lawful permanent resident (petitioner) uses the form to establish a qualifying family relationship with a relative (foreign national). If U.S. Citizenship and Immigration Services (USCIS) approves an I-130 petition, the immigration authorities recognize the relationship, but it does not change the status of the foreign national.[1]

An I-601A Application for Provisional Unlawful Presence Waiver is the second step for a foreign national applying for a Green Card who is currently present in the U.S. without status. Immigrant visa applicants who are relatives of U.S. citizens or lawful permanent residents may use the I-601A application to request a provisional waiver of the unlawful presence grounds of inadmissibility under the Immigration and Nationality Act (INA),

[1] To maintain visa availability when the National Visa Center receives an approved I-130 petition, the Immigration and Nationality Act (INA) § 203(g) has a 1-year contact requirement, providing that the beneficiary and/or counsel must communicate intent to be lawfully admitted to the U.S. with the National Visa Center yearly. Failure to communicate within 1 year after the I-130 petition is approved means risk of termination of the petition and the beneficiary would lose its benefits, such as a priority date. A beneficiary notified of possible termination may state the preference to continue pursuing the immigrant visa application with the understanding that the beneficiary must resubmit all required fees and documents to continue with immigrant visa processing. The full breadth of requirements are discussed and can be found at the following websites: U.S. Citizenship and Immigration Services, https://www.uscis.gov/i-130 (last visited July 6, 2022) [opinion attachment]; The U.S. Department of State, Bureau of Consular Affairs, https://travel.state.gov/content/travel/en/us-visas/immigrate/national-visa-center/nvc-contact-information.html (last visited July 6, 2022) [opinion attachment]; Foreign Affairs Manual, 9 FAM 504.13-2(B), available at https://fam.state.gov/fam/09FAM/09FAM050413.html (last visited July 6, 2022) [opinion attachment]. The parties do not contend that the requirements are materially different between the time of the dispute and the present time.

before departing the United States to appear at a U.S. Embassy or Consulate for an immigrant visa interview, which is the third and final step in applying for a Green Card. Section 212(a)(9)(B) of the INA establishes that foreign nationals who are unlawfully present in the U.S. for more than 180 days or 1 year are inadmissible to be admitted to the U.S. as a permanent resident for 3 years and 10 years respectively. Thus, if a foreign national has been in the U.S. for more than at least 180 days and wishes to obtain permanent residency without waiting the requisite amount of time, they must get a waiver through the I-601A application. The I-601A application asks for a waiver on the basis that it will create substantial hardship to a qualifying relative. This qualifying relative must be a U.S. citizen or lawful permanent resident who is a *parent or a spouse* of the foreign national.[2] A child may not be a qualifying relative. During Nielson's representation of M.D., she did not have a qualifying relative for the I-601A application.

Nielson filed the I-130 petition with USCIS in December 2013, establishing that M.D. was an immediate relative of her U.S. citizen daughter, A.I.M. USCIS approved the I-130 on April 30, 2014.

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[2] The requirements for an I-601A waiver are discussed and can be found at U.S. Citizenship and Immigration Services, https://www.uscis.gov/i-601a (last visited July 6, 2022) [opinion attachment], https://www.uscis.gov/family/family-of-us-citizens/provisional-unlawful-presence-waivers (last visited July 6, 2022) [opinion attachment].

The 2013 regulations extended the Provisional Unlawful Presence Waiver to allow parents of U.S. citizens to apply, but the waiver application still requires a qualifying relative to meet the extreme hardship requirement under statutory law. INA § 212(a)(9)(B)(v). Thus, under the I-601A regulation, the petitioner must have a qualifying relative to meet the statutorily prescribed extreme hardship requirement, of which only a U.S. citizen or permanent resident spouse or parent qualifies.

Following that approval, Nielson's paralegal e-mailed M.D.'s daughter on June 5, 2014, telling her that the next step in the process was to submit a I-601A application. The paralegal noted that the I-601A application would

> establish the extreme hardships that a U.S. citizen qualifying relative [which could be either a spouse or *children under the age of 21 who are not married-in this case your younger siblings Daisy and Crystal*] will go through if your mom is not allowed to remain in the United States.

The statement was incorrect; at the time of the e-mail and presently, a child was not and is not a qualifying relative for the I-601A waiver.

Nielson was copied on the e-mail. He knew the statement that a child could be a qualifying relative was wrong, but he did not immediately contact the client and correct the misstatement. Nielson also admitted he was aware of the e-mail, testifying that the error in the e-mail was discussed at a firm meeting.

On September 2, 2014, M.D. met with Nielson and provided the requested information in support of the I-601A waiver. Nielson and H.I. met with M.D. and A.I.M. on December 23, 2014. In this meeting, M.D. and A.I.M. learned that M.D. could not gain legal status through A.I.M. or any of her other daughters. M.D.'s fee payments were temporarily suspended.

On June 16, 2015, the National Visa Center issued an invoice, in reference to M.D.'s I-130 petition having gone 1 year without action. Nielson sent an e-mail to the National Visa Center on July 2, 2015, advising that M.D. wished to continue with the petition. The National Visa Center responded on July 9, 2015, acknowledging Nielson's e-mail and stating that because more than a year had passed without contact, forms and fees must be

resubmitted, including a Form G-28 if an attorney was retained on the case. At some point M.D. retained the services of another law firm, and the IP Firm forwarded her file.

O.C. Matter

The facts surrounding O.C.'s matter largely mirror M.D.'s matter. O.C. was born in Mexico and entered the United States as an undocumented immigrant without legal status. Her primary language is Spanish, and her English proficiency is that of a second-grade level. She has five children; her daughter M.A. is a U.S. citizen and had familiarity with the IP Firm because it had obtained legal status for her husband. Using other counsel, O.C. had previously investigated gaining permanent resident status without success.

O.C. entered into a fee agreement with the IP Firm on August 27, 2013, for $2,500, with the stated purpose of filing a "Form I-130 Relative Petition." This agreement was again signed by H.I. on behalf of the IP Firm. Nielson was not present at the initial meeting. Nielson filed a Form I-130 on behalf of O.C. with USCIS on November 12, 2013, and the form was approved on May 22, 2014.

On June 3, 2014, O.C. and M.A. met with Nielson, H.I., and a non-attorney staff member. The meeting covered "looking into I-601A & consular processing" and that "Father may be" eligible for status based on a different reason.[3] At the meeting a second contract for legal services was signed for an additional $6,500, calling for "Consular Processing" and "I-601A."

[3] "Consular processing" is irrelevant to this disciplinary proceeding.

The next day, June 4, 2014, Nielson sent an e-mail to M.A., O.C.'s daughter, stating, "In the 601A process *you are the qualifying relative* and your mother is the applicant." (Emphasis added.) Attached to the e-mail was a PDF of the I-601A application for M.A. to fill out, "as much as you can." Nielson told M.A. that she needed to prepare an affidavit "as to why it would be an extreme hardship to not have your mother in the U.S." As in the M.D. matter, the statement that M.A. was the qualifying relative was a clear misstatement of law, as only spouses and parents could be qualifying relatives.

On June 24, 2014, Nielson and a staff person met with O.C. and M.A. to review the I-601A application with them and work on filling in any missing information. Nielson and/or the staff person explained "how the process is anticipated to work." O.C. told Nielson that her 14-year-old daughter suffered from severe depression. O.C. was told to obtain medical documents and a letter from the daughter's therapist.

At a February 19, 2015 meeting with Nielson, H.I., and a staff member, O.C. was told she did not have a qualifying relative for purposes of proceeding with an I-601A application and that the IP Firm would help her to proceed under Deferred Action for Parents of Americans, "DAPA," when it became available.[4]

On May 7, 2015, O.C. sent a letter to the IP Firm stating that she had obtained new legal counsel and was requesting a refund of fees paid. The IP Firm's file was sent to her new attorneys.

[4] DAPA was an executive action by then-President Barack Obama to attempt to expand the I-601A regulation that was ultimately not implemented.

Disciplinary Proceedings

At a 5-day evidentiary hearing, the referee admitted into evidence numerous exhibits from both the Director and Nielson, and the referee heard testimony from several witnesses, including the former clients, H.I., Nielson, and several expert witnesses in immigration law. Both M.D. and O.C. testified that they understood from meetings and information provided by H.I. and Nielson that they could obtain permanent residency through their respective daughters. Nielson testified that he assumed he performed an independent review of whether M.D. qualified for the provisional waiver process and that when his paralegal sent that e-mail, he knew that a child could not be a qualifying relative. Nielson also independently reviewed O.C.'s eligibility for the provisional waiver process and knew that O.C. did not have a qualifying relative and thus was not eligible for the I-601A waiver.

Nielson admitted that the e-mail he sent to O.C.'s daughter was an incorrect statement of the law, but noted the error was the result of cut and paste drafting of the e-mail. Nevertheless, Nielson represented that he gathered the information in both matters in anticipation of a change in law for the I-601A waiver, and in any event, the information gathered was necessary for all forms of relief contemplated for the clients. He further testified that the information on the I-601A application and in the requested affidavit could potentially still be useful and that it was helpful to have the information in the clients' case files.

The referee noted that he was unable to make a definitive finding that Nielson affirmatively told M.D. or her daughter A.I.M. that one of M.D.'s daughters could be a

qualifying relative but found that both M.D. and A.I.M. believed this to be the case and understood that was the plan for seeking M.D.'s change of status. The referee went on to find that the actions and communications of the IP Firm supported M.D.'s belief. The referee also found that Nielson explicitly provided false and misleading information to O.C. when he told her that she had a qualifying relative, and that there was no evidence that anyone at the IP Firm contacted O.C. and/or her daughter to inform them of the incorrectness of the statement around the time it was made. The referee found that both clients were initially happy when they thought the IP Firm would be able to help them gain legal status through their children, but that they experienced significant sadness and depression, having felt "cheated" and "betrayed" when they later learned that they would not be able to do so. The referee found that the IP Firm's fees presented significant hardship to both clients and that Nielson never apologized.

The referee concluded that Nielson committed some but not all the misconduct alleged in the petition as to both matters. In the M.D. matter, the referee concluded that Nielson failed to notify M.D. that her I-130 petition would have to be resubmitted and fees paid, violating Minn. R. Prof. Conduct 1.4(a)(3);[5] failed to explain the matter to M.D. so she could make an informed decision regarding the representation, violating Minn. R. Prof.

[5] A lawyer must "keep the client reasonably informed about the status of the matter." Minn. R. Prof. Conduct 1.4(a)(3).

Conduct 1.4(b);[6] failed to make efforts to ensure a non-lawyer employee's conduct was compatible with professional obligations, violating Minn. R. Prof. Conduct 5.3(b);[7] and provided false and misleading information, through non-lawyer staff, violating Minn. R. Prof. Conduct 8.4(c).[8] As to the O.C. matter, the referee concluded that Nielson violated Minn. R. Prof. Conduct 1.4(b) for the same reasons, and that he provided false and misleading information to the client, in violation of Minn. R. Prof. Conduct 8.4(c).

The referee found that the vulnerability of the clients, Nielson's substantial experience in the practice of law and immigration law, and Nielson's lack of remorse were aggravating factors, and that no mitigating factors existed. Based on these findings and conclusions, the referee recommended that we publicly reprimand Nielson, prohibit him from taking on new clients for 45 days, and place him on probation for 1 year.

Nielson challenges many of the referee's findings and conclusions and argues that the disciplinary proceedings violated his due process rights. Both Nielson and the Director challenge the recommended discipline. Nielson contends that no public discipline is warranted. The Director asks us to suspend Nielson.

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[6] "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Minn. R. Prof. Conduct 1.4(b).

[7] "[A] lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer." Minn. R. Prof. Conduct 5.3(b).

[8] "It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Minn. R. Prof. Conduct 8.4(c).

ANALYSIS

I.

Nielson timely ordered a transcript and as a result, the referee's findings of fact and conclusions are not binding. Rule 14(e), Rules on Lawyers Professional Responsibility (RLPR). We nevertheless extend "great deference" to these findings and conclusions. *In re MacDonald*, 906 N.W.2d 238, 243–44 (Minn. 2018) (citation omitted) (internal quotation marks omitted). We review the referee's findings of fact and application of the Minnesota Rules of Professional Conduct to the facts of the case for clear error. *In re Aitken*, 787 N.W.2d 152, 158 (Minn. 2010). "A referee's findings are clearly erroneous when they leave us with the definite and firm conviction that a mistake has been made." *In re Bonner*, 896 N.W.2d 98, 105 (Minn. 2017) (citation omitted) (internal quotation marks omitted).

The referee made four main findings: 1) in both matters, the clients thought their immigration status could be adjusted because their children were qualified relatives, and Nielson did not adequately explain that existing immigration law did not permit the designation of children as qualified relatives; 2) the firm paralegal made a false statement to M.D., and Nielson failed to correct it; 3) Nielson made a false statement to O.C. and failed to correct it; and 4) Nielson failed to communicate to M.D. the status of her case in relation to the I-130 petition being monitored with the National Visa Center. Nielson makes various challenges to these findings. Taking these findings in turn, we conclude that the referee's findings are not clearly erroneous.

A.

The referee determined that Nielson violated Minn. R. Prof. Conduct 1.4(b) by failing to explain the case to the clients so they could make an informed decision. Nielson contends that this finding is clearly erroneous because he was not present at the initial client consultations and both clients knew that multiple avenues were being pursued.[9] Specifically, he argues that he explored several other options for the clients while pursuing the I-601A waiver, and that part of pursuing that relief was based on an anticipated change in the law. However, the referee made these findings based on testimony from both clients that they believed they could adjust their status based on the status of their children as qualified relatives. Nielson argues that the client testimony was not credible, but we defer to the referee's findings when the findings "rest on disputed testimony or in part on credibility, demeanor, and sincerity." *In re Voss*, 830 N.W.2d 867, 874 (Minn. 2013) (citation omitted) (internal quotation marks omitted).

In addition to the clients' testimony, other evidence supports the clients' claims that they believed they could adjust their status based on their children being qualified relatives, and that Nielson failed to adequately explain that the law would not allow them to do this. The statements of Nielson and the paralegal that the children could be qualifying relatives support the clients' beliefs because it is reasonable to conclude that the clients believed

[9] Nielson also asserts that he was a new attorney at the time of the consultations for both clients and had no authority over such consultations or the financial decisions of the IP Firm. But no language in Minn. R. Prof. Conduct 1.4(b) limits this duty to communicate to an attorney who attends the initial consultation with the client or has certain authority within a law firm.

what they were told. The retainers and other agreements the clients signed did not state that the clients could not obtain I-601A waivers based on current law. Further, Nielson's own witness, H.I., testified that communications to the clients regarding the I-601A waiver did not specifically state that the strategy in pursing the waiver was in anticipation of changes to the definition of qualifying relatives that would include children for purposes of the hardship waiver. Nielson and a paralegal at the firm expressly told the clients their children could be a qualifying relative, and Nielson prepared and had the clients fill out forms stating that the clients' children were qualifying relatives. In light of this evidence, the referee's findings are not clearly erroneous.

B.

The referee determined that Nielson failed to ensure that his paralegal's conduct was compatible with Nielson's professional obligations, in violation of Minn. R. Prof. Conduct 5.3(b), when the paralegal made a false statement that M.D.'s daughter was the qualifying relative and Nielson failed to correct the statement. Nielson asserts that the referee clearly erred because Nielson and H.I. both testified that the matter was addressed with the paralegal, including the correct procedures, and that the importance of clarity in correspondence with clients was discussed and strongly emphasized at an IP Firm meeting.

The record supports the referee's finding. The paralegal's June 2014 e-mail clearly made an incorrect statement of law about who may be a qualifying relative. Nielson was copied on the e-mail, admitted he was aware of the e-mail, and knew it was an incorrect statement, but he failed to immediately contact the client and correct the misstatement. Outside of Nielson's assurances that the correct procedures were clarified at an IP Firm

meeting, no other evidence in the record supports an inference that the statement was corrected. Critically, the IP Firm's "casenotes," where many other firm meetings and communications are recorded, do not reference the firm meeting or any communication to M.D. correcting the error until the December 2014 meeting during which M.D. was told her children were not qualifying relatives. As noted, we defer to the referee's credibility determinations, and here, the referee did not find Nielson's statements credible. *See Voss* 830 N.W.2d at 874. The referee's finding that Nielson's conduct violated Minn. R. Prof. Conduct 5.3(b) is not clearly erroneous.

C.

The referee found that Nielson violated Minn. R. Prof. Conduct 8.4(c) when he, personally and through staff, provided false and misleading information to his clients. Nielson counters that this finding is clearly erroneous because the clients did not claim that he was dishonest, and they were aware of multiple avenues for relief. But the record is clear that Nielson and his paralegal made the false and misleading statements to the clients that their respective daughters were qualifying relatives for the I-601A waiver. These statements were clearly false and misleading because at the time of the e-mails and presently, a child was not and is not a qualifying relative for the I-601A waiver.

Nielson suggests that he did not violate Rule 8.4(c) because the referee clearly erred by finding that the e-mails from Nielson and his paralegal contained a misstatement of *law*. According to Nielson, the e-mails did not contain a misstatement of law and simply identified who needed to provide certain documents. But the language of the e-mails does not support this claim; both e-mails contain a false statement that the clients' children can

be a qualifying relative. Neither the paralegal nor Nielson corrected the false statements around the time the e-mails were sent. Consequently, Nielson violated his duty to refrain from "engag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation," whether the misrepresentation was of law or fact. Minn. R. Prof. Conduct 8.4(c).

Nielson also takes pains to highlight that the referee did not find that his conduct was intentionally dishonest. Nielson asserts that we should accept the referee's findings that there was no dishonesty or intent to deceive. The referee made no such findings, however. Instead, the referee found that Nielson personally, or through his paralegal, made false and misleading statements to his clients, and that Nielson knew these statements were false when the statements were made. These findings are sufficient to support a Rule 8.4(c) violation. Moreover, we have upheld a Rule 8.4(c) violation when the referee found that the lawyer "made false statements with knowledge of their falsity." *In re Czarnik*, 759 N.W.2d 217, 223 (Minn. 2009). The referee did not clearly err by finding that Nielson violated Rule 8.4(c).

D.

The referee found that Nielson failed to notify M.D. that her I-130 petition would have to be resubmitted and fees paid, in violation of Minn. R. Prof. Conduct 1.4(a)(3). Nielson first claims that his representation of M.D. ended in May 2015 and thus he was not obligated to follow up on her I-130 petition. However, the record reveals that in July 2015, Nielson communicated with the National Visa Center regarding M.D. wishing to continue her I-130 petition. The referee pointed to this e-mail in his findings, determining that Nielson still represented M.D., and that because of inaction, the National Visa Center

concluded that the forms and fees must be resubmitted, and this information was not communicated to M.D.

Nielson next contends that since M.D., through Nielson, never submitted any forms or fees to the National Visa Center, no forms or fees needed to be resubmitted, and the National Visa Center's e-mail was instead an automatic e-mail with boilerplate language. But Nielson's claim that the forms were never submitted to the National Visa Center is of no consequence. As Nielson acknowledges, after an I-130 petition is submitted to and approved by USCIS, the case is then transferred to the Department of State's National Visa Center for pre-processing. Further, the National Visa Center's e-mail plainly says that forms and fees in M.D.'s case would need to be resubmitted, in direct tension with Nielson's argument that this "boilerplate language" had *no relevance* to M.D.'s case. At the very least, Nielson was required to provide this information from the National Visa Center to his client.

As to Nielson's claim that the referee misunderstood the law as to the I-130 petition and the authority of the National Visa Center, the referee's conclusions and findings of fact neither mention nor rely on this law. Rather, the referee determined that at the time of the National Visa Center's notice, Nielson was still representing M.D., yet he failed to inform M.D. that her I-130 petition would have to be resubmitted. Because there is ample evidence in the record to support the referee's findings and conclusions, they are not clearly erroneous.

II.

We next consider Nielson's argument that he did not receive a fair disciplinary hearing. When we exercise "disciplinary jurisdiction, the action . . . is neither criminal nor civil; rather, it is an inquiry . . . to determine if sanctions should be imposed." *In re Garcia*, 792 N.W.2d 434, 441 (Minn. 2010). Although "disciplinary proceedings are not encumbered by technical rules and formal requirements, this court observes due process in exercising disciplinary jurisdiction." *In re Gherity*, 673 N.W.2d 474, 478 (Minn. 2004). The disciplinary charges must "be sufficiently clear and specific and the attorney must be afforded an opportunity to anticipate, prepare and present a defense" at the disciplinary hearing. *Id.*

Nielson's due process claim largely focuses on the events leading up to the referee hearing, specifically, the steps the Director took to file the instant petition. Nielson criticizes the Lawyers Professional Responsibility Board (LPBR) panel, claiming that the panel did not carefully consider the documents submitted by the Director, together totaling nearly 1,000 pages of documents. As support, Nielson notes that the panel found probable cause and authorized the petition for disciplinary action less than 3 days after its hearing.[10] Nielson also asserts that the petition lacked specificity and clarity, that the clients' subsequent counsel was prevented from testifying based on the Director's trial strategy, and that Nielson was denied a hearing prior to the referee's hearing. Finally, Nielson

[10] In the case of charges of unprofessional conduct, the panel shall, "if it finds probable cause to believe that public discipline is warranted, instruct the Director to file in this Court a petition for disciplinary action." Rule 9(j)(1)(ii), RLPR.

contends that he was prejudiced by the Director's delay in filing this petition because the events in question occurred in 2013–14 and the witnesses were unable to recall many specifics related to the representation.

Nielson was afforded due process. The disciplinary charges against Nielson were thorough and specific: Nielson was served with a 17-page petition that identified the specific rules of professional conduct that Nielson was alleged to have violated and provided factual details to support those allegations. Nielson filed an answer. The passage of time between when Nielson committed the misconduct and when this petition was filed did not prejudice Nielson, as Nielson was still able to and did prepare an extensive defense.

In disciplinary proceedings, a referee is charged with "hear[ing] and report[ing] the evidence submitted for or against the petition for disciplinary action" and with making "findings of fact, conclusions, and recommendations" regarding the disposition of the case. Rule 14(a), (e), RLPR. That is what the referee did here. Nielson had the benefit of an evidentiary hearing before a neutral fact-finder. At this multi-day hearing, he presented witnesses on his own behalf, cross-examined witnesses testifying against him, and admitted exhibits into evidence. *See In re Moulton*, 945 N.W.2d 401, 406 (Minn. 2020) (finding that respondent received a fair hearing based on a day-long hearing where he presented an extensive defense, offered several exhibits that were admitted into the record, testified on his own behalf, and called several witnesses).

In sum, the disciplinary charges against Nielson were "sufficiently clear and specific" and Nielson was "afforded an opportunity to anticipate, prepare and present a

defense" at the disciplinary hearing. *Gherity*, 673 N.W.2d at 478. Nielson has not established that his due process rights were violated.

III.

We finally consider the appropriate discipline for Nielson's misconduct. The parties disagree regarding the appropriate discipline in this matter. Nielson contends that the referee's recommended discipline is too severe because the referee found no misconduct that involved dishonesty, frivolous claims, or false statements to a tribunal, and he did not engage in any deliberate deceit that violates the administration of justice or his duty to be truthful or that harms the public or legal profession. The Director argues that suspension is the appropriate discipline because Nielson's conduct is serious, the cumulative weight is substantial, and that multiple aggravating factors but no mitigating factors exist. The Director notes that our court generally suspends lawyers who make misrepresentations, coupled with other misconduct, as is the case here.

Although we give "great weight" to the referee's recommendation, *In re Butler*, 960 N.W.2d 540, 552 (Minn. 2021) (citation omitted) (internal quotation marks omitted), we retain the "ultimate responsibility for determining appropriate discipline," *In re Montez*, 812 N.W.2d 58, 66 (Minn. 2012). The purpose of disciplinary sanctions is to protect the public and judicial system and to deter future misconduct by attorneys—not to punish the attorney. *In re Vaught*, 693 N.W.2d 886, 890 (Minn. 2005). Attorney discipline cases are evaluated individually. *In re Houge*, 764 N.W.2d 328, 337 (Minn. 2009).

We consider four factors when imposing discipline: (1) the nature of the misconduct; (2) the cumulative weight of the disciplinary violation; (3) the harm to the

public; and (4) the harm to the legal profession. *Butler*, 960 N.W.2d at 552. We also consider aggravating and mitigating factors. *Id.* We will consult similar cases and attempt to impose consistent discipline, but the proper discipline is ultimately determined "based on the unique facts and circumstances of each case." *In re Rebeau*, 787 N.W.2d 168, 174 (Minn. 2010).

A.

We first consider the nature of Nielson's misconduct. Nielson's misconduct involves failing to reasonably communicate with clients, failing to supervise a non-lawyer employee, and knowingly providing false and misleading information to clients. Making misrepresentations and false statements "is significant misconduct." *In re Nwaneri*, 896 N.W.2d 518, 525 (Minn. 2017). We have explained that "making misrepresentations demonstrates a lack of honesty and integrity, and warrants severe discipline." *In re Lundeen*, 811 N.W.2d 602, 608 (Minn. 2012); *see also Montez*, 812 N.W.2d at 68 (finding that attorney's dishonesty in making false statements to client and successor counsel, among others, was "serious misconduct"); *In re Dedefo*, 752 N.W.2d 523, 532 (Minn. 2008) ("We take dishonesty by lawyers seriously and have repeatedly held that a lack of truthfulness or candor warrants severe discipline."). We have also recognized that the failure to communicate with clients can be serious misconduct. *See In re Getty*, 452 N.W.2d 694, 699 (Minn. 1990).

B.

We next consider the cumulative weight of Nielson's disciplinary violations. We treat an "isolated incident" differently from a pattern of misconduct "occurring over a

substantial amount of time." *In re Eskola*, 891 N.W.2d 294, 300 (Minn. 2017) (citation omitted) (internal quotation marks omitted). Nielson's misconduct took place over several months with two clients. Although more than a brief lapse in judgment, *see In re Stoneburner*, 882 N.W.2d 200, 206 (Minn. 2016), his conduct across two matters does not form an extended pattern warranting more severe discipline.

C.

Next, we consider the harm that Nielson's misconduct caused to the public and to the legal profession. In assessing harm to the public, we consider how many and to what extent clients were harmed. *In re Coleman*, 793 N.W.2d 296, 308 (Minn. 2011). Here, Nielson's conduct resulted in significant harm to M.D., O.C., and their families. The clients and their families relied on representations made by Nielson and the IP Firm that they each had qualifying relatives to apply for the I-601A waiver to change their legal status in the U.S., and they experienced significant sadness, anger, and depression upon learning that they did not qualify. The clients also experienced financial harm, having paid substantial amounts of money for the representation. O.C. testified to having to borrow money from family members to cover the cost. Similarly, M.D. relied on relatives and at times used food shelves. Moreover, a lawyer's misconduct involving misrepresentations harms the legal profession. *In re Klotz*, 909 N.W.2d 327, 337 (Minn. 2018) (stating that a lawyer's "false statements harmed the profession by undermining the public's faith in the legal profession"). Consequently, harm to Nielson's clients and the legal profession favors more significant discipline.

D.

To determine the appropriate discipline, we also must examine any aggravating and mitigating factors. *In re Quinn*, 946 N.W.2d 583, 592 (Minn. 2020). The referee found three aggravating factors: the vulnerability of the clients, Nielson's substantial experience in the practice of law in general and immigration law in particular, and his lack of remorse. The referee also determined that no mitigating factors existed.

As the referee found, Nielson's clients were particularly vulnerable as foreign nationals living in the U.S. without legal status and with very little English proficiency. *See In re Kaszynski*, 620 N.W.2d 708, 712 (Minn. 2001) (recognizing vulnerability of immigration clients as an aggravating factor); *In re Udeani*, 945 N.W.2d 389, 398–99 (Minn. 2020) (same). Nielson's extensive experience in the law, and in immigration law in particular, is also an aggravating factor. *In re Tigue*, 900 N.W.2d 424, 432 (Minn. 2017) ("Committing misconduct despite . . . substantial experience is an aggravating factor.").

In other cases, we have also considered the attorney's lack of remorse and failure to appreciate the severity of the misconduct to be an aggravating factor. *In re Winter*, 770 N.W.2d 463, 468 (Minn. 2009). The referee found that Nielson failed to acknowledge his wrongdoing, "not even the obvious and basically uncontested evidence regarding the improper legal information given to [M.D.] and [O.C.]." Indeed, in his brief to our court, Nielson stated that he "recognizes and regrets" that the e-mails containing the misrepresentations were sent, but went on to suggest that the e-mails, "when viewed solely on [their] face and out of context[,] may seem like it could have confused the clients . . . to

an outside observer." Such a sentiment highlights Nielson's lack of accountability and appreciation for the seriousness of his misconduct.

Concerning mitigating factors, Nielson identifies his lack of disciplinary history as a mitigating factor. We have repeatedly held, however, that "an attorney's lack of prior disciplinary history is not a mitigating factor, but instead constitutes the absence of an aggravating factor." *In re Fairbairn*, 802 N.W.2d 734, 746 (Minn. 2011). Nielson also insists that his pro-bono work is a mitigating factor. While "extensive pro bono or civic work" *might* constitute mitigation, *In re Wylde*, 454 N.W.2d 423, 426 n.5 (Minn. 1990), Nielson has not demonstrated particularly extensive pro bono work. The referee did not clearly err by finding no mitigating factors.

E.

Finally, we consider similar cases when deciding what discipline is warranted, *Tigue*, 900 N.W.2d at 433, although we will ultimately decide the appropriate discipline on a case-by-case basis, *In re Walsh*, 872 N.W.2d 741, 749 (Minn. 2015) ("We tailor the sanction to the specific facts of each case . . . ."). We have suspended lawyers whose misconduct included making misrepresentations. *See In re Wentzell*, 656 N.W.2d 402, 408–09 (Minn. 2003) (imposing a 6-month suspension for misconduct including, in part, making false and misleading statements); *In re Jambor*, 694 N.W.2d 72, 72 (Minn. 2005) (lengthening a suspension based on making a false statement to a tribunal); *In re Strunk*, 744 N.W.2d 397, 397–98 (Minn. 2008) (imposing a 90-day suspension for neglecting client matters, making misrepresentations to client and Director about neglect, and other misconduct). But the level of discipline imposed for making false statements varies

depending on the facts of the case. *See In re Roggeman*, 779 N.W.2d 520, 528–29 (Minn. 2010) (publicly reprimanding an attorney for neglecting a matter, failing to communicate with that client, and making misrepresentations to the client to cover up the errors); *In re Shaughnessy*, 467 N.W.2d 620, 621–22 (Minn. 1991) (imposing a 30-day suspension where an attorney failed to communicate with clients and made misrepresentations regarding the status of their cases).

We believe that a suspension is appropriate based on the facts and circumstances of this case. Nielson's misconduct caused substantial harm to his clients. *See In re Ganley*, 549 N.W.2d 368, 370 (Minn. 1996) ("Suspension is warranted when the lawyer knowingly engages in conduct that violates a duty to the profession and causes injury to the client, the public, or the legal system."). In addition, significant aggravating factors are present and there are no mitigating factors. We therefore conclude that the appropriate discipline is a suspension for 30 days.

Accordingly, we order that:

1. Respondent Jason A. Nielson is suspended from the practice of law for a minimum of 30 days, effective 14 days from the date of this opinion.

2. Respondent shall comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals).

3. Respondent shall pay $900 in costs pursuant to Rule 24, RLPR.

4. Respondent shall be eligible for reinstatement to the practice of law following the expiration of the suspension period provided that, not less than 15 days before the end of the suspension period, respondent files with the Clerk of the Appellate Courts

and serves upon the Director an affidavit establishing that he is current in continuing legal education requirements, has complied with Rules 24 and 26, RLPR, and has complied with any other conditions for reinstatement imposed by the court.

5. Within 1 year of the date of this opinion, respondent shall file with the Clerk of the Appellate Courts and serve upon the Director proof of successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. *See* Rule 4.A.(5), Rules for Admission to the Bar (requiring evidence that an applicant has successfully completed the Multistate Professional Responsibility Examination). Failure to do so shall result in automatic suspension, as provided in Rule 18(e)(3), RLPR.

6. Upon reinstatement to the practice of law, respondent shall be placed on probation for a period of 1 year, subject to the following terms and conditions:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation. Respondent shall promptly respond to the Director's correspondence by its due date. Respondent shall provide to the Director a current mailing address and shall immediately notify the Director of any change of address. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct that may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

b. Respondent shall abide by the Minnesota Rules of Professional Conduct.

c. Respondent shall be supervised by a licensed Minnesota attorney, appointed by the Director to monitor compliance with the terms of this probation. Within 2 weeks of the date of the order reinstating respondent to the practice of law, respondent shall provide to the Director the names of four attorneys who have agreed to be nominated as respondent's supervisor. If, after diligent effort, respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to

supervise, the respondent shall, on the first day of each month, provide the Director with an inventory of active client files described in paragraph d. below. Respondent shall make active client files available to the Director on request.

d. Respondent shall cooperate fully with the supervisor in his/her efforts to monitor compliance with this probation. Respondent shall contact the supervisor and schedule a minimum of one in-person meeting per calendar quarter. Respondent shall submit to the supervisor an inventory of all active client files by the first day of each month during the probation. With respect to each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and next court appearance date. Respondent's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as may reasonably be requested by the Director.

e. Respondent shall initiate and maintain office procedures for supervision of non-lawyer staff to ensure that their conduct is compatible with his professional obligations.

f. Within 30 days of the date of the order reinstating respondent to the practice of law, respondent shall provide to the Director and to the probation supervisor, if any, a written plan outlining office procedures designed to ensure that respondent is in compliance with the probation requirements. Respondent shall provide progress reports as requested.

Suspended.

U.S. Citizenship and Immigration Services

I-130, Petition for Alien Relative

Use this form if you are a U.S. citizen or lawful permanent resident (LPR) and you need to establish your relationship to an eligible relative who wishes to come to or remain in the United States permanently and get a Permanent Resident Card (also called a Green Card).

File Online

Submitting Form I-130 is the first step in helping an eligible relative apply to immigrate to the United States and get Green Card. The filing or approval of this petition does not give your relative any immigration status or benefit.

We will generally approve your Form I-130 if you can establish a relationship between you and your relative that qualifies them to immigrate to the United States. Generally, once we approved the petition, your relative may apply to become a lawful permanent resident. If your relative is already in the United States and a visa is available, they may be eligible to get their Green Card by filing Form I-485, Application to Register Permanent Residence or Adjust Status

Certain relatives must wait until a visa number is available before they can apply. If your relative qualifies as an immediate relative, an immigrant visa always is available.

- If your relative is not eligible to get their Green Card in the United States by filing Form I-485, or if your relative lives outside the United States, they may apply for an immigrant visa with the U.S. Department of State at the U.S. Embassy or Consulate in their country. For more information on ineligibility, please visit our Green Card Eligibility Categories page.

When completing Form I-130, Petition for Alien Relative, please make sure that you (as the petitioner) select only one option when indicating that the beneficiary intends to apply for adjustment of status inside the United States or will pursue visa processing abroad. If the Form I-130 is still pending with us and you want to change your selection (to either consular processing abroad or adjust status in the United States), you may contact the USCIS Contact Center and request a change. If you want to change your selection after we have already approved the form, you may need to file Form I-824, Application for Action on an Approved Application or Petition.

How to Report Suspected Marriage Fraud: We encourage you to report suspected immigration benefit fraud and abuse, including marriage fraud. For more information, please visit our Reporting Fraud page.

Help for victims of abuse

If you are the spouse, child, or parent of a U.S. citizen who has abused you, or [illegible] lawful permanent resident who has abused you, you may be eligible to file a petition for yourself independent from your U.S. citizen or lawful permanent resident abuser. For more information, go to the Abused Spouses, Children, and Parents (Form I-360 VAWA Self-Petitioners) webpage.

What This Form Can Help You Do

Family Based Petition for an Adopted Child

Green Card for Family Members of a Permanent Resident

U.S. Citizen Petition for a Preference Relative to Become a Lawful Permanent Resident

U.S. Citizen Petition for a Spouse

U.S. Citizen Petition for an Immediate Relative to Become a Lawful Permanent Resident

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Last Reviewed/Updated: 05/09/2022

Questions about the I-130?

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NVC Contact Information

Important Notice Effective May 23, 2022

To address critical backlogs, the National Visa Center has suspended our public inquiry telephone line. We apologize for any inconvenience. The suspension of public inquiry telephone lines will not impede any essential functions of the National Visa Center and individuals will still be able to contact us using the methods identified below and find information regarding common IV and NIV inquiries on our Helpful Hints pages.

NVC Correspondence Update

On June 1, 2020, National Visa Center will no longer accept or respond to inquiries through mail. National Visa Center has modernized the way we pre-process visa applications. This has allowed NVC to streamline services to case parties and to U.S. Embassies and Consulates. Elimination of paper correspondence is the next step in this modernization. This change will further help us streamline and provide better services for all involved. Thank you for your understanding.

Any unsolicited mail post-marked June 1, 2020 or later will not receive a response and will be destroyed. You will need to submit all your inquires through the Public Inquiry Form at https://nvc.state.gov/inquiry.

You should only send mail to National Visa Center if explicitly instructed to through an email, telephone call, or letter from National Visa Center. In most cases, this request for documentation will be for a case that is not processing electronically. If necessary for your case, NVC will provide you with a mailing address. Never send original documents to the National Visa Center.

Before you contact us, please review our Frequently Asked Questions (FAQs):

- About Visas – The Basics
- Immigrant Visa Processing FAQs
- Immigrant Visa Fee Payment FAQs
- Immigrant Visa Affidavit of Support FAQs
- DS-260, Online Immigrant Visa Application FAQs
- Immigrant Visa Medical Exam FAQs
- Immigrant Visa Interview Preparation FAQs
- DS-160, Online Nonimmigrant Visa Application FAQs

If you don't find the answer you are looking for in the FAQs, you can contact us in the following way:

> Online (immigrant visa inquiries only): Public Inquiry Form
> *(Note: the NVC is unable to respond to nonimmigrant visa inquiries by email or fax. Please see our Contact Us page for contact information). We ask that you make a subsequent inquiry only if you do not receive a response to your email within our published timeframe. Duplicate inquiries slow our ability to respond to you in a timely manner.*

Submitting Forms or Documents to the NVC: If you need to submit a form or document to us, please visit our Submit Documents to the NVC page.

Note: Visa records are confidential under Section 222(f) of the Immigration and Nationality Act (INA), so information can only be provided to visa applicants. There are some exceptions, such as providing information to U.S. sponsors, attorneys representing visa applicants, members of Congress, or other persons acting on behalf of the applicants.

One Year Contact Requirement

Immigration and Nationality Act (INA) section 203(g) provides that the Secretary of State shall terminate the registration (petition) of any alien who fails to apply for an immigrant visa within one year of notice of visa availability. The petition may be reinstated if, within two years of notice

of visa availability, the alien establishes that the failure to apply was for reasons beyond the alien's control. Therefore if you do not respond to notices from the NVC within one year you risk termination of your petition under this section of law and would lose the benefits of that petition, such as your priority date.

UNCLASSIFIED (U)

9 FAM 504.13
TERMINATION OF IMMIGRANT VISA REGISTRATION

(CT:VISA-1413; 11-03-2021)
(Office of Origin: CA/VO)

9 FAM 504.13-1 STATUTORY AND REGULATORY AUTHORITIES

9 FAM 504.13-1(A) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

INA 203(g) (8 U.S.C. 1153(g); INA 221(g) (8 U.S.C. 1201(g)).

9 FAM 504.13-1(B) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

8 CFR 205(a)(1); 22 CFR 42.43; 22 CFR 42.83.

9 FAM 504.13-2 INACTIVE CASES

9 FAM 504.13-2(A) Termination of Inactive Cases

(CT:VISA-1413; 11-03-2021)

INA 203(g) provides for termination of registration of the visa petition of any *individual* who fails to apply for an *IV* within one year following notification to the *applicant* of the availability of *a* visa. But INA 203(g) also permits reinstatement of the registration where the *individual* establishes within 2 years following the date of notification of the availability of such visa that such failure was due to circumstances beyond *their* control.

9 FAM 504.13-2(A)(1) When a Case is "Inactive"

(CT:VISA-1413; 11-03-2021)

An applicant becomes liable to possible termination of registration under INA 203(g) if the applicant:

(1) Has not made an application for a visa within one year of notice of visa availability. The beneficiary has one year to make an application for a visa, beginning on the date the notice of visa availability is issued.

(2) Does not respond to the appointment notice included with the Immigrant Visa Appointment Package, meaning that the applicant fails to appear for a visa application interview on the scheduled appointment date and fails to take further action on the case within one year of the scheduled interview;

(3) Is refused at the interview under INA 221(g), and fails to present evidence purporting to overcome the basis for a refusal under INA 221(g) within one-year following the refusal; or

(4) Fails to comply with the Follow-up Instruction Package for Immigrant Visa Applicants or logs into their CEAC account within one year.

9 FAM 504.13-2(A)(2) Who is Subject to 203(g)?

(CT:VISA-1413; 11-03-2021)

a. **Applicants Whose Cases are Subject to Termination Under 203(g):** INA 203(g) procedures apply to all *IV* classifications, except as noted in 9 FAM 504.13-2(A)(2) paragraph b below. The covered classifications include those established by approval of *IV* petitions I-130, I-140, and I-360 for applicants who are immediate relatives, family-preference immigrants, employment-preference immigrants, and special immigrants.

b. **Applicants Whose Cases are Not Subject to Termination Under 203(g):**

(1) INA 203(g) procedures do not apply to applicants in categories for which numbers are unavailable, and applicants in limited-duration programs with specific timelines dictated by other statutory or regulatory provisions. For example, special immigrants whose entitlement to status is established by approval of Form DS-1884 are subject to the limited validity of that form as described in 22 CFR 42.32(d)(2)(i)(A) and not the termination procedures under INA 203(g).

(2) **Administrative Processing:** Applications refused under INA 221(g) for administrative processing are not subject to INA 203(g) provisions during the period that the application is undergoing administrative processing.

(3) **Unavailability of Documentation or Information to Overcome** INA 221(g) **Refusal:** Applications refused under INA 221(g) for reasons other than administrative processing are subject to termination under 203(g), but an applicant who makes a credible assertion that documentation or information is not available within one year of the INA 221(g) refusal would not be subject to INA 203(g) provisions.

(4) **Beneficiaries of More than One Approved Petition:** If an applicant is the beneficiary of more than one approved visa petition, you would

terminate only the petition for which the beneficiary failed to make a timely application. All other petitions would remain valid.

(5) **Beneficiaries of New Petition Filed by Same Petitioner:** If the same petitioner files a new petition for the same beneficiary, and the original petition was revoked under INA 203(g), the original priority date would not be valid.

(6) **"Following-to-Join" Applicants:** Applicants who are "following to join" the principal applicant are not subject to the provisions of INA 203(g).

9 FAM 504.13-2(A)(3) Identifying Inactive Cases

(CT:VISA-1413; 11-03-2021)

a. Consular managers should periodically use the various reporting features available in *IVIS* to monitor the status of IV cases, including those considered inactive and undergoing termination processing, and INA 221(g) refusal cases.

b. The termination process should be initiated if the applicant has not applied or responded to follow-up mailings by post or the National Visa Center (NVC) within one year after receiving notification of the availability of a visa (i.e., after receiving Packet 4, Packet 4(a), or the modified follow up (MFL) letter). See 9 FAM 504.4-5(C)(1). Cases should also be terminated if the applicant fails to present evidence purporting to overcome the basis of an INA 221(g) refusal within one year. *You* should refer to 9 FAM 504.13-2(B)(1) *below* regarding termination of registration.

9 FAM 504.13-2(B) Notification of Possible Termination of Registration

9 FAM 504.13-2(B)(1) Possible Termination Notification Requirements

(CT:VISA-1413; 11-03-2021)

a. Upon receipt of an approved petition granting *a beneficiary* immediate relative or preference status, the National Visa Center sends the beneficiary an instruction packet notifying *them* of receipt of the petition and advising *them* what steps, if any, to take in applying for a visa. See 9 FAM 504.4-2(B). The NVC is responsible for the dispatch of the vast majority of instruction packets, but posts may provide instruction packets for a limited number of exceptional cases. See 9 FAM 504.4-2(C). Notification of possible termination of registration begins at the instruction packet stage as described in this guidance.

b. You or NVC must send a follow-up package including notification of possible termination of registration pursuant to INA 203(g) in cases in which applicants have not responded to the instruction package for *IV* applicants

within one year. In the case of an applicant whose priority date has not been reached on the one-year anniversary, you or NVC should send this follow-up package when the applicant's priority date is reached.

c. You or NVC may choose to initiate the termination process by mailing only the notice of possible termination of registration, a form letter automatically generated by the automated *IV* processing system.

(1) If the applicant responds requesting that registration not be terminated, then the follow-up instruction package for IV applicants outlined below should be sent.

(2) Alternatively, you or NVC may choose to send the instruction package as an initial mailing.

(3) **The Follow-Up Package Consists of:**

(a) Notice of Possible Termination of Registration;

(b) Form DS-2001, Notification of Applicant Readiness; and

(c) Instructions for Accessing Form DS-260, Online Application for Immigrant Visa and Alien Registration.

d. All cases (IVIS and PIVOT) held at NVC will have notifications of termination mailed directly to the applicant. The follow-up package mailed from NVC consists of:

(1) Notice of Possible Termination of Registration; and

(2) A response request containing the following:

(a) Yes, I wish to pursue my immigrant visa application, please send me information on applying for my immigrant visa. I understand I will have to resubmit all required fees and documents to continue the immigrant visa processor

(b) No, I do not want to pursue my immigrant visa application for one of the following reasons:

(i) I have adjusted status (please send a copy of both sides of your alien registration card);

(ii) I have received an immigrant visa through another petition and am now a permanent resident (please send us a copy of both sides of your alien registration card);

(iii) I am no longer interested in immigrating to the United States; or

(iv) Other (please explain).

9 FAM 504.13-2(B)(2) Applicant Response to Notification

(CT:VISA-1413; 11-03-2021)

a. **Applicant Advises Documentarily Qualified/Completed:**

(1) If the applicant's response to the follow-up package is to return Form DS-2001, Notification of Applicant Readiness, and *the* DS-260, you must process the applicant in the same manner as any other applicant who responds to the instruction package for IV applicants (i.e., background checks will be conducted, a number will be requested, a medical exam will be scheduled, and the applicant will be sent an appointment letter).

(2) If the applicant's response to the follow-up package is sent to NVC, NVC will renew the process of collecting fees as outlined in 9 FAM 504.6-5(B).

b. **Applicant Fails to Respond:** If the applicant does not comply with the follow-up instructions within one year and a visa is available, you or NVC must initiate proceedings to terminate the *applicant's* IV registration.

9 FAM 504.13-2(C) Extension of One-Year Period of Registration

(CT:VISA-1413; 11-03-2021)

a. **Failure to Appear:** The end of the one-year period to apply for the visa *is the* mandated date triggering termination of the petition for *inactivity.* The one-year period stops, however, if during that time the applicant takes substantive steps to apply for the visa, such as rescheduling the *IV* appointment date. If the applicant reschedules the appointment date within one year of an initial failure to appear the one-year period to *apply for* the visa would begin anew on the new appointment date.

b. **221(g) refusals:** The one-year period is extended each time an applicant presents evidence reasonably purporting to overcome the INA 221(g) ineligibility.

9 FAM 504.13-2(D) Initiating Termination of Registration

(CT:VISA-1413; 11-03-2021)

a. **Notice of Termination of Registration Letter (Termination 1):** If, after one year, the applicant does not request a new visa appointment date or has failed to present evidence to overcome an INA 221(g) refusal requesting evidence from the applicant, post will use the features of *IVIS* to run the "Report of Cases Subject to Possible Termination" and must send the automatically generated Notice of Termination of Registration letter (also known as the Termination 1 letter) to all inactive cases on that report. It is essential that consular managers take steps to ensure that data entry is kept as up to date as possible so that this report and others are as accurate as possible with respect to which cases are inactive. It is also vital that consular personnel use the "date of last contact" filed in the automated application so that active cases are not improperly placed.

b. **Final Notice of Cancellation (Termination 2):** When one year has passed following the mailing of the Notice of Termination of Registration (Termination 1 letter), and the applicant has not established that a basis for reinstatement of registration exists, post must send the applicant the Final Notice of Cancellation of Registration (also known as the Termination 2 letter), which is generated automatically by the automated system.

c. Post should ensure at a minimum that the Notice of Termination of Registration is sent to the address on file for the applicant and any third party authorized by the applicant to receive notices on *their* behalf.

9 FAM 504.13-2(E) Termination Notices

9 FAM 504.13-2(E)(1) Notice of Termination of Registration For Posts

(CT:VISA-1123; 07-22-2020)

NOTICE OF TERMINATION OF REGISTRATION

United States Department of State
Washington, D.C. 20520

Dear Visa Applicant:

We refer to your application for an immigrant visa. Section 203(g) of the Immigration and Nationality Act requires that your registration be canceled and any petition approved on your behalf canceled, if you do not apply for your immigrant visa within one year of being advised of visa availability, or fail to present evidence purporting to overcome the basis of your refusal under INA 221(g) within one year following the refusal.

You were advised of this requirement on _____, but we have not received a response from you since then. As a result, you are hereby notified that your application for a visa has been canceled and any petition approved on your behalf has also been canceled.

Your application may be reinstated and any petition revalidated if, within one year, you can establish that your failure to pursue your immigrant visa application was due to circumstances beyond your control.

If you have any questions or are experiencing difficulty in complying with the above instructions, please contact the National Visa Center at the address below:

DOS Visa

P.O. Box 65446

Potomac Falls, VA 20165

Nvc.state.gov/inquiry

9 FAM 504.13-2(E)(2) Final Notice of Cancellation of Registration for Posts

(CT:VISA-1123; 07-22-2020)

FINAL NOTICE OF CANCELLATION OF REGISTRATION

United States Department of State
Washington, D.C. 20520

Dear:

This office previously notified you that as of _____ your registration for an immigrant visa was cancelled, and any petition approved on your behalf was also cancelled. We informed you that your application might be reinstated if, within one year, you could establish that your failure to pursue your immigrant visa application was due to circumstances beyond your control.

Since you have failed to do so, the record of your registration and any petition approved on your behalf and all supporting documents have been destroyed; any Department of Labor certification has been returned to your prospective employer.

Principal Applicant:

Case Number:

Sincerely,

Letter
Termination 2

9 FAM 504.13-3 REINSTATEMENT OF TERMINATED PETITIONS

9 FAM 504.13-3(A) Requests for Reinstatement

(CT:VISA-1413; 11-03-2021)

a. **After the One-Year Period has Ended:** If the applicant is able to persuade you within one year following issuance of Notice of Termination of Registration (Termination 1 letter) that the failure to appear within the first year was due to circumstances beyond *their* control, the applicant would be entitled to reinstatement of the petition and a new visa appointment. The date that you agree to set the new appointment would start another one-year period in which to apply.

b. **Notification of Change of Address:** The applicant is responsible for providing the visa-issuing post with a current address. The applicant's failure to receive the notice of termination because *they* neglected to notify post of *their* change of address *is not* a "reason beyond the applicant's control" for not pursuing the application.

c. **"Circumstances Beyond Control":** Whether an applicant has established that the failure to apply for the visa was due to circumstances beyond control is a factual determination to be made by *you* and depends upon *your*

assessment of the unique circumstances of the case. Circumstances beyond the applicant's control will generally be factors that have arisen outside of the applicant's normal circumstances, including medical emergency or natural disaster. Convenience or a wish not to travel to the visa interview within the one-year period is not a factor outside of the applicant's control.

d. **Requests for *AO*s:** The Department encourages posts to submit *AO* requests whenever they are in doubt as to whether INA 203(g) should be applied to L/CA.

9 FAM 504.13-3(B) Reinstatement Procedures

(CT:VISA-1413; 11-03-2021)

a. If during the one year following the mailing of the Notice of Termination of Registration (Termination 1 letter), the applicant satisfies you that failure to pursue the application was due to circumstances beyond *their* control, you shall reinstate the application and petition.

b. **Reinstating Cases for Documentarily Completed Applicants:** If the *applicant's case* is documentarily completed, post will renew all clearances that are over six months old and, if the priority data is current, request a visa number from the Immigration Visa Control and Reporting Division (CA/VO/DO/I).

c. **Reinstating Cases for Applicants Not Documentarily Completed:** If the applicant requesting reinstatement of the case is not yet documentarily completed, post must:

(1) Give the applicant a new Instruction Package for Immigrant Visa Applicants; and

(2) Ensure that *IVIS* is updated to reflect this action.

9 FAM 504.13-4 DISPOSITION OF DOCUMENTS IN TERMINATED CASES

9 FAM 504.13-4(A) Petitions Terminated Under INA 203(g)

(CT:VISA-1208; 01-26-2021)

a. **Disposition of Visa Petitions:** Due diligence requires us to protect the privacy of the applicant/petitioner by destroying the original or supporting documents if the applicant/petitioner fails to respond to mailings from posts or the National Visa Center. Therefore, when a case is terminated under INA 203(g), posts and the National Visa Center must take the following action to dispose of visa petitions:

(1) Notify the petitioner/applicant or agent that the petition was revoked under INA 203(g) (Termination 2 letter);

(2) Destroy the physical petition and copies of supporting documents filed with the petition;

(3) Return unused labor certs along with the petition to the approving USCIS office; and

(4) Return original documents (i.e., birth, death, marriage, divorce certificates) to the petitioner (if filed with the petition), or to the beneficiary or agent (if filed during the application process).

(5) For PIVOT cases, purge the digital record by updating the case status to Administratively Closed.

b. **Disposition of Unused Labor Certifications:** If the certification will not be used because registration has been terminated you must return the petition and the supporting documents to the approving office of the Department of Homeland Security/United States Citizenship and Immigration Services (DHS/USCIS) under cover of a memorandum.

9 FAM 504.13-4(B) Pre-IMMACT 90 P3 and P6 Petitions

(CT:VISA-1413; 11-03-2021)

a. IMMACT 90 provided for the conversion of employment-based petitions (P3 and P6) to the new E2 and E3 classifications, allowing two *years* for such conversion. If the beneficiaries did not apply within two *years*, the petitions have expired. In such cases, post must take the following actions:

(1) Return the labor certification, along with any attached documentation, to the employer or attorney of record;

(2) Attach a memo with the following text:

"We are returning the enclosed labor certification (ETA 750A & B) which you filed on behalf of (name of beneficiary). The accompanying Form I-140, Immigrant Petition for Alien Worker, which you filed at the same time, has expired after at least two years. During this two *years*, a visa number was available, but the beneficiary failed to apply for an *IV*. The petition is part of a group of employment-based petitions which converted to another visa classification under the provisions of the Immigration Act of 1990. The petition has now expired and neither our office nor the Department of State is retaining any record of the petition. The labor certification is returned to you for appropriate action."

b. **Labor Certification Returned as Undeliverable:** If the labor certification is returned as undeliverable, post may destroy the certification and any attached documents. Any significant original documents (i.e., birth, death, marriage certificates, etc.) should be returned to the petitioner or beneficiary (whoever submitted it).

U.S. Citizenship and Immigration Services

I-601A, Application for Provisional Unlawful Presence Waiver

Certain immigrant visa applicants who are relatives of U.S. citizens or lawful permanent residents may use this application to request a provisional waiver of the unlawful presence grounds of inadmissibility under Immigration and Nationality Act section 212 (a)(9)(B), before departing the United States to appear at a U.S. Embassy or Consulate for an immigrant visa interview. For more information, see our Provisional Unlawful Presence Waiver page.

Forms and Document Downloads

Form I-601A (PDF, 545.02 KB)

Instructions for Form I-601A (PDF, 362.34 KB)

Form Details

Close All Open All

- Edition Date
- Where to File
- Filing Fee
- Checklist of Required Initial Evidence (for informational purposes only)
- Special Instructions
- Related Links

U.S. Citizenship and Immigration Services

Provisional Unlawful Presence Waivers

Since March 4, 2013, certain immigrant visa applicants who are immediate relatives (spouses, children and parents) of U.S. citizens can apply for provisional unlawful presence waivers before they leave the United States for their consular interview. On August 29, 2016, the provisional unlawful presence waiver process was expanded to all individuals statutorily eligible for an immigrant visa and a waiver of inadmissibility for unlawful presence in the United States.

Noncitizens who are not eligible to adjust their status in the United States must travel abroad and obtain an immigrant visa. Individuals who have accrued more than 180 days of unlawful presence while in the United States must obtain a waiver of inadmissibility to overcome the unlawful presence bars under section 212(a)(9)(B) of the Immigration and Nationality Act before they can return. Typically, noncitizens cannot apply for a waiver until after they have appeared for their immigrant visa interview abroad, and a Department of State (DOS) consular officer has determined that they are inadmissible to the United States.

The provisional unlawful presence waiver process allows those individuals who are statutorily eligible for an immigrant visa (immediate relatives, family-sponsored or employment-based immigrants as well as Diversity Visa selectees); who only need a waiver of inadmissibility for unlawful presence to apply for that waiver in the United States before they depart for their immigrant visa interview.

This new process was developed to shorten the time that U.S. citizens and lawful permanent resident family members are separated from their relatives while those relatives are obtaining immigrant visas to become lawful permanent residents of the United States.

The expansion of the provisional unlawful presence waiver process does not affect the continued availability of the Form I-601 process: Individuals who do not wish to seek or do not qualify for a provisional unlawful presence waiver can still file Form I-601, Application for Waiver of Grounds of Inadmissibility, after a DOS consular officer determines that they are inadmissible to the United States.

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What You Need to Know

Eligibility Requirements

How to Apply

- Approval of Form I-601A
- Reasons Your Provisional Unlawful Presence Waiver May Be Revoked
- If Your Approved Provisional Unlawful Presence Waiver is Revoked
- If You Are in Removal Proceedings
- If You Have a Final Order of Removal, Exclusion, or Deportation Including an in Absentia Order of Removal Under INA 240(b)(5)
- Denial of Form I-601A or Withdrawal of Form I-601A
- Avoid Immigration Scams
- Related Links

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Last Reviewed/Updated: 01/05/2018