

BEFORE THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

In re _____)
) Decision on Petition
) Under 37 CFR §11.2(d)
)
)
)

MEMORANDUM AND ORDER

(Petitioner) appeals the decision of the Director of the Office of Enrollment and Discipline (OED) denying her application for registration to practice in patent cases before the United States Patent and Trademark Office (USPTO or Office). For the reasons stated below, the decision of the OED Director is AFFIRMED.

I. PROCEDURAL HISTORY

Petitioner submitted an Application for Registration to Practice Before the United States Patent and Trademark Office dated May 16, 2005. On September 7, 2005, Petitioner passed the registration exam. In her May 16, 2005 application, Petitioner answered “yes” to Question No. 22 (“Are you delinquent on any state or Federal debt?”). The application instructions stated, “For each question answered ‘yes,’ provide a detailed statement setting forth all relevant facts and dates along with verified copies of relevant documents.” However, Petitioner failed to provide any explanation or further description for her answer as required in the instructions. On September 19, 2005, OED sent Petitioner a letter requesting an explanation to her answer to question No. 22, and to provide any relevant documentation for purposes of determining whether there were any

impediments to concluding that Petitioner possessed good moral character and repute. In this letter, OED also asked Petitioner to explain whether she had taken any corrective action or entered into any agreements, and to provide documentation. In a letter dated September 26, 2005, Petitioner submitted a letter with attachments. On November 18, 2005, pursuant to 37 C.F.R. § 11.7(j), OED issued a Show Cause Requirement to Petitioner to show cause why her application for registration to practice before the Office should not be denied. On December 12, 2005, Petitioner requested an eight month extension to respond to the OED Director's Show Cause Requirement. OED granted the Applicant's request for an extension and received her response, dated August 4, 2006.

On October 17, 2006, the OED Director issued a Final Decision and memorandum Opinion denying the Petitioner's application for registration to practice in patent cases. On December 18, 2006, Petitioner submitted a Petition for Review of the Director's Final Decision and Memorandum Opinion.

II. LEGAL STANDARDS

35 U.S.C. § 2(b)(2)(D) states in pertinent part that the USPTO:

“may require [agents, attorneys, or other persons representing applicants or other parties before the USPTO], before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation...”

Pursuant to the statute, Petitioner bears the burden of showing that she is of good moral character and reputation. In accordance with that statute, the USPTO Director promulgated 37 C.F.R. § 11.7, which states in pertinent part:

“(a) No individual will be registered to practice before the Office unless he or she has:

....
(2) Established to the satisfaction of the OED Director that he or she:

(i) Possesses good moral character and reputation...”

An individual dissatisfied with the final decision of the OED Director may petition the USPTO Director for review. 37 C.F.R. § 11.2(d). The USPTO Director will consider no new evidence in deciding a petition for review. Id.

III. OPINION

A. Background

As indicated above, Petitioner submitted an Application for Registration to Practice Before the United States Patent and Trademark Office dated May 16, 2005. In her application, Petitioner answered “yes” to Question No. 22 (“Are you delinquent on any state or Federal debt?”). In response to OED’s follow up inquiry, Petitioner’s letter of September 26, 2005, explained that she answered affirmatively to Question No. 22 because she had defaulted on her student loans. She noted that “I am in an extremely difficult financial position.” At this time, Petitioner stated that her employment was as a postdoctoral research scientist in which her “take home” salary was approximately \$20,000.00, which made it difficult to “meet basic living expenses (exhibit 1B) and financial obligations [\$243,284.00: primarily of student loans [\$201,630.00] and credit cards (exhibit 2)] and 2) there was a pre-emptive financial obstacle that set forth a downward spiral in August 1997 (exhibits 3-4).”

Petitioner further described this “financial obstacle” as occurring when she responded to a television advertisement for a business opportunity, which she believed could supplement her income. As a result, Petitioner stated that this brought an

“immediate debt of \$14,000+ (exhibit 3B) in addition to another \$5000-10,000 to set the business up + years of interest.” Petitioner stated that “this expense maxed out my credit cards—and it was my fault for falling for this—not the creditors.” Petitioner also submitted statements and exhibits that indicated her net pay, as of April, 2005 was \$1213.66 per month.

Petitioner’s response to OED’s Show Cause Requirement stated that “your response was accurate in describing my fiscal irresponsibility and neglect. As previous [sic] stated, I was financially diligent and maintained A+ (FICO around 780) until 1997. I will again restore my financial stability.” Petitioner then indicated that “within the last half year, I have drastically altered my life in terms of how I manage my finances.” She claimed that she was committed to depositing money into a savings account, eliminating unnecessary expenses, using money saving techniques in spending, anticipating a \$10,000.00 a year raise in the near future, and that her wages were no longer subject to garnishment. Attachments to Petitioner’s response indicated that she had one loan with AES Loan Servicing in the amount of \$23,486.66 and another with Indiana Secondary Market (ISM) in the amount \$176,225.01.

On October 17, 2005, OED denied Petitioner’s application for registration on the grounds that she did not meet her burden of establishing to the satisfaction of the OED Director that she presently possesses the good moral character and reputation required to represent applicants before the Office. Specifically, the OED Director, found that Petitioner had not shown she was financially responsible at the time of the Decision and that this reflected adversely on her present moral character. In reaching that conclusion, the OED Director determined that Petitioner owed approximately \$200,000.00 in federal

and state student loans and had been in default on approximately \$175,000.00 from 2002 until some time during 2006 when she refinanced her loans. As a result, her wages were subject to garnishment. The OED Director found Petitioner had not demonstrated that, prior to receiving the Show Cause Requirement, she entered, or attempted to enter, into any agreements to repay the defaulted government loans. The OED Director appreciated that Petitioner incurred a high debt by devoting many years to her education; however, found that she had not shown that she took steps to prepare for repayment and continued repayment of her loans. Moreover, the OED Director determined that the reason Petitioner's wages were no longer subject to garnishment was that she had shifted her indebtedness from government loans to the loan with ISM, and further had obtained a one year deferral for repayment of the \$176,225.01 loan. As a result, the OED Director concluded that Petitioner did not establish that she can be relied upon to pay her lawful debts and that this lack of financial responsibility reflects on her present moral character.

B. Discussion

In the Petition for Review, Petitioner does not dispute that her debt is approximately \$200,000.00, but rather argues that she suffered from severe and extended financial hardship and is willing to pay the amount back. Petitioner further asserts that a significant amount of the loans constitute late fees, interest, and penalties, and that her payments to her smaller AES Loan indicate that she has paid back more than the original principle. However, none of this is relevant to the issue of whether Petitioner can be relied upon to meet her financial responsibilities relative to her indebtedness.

In her August 4, 2006 Response to the OED Show Cause Requirement, Petitioner asserted that she was taking steps to pay back her debt. She stated that she had agreed to

pay \$1075.46 a month to the consolidated ISM Loan (which totaled \$176,225.01), which would be in addition to her AES Loan (which totaled \$23,486.66) payments. However, even with any such agreement, Petitioner noted she is receiving a one-year deferral on payments to the ISM loan. The fact that Petitioner may be making payments on a much smaller loan while receiving a deferral on payments to a much larger loan does not establish that she is capable of reliably meeting her financial obligations and paying her indebtedness.

Petitioner also attempts to argue that cases cited in the OED Decision are not applicable to her situation. Petitioner asserts that in *Application of Gahan*, 279 N.W.2d 826 (Minn. 1979), the applicant had a higher available income and the means to prepare for repayment of his debts, but neglected and was unwilling to do so. Petitioner also mentions that the applicant in another case cited by the OED Director, *In re Hyland*, 663 A2d. 1309 (Md. 1994), was convicted of tax evasion and also found to have lacked candor and made inconsistent statements. Petitioner may be correct to note different factual circumstances obtained in *Gahan* and *Hyland*. The OED Director was nevertheless justified in reaching the conclusion that Petitioner had a recent history of fiscal irresponsibility and had not yet demonstrated that she is now financially responsible. As found in other bar applicant cases, “financial irresponsibility alone is enough to disapprove a bar candidacy or bar exam application.” *Application of Stewart*, 112 Ohio St.3d 415, 419 (Ohio 2006). Applicants for admission are expected “to scrupulously honor all financial commitments.” *Application of Manayan*, 102 Ohio St.3d 109, 112 (Ohio 2004). “Financial responsibility is critical for lawyers.” *Application of Dickens*, 106 Ohio St.3d 128, 131 (Ohio 2005).

As the OED Director noted, it is appreciated that Petitioner accrued much of these loan amounts in pursuit of her education. However, the OED Director's decision concerned the Petitioner's failure to prove that she can and will reliably pay her debt, rather than the reason why the debt was incurred. Given the documentation which indicates that Petitioner still possesses a significant amount of debt, relative to her income, the OED Director appropriately found that she had failed to demonstrate her ability to exercise financial responsibility.

Even if Petitioner, as she asserts, is now taking steps to become financially responsible after receiving OED's Show Cause Requirement, she has asserted that her financial difficulties began in 1997. The OED Director determined, and Petitioner does not on appeal contest, that she was in default on her loans for multiple years prior to her refinanced loan. Therefore, Petitioner has not established any significant period of financial stability relative to her duration of financial irresponsibility, nor that the initial steps she has taken toward financial responsibility will be successful.

The OED Director clearly took into account the steps that petitioner has undertaken to reestablish her financial responsibility. As the Ohio Supreme Court, however, held in *Manyan*, although a commitment to satisfy a delinquency can be taken into account, it may properly be found not to outweigh a history of serious financial mismanagement. 102 Ohio St.3d. 109 (Ohio 2004). On the record here, the OED Director properly found, in effect, that, as yet, the evidence of Petitioner's commitment could not be regarded as overcoming the effects of prior mismanagement.

The Petition faults the OED Director for not giving weight to the evidence in support of Petitioner's claim that her financial troubles result, in part, from deceptive

practices that drew her into a bad investment. As reflected above, the immediate issue is whether she is financially responsible. That her victimization by an allegedly fraudulent scheme may have contributed to her financial irresponsibility and that she is now forthright about her situation do not change the facts of her current financial irresponsibility.

Accordingly, the OED Director considered the information submitted by Petitioner, applied the correct legal standard, and his findings were well supported.

III. CONCLUSION

The OED Director properly determined that Petitioner has not established that she can be relied upon to pay her lawful debts. The OED Director's conclusion that this lack of financial responsibility reflects adversely on the Petitioner's present moral character is well founded. The OED Director's decision is hereby affirmed.

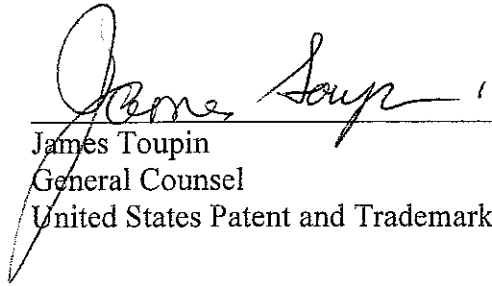
IV. ORDER

Upon consideration of the petition to the USPTO Director for registration to practice before the USPTO in patent cases, it is

ORDERED that the petition is denied.

By delegation from the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office:

MAY 18 2007
Date



James Toupin
General Counsel
United States Patent and Trademark Office