

SEP 10 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BOUTROS ALBERT KATTRA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 05-70387

Agency No. A078-440-660

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted December 11, 2008
Pasadena, California

Before: PREGERSON and D.W. NELSON, Circuit Judges, and SINGLETON,**
Senior District Judge.

Boutros Albert Kattrra (“Kattrra”), a native and citizen of Lebanon, asks us to review the Board of Immigration Appeals’s (“BIA”) decision denying his motion to reopen his removal proceedings.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable James K. Singleton, United States District Judge for the District of Alaska, sitting by designation.

We have jurisdiction pursuant to 8 U.S.C. § 1252. We review denials of motions to reopen under an abuse of discretion standard. *Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (citing *Sharma v. INS*, 89 F.3d 545, 547 (9th Cir. 1996)). Reversal is only appropriate where the BIA’s denial of the motion to reopen is “arbitrary, irrational, or contrary to law.” *Id.* (citing *Ahwazi v. INS*, 751 F.2d 1120, 1122 (9th Cir. 1985)).

In his motion to reopen before the Immigration Judge (“IJ”), Kattrra was represented by James L. Rosenberg.¹ Rosenberg argued that Kattrra’s prior counsel

¹ Rosenberg represented Kattrra in his January 20, 2004 motion to reopen before the IJ. The IJ denied the motion on February 18, 2004. Rosenberg then represented Kattrra in his March 5, 2004 appeal to the BIA. The BIA adopted and affirmed the IJ’s denial on December 23, 2004. Rosenberg initially represented Kattrra before this court in January 2005. In April 2008, however, this court appointed Seth M. Hufstedler and Bryant Yuan Fu Yang of Morrison & Foerster LLP as pro bono amicus counsel. Rosenberg was suspended from practice before the Ninth Circuit in September 2008 for a period of one year. *See Matter of James L. Rosenberg*, 24 I.&N. Dec. 744 (BIA 2009). He was terminated as Kattrra’s counsel of record on September 25, 2008. Hufstedler and Yang appeared before the court at oral argument on December 11, 2008. As recounted by the BIA, the Ninth Circuit Appellate Commissioner “found that [Rosenberg] was the attorney of record in 19 petitions for review concerning immigration cases that were dismissed for failure to prosecute, and that his ‘violation of the court’s rules and lack of diligence interfered with the judicial process.’” *Id.* at 745. The Appellate Commissioner further found that Rosenberg’s “practices concerning immigration briefs demonstrated ‘a lack of competence that has potentially harmed his clients.’” *Id.*

After our court’s suspension, the Office of General Counsel for the Executive Office for Immigration Review petitioned for Rosenberg’s immediate

(continued...)

failed to advise the immigration court that Kattrra was the beneficiary of an approved labor petition. The motion did not name Kattrra's prior counsel, but explained that prior counsel had resigned from the state bar. Accordingly, the motion explained that it did not conform to the requirements of *Matter of Lozada*, 19 I.&N. Dec. 637 (BIA 1996) because the state bar lacked jurisdiction over Kattrra's prior counsel. The IJ denied Kattrra's motion to reopen on February 18, 2004.

On March 5, 2004, Kattrra filed his Notice of Appeal with the BIA. Still represented by Rosenberg, Kattrra clarified that he had originally attempted to retain James Valinoti² for legal representation, but that another attorney appeared

¹(...continued)
suspension from practice before the immigration courts and the Board of Immigration Appeals. *Id.* at 744-45. The Department of Homeland Security also asked that Rosenberg be barred from practice before it. *Id.* at 745. On October 9, 2008, the BIA suspended Rosenberg from practice before the BIA, the immigration courts, and the Department of Homeland Security. *Id.*

² James Valinoti resigned from the state bar with charges pending against him in 2003. *See Morales Apolinar v. Mukasey*, 514 F.3d 893, 894 n.1 (listing cases describing poor representation by Valinoti or his firm), 896 n.4 (pointing out that "Valinoti handled more than 2,720 immigration cases in a two-year period in a manner that was 'reckless and involved gross carelessness,'" and that he "routinely 'placed his interests above those of his clients' by permitting non-lawyers to perform legal work").

instead on the date of Kattrra's merits hearing.³ The Notice of Appeal to the BIA argues that the attorney who appeared at Kattrra's merits hearing had no knowledge of Kattrra's case, and that the immigration court was not advised that Kattrra had an approved labor certification. The BIA adopted and affirmed the IJ's denial of the motion to reopen on December 23, 2004.

Before this court and with the aid of Seth M. Hufstedler and Bryant Yuan Fu Yang of Morrison & Foerster LLP, as pro bono counsel, Kattrra provided additional facts and claims in support of his appeal from the BIA's denial of his motion to reopen. Through pro bono counsel, Kattrra alleged that when he went to Valinoti's office for the first time, he was told that Valinoti was not there and he was instead directed to a man named "Pedro." Kattrra alleges that he believed "Pedro" was an attorney working for Valinoti. According to Kattrra, he specifically asked "Pedro" to represent him before the IJ, and "Pedro" never notified Kattrra that he was not, in fact, an attorney.

Kattrra alleges that "Pedro" arranged for other attorneys who were not knowledgeable about Kattrra's case to represent Kattrra at his hearings before the IJ.

³ The Notices of Entry of Appearance contained in the record show that attorneys from the Law Offices of John P. Bruno represented Kattrra. Mr. Bruno was ordered disbarred on November 15, 2006. *In re John Pasquale Bruno*, No. 06-N-11711 (Cal. Bar Ct. Nov. 15, 2006).

Before his third and final hearing, Kattrra claims that “Pedro” briefed an attorney on Kattrra’s case in the few minutes it took to walk from Valinoti’s office to the immigration court. Kattrra alleges that that attorney was not knowledgeable about Kattrra’s case and did not advise the immigration court of Kattrra’s pending labor certification. Believing he had no other choice when he appeared before the IJ, Kattrra agreed to accept voluntary departure. He later sought the advice of Rosenberg, who represented him in his motion to reopen before the IJ, his appeal to the BIA of the IJ’s denial of the motion to reopen, and, initially, in his appeal to this court.

Unfortunately , we cannot review Kattrra’s additional facts, which were not presented to the BIA, nor his unexhausted claims of ineffective assistance of counsel. We must therefore deny for failure to exhaust administrative remedies his petition for review, which has passed “[t]hro’ many dangers, toils, and snares.” *See Rashtabadi v. INS*, 23 F.3d 1562, 1567 (9th Cir. 1994); *Olivar v. INS*, 967 F.2d 1381, 1382-83 (9th Cir. 1992). We exercise our authority, however, to stay the mandate for 120 days, subject to extension for good cause shown, to permit Kattrra to file a motion to reopen with the BIA. Now that Kattrra has competent counsel, such a motion to reopen would permit Kattrra to properly develop the record with additional facts, deal with the issue of unexhausted claims, and brief

any relief for which he may now be eligible. The stay of the mandate shall be continued until the BIA disposes of the motion to reopen. *See, e.g., Aguilar-Escobar v. INS*, 136 F.3d 1240, 1241 (9th Cir. 1998).

PETITION FOR REVIEW DENIED. MANDATE STAYED.