

University with a Master of Science in Electrical Engineering (MSEE) in [REDACTED] (Exhibit E). He was admitted to the New York State and California State bars in 2015 (Exhibit F). While completing his MSEE degree at [REDACTED] University, Petitioner applied for and received F-1 Optional Practical Training (OPT)¹ authorization from USCIS, which began on June 15, 2015 and expires on June 14, 2016. (Exhibit G). The F-1 OPT indicated that the Petitioner's primary major was Electrical and Electronics Engineering. (Exhibit G). On June 18, 2015, [REDACTED] hired [REDACTED] as an intern to serve as a technical advisor for patent prosecution in the technical field of electrical engineering starting on June 22, 2015. (Exhibit H). The duration of the internship is 9 months.

Petitioner's Application for Registration to the USPTO

On June 25, 2015, USPTO received from the Petitioner an application for registration to serve as a practitioner to prosecute patent applications before the Office. (Exhibit I). Along with his application, Petitioner submitted supporting documentation including the following: official transcripts from [REDACTED] University documenting his Bachelors in Engineering (Exhibit J), and from [REDACTED] University documenting his JD and MSEE (Exhibit E); official Educational Credential Evaluators, Inc.² Course By Course Evaluation Report³ (Exhibit K); immigration documents, such as copies of his passport (Exhibit C), F-1 visa (Exhibit D), Form I-

¹ F-1 Optional Practical Training authorization allows undergraduate and graduate students with F-1 status who have completed or have been pursuing their degrees for more than nine months to work for a maximum of one year on a student visa towards getting practical training to complement their field of studies. The authorization is provided to the student through the issuance of Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status – For Academic and Language Students.

² This is a private, non-profit organization that prepares evaluation reports that identify the United States equivalents of educational credentials earned in other countries.

³ The Course By Course Evaluation Report provides the U.S. equivalent for each educational credential; credit and grade equivalents; grade average for each educational credential; identifies upper level courses for undergraduate or professional studies; and general evaluation of high school level credentials (without a grade average), if included for evaluation.

20⁴ authorizing F-1 Optional Practical Training (Exhibit G), Form I-94⁵ (Exhibit L), and Employment Authorization Card (Exhibit M); and a copy of a letter of employment from [REDACTED] (Exhibit H).

On July 6, 2015, OED notified Petitioner that his application for registration was denied because the application was incomplete. (Exhibit N). The letter indicated that Petitioner failed to establish that that his recognition to practice in patent matters before the Office is consistent with the capacity of employment authorized by USCIS, and cited to the pertinent provision of the USPTO General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office (issued in June 2004, as updated in May 2014) (“General Requirements Bulletin” or “Bulletin.”) (Exhibit T) Specifically, the letter expressly indicated that the applicant had

not shown that you are authorized to be employed in a capacity of representing patent applications before the USPTO by preparing and prosecuting their patent applications. See General Requirements Bulletin, pages 8-9. Representing patent applicants before the USPTO is the practice of law. You reside in the United States on an F-1 visa. The documentation you submitted indicates your field of study, Electrical and Electronics Engineering. However, this field is not the practice of law and does not include representing patent applicants by preparing and prosecuting their applications.

(Exhibit N, at 2).

Petitioner was invited to submit additional evidence to demonstrate the required authorizations to practice in patent matters before the Office, and was provided a deadline of September 4, 2015 to do so.

On July 13, 2015, OED received a response from Petitioner that argued that OED’s denial of his application was in error because the USCIS authorized him to prepare and prosecute

⁴ Certificate of Eligibility for Nonimmigrant (F-1) Student Status - For Academic and Language Students.

⁵ U.S. Customs and Border Protection Arrival/Departure Record.

patents in Electrical Engineering. (Exhibit O). However, Petitioner did not provide any documentary evidence that would support that argument or demonstrate that he had the required authorization to prepare and prosecute patent applications before the USPTO. In addition, he alleged that OED violated the Due Process Clause and the Equal Protection Clause of the Constitution, and that the decision was an abuse of agency discretion.

On July 22, 2015, OED sent Petitioner a supplemental communication clarifying the reason for denial was because “it is not clear that the USCIS approved your Optional Practical Training to include preparation and prosecution of patent applications before the U.S. Patent and Trademark Office,” and again cited to the pertinent provisions of the General Requirements Bulletin. (Exhibit P, at 1). On July 30, 2015, OED received a response from Petitioner that again argued that OED’s denial of his application was in error because his visa satisfied all the requirements of the USCIS’s regulations at 8 C.F.R. § 214.2(f)(10)(ii)(A), and that it was an undue burden to require him to prove that the USCIS authorized his OPT to include the preparation and prosecution of patent applications before the USPTO. (Exhibit Q). In addition, he again alleged that OED violated the Due Process Clause and the Equal Protection Clause. *Id.* However, Petitioner’s response did not provide any documentary evidence that demonstrated he had the required authorizations requested by OED.

On August 10, 2015, OED sent Petitioner another supplemental communication requesting a copy of his Employment Authorization Card and a copy of Form I-765, Application for Employment Authorization in connection with his graduation from law school, including Form I-20. (Exhibit R).

On September 3, 2015, OED received from the Petitioner a Petition to the Director of the Office of Enrollment and Discipline, pursuant to 37 C.F.R. § 11.2(c), that alleged that the

USPTO violated the Due Process Clause and the Equal Protection Clause of the Constitution, and argued that it is beyond the USPTO's authority to determine that Petitioner is not authorized to engage in his current employment after USCIS has already authorized it. (Exhibit S). The Petition did not contain any documentary evidence that demonstrated that the Petitioner had the required authorizations to prepare and prosecute patent applications before USPTO. OED received no further communication or documentation from the Petitioner that demonstrated that he possessed the required authorizations before the deadline on September 4, 2015.

On December 1, 2015, the OED Director denied the Petition concluding that the "Applicant has not met his burden of establishing to the satisfaction of the OED Director that recognition is not inconsistent with the terms of his visa or entry into the United States, as required by 37 C.F.R. § 11.7." (Exhibit A, at 10).

On December 14, 2015, OED received the instant Petition to the USPTO Director pursuant to 37 C.F.R. § 11.2(d), seeking review of the OED Director's decision. The Petition alleged that the OED Director's decision was a violation of the Due Process Clause and Equal Protection Clause (Exhibit B, at 1). He also argued that "technology is still directly related to patent prosecution." (Exhibit B, at 1, 5). In the alternative, he argued that "registration for the exam and practicing before the USPTO are two different steps" and thus the USPTO should separate these applications and review them under "different standards." (Exhibit B, at 1). As discussed below, however, the Petitioner's arguments are insufficient to overturn the OED Director's determination.

II. LEGAL STANDARD

Congress has "delegated plenary authority over PTO practice . . . to the Office." *Hsuan-Yeh Chang v. Kappos*, 890 F. Supp. 2d 110, 116 (D.D.C. 2012) (quoting *Stevens v. Tamai*, 366

F.3d 1325, 1333 (Fed. Cir. 2004)). This includes the “broad authority to govern . . . the recognition and conduct of attorneys” who practice before the Office. *Lacavera v. Dudas*, 441 F.3d 1380, 1383 (Fed. Cir. 2006) (citing *Stevens*, 366 F.3d at 1333). The USPTO has authority to promulgate regulations respecting the recognition of attorneys and agents before the Office pursuant to 35 U.S.C. § 2(b)(2)(D). *See also Hsuan-Yeh Chang*, 890 F. Supp. 2d at 117. The USPTO is authorized under this statutory provision to promulgate regulations that:

may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

35 U.S.C. § 2(b)(2)(D) (2010).

Pursuant to this authority, the USPTO promulgated the regulations at 37 C.F.R. § 11.7(b)(1)(i), which state that no individual will be registered to practice before the Office unless he or she has filed a complete application for registration that established to the satisfaction of the OED Director that he or she, *inter alia*, is competent to advise and assist patent applicants in the presentation and prosecution of their applications before the Office. *See* 37 C.F.R. § 11.7(a)(2)(iii). To enable the OED Director to make this determination, the regulations specify that aliens shall provide satisfactory proof that recognition is not inconsistent with the terms of their visa or entry into the United States. *See* 37 C.F.R. § 11.7(b)(1)(i)(D). The regulations clearly state that if an individual fails to file a complete application for registration, he or she will not be admitted to the examination. *See* 37 C.F.R. § 11.7(b)(2).

Federal courts have upheld the USPTO’s authority to promulgate regulations that take into account visa restrictions when determining whether or not to grant full recognition. In

Lacavera, the USPTO denied Appellant Catherine Lacavera's request for full recognition because her visa, which permitted her to prepare and prosecute patent applications for the New York office of the law firm White and Case, was limited in duration. 441 F.3d at 1382-83. Although the Immigration and Naturalization Service (INS) (currently the USCIS) granted her timely extensions, they renewed her visa for only a specific duration. *Id.* at 1382. With each renewal from INS, the USPTO also granted timely extensions to her recognition period for the same duration. *Id.*

The court in *Lacavera* ruled that the USPTO did not exceed its authority granted to it under 35 U.S.C. § 2(b)(2) when it promulgated regulations that took into account visa restrictions in determining whether or not to grant recognition. 441 F.3d at 1383. The court analyzed the pertinent regulations under the framework of analysis for review of agency statutory interpretations, established under *Chevron U.S.A. Inc. v. Natural Resources Def. Council*, 467 U.S. 837 (1984), and held that the USPTO did not exceed its statutory authority because “[i]t was reasonable for the PTO to interpret legal authority to render service as being a necessary qualification. Accordingly, it was reasonable for the PTO to enact regulations that limit an alien's ability to practice before it to those activities in which the alien may lawfully engage.” *Lacavera*, 441 F.3d at 1383.

In addition to its regulations at 37 C.F.R. § 11.7(b)(1)(i)(D), the Office relies on guidance provided in the General Requirements Bulletin to instruct the public on the ways to demonstrate possession of the legal, scientific and technical qualifications, and good moral character and reputation. This USPTO publication provides, among other things, the criteria that are generally sufficient to establish scientific and technical competence for admission to the examination under 37 C.F.R. § 11.7(a)(2)(ii). *See Premysler v. Lehman*, 71 F.3d 387, 388 (Fed. Cir. 1995). The

Bulletin is not dispositive of determining whether an applicant may sit for the USPTO examination and thus is not subject to the rule-making procedures under 5 U.S.C. § 553. *Id.* However, the Bulletin has been held to reasonably interpret qualification requirements. *See Lacavera*, 441 F.3d at 1383 (finding that the Bulletin “reasonably interprets” the previous version of § 11.9); *Premysler*, 71 F.3d at 389-90 (finding that the PTO could rely on the Bulletin as guidance for what kinds of credentials typically demonstrate “technical competence” under an agency regulation prohibiting the PTO from registering an individual to practice before it unless he is “possessed of the legal, scientific, and technical qualifications necessary to enable him or her to render applicants for patents valuable service”).

The Bulletin further elucidates the requirement for proof that recognition to practice before the Office is not inconsistent with the terms of a visa or entry into the United States. (Exhibit T). Specifically, the General Requirements Bulletin states that an applicant must establish that recognition is consistent with the capacity of employment authorized by the USCIS. (Exhibit T, at 9). The required documentation must show that the USCIS has authorized the applicant “to be employed or trained in the capacity of representing patent applicants before the USPTO by preparing and prosecuting their patent applications.” *Id.*

III. DISCUSSION

A party dissatisfied with a final decision of the OED Director regarding enrollment or recognition may seek review of that decision upon Petition to the USPTO Director, accompanied by payment of the appropriate fee. *See* 37 C.F.R. § 11.2(d). Here, Petitioner submitted a Petition to the USPTO Director to request reversal of the OED Director’s decision to deny his application for registration to practice in patent matters before the Office for failing to meet his burden to demonstrate that recognition is not inconsistent with the terms of his visa or entry into

the United States, as required by 37 C.F.R. § 11.7. In support of his Petition, Petitioner argues that (1) his visa authorization to engage in electrical engineering is directly related to patent prosecution, (2) the process governing registration for the exam and the ability to practice before the USPTO are separate and distinct and should be reviewed separately and under different standards, and (3) the decision is a violation of the Due Process Clause and the Equal Protection Clause.

The Petition, however, does not present any evidence to disturb the OED Director's conclusion that Petitioner does not currently possess the requisite proof that recognition is not inconsistent with the terms of their visa or entry into the United. Rather, the record before the OED Director, provides firm support for the OED Director's decision. Thus, the OED Director's decision is affirmed.

A. Petitioner Has Not Demonstrated That He Currently Possesses the Requisite Proof That Recognition Is Not Inconsistent with the Terms of His Visa or Entry Into the United States for Registration to Practice in Patent Matters Before the Office.

Based on the authority vested in the Office and in the OED Director, Petitioner's registration to practice patent matters before the Office was denied on December 1, 2015. The basis for that decision was that the Petitioner did not provide the requisite proof necessary to show that his recognition to practice before the Office is not inconsistent with the terms of his visa or entry into the United States. While the Petitioner provided abundant arguments that he did in fact have the necessary authorization from USCIS, Petitioner has not provided any facts or evidence that would warrant disturbing the OED Director's decision.

1. Petitioner Has Not Provided the Requisite Documentary Evidence Sufficient to Prove That His Authorization to Work in the United States Was Consistent with Recognition.

In making a determination regarding an applicant's ability to prosecute patent applications before the Office, the USPTO relies on the documentary evidence provided by the Petitioner to prove that a petitioner has the requisite background and authorizations to establish to the satisfaction of the OED Director that he or she, *inter alia*, is competent to advise and assist patent applicants in the presentation and prosecution of their applications before the Office. *See* 37 C.F.R. § 11.7(a)(2)(iii). In the case of a foreign national who is authorized to work in the United States, the regulations require that aliens provide satisfactory proof that recognition is not inconsistent with the terms of their visa or entry into the United States. *See* 37 C.F.R. § 11.7(b)(1)(i)(D). The General Requirements Bulletin further clarifies the documentary evidence that may serve as such proof are: a copy of both sides of any work or training authorization, copies of all documents submitted to and received from the USCIS regarding admission to the United States, and a copy of any documentation submitted to the U.S. Department of Labor. Here, Petitioner provided the USPTO with the documents listed in the General Requirements Bulletin. However, none of those documents satisfactorily demonstrated that recognition to prosecute patent applications before the Office is not inconsistent with the terms of his visa or entry into the United States, which is limited only to work related to Petitioner's major field of study, Electronics and Electrical Engineering. (Exhibit G).

The USPTO requested the Petitioner to submit the required documentary evidence multiple times before it denied the Petitioner's application. After review of the Petitioner's initial application and documentation, the USPTO determined that the copy of his F-1 visa, Form 1-20, and Employment Authorization Card (Exhibits D, G & M) furnished with his application

showed only authorization to work in the field of Electrical and Electronics Engineering, and therefore was not sufficient to prove that his authorization to work in the United States allowed him to prosecute patent applications before the USPTO or to otherwise practice law. *See Sperry v. State of Florida ex rel. Florida Bar*, 373 U.S. 379, 383 (1963) (finding that “the preparation and prosecution of patent applications for others constitutes the practice of law”). On July 6, 2015, the USPTO conveyed this determination to the Petitioner and requested that Petitioner submit the necessary documentary evidence by September 4, 2015. (Exhibit N). USPTO sent Petitioner multiple subsequent letters (on July 22, 2015 and August 10, 2105) requesting the documentary evidence. (Exhibits P & R). Although Petitioner responded to each letter from USPTO, on July 13, 2015, July 30, 2015 and September 3, 2015 (Exhibits O, Q & S), respectively, none of his correspondence contained the requested additional documentary evidence. After failing to receive such evidence that proved that Petitioner had the necessary authorizations to prosecute patents before the Agency, the USPTO determined that it had no choice but to deny the Petitioner’s Petition to the OED Director.

Petitioner argued in his Petition and in the multiple correspondence sent to USPTO that the description of the Electrical and Electronics Engineering work authorized in his visa is directly related to patent prosecution. (Exhibit B, at 1, 5). While Petitioner is correct that the study of and knowledge in electrical and electronics engineering is important in the prosecution of patent applications before the USPTO, this alone is insufficient to gain recognition from the Office. To gain recognition from the Office, the regulations at 37 C.F.R. § 11.7 are clear that the Practitioner must provide evidence that his or her visa authorization is consistent with recognition. The General Requirement Bulletin further makes clear that the Petitioner must show that “the USCIS has authorized the applicant to be employed or trained in the capacity of

representing patent applicants before the USPTO by preparing and prosecuting their patent applications.” (Exhibit P, at 9).

Petitioner’s F-1 visa and Optional Practical Training⁶ authorization submitted with his application did not expressly authorize Petitioner to be employed or trained in the capacity of preparing and prosecuting patent applications or to practice law, but rather it authorized him only to engage in an employment opportunity directly related to his or her major field of study, which is “Electrical and Electronics Engineering.” (Exhibit G). Generally, the primary focus in the occupation of electrical and electronics engineering is the development and application of electrical equipment,⁷ and it typically does not include the act of representing patent applicants in the preparation and prosecution of patent applications or the practice of law before the USPTO. Moreover, documentation from Petitioner’s employer for the purposes of his OPT, [REDACTED] [REDACTED] also further supports the conclusion that he was not hired to prepare and prosecute patent applications or to serve in a legal capacity. Rather, Petitioner’s letter of employment from [REDACTED] [REDACTED] indicated that he was hired to serve as a “technical advisor” for the purpose of “providing technical supports [*sic*] for patent prosecution in the technical field of electrical engineering to one of [*sic*] partners, [REDACTED]” (Exhibit H). Because the Petitioner’s visa did not expressly authorize the Petitioner to prepare and prosecute patent applications or to practice law, and because Petitioner did not provide any documentary evidence to show otherwise, despite multiple requests by USPTO, Petitioner has not sufficiently proven

⁶ In general, the OPT authorizes the visa holder to be eligible to work in the United States to receive practical training in the student’s major area of study. *See generally* U.S. Immigration and Customs Enf’t, PRACTICAL TRAINING, <https://www.ice.gov/sevis/practical-training> (last visited Feb. 18, 2016).

⁷ *See generally* Bureau of Labor Statistics, OCCUPATIONAL OUTLOOK HANDBOOK, <http://www.bls.gov/ooh/architecture-and-engineering/electrical-and-electronics-engineers.htm> (last visited Mar. 11, 2016).

that his authorization to work in the United States is consistent with recognition to practice in patent matters before the Office.

2. Petitioner's Argument that Registration for the Exam and Recognition Must be Separate Processes Is without Merit.

The Petitioner argues that registration for the exam and practicing before the USPTO are distinct and must be reviewed separately and under different standards. (Exhibit B, at 4). In support of his argument, Petitioner cites the example of the states of California and New York, who both allow foreign nationals to sit for the respective state bar examinations before the moral character evaluation, and therefore the USPTO should as well. (Exhibit B, at 5). Petitioner offers no legal authority or support for this argument.

As already stated, the USPTO possesses the statutory authority to establish any and all procedures and requirements that it deems necessary to administer its authority to govern the recognition of attorneys before it. *See* 35 U.S.C. § 2(b)(2)(D). This includes the authority to set its own process for reviewing and evaluating applications requesting recognition from the Office, which is supported in case law. *See Lacavera*, 441 F.3d at 1383 (upholding the USPTO's authority to establish its regulations that "limit[ed] an alien's ability to practice before it to those activities in which the alien may lawfully engage."). Pursuant to this authority, the USPTO established 37 C.F.R. § 11.2, which incorporates into the registration process the requirement that all foreign nationals prove that recognition is not inconsistent with the term of a visa or entry into the United States. The Bulletin, as already discussed, identifies the type of documentary evidence that would satisfy this requirement. (Exhibit T, at 9). Unfortunately, despite being given many attempts to provide additional information to prove that recognition to prosecute patent applications, or to practice law before the Office, is not inconsistent with the terms of his visa, Petitioner failed to provide any documentary proof supporting his recognition.

Despite the forgoing, Petitioner makes two arguments. The first is that registration for the patent bar exam is merely one condition that needs to be met before an applicant is authorized to practice before Office; the applicant must complete additional steps, such as the moral character check, before he or she is granted authorization to practice. (Exhibit B, at 4-5). As cited above, however, case law supports the USPTO's authority to limit a foreign national's ability to practice before it to those activities authorized by their visa. USPTO reviewed Petitioner's visa, and found that it does not authorize Petitioner to prosecute patent applications or to practice law before the Office, and therefore Petitioner has not satisfied all the conditions required to sit for the exam.

Second, Petitioner cites the fact that other state jurisdictions have allowed him to sit for their bar examination despite the terms of his current visa. (Exhibit B, at 5). However, this is irrelevant here. While the Office does not dispute that Petitioner was able to apply for and sit for the California and New York state bar exams, this fact has no bearing on the USPTO's authority to establish those procedures and requirements that it deems necessary to evaluate applicants requesting admission to the patent exam. *See Kroll v. Finnerty*, 242 F.3d 1359, 1365 (Fed. Cir. 2001) (finding that the Office does possess "exclusive authority to establish qualifications and procedures for admitting persons to practice before the PTO, and to suspend or exclude those patent practitioners from practicing before the PTO").

In sum, the Petitioner has not demonstrated that the USPTO's current regulations governing the exam registration and recognition process violates any legal authority, and therefore the Petitioner's claim is without merit.

3. Petitioner's Constitutional Claims Are without Merit.

Petitioner lastly claims in his Petition that the USPTO violated the Equal Protection Clause when it denied his application because he does not possess a visa that authorizes him to prosecute patent applications or to practice law, while allowing US citizens who do not have law degrees to take the patent exam. (Exhibit B, at 1). However, this argument is without merit.

To succeed on a claim asserting a violation of equal protection, the court will review the matter using the rational basis standard. *See Mathews v. Dias*, 426 U.S. 67 (1976). Under this standard, there must be a showing of unequal treatment of an individual compared to others with the same restrictions. *See Lacavera*, 441 F.3d at 1384. If the regulations in question are rationally related to a legitimate government interest, they do not violate the Equal Protection Clause. *See id.* In *Lacavera*, the appellant Lacavera contended that she was denied equal protection when the USPTO denied her request for full recognition due to the work and time restrictions imposed by her visa. However, the court found no evidence that she was “treated unequally as compared to other aliens with visa restrictions, and therefore she suffered no individual equal protection violation.” *Lacavera*, 441 F.3d at 1384. In addition, the court found that the Office’s regulations were “rationally related to a legitimate government interest, e.g., minimizing the unauthorized practice of law before the PTO and its attendant public harm,” and therefore there was no violation of the Equal Protection Clause. *Id.* at 1384.

In the Petitioner’s case, he does not present any evidence to show that he was treated differently from other aliens who possessed the same F-1 visa status. The Petitioner provides no information or evidence that others aliens who possessed an F-1 visa and documentation authorizing them to work in the Electrical and Electronics Engineering field were granted permission to sit for the exam. The arguments presented in his petition compare his

circumstance only with applicants who are citizens of the United States, which is a separate class of applicants that is not subject to the visa requirements. While the analysis could properly end there, it is worth noting that the regulations that are in question have been found to be rationally related to the legitimate government interest, which is to minimize the unauthorized practice of law before the USPTO, and therefore they do not violate the Equal Protection Clause. *See Lacavera*, 441 F.3d at 1384. Because the Petitioner provides no evidence of unequal treatment or support of an illegitimate government interest, the Petitioner's Equal Protection Clause claim is not valid.

Petitioner also claims that the USPTO violated the Due Process Clause. (Exhibit B, at 1, 4). However, in doing so, Petitioner has provided no evidence of a due process violation. To the contrary, the record shows that throughout the application process, the Office provided Petitioner with sufficient notice and opportunity to respond before it denied his application to sit for the patent exam. While Petitioner's case does not rise to the level of a disciplinary hearing, the Office uses the related case law precedent to illustrate the required standard of process afforded for actions taken under 37 C.F.R. pt. 11, which it has more than exceeded.

In the context of disciplinary hearings, the court stated that “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *In re Karten*, 293 F.App'x. 734, 736 (11th Cir. 2008) (quoting *Mathews v. Eldridge*, 424 U.S. 319 (1976)); *see also In re Feng Li*, Proceeding No. D2014-36 (USPTO Apr. 28, 2015); *In re Brufsky*, Proceeding No. D2013-18 (USPTO June 23, 2014). In disciplinary proceedings, an attorney is entitled to due process, such as reasonable notice of the charges before the proceedings commence. *See In re Ruffalo*, 390 U.S. 544 (1968); *In re Cook*, 551 F.3d 542, 549 (6th Cir. 2009) (procedural due process includes fair notice of the charge). Due process

requirements are satisfied where a respondent “attended and participated actively in the various hearings, and was afforded an opportunity to present evidence, to testify, to cross-examine witnesses, and to present argument.” *In re Squire*, 617 F.3d 461, 467 (6th Cir. 2010) (quoting *Ginger v. Circuit Court for Wayne Cty.*, 372 F.2d 620, 621 (6th Cir. 1967)); see also *In re Zdravkovich*, 634 F.3d 574 (D.C. Cir. 2011) (stating that attorney could not satisfy claim of due process deprivation where he was given notice of the charges against him, was represented by counsel, and had hearing at which counsel had the opportunity to call and cross-examine witnesses, make arguments, and submit evidence). Due process requirements are also met where a respondent is given “an opportunity to respond to the allegations set forth in the complaint, testify at length in [his] own defense, present other witnesses and evidence to support [his] version of events . . . , [and is] able to make objections to the hearing panel’s findings and recommendations.” *In re Squire*, 617 F.3d at 467 (ellipsis and third alternation in original) (quoting *In re Cook*, 551 F.3d 542, 550 (6th Cir. 2009)).

The Office far exceeded the required level of notice and opportunity for meaningful participation before denying Petitioner’s registration application. The Office provided Petitioner with ample notice of the required documentary evidence through multiple letters that cited the relevant portions of the regulations and General Requirements Bulletin, and explained what information and documentary evidence was necessary to meet the regulatory requirements. (Exhibits N, P & R). After the initial letter identifying the missing information, sent on July 6, 2015 (Exhibit N), the Office sent Petitioner two subsequent letters on July 22, 2015 and August 10, 2105 explaining and clarifying the requirement that Petitioner prove that recognition is consistent with the capacity for employment authorized by the USCIS. (Exhibits P & R). Although Petitioner responded to each letter from USPTO, on July 13, 2015, July 30, 2015 and

September 3, 2015, respectively, none of that correspondence contained the requested documentary evidence that Petitioner prove that recognition is consistent with the capacity for employment authorized by the USCIS. (Exhibits O, Q & S). The September 4, 2015 deadline for the information – nearly two months after the denial letter – was sufficient time for Petitioner to supply the requested information. Having been afforded notice of the deficiencies in his application and having been provided multiple opportunities to address those deficiencies, including a review of the decision to deny his application by the OED Director, Petitioner’s claim of lack of due process is without merit.

IV. CONCLUSION

The instant Petition for review of the OED Director’s decision dated December 1, 2015, is Denied. Petitioner has not shown that he currently possesses the requisite proof that recognition is not inconsistent with the terms of his visa or entry into the United States for registration to practice in patent matters before the Office. The OED Director considered the administrative record and appropriately denied the Petitioner’s application for registration to practice before the Office in patent matters, therefore his decision is Affirmed.

ORDER

Upon consideration of the Petition to the USPTO Director for review under 37 C.F.R. § 11.2(d), it is ORDERED that said Petition is Denied. The OED Director’s December 1, 2015 decision is Affirmed.

(signature page follows)

MAR 16 2016

Date



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on behalf of
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Petitioner

