NO.

In the

Supreme Court of the United States

ALEXANDER M. CHANTHUNYA

Petitioner

V.

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE MARYLAND COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Maryland Court of Appeals erred in denying Petitioner's Petition, without opinion, that properly raised a constitutional issue regarding violation of petitioner's due process right of fair hearing arising from the Court's refusal to review record of cross examination.

2. Whether Court's failure to consider adverse admissions of Bar Counsel's witnesses in cross-examination that were material in the determination of attorney alleged misconduct is violation of petitioner's constitutional due process right of fair hearing

3. Whether an attorney is entitled to due process right of fair hearing in attorney disciplinary proceedings

4. Whether an attorney suffers prejudice when he is suspended indefinitely in violation of his due process right of fair hearing.

PARTIES TO THE PROCEEDING

All parties to the proceeding are set forth on the cover of this Petition.

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Cases

PETITION FOR WRIT OF CERTIORARI

Alexander M. Chanthunya respectfully petitions for writ of certiorari to review the Order of Maryland Court of Appeals dated April 19, 2018 because the Court violated his procedural due process rights for a fair hearing under the Fourteenth Amendment of the U.S. Constitution. The Court expressly declined to consider material adverse admissions of Bar Counsel's witnesses in cross- examination on presumption of regularity regarding Findings of Fact by a Circuit Court.

OPINIONS BELOW

On April 19, 2018 the Maryland Court of Appeals, denied without opinion Petitioner's Petition to Vacate the Court's Judgment in Misc. Docket AG No. 63, September Term 2017. (Appendix A).

The Court of Appeals suspended petitioner indefinitely in Judgment of the Court in Misc. Docket AG No. 58, September Term 2014 dated March 25, 2016. (Appendix B).

BASIS FOR JURISDICTION

Jurisdiction is based on 28 U.S.C. §1257 for review of judgment of the highest court of a state. The Court of Appeals denied Petitioner's Petition on April 19, 2018.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution 14th Amendment, Section 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner filed Petition with Maryland Court of Appeals to vacate its previous judgment, alternatively to reinstate him, consistent with Maryland Rule 19-752 (h)(1), because the Court violated his due process right for a fair hearing in the Court's earlier judgment in March 2016 arising from the Court's refusal and neglect to review material adverse admissions of Bar Counsel's witnesses in the Record of Cross Examination and Exhibit 4.

The violation of petitioner's due process rights surfaced in the Court of Appeals' judgment entered in March 2016. Before appealing against such a judgment, petitioner had to raise the issue with Court of Appeals for its consideration. Petitioner presented excerpts of transcript of material adverse admissions of Bar Counsel's witnesses in the Record of Cross Examination and Exhibit 4 to show how the Court violated his due process right. The Court of Appeals denied the Petition without opinion on the Constitutional issue.

In attorney disciplinary proceedings, the Court of Appeals exercises original jurisdiction. It has de novo power to review all records before it. In the judgment entered in March 2016 the Court of Appeals openly declared that it didn't read the transcript of the cross examination and exhibit 4 because it presumed that the Circuit Court's judge it assigned to hear witnesses on petitioner's case considered all evidence in the Findings of Fact reported to the Court of Appeals.

The Court of Appeals remarked in the judgment:

> "In response to the hearing judge's original opinion, Chanthunya excepted to several of the hearing judge's findings of fact, asking us "to review the [testimony] of the witnesses . . . and draw [our] own independent conclusions." Chanthunya contends, among other things,

that the hearing judge "wrongfully evaluated" the evidence presented, that one of the hearing judge's findings is a "total lie," **that the hearing judge considered only evidence presented on direct examination and ignored testimony that Chanthunya elicited on cross-examination...**, We observe initially that, just because Chanthunya disagrees with the hearing judge's findings of fact does not make the findings of fact clearly erroneous. And, that the hearing judge does not mention a particular piece of evidence or particular testimony in making findings of fact does not mean that the hearing judge failed to consider such evidence. Indeed, as this Court has recognized...Our hearing [judges]' duties are to consider all evidence properly submitted in the discipline process. Absent indications that such evidence is not considered, we presume it was considered along with all the other evidence..."(Appendix B, P.20)

The Court of Appeals adopted the Circuit Court Judge's Findings of Fact without reviewing the record of cross examination. The Court of Appeals presumed that the Circuit Court judge had already considered all evidence even though the judge made no specific references to the record of cross examination. **Thus the Court of Appeals decided petitioner's case in total ignorance of evidence that petitioner elicited in cross examination**. Almost every aspect of the Court of Appeals' judgment reveals the Court's total ignorance of petitioner's case as developed in cross examination.

The Court of Appeals made inflammatory remarks on an alleged sexual assault without recognizing that the complainant was evasive in cross examination and alleged that the assault took place in June/July 2009 even though she met and retained petitioner in August/September 2009. Probably the Court of Appeals would have had a better understanding why the Circuit Court didn't believe the complainant if the Court of Appeals had reviewed the record of cross examination. The issue is not discussed in this Petition because the Court of Appeals accepted the Circuit Court Judge's finding that petitioner did not assault the complainant.

This Petition highlights some obvious mistaken findings that confirm that the Court of Appeals violated petitioner's due process right for a fair hearing as a result of Court's refusal to review record of cross examination. The adverse admissions of Bar Counsel's witnesses in Record of Cross Examination and Exhibit 4 show that the Court of Appeals was mistaken in its reliance of presumption of regularity as illustrated below:

i. The Court held that petitioner should have produced information from Ms. Traole's passport when he was filling an application form for her green card. Record of Cross Examination shows that Bar Counsel's witnesses and Bar Counsel admitted that Ms. Traole entered the USA fraudulently and without a passport.

ii. The Court held that petitioner did not respond to three USCIS (United States Citizenship and Immigration Services) letters presented to Court in Exhibit 4. Record of Cross Examination shows that Bar Counsel's Witnesses admitted that petitioner responded to the USCIS Letters. The response letters were/are in Exhibit 4.

iii. The Court held that petitioner failed to ask USCIS to reschedule interview for Ms Traore. Record of Cross Examination shows that petitioner rescheduled one interview and at a subsequent interview USCIS offered Ms. Traore an opportunity to reschedule her interview. She instead chose to proceed with the interview. She signed a Waiver of Attorney Form, which is in Exhibit 4, so that could she could be interviewed in petitioner's absence.

iv. The Court held that petitioner did not file an appeal for Ms. Traore. Record of Cross Examination shows that Bar Counsel's witnesses admitted that petitioner filed an appeal for Ms. Traore; The Record contains copies of money orders that USCIS cashed for fees for Ms. Traore's Appeal. Further Record of Cross Examination shows that Bar Counsel conceded that petitioner filed an appeal for Ms. Traole.

v. The Court held that petitioner failed to inform Ms. Traore about USCIS's denial of her applications. Record of Cross Examination shows that Ms. Traole was aware of the denials. She testified that she instructed and gave petitioner money orders to file an appeal against USCIS's denial of her applications.

vi. The Court held that complainants in the case were vulnerable immigrants. Record of Cross Examination of Bar Counsel's witnesses shows that USCIS described Ms. Traore as a fraudulent person who deceived the US Government to enter the USA without a passport or visa. As regards the other complainant Ms. Vanguere, Baltimore Immigration Court and Board of Immigration Appeals determined that she was not a credible person.

vii. The Court relied on Opinion of an expert in holding that petitioner committed professional misconduct. Record of Cross Examination of Bar Counsel's Expert shows that the Expert admitted that she did not know all the facts of the case against petitioner and that she rendered her opinion based on speculation. When cross examined whether she was engaged in speculation, the expert openly admitted "**Yes yes yes** "

REASONS FOR GRANTING THE WRIT

This Petition raises substantive Constitutional issue whether lawyers in disciplinary proceedings have due process rights of fair hearing.

Although Court of Appeals denied petitioner's Petition without opinion on complaint that the Court violated his due process rights for a fair hearing. The Supreme Court has jurisdiction to review the Court of Appeals Order. In Konigsberg v. State Bar of California, 353 U.S. 252 (1957), the Supreme Court held that although the State Supreme Court had denied petition without opinion, the Supreme Court held it had jurisdiction to review the case because petitioner had raised a substantive constitutional issue.

Further the Supreme Court has jurisdiction to review the Order of the Court of Appeals by "Looking Through" the Court of Appeals judgment of March 25, 2016 that suspended petitioner indefinitely to redress violation of petitioner's federally protected right to procedural due process in a disciplinary proceeding. The question as to what happens when the last state court decision in a case is a summary appellate ruling with no explanation for the decision, was answered by the Supreme Court in Wilson v. Sellers, Docket Number 16-6855, Decided on April 17, 2018, October Term 2017. The Supreme Court clarified that, in such circumstances, "the federal court should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale," and presume that the unexplained decision adopted the same rationale. Because there was no reason given for the denial of petitioner's complaint regarding violation of his due process right, the Supreme Court can 'look through' the unexplained decision to the Court of Appeals Judgment of March 25, 2016 that provides relevant rationale and presumably that the unexplained decision adopted the same rationale. The judgment of the Court of Appeal was fundamentally flawed because the Court did not conduct independent review of the Record from the Circuit Court.

The Court of Appeals rendered its judgment in ignorance of the material adverse admissions of Bar Counsel's witnesses in cross examination. If the Court had read the admissions, the Court would have made findings that would have exonerated petitioner from the charges of professional misconduct as illustrated below:

1. The Court of Appeals' failure to consider adverse admissions of Bar Counsel's witnesses in cross-examination that were material in the determination of petitioner's alleged misconduct was a violation of petitioner's constitutional due process right of fair hearing

The Court of Appeals refused to read material adverse admissions of Bar Counsel's witnesses in cross-examination on presumption of regularity that the Circuit Court hearing judge considered all evidence on record although he didn't specifically mention such evidence. Petitioner rebutted the presumption of regularity by including in his Petition to Vacate excerpts from transcript of cross examination of Bar Counsel's witnesses. A mere reading of testimony of Bar Counsel's witnesses in the record of cross examination, makes it abundantly clear that the Court would not have rendered its mistaken judgment if it had read the record of cross examination as was requested by petitioner.

The Court's mistaken findings of facts are exposed as follows:

i. The Court's Fallacy Regarding Ms. Traore's Passport

The Court of Appeals made the following finding of fact in the Judgment: (See Appendix page)

"The application for a green card contained inaccurate statements and spaces that were not filled in that should have been, and Chanthunya failed to attach required or necessary documents, such as the identification page of Traore's passport."

In cross examination Ms. Traore admitted that she came to the USA without a passport. She admitted that she came from France with intention of deceiving U.S. Immigration officers that she was a French citizen when in fact she was a citizen of Guinea. Cross Examination of Ms. Traore is in Vol.1 of the Transcripts, hearing on 3/25/2015, reproduced hereunder – (Questions by Petitioner, Answers by Ms. Traore) p.76, lines 2-25

Q When you are travelling from France to the United States, did you use your Guinea passport?

A No.

Q Why didn't you use your Guinea passport?

A Because I have the French passport. It doesn't have the (American) visa I wanted to come here.

Q Okay, that French passport, was it in your name?

A No. No.

Q Why did you decide to use somebody else's passport when you have your own passport?

A Because my passport did not have the visa.

Q So, since you didn't have a visa you knew that they wouldn't allow you to get into the United States?

A Yes.

Q With that passport, French passport, you came with the purpose of deceiving the United States Government Customs officials?

MS. PAULICK: Your Honor, I'm going to object to (p.77 lines 1-25) leading.

THE COURT: It is cross-examination.

MS. PAULICK: Right.

THE COURT: Overruled.

MS. PAULICK: But objection as to his -- objection, Your Honor, as to characterization of saying that she was lying.

THE COURT: Well, I can't think of a better characterization if she's using somebody else's passport. Now, maybe I don't have all my facts.

MS. PAULICK: That's fine, Your Honor.

THE COURT: I think that would be a classic definition. He also gave her an alternative. He said deceiving.

MS. PAULICK: That's fine.

THE COURT: So, I think they both might fit…

THE COURT: Well, go ahead. Ask your question again.

BY MR. CHANTHUNYA:

p.78

Q When you were coming from France, you came with the intention of deceiving or defrauding U.S. Immigration and Customs officers that you are a French citizen when you knew that you are not a French citizen?

A Yes.

Contrary to the Court 's finding that petitioner should have produced information from Ms. Traole's Passport, she admitted that she didn't have her own passport when she entered the United States. Therefore the Court was mistaken in its finding that petitioner should have produced information from Ms. Traore's Passport. The Court would not have made the mistaken finding if it had read the Record of Ms. Traore's Cross Examination.

Further during Cross Examination of Ms. Traore, pages 80-81 of Transcript, Ms. Lee, then Senior Assistant Bar Counsel, admitted that Ms. Traore entered the United States with a fake passport.

p.80 lines 16-25

MS. LEE: And Your Honor, we can keep going with the questions, but we proffer and there's no dispute, the fact that Ms. Traore entered with a fake passport. That it, there's a terminology for it, a non-legal entry. All of that is not in dispute.

THE COURT: Okay.

MS. LEE: So, if Mr. Chanthunya wants to keep asking about it, there no dispute that as Ms. Traore has testified, she disclosed that in her asylum -- strike that, not the

asylum. But she disclosed that in her immigration application, (p.81) that she entered through a fake passport ....

Ms. Lee's admission confirms that the Court was mistaken in its finding that "Chanthunya failed to attach required or necessary documents, such as the identification page of Traore's passport. The court's violation of petitioner's due process right affected the outcome of the disciplinary proceedings against him. The Court would not have made a finding that petitioner should have produced information from Ms. Traore's passport if it had read the admission of Ms. Lee that Ms. Traore came to the United States without a passport.

ii. As a result of the Court's failure to review admissions in the record of cross examination of Bar Counsel's witnesses, the Court made the following mistaken finding:

> **In December 2009, April 2010, and September 2010, USCIS requested additional documents from Chanthunya, who failed to inform Traore of USCIS's three requests.** (See Court's Opinion **App. B,** page 4, paragraph 1)

The Court would not have made this mistaken finding of fact if it had reviewed the Record of Cross Examination of Bar Counsel's witnesses and Bar Counsel's Exhibit 4 as exposed below:

a. On December 17, 2009 USCIS wrote to Ms. Traore requesting additional documents. On **March 3, 2010**, petitioner and Ms. Traore responded to the USCIS letter.

b. On April 6, 2010 USCIS wrote to Ms. Traore requesting documents. On **May 11, 2010**, Ms. Traore and petitioner responded to the USCIS letter..

c. On September 17, 2010 USCIS wrote to Ms. Traore a Notice of Intent to Deny. On **October 15, 2010** petitioner and Ms. Traore, responded to the USCIS letter.

Petitioner's response letters and attachments mailed to USCIS are in Bar Counsel's Exhibit 4 on Record

During Cross Examination of Ms. Traore, Ms. Lee, Senior Assistant Bar Counsel and Ms. Paulick, Assistant Bar Counsel and Ms. Traole admitted that petitioner submitted Responses to USCIS Letters. Petitioner reproduces transcript of Ms. Traore cross examination regarding USCIS Letters and Responses thereto.

p.94 lines 10-13

BY MR. CHANTHUNYA:

Q After the I-485 was filed, the Immigration wrote that we should produce a medical report Form I-693. Did you get that letter?

A Yes.

p.95 lines 17-25

Q This is the process. You have done it three times. You did with Mr. Hanes. To get your green card, you have to go to a doctor. You remember? And when I also did it --

A I was trying to get some vaccination, and these vaccination were for the Immigration that I did.

Q Who --

A No, I did that.

Q You did, yes?

A Yeah.

p.96 lines 1-25

Q Yeah, and it was Dr. Morris Natatch? And he gave you a sealed envelope?

A Yes. It was for vaccination. It was not because I would be sick.

Q But, I'm asking for Immigration purposes?

A So, you said that I was going there because I was sick.

Q No --

A So, I didn't go there because I was sick. I went for having to get some vaccination.

Q Wasn't it me who told you that Immigration want you to submit that form?

A Yes. We, we left to do that.

Q Okay, so we communicated on that issue?

A Yes.

Q Now, Immigration wanted affidavits of support?

A Uh-huh.

Q You remember that?

A Yes.

Q Okay, did I ask you to get affidavits of support?

A Yeah, you do.

Q So we communicated regarding the forms that Immigration wanted, I-864, the affidavit?

A Yes.

Q On April 6, 2010 the Immigration Office issued (p.97 lines 1-23) another request for information regarding the joint sponsor, Mr. Donovan A. Harris. His Federal Income Tax returns, his W-2, and they also wanted an additional medical. **Did I talk to you to get those papers?**

A Yes, you said it. You said it because they ask you about it. They say what was not, what is going on.

Q And you give me the documents, and I mail them to Immigration?

A Yes.

Q Now, do you remember your husband going to Africa?

A Yes.

Q When did he go to Africa?

A So, yeah he went during the summer.

Q Okay, do you remember what month?

A No.

Q When Immigration issued a Notice of Interview, did I tell you that there was an interview coming up?

A We received a letter.

Q Did you discuss with me about the interview?

A Yes. You felt that we were going to have an interview.

p.101 lines 13-25

Q We'll come to that. Coming back to the interview, what day did the Immigration set you an interview?

A With you?

Q Yes.

A I don't remember exactly the date.

Q But the first date, they set your husband was in Africa?

A Yes, we cancelled it.

Q Okay. Did we discuss about postponing the interview?

A We spoke about it, and we said he is going to call and talk to the Immigration since my husband is not there.

BY MR. CHANTHUNYA:

p.102 lines 1-16

Q Okay, me? I was going to call the immigration to postpone?

A Because my husband wasn't there, so.

Q Okay, did you give me your husband's telephone number in Guinea?

A Yes.

Q Did I ask you, was your husband in Guinea?

A Yes.

Q Did I ask him to send a fax so I could use to request for a postponement?

A Yes.

Q So there was communication between you and me with your husband, even when he was in Guinea?

A Just because something is done once because, I went to see him to tell him he's not there, what are we going to do since he's not here.

p.131 lines 4-25

Q Did your husband go to see the doctor on September 29th, 2010?

A Yes.

Q Did Alex (petitioner) tell your doctor to write a report?

A Yes.

Q Did he say the report was to be submitted to Immigration?

A Yes.

Q Did Alex (petitioner) ask you to bring all the documents that you can support your husband?

A He asked to do that. He did that. But he did not do everything that Immigration was asked of him to do. That's the problem.

Q So, your husband produced all those medical documents to support that he was with the chronic medical condition?

A Yes, when he visited the doctor, and he wrote what he saw, what he witnessed.

Q Oh, the doctor wrote what he saw?

A Because he asked us to, you just had to go and then bring his heath record.

p.132 lines 1-14

Q So Alex (petitioner) asked you to bring your husband's health records so that he can send it to Immigration?

A Yes.

Q Now, can you read the last sentence right there. Starting here.

INTERPRETER TWO: Can you read for me, she asked me.

MR. CHANTHUNYA: Yes.

INTERPRETER TWO: Okay. Please feel free to contact the office if you need any further assistance.

BY MR. CHANTHUNYA:

Q Did you understand that statement to mean, if anybody has a problem with this document, they can call the doctor?

A Yes. If the Immigration wants, they can contact him.

p.133 lines 14-25

BY MR. CHANTHUNYA:

Q Showing witness what has been marked as Defendant's Exhibit No. 13. Are you originally from Guinea?

A From Guinea, yes.

Q Now, while your husband was in Guinea, did he send a document to me or to you showing that was sick in Guinea?

A Yes, was sick in Guinea. Sick in Guinea.

p.134 lines 14-17

BY MR. CHANTHUNYA:

Q Did Alex submit this to Immigration to support your husband's suffering?

A Yes, he brought that. Yes.

p.135 lines 1-23 Exhibit No. 14.

A Okay.

Q Can you see to whom it is addressed?

A That one's to us.

Q Okay, was that September 17, 2010?

A Uh-huh.

Q Okay, now in this letter, Immigration gave you notice that they were intending to deny your application for waiver I-601.

A We received that. We called them, we called them --

THE WITNESS: No, we call him. We have spoken and we receive that later on. He said we were going to have an appointment. We were going to come. We were going to show you that. We went to show him that, and he looked at it and he made a copy, and he gave it to us. And we kept the original.

p.142 lines 6-25

BY MR. CHANTHUNYA:

Q To your knowledge, did Alex (petitioner) respond to the Notice of Intent to Deny that was written?

A If you wrote to the Immigration?

Q Yes, to challenge their Notice of Intent to Deny? Okay, let me me (unintelligible). Can you see this was a response of Notice of Intent to Deny?

MS. PAULICK: Your Honor, I'm sorry. We say in this petition that he responded to the denial of the 601 application. We actually say that in our petition.

THE COURT: All right. Well that's a good thing for him, right?

MS. PAULICK: It is.

MS. LEE: Yes, we stipulate.

THE COURT: You're trying to basically say he fumbled the ball. He's trying to say I did A, B and C.

MS. PAULICK: Well, that's correct, Your Honor. I think what I'm saying is some things he's presenting is what's already stated in the petition.

THE COURT: All right, the petitioner (Bar Counsel) concedes, (p.143 lines 1-9) admits, accepts the fact that you objected to the denial of the green card of this witness?

MS. LEE: Your Honor, it's paragraph 21 of the Petition for Disciplinary or Remedial Action.

THE COURT: Right.

MS. LEE: In respondent's (petitioner) letter dated October 18th, 2010 to USCIS in response to its Notice of Intention to Deny Ms. Traore's I-601 application, so we stipulate that he wrote that and he sent it to USCIS.

The foregoing conclusively establish that Ms. Traole, Ms. Lee, and Ms. Paulick admitted that petitioner communicated with Ms. Traore and responded to USCIS's Letters. Therefore the Court made a mistaken finding of fact that petitioner did not communicate with Ms. Traore and did not respond to USCIS's Letters. The Court violated petitioner's due process right for a fair hearing by failing to review the record of Ms. Traore's cross examination. But for the Court's failure to review record of Ms. Traore's cross examination, the Court would have exonerated petitioner from the disciplinary charge against him.

iii. As a result of failure to review record of cross examination, the Court made the following mistaken finding of fact:

USCIS scheduled an interview regarding Traore's application for a green card. Chanthunya failed to: prepare Traore for the interview; advise her of what to expect at the interview; appear at the interview himself; and ask USCIS to reschedule the interview.

In cross examination, Ms. Traore testified how she, her husband and petitioner collaborated to seek a postponement of a green card interview that was scheduled while the husband was away in Africa. See pp.101-102 of the Transcript.

P.101 lines 13-23

Q We'll come to that. Coming back to the interview, what day did the Immigration set you an interview?

A With you?

Q Yes.

A I don't remember exactly the date.

Q But the first date, they set your husband was in Africa?

A Yes, we cancelled it.

Q Okay. Did we discuss about postponing the interview?

A We spoke about it, and we said he is going to call and talk to the Immigration since my husband is not there.

p.102 lines 1-11

Q Okay, me? I was going to call the immigration to postpone?

A Because my husband wasn't there, so.

Q Okay, did you give me your husband's telephone number in Guinea?

A Yes.

Q Did I ask you, was your husband in Guinea?

A Yes.

Q Did I ask him to send a fax so I could use to request for a postponement?

A Yes.

Bar Counsel's Exh 4 contains USCIS Notice of Interview dated 6/17/2010 for an Interview on 7/15/2010. Ms. Traore testified that petitioner informed her about the Interview. Ms. Traore informed her husband in Guinea about the Interview. The husband called petitioner to request USCIS to reschedule the interview. Petitioner informed husband that he had to fax a signed letter for proof that he was away and unable to attend the interview. The husband faxed a letter to petitioner regarding his request to reschedule the interview. On 7/12/2010 petitioner mailed a letter to USCIS requesting for postponement of the interview.

On August 16, 2010 USCIS issued another Notice of Interview for August 31, 2010. Ms. Traore and her spouse appeared for the interview at USCIS Baltimore Office on August 31,

2010. Ms. Traore testified that petitioner agreed that he would be with her and her husband at the Interview. See Transcript p.44 lines 17-24. She testified that petitioner informed her at 7.30 am on the date of interview that he couldn't come to the interview because his car tire blew up. See Transcript p.44 lines 23-24.

Ms. Traole appeared before USCIS Officer Douglas L. Wideman who informed her and her husband their rights to be represented by counsel at the interview. Officer Wideman offered them an opportunity to reschedule the Interview. Ms. Traore and her husband waived the right to an attorney. They requested to proceed without counsel (petitioner). **Ms. Traole signed Waiver of Attorney form.**

Therefore the Court was mistaken in the characterization of Ms. Traole's Interview that she did not have a chance to postpone the interview. The Court would not have made a mistaken finding of fact regarding the Interview if it had reviewed the Record of Cross Examination and Exhibit 4 on Record.

iv. As a result of the Court's failure to review Record of Cross Examination, the Court made the following mistaken finding of fact:

> **USCIS denied Traore's application for a green card and waiver of grounds of inadmissibility, and chanthunya failed to inform Traore as much. (See Court's Opinion Appendix B page 6, paragraph 3)**

Assistant Bar Counsel Ms. Paulick admitted that Ms. Traore had knowledge of the USCIS denials of her applications. Transcript Vol.1, p.144 lines 20-25

> **"MS. PAULICK:** And, Your Honor, just for the record the document that Mr. Chanthunya just showed to me, in the Petition for Disciplinary or Remedial Action at paragraph 22, **we state and so therefore we would stipulate that on February 23rd, 2011, USCIS sent to the respondent notice of its denial of the 1-601 and the 1-485 applications...(page 145) So this document that he's moving in to evidence, we have no objection of moving in to**

the evidence.

Transcript p.145 lines 1-25

THE COURT: All right, we'll move it --

MR. CHANTHUNYA: These are the difference. They are saying USCIS wrote to respondent. This one shows they wrote to the witness.

MS. PAULICK: Is it cc'd to you, Mr. Chanthunya?

MR. CHANTHUNYA: It was cc'd to me.

MS. PAULICK: Right.

MR.CHANTHUNYA: But it was written to her.

MS. PAULICK: Okay, well I agree with that.

THE COURT: They'll stipulate it went to her, and cc'd you. That's exhibit number?

MS. LEE: I'm sorry, it was address to her, Your Honor.

THE COURT: Addressed to her. Went to her. And you got a copy. Intentionally, they sent you a copy?

MS. PAULICK: Yes, Your Honor.

THE COURT: Okay, you agree to that, sir?

MR. CHANTHUNYA: And that she was aware about it.

THE COURT: Who was aware of that?

MR.CHANTHUNYA: The witness.

MS.PAULICK: She testified to that.

THE COURT: All right, so you stipulate — well, it is a little like pulling teeth sometimes here. So she admits.

The Court of Appeals would not have made a mistaken finding that Ms. Traore was not aware that USCIS had denied her applications if the Court had read the Record of Cross Examination. Ms. Traore was aware that USCIS denied her applications. Hence the Court would have exonerated petitioner from the charge that Ms. Traore was not informed that USCIS had denied her applications

v. As a result of the Court of Appeals' failure to review Record of Cross Examination, the Court made the following mistaken finding:

> **Traore contacted Chanthunya, who promised to file an appeal. Traore, however, did not receive notice from USCIS that the appeal had been filed. Traore telephoned Chanthunya to ask about the status of the appeal, and Chanthunya promised to call her back. Chanthunya, however, failed to contact Traore, prompting her to visit USCIS herself. Upon visiting USCIS, Traore was unable to confirm that the appeal had been filed. Chanthunya's omissions cost Traore the opportunity to have USCIS consider the appeal. (See Court's Opinion, Appendix B, page 4, paragraph 3)**

Ms. Traore testified that she went to petitioner's office and instructed petitioner to file an appeal. See Transcript Vol.1 p.150 lines 1-15. She testified that she gave petitioner two Money Orders for $585 for fees for her appeal. Petitioner mailed Ms. Traole's Notice of Appeal to USCIS Baltimore Offices on March 24, 2011 by US Post Office Express mail Receipt EG376812427US" which was petitioner's Exhibit 24. **USCIS cashed the Money Orders submitted for fees for Ms. Traole's Appeal on April 5, 2011** as evidenced by USCIS stamps on the Money Orders. The Money Orders are on Record as Bar Counsel**'s Exhibit 1 pp.8-9.** Bar Counsel admitted that USCIS cashed the Money Orders for fees for Ms. Traole's Appeal. See p.150 lines 1-15.

As result of the Court's failure to review Record of Cross Examination, the Court made a mistaken finding of fact that petitioner cost Ms. Traore an opportunity for an appeal when in fact petitioner filed the appeal. Bar Counsel admitted that petitioner filed the appeal. See Transcript

Vol.1, p.150 lines 1-15.

THE COURT: Do you concede that he used the money orders to pay for the appeal, or is that an allegation?

MS. LEE: Our allegation is that he did not timely file the appeal, Your Honor.

THE COURT: Okay, but the money that he got, he used to note the appeal. You're just saying it wasn't timely filed.

MS. LEE: Correct. And there's no indication in any of the A file that the 290 appeal was actually filed. **We do contend that the money order to the USCIS for the filing of appeal was cashed by USCIS. I think that**

Ms. Lee alleged that there was no document in Bar Counsel's Exhibit 4 regarding the Appeal yet she admitted that money orders sent to USCIS for fees for the Appeal were cashed by USCIS. She alleged that appeal was untimely but produced no evidence to counter petitioner's U.S. Post Office proof of mailing reproduced in Appendix 13. Ms. Lee did not suggest any date when the Appeal was mailed. She informed the Court that USCIS Records (Exhibit 4) presented to court had missing documents. Ms. Lee read USCIS Letter into the Records. Transcript Vol.2 p. 41 lines 23-25

MS. LEE: We have completed review of all documents and have identified 729 pages that are responsive to your request. Enclosed are 472 pages released in their entirety and (p.42 lines 1-5) 87 pages released in part. We are withholding 109 pages in full. In our review of these pages, we have determined that they contain no reasonably severable portion of non-exempt information. Additionally, we have referred two pages in their entirety to US Visit for their direct response to you.

Ms. Lee did not offer any evidence to suggest that information about the appeal was not among the missing 196 pages of Bar Counsel's Exhibit 4.

Ms. Traole also admitted that an appeal was filed on her behalf. Transcript Vol.1, p. 147 lines 1-21

BY MR. CHANTHUNYA:

Q Do you see this document as a (unintelligible) of this document?

A Yes.

Q What date does it show as having been mailed?

A You have to read that?

Q What is it?

A 24, 2011.

BY MR. CHANTHUNYA:

Q Showing witness what has been marked as Defendant's (petitioner's) Exhibit No.19. Does your name appear on this document there?

A Yes.

Q Is written Notice of Appeal?

A (Unintelligible French).

Q Did you give Alex money for the appeal?

A Yes.

Q Is your name on these money orders?

A Yes.

P.148 lines 8-13 Vol.1

BY MR. CHANTHUNYA:

Q After we filed the appeal, did you get the receipt for that appeal?

A I received the $585.

Q The receipt?

A Yes, but from the Immigration Service.

The foregoing demonstrates that the Court made a mistaken finding of fact that petitioner cost Ms. Traole an opportunity for appeal. The Court would have exonerated petitioner from the charge that he didn't file an appeal for Ms. Traole if Court had read the record of cross examination and Bar Counsel's Exhibit 4.

vi. As a result of the Court's failure to review Record of Cross Examination, the Court held that Ms. Traore was a vulnerable immigrant.

The Court did not see the complainants. The Court did not review record before assuming that the complainants were vulnerable immigrants. If the Court had reviewed the Record, it would have learnt that USCIS and Immigration Court's had made unfavorable description of the complainants. In a Letter dated July 13, 2007, in Bar Counsel's Exhibit 4, USCIS described Ms. Traore as a fraudulent person who deceived the US Government. USCIS wrote,

"You (Ms. Traore) committed fraud and misrepresented yourself to gain an immigration benefit: entry into the United States. You have known or should have known since that time that you faced deportation every day...

In a letter dated February 23, 2011, in Exhibit 4, USCIS wrote -

"USCIS records reflect you are an alien who, by fraud or willfully misrepresenting a material fact, sought to obtain an immigration benefit. As such, you are inadmissible to the United States pursuant to Section 212(a)(6)(C) of the Act".

Further as a result of the Court's failure to read the Record of Cross Examination, the Court was ignorant of the Circuit Court's concern regarding Ms. Traore and Ms. Vanguere's character. See Transcript Vol.2 page 191, lines 17-25

THE COURT: And the facts aren't going to change with respect to the lying. I know you ladies don't like hearing that over and over again.

MS. LEE: No, Your Honor, but I think if you –

THE COURT: But this applicant is not as pure as the driven snow.

MS. LEE: But we're not not --

THE COURT: But you have no problem with her. All the problem is with this man.

Page 192, lines 1-10

MS. PAULICK: No, Your Honor, I think this is why we presented that –

THE COURT: I don't mean her. I mean both of them.

MS. PAULICK: But this is the –

THE COURT: One gets in to the country on a fraudulent visa, which doesn't bother you. The other lady lies in her hearing under oath, commits perjury, in front of the hearing examiner. That doesn't seem to bother bar counsel. But what does bother you is that he didn't do a new application, and he didn't get some more medical evidence

Page 196, lines 8-25

THE COURT: Sustained. Judge Kessler's transcript speaks for itself. The Court can make its own conclusions, and you can argue that one person giving two versions of the same version is not lying. Judge Kessler didn't see it the way that I guess you're going to argue to me, but she's an expert witness on what was done and what wasn't done. She can't judge credibility.

MS. PAULICK: Your Honor, based on immigration law and based on --

THE COURT: Well, I know that. You're acting like this is something from a different universe. It still deals with witnesses and testimony, and believability. And I'm assuming -- are they under oath when they testify?

THE WITNESS: Yes.

THE COURT: So we still have perjury involved there. And Judge Kessler went out of her way on separate occasion, Ms. Paulick, to confront this witness.

MS. PAULICK: Yes, Your Honor.

Page 197, lines 1 -25

THE COURT: Both your witnesses lied. One committed perjury coming in to the country, the other one committed perjury on the stand either in her affidavit, which I guess was under oath originally --

THE WITNESS: Yes.

THE COURT: Or under oath when she testified. She gave two conflicting stories. Now, can they be explained away? They were given the opportunity in front of Judge Kessler. This witness can't give an explanation for something she didn't testify to, and she can't get in the mind of the applicant.

MS. PAULICK: Court's indulgence.

THE COURT: You're asking her, could there be other explanations. She's the wrong person to be asking. You could of or should of, and I don't know that it would have done you any good, ask the applicant. Why did you give us two different versions? I'm guessing we're going to get the same thing. We had two different translators. A younger person, no, no, I mean an older, no older, I mean a younger person. She's going to be right back with what Judge Kessler had.

MS. PAULICK: Yes, Your Honor.

THE COURT: But this witness isn't going to know what the truth is any more than the man in the moon. The only people that know the truth are the applicant. She knows what the truth is, and she's either testifying truthfully as to in (PAGE 198, lines1-8) her affidavit and lying in front of Judge Kessler, or she was lying in her affidavit and telling the truth in front of Judge Kessler. Or she was lying both times, and because she lied both times, she couldn't get her story straight. I don't know. All I know is what Judge Kessler said, who listened to the hearing. Go ahead. Anything else?

MS. PAULICK: No, Your Honor. I rest.

The Court of Appeals held its mistaken finding of fact that complainants were vulnerable immigrants as an aggravating factor requiring indefinite suspension of petitioner. If the Court had read the record of cross examination that revealed that complainants' true character, the Court would not have found any aggravating factor requiring indefinite suspension of petitioner.

vii. The Court mistakenly relied on an Opinion of an expert without reading the transcript of expert's testimony in Cross Examination. If the Court had read the Transcript it would not have accepted the testimony because **the Expert admitted that she rendered her opinion based on speculation.**

It is settled law that experts cannot simply hazard guesses, however educated, based on their credentials; instead, expert testimony must be sufficiently definite and certain to be admissible, for neither the courts nor the juries are justified in inferring from mere possibilities the existence of facts, and they cannot make mere conjecture or speculation the foundation of their verdicts. Speculative expert testimony must be excluded as incompetent. Porter Hayden Co. v. Wyche, 1999, 738 A.2d 326, 128 Md.App. 382, certiorari denied 743 A.2d 246, 357 Md.

234. See also Md.Rule 5-702.

In this case the Expert admitted that she didn't know the facts of the complainants' cases. She didn't speak with any of the complainants. The following record of cross examination exposes how the Court was mistaken about expert as a result of the Court's failure to review material admissions of the expert in cross examination. (Questions by petitioner and Court; Answers by Expert Zigel) Regarding Ms. Traole Transcript Vol.2 p.1721 lines 10-25

Q Okay, you said there should have been a psychological evaluation?

A Yes.

Q Okay, did you know that Mr. So (Ms. Traore's husband) was not in the United States during most of the period that the I-601 waiver was being prepared?

A No, I did not.

Q Okay, would that have influenced your opinion? Would you have said that he should have done psychological evaluation when actually he was absent from the United States?

A You can't do it, then.

Transcript Vol.2 p.177 lines 1-23***

Q Okay, your opinion about what should have been done for Ms. Traore, is not based on your knowledge of Ms. Traore and So, but what you think generally it should be?

A Yes.

Q So it was more of a speculation applying that abstract situation to this case? What are you are saying about Ms. Traore and Ms. So, her husband –

A Yes?

Q -- was mere speculation based on your belief on an abstract applicant, who would have all the things you did?

A Yes, I think that's fair.

THE COURT: Right, he didn't say that. He said weren't you speculating that he didn't ask for more when you came with your conclusions.

THE WITNESS: Yes, perhaps I did.

BY MR. CHANTHUNYA:

Q You speculated?

A Yes, yes, yes.

Transcript Vol.2 p.166 lines 8-25

Regarding Ms. Vanguere

THE COURT: Just before you get to Ms. Traore. So, you're saying if he had presented evidence that you suggested he present, perhaps it would have gone differently. Specifically, what evidence did he have that he didn't present?

THE WITNESS: What I stated initially was that I would have submitted a new application, and I would have submitted a new affidavit. I would have submitted --

THE COURT: A new application is not new evidence.

THE WITNESS: Okay, but --

THE COURT: It would look nicer?

THE WITNESS: Yes, okay. We'll leave the application out. I would have submitted --

THE COURT: Well, I'm asking you.

THE WITNESS: I would have submitted a new application. I would have explained things differently. I would have submitted a new affidavit using my own interpreter, because it's how I do things. I would have sent to this center –

p.167 lines 4-25

THE WITNESS: Well, I would have had -- oh, I would have required her to provide me with a statement in French that I would then have had translated. I wouldn't have used what was in the Court record that was in English with no French attached to it, because then I don't know what -- I wouldn't have a way to determine for myself whether the English version that's in there was an accurate translation of the French document that was not in the record.

THE COURT: Okay. But if you had gone over it with your client in advance, and she had given you the same version that was in her application, you still would have gone and got another interpreter?

THE WITNESS: No. If, if, if it was, if, if she would have reviewed the document with me and advised that the information was accurate with the interpreter that I would use then I could have left it. But I --

THE COURT: Though when she was pro se, she sent in her own application?

THE WITNESS: Yes.

THE COURT: With her version of what happened in Africa, correct?

THE WITNESS: Yes. Somebody, somebody wrote that (p.168 lines 1-25) document in English. That's what they were reviewing.

THE COURT: But she submitted it on her own.

THE WITNESS: She did.

THE COURT: So wasn't her attorney stuck with that application?

THE WITNESS: No.

THE COURT: No?

THE WITNESS: No, we're permitted when we move to the Immigration Court to supplement, to add whatever and to provide a --

THE COURT: Can you withdraw documents?

THE WITNESS: You can't withdraw it because it's come from below, but you can explain to the Court that --

THE COURT: But what I'm saying is, there were two completely different versions. For example, the soldier version that Judge Kessler caught her on. So if version A has been submitted by her, a new attorney can't take version A out of the file and submit version B?

THE WITNESS: No, but new attorney can submit version B and can explain the, what was done improperly with version A.

THE COURT: So you know that she gave version B to her attorney before they went in to the hearing?

THE WITNESS: I know that version A, what came from below, was moved to the Immigration Court because it was part of the record of proceedings that I reviewed.

p.169 lines 1-25*

THE COURT: Right, right.

THE WITNESS: I don't know if another version was presented. Her testimony contradicts the written version, and the written version was presented to the Immigration Service at the original asylum interview.

THE COURT: Okay, so if version A is already in there, and then he meets with her, and she gives him version B and says to her, well, now we got two conflicting versions. We need to do something or I need to get out of the case because you're lying.

THE WITNESS: Well, then the lawyer makes the determination. Wait a second, you know, you lied below and now you want to tell a different story. I'm not representing you. I'm getting out. Or the lawyer says, why is there this, these inconsistencies and determines whether the reason given for the inconsistencies is valid.

THE COURT: You're assuming for purposes of this hearing that Ms. Traore (Vanguere) told Mr. Chanthunya before the hearing that there was a version B, correct?

THE WITNESS: No, I'm not.

THE COURT: You're not?

THE WITNESS: No, I'm --

THE COURT: Well, if she didn't and it came out of left field for the very first time, how was he supposed to have dealt with it?

p.170 lines 1-25

THE WITNESS: What I would have done as an attorney --

THE COURT: Now, let's say you interviewed your client?

THE WITNESS: Yes.

THE COURT: She gave you the same version as submitted pro se before you got in the case. Then you get in to the hearing, and all of the sudden you hear a different version.

THE WITNESS: Yes.

THE COURT: Judge calls her on it. What are you going to do?

THE WITNESS: Well, in that, you can't do anything.

THE COURT: Do exactly what he did, right?

THE WITNESS: Okay, yes.

THE COURT: So you're assuming, for purposes of what he should have done on your own interpreter is that he would have known that there was going to be a version B that she was going to give to the judge. If not, he would have been fine with the interpreter they had. Let's say it's consistent with the interview that he had with her. You see what I'm saying?

THE WITNESS: Yes, yes.

THE COURT: Would you agree there would be no need, then, to go and get another interpreter?

THE WITNESS: If, yes, if the, if it would, yeah,

(p.171 lines 1-5) **yes.**

THE COURT: All right. And then the new application wouldn't have mattered too much. What was the third? You said go have her evaluated?

THE WITNESS: Yeah, yeah.

p.117 lines 15-25

Q Okay. Now, regarding your evidence as to whether she should have a witness or not, it's mere speculation. Isn't that so? Because you don't know whether she had a witness ready to come to Court.

A I don't know if it's speculation or not. I, I, I --

Q Is it a fact? If you had talked with her, and she told I had this witness, then it would have been a fact. But you did talk to her so it's mere speculation.

A I did not speak with her.

Q So it's mere speculation, isn't that so?

p.118 line 3-4

THE WITNESS: I don't know if she had a witness or not.

The foregoing shows that the Court of Appeals violated petitioner due process right for a fair hearing by accepting testimony of expert without knowledge that the expert made material adverse admissions in cross examination that her opinion was based on mere speculation. Petitioner was prejudiced because there was no credible expert's testimony upon which the Court would have assessed petitioner's competency or diligence or misconduct. The Court would have exonerated petitioner of any charge of professional misconduct if it had read the record of cross examination of the expert.

3. An attorney is entitled to due process right of fair hearing in attorney disciplinary proceedings

The United States Supreme Court has consistently held that although the States have a compelling interest in regulation of the practice of law, that power may not be exercised in an arbitrary or discriminatory manner, nor may it be exercised so as to abrogate federally protected rights. One of these "federally protected rights" is an attorney's right to procedural due process in a disciplinary proceeding. *Matter of Ruffalo*, 390 U.S. 544, 550 [1967 see also: *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238-239.

The Due Process Clause requires that a court review all relevant evidence. Due process gives a party to case the right to cross-examine witnesses. Testimony elicited in Cross Examination is relevant evidence and has to be considered by a court to comply with process requirements.

In failing to review the adverse material admissions of Bar Counsel's witnesses in the Record of Cross Examination, the Court violated petitioner's due process right of fair hearing.

The Court did not consider petitioner's side of the story as developed in cross-examination of Bar Counsel's witnesses.

4. Petitioner suffered prejudice as a result of the Court's violation of petitioner's due process rights. The Court suspended petitioner indefinitely.

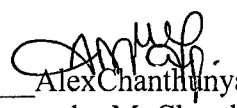
Petitioner has been on suspension for more than 2 years as a result of the Court of Appeals violating his Due Process right of fair hearing. If the Court had reviewed the material evidence elicited in cross examination, the Court would have recognized that there was no basis for suspending petitioner indefinitely.

The Order of Indefinite Suspension has deprived petitioner means of livelihood and at the same time discredited and disgraced him. Petitioner has been not been able to find work. Employers assume that petitioner was suspended indefinitely for gross and grave misconduct.

Conclusion

For these reasons the Supreme Court should grant the Writ of Certiorari and vacate the Judgment of the Court of Appeals.

Respectfully submitted,



/s/

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