

STATE OF MINNESOTA

IN SUPREME COURT

A21-0547

Original Jurisdiction

Per Curiam

In re Petition for Disciplinary Action
Against Patrick Chinedu Nwaneri,
a Minnesota Attorney,
Registration No. 0322003.

Filed: August 24, 2022
Office of Appellate Courts

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

Eric T. Cooperstein, Law Office of Eric T. Cooperstein, PLLC, Minneapolis, Minnesota,
for respondent.

S Y L L A B U S

A 90-day suspension followed by 2 years of supervised probation is the appropriate discipline for an attorney who failed to take necessary steps to prepare for and be ready to proceed with his client's relief from removal claims in immigration court and effectively abandoned his client during the removal hearing.

Suspended.

O P I N I O N

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility (Director) filed a petition for disciplinary action against respondent Patrick Chinedu Nwaneri, alleging that

Nwaneri had violated the Minnesota Rules of Professional Conduct by (1) submitting a faulty biometrics application for his client and failing to follow up in any way despite the known importance of biometric information to immigration proceedings, (2) failing to prepare for his client's removal hearing or to be ready to proceed on his client's claims for relief from removal, (3) effectively abandoning his client during the removal hearing, and (4) filing a complaint on a separate matter in the United States District Court on the morning of the removal hearing erroneously expecting to get a continuance on the removal matter, despite previous explicit instructions from the immigration court to the contrary.

Following a 2-day hearing, the referee concluded that Nwaneri failed to represent his client competently, expeditiously, and with diligence, and that his conduct prejudiced the administration of justice. The referee further found that Nwaneri's previous discipline, including public discipline, and his substantial experience in immigration matters are aggravating factors. The referee also determined that Nwaneri's client was particularly vulnerable due to his uncertain legal status and potential to be removed from the country. The referee recommended that Nwaneri be suspended for 90 days, followed by 2 years of supervised probation upon reinstatement. We conclude that the referee's recommended discipline is the appropriate discipline.

FACTS

Nwaneri is an immigration lawyer who was first admitted to practice law in Minnesota in 2002. On June 7, 2017, we suspended Nwaneri for 30 days for filing an untimely brief, making a false statement under oath, and initially lying during the disciplinary investigation. *In re Nwaneri*, 896 N.W.2d 518 (Minn. 2017). On June 7, 2018,

we again suspended Nwaneri for failing to file proof of successful completion of the written examination on the subject of professional responsibility as required by his conditional reinstatement. *In re Nwaneri*, 912 N.W.2d 882 (Minn. 2018). On July 2, 2018, the Director issued an admonition against Nwaneri for failing to notify a client that he was suspended.

Nwaneri's conduct at issue in this matter predated the conduct that resulted in the prior discipline we imposed on him. The conduct occurred between February 9 and August 22, 2012, while representing his client, F.M., during removal proceedings.

Background

F.M. is from Tanzania. In 2003, he entered the United States on a student visa. Later that year, F.M. married H.J. In 2004, H.J. filed a form I-130 petition—a form filed to establish a person's relationship to an eligible relative; here, as a married couple. An approved I-130 petition allows a foreign national to then apply for lawful permanent resident status—also known as a green card.

F.M. did not register as a student in 2004, which was a requirement for maintaining his student visa status. Later that year, the Department of Homeland Security determined that F.M.'s marriage to H.J. was not bona fide. H.J. soon withdrew her I-130 petition and the two divorced in 2005.

The Department of Homeland Security initiated removal proceedings against F.M. in October 2004. In December 2005, F.M. married his current wife, P.W., with whom he has two children. P.W. filed an I-130 petition to establish her married relationship with F.M. as a step to getting F.M. a green card. The Department of Homeland Security approved P.W.'s I-130 petition.

In 2006, F.M. hired Nwaneri to represent him in his immigration matters. Nwaneri pursued two strategies on behalf of F.M. First, he pursued a petition for adjustment of status (he sought a green card for F.M.) based on the I-130 petition submitted by P.W. The second approach was to petition for asylum, withholding of removal or relief under the Convention Against Torture (collectively, relief from removal).

Nwaneri appeared with F.M. on September 18, 2006, for an immigration court hearing concerning all forms of relief. At the hearing, the immigration court disallowed some of F.M.'s witnesses because Nwaneri failed to file a witness list or testimony summaries as court procedures require. The court granted a continuance until February 26, 2007, however, to allow Nwaneri to correct these problems and to procure documents that he had not yet obtained.

The immigration court granted another continuance on February 26, 2007, because the United States Citizenship and Immigration Service (USCIS) was in the process of revoking their approval of the form I-130 filed by P.W. As the immigration court explained during the removal proceedings, it has no jurisdiction over form I-130 approvals or revocations; it may consider only discretionary claims such as adjustment of status after the petitioner already has the form I-130 approved by USCIS.

The USCIS finalized the revocation of F.M.'s form I-130 on March 12, 2007, determining that F.M. had entered into a previous fraudulent marriage for immigration purposes. Without an approved form I-130, F.M. had no basis for his adjustment of status petition. Consequently, on October 22, 2007, the immigration court pretermitted and

denied F.M.'s petition for adjustment of status. The immigration court also denied F.M.'s claims for relief from removal and ordered him removed to Tanzania.

F.M. separately appealed both the USCIS decision to revoke the form I-130 and the immigration court's relief from removal decision. On the appeal of the immigration court's relief from removal decision, the Board of Immigration Appeals (BIA) discovered that the transcripts from that hearing were not properly recorded and remanded F.M.'s relief from removal case to the immigration court to conduct a new hearing and complete the record. That remand hearing, as addressed below, is the primary subject of Nwaneri's misconduct.

As to the other appeal, on June 6, 2011, the BIA affirmed the USCIS's revocation of F.M.'s form I-130—a final administrative decision. Nwaneri erroneously advised F.M. to file an appeal of the BIA's revocation affirmance directly to the Eighth Circuit Court of Appeals, which F.M. did pro se in August 2011. Upon learning that the appeal should have been filed with the United States District Court, F.M. withdrew his appeal and the Eighth Circuit formally dismissed it.

Misconduct in this case

The conduct that forms the basis for the Director's petition for disciplinary action is as follows. In response to the BIA remand order on F.M.'s relief from removal claims, the immigration court held a scheduling hearing on February 9, 2012. The court scheduled a further hearing to address F.M.'s relief from removal claims for August 22, 2012, and F.M. updated his address with the court. The court reminded Nwaneri to follow the court practices manual and repeatedly gave explicit instructions to complete all requirements for the August 22 hearing, including filing a witness list and testimony summaries, obtaining

current biometrics (fingerprints) for F.M., and ensuring that F.M.'s passport was current to enable a voluntary departure option.

The immigration court also inquired about any appeal of F.M.'s I-130 revocation. Nwaneri informed the court that the BIA had denied that appeal but that they planned to file a complaint in federal district court. The court then reminded Nwaneri that the BIA's affirmance of the I-130 revocation was a "final administrative decision" and stated that "for my purposes the I-130 issue is over."¹ The court also once again explicitly explained that because the I-130 revocation was final, "adjustment [of status] is no longer a viable option at this time." The court instructed: "If you should happen to get different results back from U.S. District Court . . . you would need to let the court know that." The court emphasized that "at this time the only relief that we're addressing on August 22 is asylum, withholding, Torture Convention relief, and voluntary departure." When the court directly asked Nwaneri if he understood, Nwaneri acknowledged that he did.

The immigration court then provided Nwaneri with the biometrics instruction sheet and repeatedly stressed the importance of complying with the instructions and following up to ensure current biometrics are obtained, stating: "If you don't comply with this and don't have current records checks for the final hearing, I could deem your application abandoned and dismissed." The biometrics application instructions also state across the bottom: "Important: Failure to complete these actions and to follow any additional

¹ At the hearing on September 18, 2006, the immigration court explained that it had no jurisdiction over form I-130 issues and at the hearing on February 26, 2007, the court explained that in the absence of any basis for an adjustment of status claim, it would address only F.M.'s relief from removal claims.

instructions that the Immigration Judge has given you could result in delay in deciding your application or in your application being deemed abandoned and dismissed by the court.” The court and government counsel stressed to Nwaneri the importance of keeping records of his follow-up attempts and any correspondence he submitted in case any difficulties arose obtaining a biometrics appointment in order to relieve his client of any liability for a failure to obtain current biometrics, because the consequences of appearing without that information were so grave.

Nwaneri submitted F.M.’s biometrics application on February 24, 2012, with F.M.’s outdated and incorrect address. The biometrics instruction sheet specifically directed that the specified USCIS 1-800 number be called if no notice of appointment was received within three weeks. The court had also instructed Nwaneri to contact the chief counsel’s office if, after attempting to follow up himself, he was still running into difficulty obtaining a biometrics appointment for F.M. When no biometrics appointment notice was received, apparently due to the wrong address on the form, Nwaneri did nothing to follow up in contravention of the detailed follow-up instructions on the biometrics instruction sheet and from the court.

Although F.M. believed that his brother’s testimony would be helpful to his case, Nwaneri failed to inform F.M. that family members could testify on his behalf at the removal hearing. He did not prepare a witness list, discuss possible exhibits with F.M., or prepare F.M. in any way to proceed with his relief from removal claims. Despite the unusual second chance F.M. was being given on his relief from removal claims—the only

viable claims he had remaining—Nwaneri failed to prepare anything to support those claims at the August 2012 hearing.

Just before arriving at F.M.’s removal hearing on August 22, 2012, (more than a year after the BIA affirmed USCIS’s revocation of F.M.’s form I-130), Nwaneri filed a complaint in U.S. District Court. He sought reversal of the “purported revocation” of F.M.’s approved form I-130, alleging several counts of abuse of discretion and unconstitutional actions by the USCIS and the immigration court. The revoked form I-130 did not bar the proceedings on F.M.’s relief from removal claims that were scheduled for the same day as the complaint in U.S. District Court was filed. As the referee correctly found, “whether an appeal of the revocation of the approval of the I-130 was pending had nothing to do with the claims the court would address on August 22.”

Nonetheless, Nwaneri informed the immigration court that he had just commenced an action on F.M.’s revoked form I-130 that morning and asked for a continuance on the relief from removal hearing. The court reminded Nwaneri again that because the BIA affirmance on F.M.’s form I-130 revocation was a final decision, no adjustment of status claim was before the court. The court denied a continuance “for something that is just being filed today . . . after . . . withdrawal of that petition . . . a year ago.”

The government counsel informed the immigration court that there were no current records checks or biometrics on F.M., at which point the court recalled that it had given clear instructions at the February 9 hearing for the required biometrics. The court noted that the biometrics application Nwaneri submitted had F.M.’s old address on it and that any appointment notice would have been sent to the incorrect address. The court then

repeatedly asked, and Nwaneri repeatedly did not answer, questions about what follow-up he did when no appointment notice was received. Nwaneri claimed that he had been given no time limit, so he was still waiting. When pressed, he admitted that he neither called the specified USCIS 1-800 number, as the application instructed, nor did any other follow-up, as the court had instructed at the February 9 hearing.

The immigration court then asked F.M. whether F.M. had called the specified USCIS 1-800 number when he did not receive a fingerprint appointment notice; F.M. responded, “He is my lawyer representing me, Your Honor. So I don’t know how should I call” Nwaneri claimed that the instructions on the biometrics application were “very tiny and highly, you know, inconsequential.” When pressed by the court, Nwaneri admitted that the biometrics instructions were not inconsequential but insisted that they were “easy to overlook.” The court reminded Nwaneri that it had stressed to him at the February 9 hearing that failure to follow up on obtaining the required biometrics could deem the application “abandoned and dismissed.”

The immigration court then explained that although it could deem F.M.’s relief from removal claims abandoned for lack of current biometrics, it was nonetheless willing to proceed with the hearing. The court then asked Nwaneri what testimony or witnesses he had. Nwaneri responded that he just got the exhibit list that day and stated, “I don’t do

magic.”² He further asserted that “there is no emergency” and that “there is no need to stampede . . . or bamboozle us into doing all this.”

Throughout the hearing, Nwaneri repeatedly asserted that he was entitled to preparation time, that the proceedings were unfair, and that the immigration court should grant a continuance of F.M.’s relief from removal case. The court noted Nwaneri’s noncooperation and stated that if it had contempt authority, it would find Nwaneri in contempt of court. It then deemed F.M.’s relief from removal claims abandoned and dismissed.

Turning to the option for voluntary departure, the immigration court then inquired about a current passport for F.M. Government counsel informed the court that no passport request had been submitted. In response to the court’s inquiries about what efforts had been made to obtain a current passport for F.M., Nwaneri stated, “[A]t this stage I’m abstained from these proceedings. I’m abstained.” Consequently, the court pretermitted and denied any request for voluntary departure for F.M.

Because Nwaneri was no longer participating in the proceedings, the immigration court asked F.M. questions directly, including about whether he had any objections to

² Nwaneri claimed that he did not receive any exhibit list from the immigration court. In response, the court confirmed that the list was sent to Nwaneri’s correct address, that it was mailed at the same time to government counsel who received it, and that it was not returned undeliverable. The court noted that Nwaneri already had the exhibits and that in fact it was not required to mail out an exhibit list. It then proceeded to read off the exhibits as it said it normally does when it does not mail out an exhibit list. When Nwaneri also protested that he had not received the exhibit list order, the court then summarized the order, which essentially repeated all the instructions that were given at the February 9 hearing.

exhibits and whether he wanted to reserve his right to appeal. F.M. answered that “my attorney is the one who represents me” and “whatever my attorney say, it’s okay.” From that point on, however, Nwaneri did not say anything substantive to the court or to F.M., aside from his insistence that he was abstaining. Government counsel then stepped in and attempted to explain to F.M. that reserving his right to appeal was in his best interests. In the absence of any participation from Nwaneri, the court proceeded to reserve F.M.’s right to appeal on F.M.’s behalf.

Because F.M.’s relief from removal claims were deemed abandoned and dismissed for “a lack of prosecution or lack of diligence in going forward with that application” and because voluntary departure was denied for lack of current travel documents, the immigration court ordered F.M. removed to Tanzania.

Discipline proceedings

The Director filed a Petition for Disciplinary Action against Nwaneri on April 27, 2021, alleging misconduct in the F.M. matter. Nwaneri cooperated with the disciplinary proceedings, offered vigorous arguments in defense, testified during 2 days of the disciplinary hearing, and cross-examined F.M. who testified as the Director’s witness. Following consideration of the evidence, arguments, and testimony, the referee concluded that Nwaneri violated the Minnesota Rules of Professional Conduct in several ways: he did

not represent F.M. competently³ and diligently⁴ because he failed to list the correct address on F.M.'s biometric form, failed to follow-up despite the known importance of having current biometrics on file, and failed to prepare for and be ready to proceed with his client's asylum relief request at the August 22 hearing; he failed to represent F.M. competently and also engaged in conduct prejudicial to the administration of justice⁵ when he abstained from answering the immigration court's questions during the August 22 hearing; and he did not represent F.M. competently and diligently, engaged in conduct prejudicial to the administration of justice, and failed to make reasonable efforts to expedite litigation consistent with F.M.'s interests⁶ by waiting to file the appeal of F.M.'s form I-130 revocation with the U.S. District Court until the morning of F.M.'s August 22 hearing. The referee also concluded that Nwaneri's history of discipline, including public discipline, and his "substantial experience" in immigration law aggravated his misconduct. The referee additionally concluded that F.M. was "highly vulnerable." The referee found no mitigating factors. Accordingly, the referee recommended a 90-day suspension followed by 2 years of supervised probation.

³ "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Minn. R. Prof. Conduct 1.1.

⁴ "A lawyer shall act with reasonable diligence and promptness in representing a client." Minn. R. Prof. Conduct 1.3.

⁵ "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." Minn. R. Prof. Conduct 8.4(d).

⁶ "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." Minn. R. Prof. Conduct 3.2.

ANALYSIS

A.

When a transcript is ordered, as it was here, we review the referee's factual findings and conclusions that an attorney violated the Rules of Professional Conduct for clear error. *See, e.g., In re Walsh*, 872 N.W.2d 741, 747 (Minn. 2015). We give "great deference" to the referee's findings and will uphold those findings when they have evidentiary support in the record and are not clearly erroneous. *In re Igbunugo*, 863 N.W.2d 751, 759 (Minn. 2015). A finding is clearly erroneous when we are left with the "definite and firm conviction that a mistake has been made." *In re Ulanowski*, 800 N.W.2d 785, 793 (Minn. 2011) (citation omitted) (internal quotation marks omitted).

1.

As an initial matter, Nwaneri attempts to refute the referee's finding that he provided an incorrect address in F.M.'s biometrics application. Although Nwaneri does not dispute that the address on the submitted biometrics form itself was outdated and incorrect, he points out that several months before the submission of the biometrics application, F.M. had changed his address with the immigration court and with the USCIS office in Bloomington, Minnesota. Essentially, he argues that USCIS should have known to ignore the address on the biometrics form and rely on the previous change of address submission.

We conclude that the referee's finding that Nwaneri included an incorrect address on the biometrics form is supported by the record. The biometrics applications are submitted to and processed at a USCIS service center located in Nebraska, and the detailed application instructions require the client to mail in a copy of the first three pages of the

client's asylum application, "which must include your full name, *your current mailing address*, and your alien number." (Emphasis added.) Nwaneri submitted the 2006 version of F.M.'s asylum application, which also included the wrong address. The referee did not clearly err by finding that Nwaneri submitted the incorrect address on his client's biometrics application form.

Nwaneri also does not dispute that he failed to follow up when no biometrics appointment notice was received. Instead, he argues that there was no "clear duty" to do more than document that he had mailed the application. But the record shows that the immigration court and the biometrics application form itself provided detailed instructions to follow up if a biometrics appointment was not received within 3 weeks and clear explanations of the consequences of failing to do so: the client's claims for relief from removal could be deemed abandoned and dismissed. Evidence supports the referee's finding that the importance of having current biometrics on file was known and that Nwaneri did not fulfill his professional obligations to his client when he failed to provide a correct address and failed to follow up to ensure his client obtained the biometrics information before the August 2012 hearing. *See Igbunugo*, 863 N.W.2d at 763–64 (imposing discipline on lawyer who failed to obtain biometric data following instructions from the immigration court nearly identical to those given to Nwaneri).

2.

Nwaneri next contends that he should not be disciplined for his failure to prepare F.M.'s relief from removal case in the months leading up to the August 22 hearing because F.M.'s claims were "weak" and the hearing was simply a "redo" of the previous 2006

hearing, which resulted in the removal order. Therefore, Nwaneri argues, any preparation would not have affected the outcome. This is a remarkable claim for a lawyer to make. A lawyer has a duty to represent their client competently and diligently with respect to all of the client's claims in all cases, and often more attention and preparation is required on matters involving complex issues or dire consequences. *See* Minn. R. Prof. Conduct 1.1 cmt. 5, 1.3 cmt. 1 (“A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.”).

Further, Nwaneri's view that the outcome of the August 22 removal hearing was a foregone conclusion because it was a “redo” ignores the BIA's remand order requiring the immigration court to conduct a “new hearing, if necessary.” Indeed, the immigration court was prepared to conduct a new hearing. In February 2012, the immigration court instructed Nwaneri to submit witness lists, testimony summary, exhibits, and to obtain F.M.'s biometrics in preparation for the August 22 hearing. The consequences for Nwaneri's client were dire—he was facing removal and he was afforded a rare second chance to advance his relief from removal claims. Yet Nwaneri did nothing to prepare for the hearing on his client's relief from removal claims.

Nwaneri justifies his lack of preparation by claiming that the August 22 hearing should have been continued because of the “pending I-130 litigation in the District Court.” Nwaneri further admitted to advising F.M. that there was “no need” for F.M. to bring his

passport—which would have enabled voluntary departure as an option—because they were instead pursuing “all avenues of seeking relief on the I-130 that was revoked.”

We agree with the referee that Nwaneri’s position—that the last-minute appeal of the I-130 revocation in federal district court justified his lack of preparation—was not reasonable. Nwaneri’s theory of the case disregarded clear and repeated instructions from the immigration court that the I-130 revocation was final and that the only claims it had jurisdiction to address on August 22, 2012, were F.M.’s relief from removal claims. The immigration court instructed Nwaneri in February 2012 to let it know whether the federal district court came to a different decision on F.M.’s I-130 revocation; otherwise, the immigration court would proceed on the basis that Nwaneri had no grounds for an adjustment of status claim. Perhaps more critically, even if Nwaneri believed there was a chance that the August 22 hearing would be continued, he should have been prepared for the contingency that the immigration court would not grant the continuance.

3.

Nwaneri does not contest that during the August 22 hearing he repeatedly alleged unfairness, refused to answer the immigration court’s questions, and stopped communicating with his client. Rather, he argues that his abstention from the removal proceedings did not prejudice the administration of justice because his behavior “did not stop the hearing from continuing.” He also posits that because he began abstaining after the court deemed his client’s relief from removal claims abandoned and dismissed, his abstention did not cause the court to deny relief.

Although the facts in each situation are unique, we have found behavior that disrupts court hearings to be prejudicial to the administration of justice. *See, e.g., In re McCloud*, 955 N.W.2d 270, 277 (Minn. 2021) (failing to communicate with the court or to attend hearings); *In re MacDonald*, 906 N.W.2d 238, 241–42 (Minn. 2018) (refusing to respond to the judge and offering “minimal” involvement during the remainder of a trial); *In re Greenman*, 860 N.W.2d 368, 373–74 (Minn. 2015) (terminating representation of the client 8 days before a hearing, but failing to file a notice of termination with the district court and failing to appear at the hearing); *In re Michael*, 836 N.W.2d 753, 765 (Minn. 2013) (stating that “[d]isrespectful conduct directed at a tribunal can be prejudicial to the administration of justice”); *In re Getty*, 401 N.W. 2d 668, 671 (Minn. 1987) (stating that attorney’s remarks accusing the district court of treating the attorney’s client unfairly violated the rules of professional conduct). After reviewing the record in this case, we conclude that the referee’s conclusion that Nwaneri’s decision to “abstain” from his client’s removal proceedings demonstrated a lack of competence and prejudiced the administration of justice was correct.

B.

Nwaneri also challenges the referee’s aggravating factors analysis. Recall that the referee found Nwaneri’s history of discipline and his experience as an immigration lawyer to be aggravating factors. Both previous discipline and lawyer experience may be considered aggravating factors in appropriate cases. *See, e.g., In re Capistrant*, 905 N.W.2d 617, 622 (Minn. 2018) (finding that it was an aggravating factor that the lawyer had been previously disciplined); *In re Fett*, 790 N.W.2d 840, 850, 852 (Minn.

2010) (emphasizing that an attorney’s “experience in a particular area of the law” was an aggravating factor “when the misconduct [arose] from that area of practice”); *In re Holker*, 730 N.W.2d 768, 775 (Minn. 2007) (affirming the referee’s conclusion that several years of practice in estate planning aggravated the misconduct arising from the attorney’s practice in that area).

Nwaneri asserts that his previous discipline should not be considered because his two suspensions and one admonition were imposed in 2017 and 2018, 5 and 6 years *after* his misconduct in this matter, which occurred in 2012. We rejected just such an argument in *Capistrant*. 905 N.W.2d at 622 (determining that a prior suspension was an aggravating factor even though it occurred 3 years after the single misconduct at issue). In such cases, we have noted that “it is not uncommon, when an attorney has been publicly disciplined, for former clients to report additional matters to the director’s attention,” revealing “a pattern of conduct which, by its nature, requires the passage of time to develop.” *In re Selmer*, 568 N.W.2d 702, 704 (Minn. 1997) (revoking attorney’s probation and suspending him for 12 months for misconduct, which predated the misconduct for which the probation was imposed). The point of our consideration of prior discipline is not that a lawyer with previous discipline is on notice that he should clean up his act; that is always expected. Rather, the reason we consider other discipline as an aggravating factor is that it reveals a pattern of misconduct, which heightens our concerns about whether allowing the lawyer to continue to practice without discipline sufficiently protects the public.

Nwaneri next argues that the referee erred by concluding that Nwaneri’s substantial experience in immigration law aggravates his sanction. Nwaneri had been practicing

immigration law for 10 years at the time of his acts of misconduct during his client's immigration court proceedings. Nwaneri's misconduct in this case includes incompetence in representing F.M. in immigration matters. The referee properly considered his experience in immigration law to be an aggravating factor.⁷

The Director also challenges the referee's consideration of aggravating factors. The Director urges us to find that Nwaneri lacks remorse. During the disciplinary hearings, Nwaneri acknowledged that he contributed to F.M.'s anxiety and stated: "I want to respectfully say that the events of August 22, 2012, which regarding abstention, I don't feel good about it. And I, you know, I'm sorry for that incident and event." Nwaneri then went on to explain that he felt he had "no choice." Because the record contains evidence that could be construed as remorse, the referee did not clearly err by not finding that Nwaneri lacked remorse.

⁷ Nwaneri did not challenge the referee's conclusion that F.M. was a vulnerable client. Individuals with uncertain legal status in this country facing removal or deportation are particularly vulnerable and that vulnerability can be an aggravating factor. *See In re Fru*, 829 N.W.2d 379, 391 (Minn. 2013) (stating that "[w]e are particularly troubled by the fact that Fru's misconduct threatened the immigration status of many of his clients" and that those clients were "vulnerable and depended on him to guide them through the complex—and often punitive—maze of federal immigration law" (citation omitted) (internal quotation marks omitted)); *In re Kaszynski*, 620 N.W.2d 708, 714 (Minn. 2001). However, because we consider F.M.'s vulnerability as an immigrant in assessing the seriousness of Nwaneri's conduct, we will not also consider it as an aggravating factor. *See McCloud*, 955 N.W.2d at 277 (stating that we do not double-count the same factors when imposing discipline).

C.

We now turn to the appropriate discipline for Nwaneri's misconduct. The referee recommended that Nwaneri be suspended for a minimum of 90 days and that he be subject to 2 years of supervised probation upon reinstatement.

We afford great weight to the referee's recommendation for discipline, but we have the ultimate responsibility for sanctioning an attorney. *See In re Coleman*, 793 N.W.2d 296, 308 (Minn. 2011). We impose attorney discipline to protect the public by deterring future misconduct, both by the attorney subject to discipline and by other lawyers. *In re Albrecht*, 845 N.W.2d 184, 191 (Minn. 2014). When determining the appropriate discipline, we consider four factors: "(1) the nature of the misconduct; (2) the cumulative weight of the disciplinary violations; (3) the harm to the public; and (4) the harm to the legal profession." *Ulanowski*, 800 N.W.2d at 799 (citation omitted) (internal quotation marks omitted). While we will "use prior decisions to ensure consistent discipline," we consider both mitigating circumstances as well as aggravating circumstances, and the discipline we impose will depend on the "unique facts of each case." *Id.*

We conclude that the referee's recommendation of a 90-day suspension followed by 2 years of supervised probation following reinstatement is appropriate discipline for the constellation of Nwaneri's misconduct, combined with his record of previous discipline and his experience as an immigration lawyer. Nwaneri did not provide competent, diligent, and expeditious representation to F.M.: (1) he failed to list the correct address on F.M.'s biometric form and failed to follow up on the status of the biometric form despite the known importance of having current biometrics on file; (2) he failed to prepare for and be ready

to proceed with F.M.’s relief from removal request at the August 22 hearing; (3) he ignored the immigration court’s repeated admonitions that the August 22 hearing would focus solely on relief from removal because, absent action by the U.S. District Court reversing the revocation of the I-130 revocation, there existed no basis for an application for adjustment of status—an appeal that he failed to file until the morning of August 22; and (4) he abstained from answering many of the court’s questions during the August 22 hearing—even refusing to assist his client to preserve his right to appeal the immigration court’s removal decision. His refusal to participate during the August 22 hearing was also prejudicial to the administration of justice.

This misconduct warrants suspension. *See In re Rymanowski*, 809 N.W.2d 217, 224 (Minn. 2012) (stating that “depending on the severity, client neglect alone may also warrant indefinite suspension or disbarment”). We have noted that misconduct in representation of clients in immigration matters has “potentially grave consequences” and can put clients “at risk for deportation or removal.” *In re Fru*, 829 N.W.2d 379, 388–89 (Minn. 2013). Accordingly, we have previously suspended and even disbarred lawyers for misconduct of this nature. *Id.* The record in this matter reveals a direct line between Nwaneri’s misconduct and the dismissal of his client’s relief from removal claims and subsequent order for removal—precisely exemplifying the grave consequences we warned of in *Fru*. *See id.* at 390–91. The immigration court deemed F.M.’s relief from removal claims abandoned and dismissed *because of* Nwaneri’s failure to prepare and to participate.

Further, Nwaneri’s conduct was not a brief lapse of judgment. Nwaneri committed multiple acts of misconduct over a period of approximately 6 months.

Moreover, Nwaneri's misconduct caused serious harm to both his client and to the legal profession. In addition to his claims of being abandoned and dismissed, resulting in his order for removal from the United States, F.M. testified that it was a "shock, frustrating" when Nwaneri began abstaining from his immigration hearing because "he was my lawyer, so I was expecting him to represent me well in that matter." F.M. did not know what "abstain" meant. He stated that he "didn't have any answer to respond to the judge because [he] was not prepared for this hearing" and that he was "frustrated and kind of don't know what to do." He did not speak up at the time, explaining that "it was a lot of emotion. I was not yet prepared for the hearing to begin, anyway. It was a lot of emotion at that time, and frustration, too." F.M. experienced that "emotion" for about a month afterwards. Although Nwaneri acknowledged that he "contributed to [F.M.'s] anxiety," this acknowledgment does little to capture the gravity of that situation: F.M. was deprived of the unique opportunity to have the immigration court consider again his only remaining petition to remain in the United States with his family. And Nwaneri's neglect of his client's claims undermines the public's confidence in the legal profession, "which harms the public, the legal profession and the justice system." *In re Paul*, 809 N.W.2d 693, 705 (Minn. 2012) (citation omitted) (internal quotation marks omitted); see *Capistrant*, 905 N.W.2d at 621; *In re Hummel*, 839 N.W.2d 78, 82 (Minn. 2013).

When determining the appropriate discipline, we consider similar cases to "ensure that our disciplinary decision is consistent with prior sanctions." *In re Nathanson*, 812 N.W.2d 70, 80 (Minn. 2012). Nwaneri points to several cases in which he claims that some combination of neglect and misconduct related to a court hearing or process resulted

in a public reprimand and asks us to depart from the referee’s recommendation and impose only a public reprimand and no probation. *See, e.g., In re Robinson*, 874 N.W.2d 438 (Minn. 2016); *In re Shoeberg*, 869 N.W.2d 58 (Minn. 2015); *In re Hulstrand*, 757 N.W.2d 690 (Minn. 2008). After a full review of the record in this case, we conclude that Nwaneri’s conduct was more egregious than the conduct in the cases he cites.

We give substantial weight to the referee’s recommended discipline, especially when, as here, we upheld all the referee’s findings after a thorough review of the record, testimony, and briefed arguments from both parties. Further, the referee’s recommendation of a 90-day suspension followed by 2 years of supervised probation is in line with the broad range of discipline we have imposed in prior cases.

In *Igbanugo*, the immigration court provided instructions (nearly identical to those given to Nwaneri), stressing the importance of obtaining biometric data and outlining the requirements for obtaining it. 863 N.W.2d at 758. Igbanugo did not timely provide the required materials. *Id.* at 758–59. We concluded that “[a] reasonably prudent attorney . . . would have ensured that the required biometric data and original documents were provided to the government within the time period ordered by the immigration court and would not have allowed 7 months to go by before complying with the court’s order.” *Id.* at 763. We rejected Igbanugo’s arguments that failure to provide the biometrics was an “inadvertent oversight” and concluded that such conduct violated Rule 1.3. *Id.* While Igbanugo did not effectively abandon his client during a hearing or erroneously attempt to delay immigration court proceedings, he committed other misconduct in charging client fees. *Id.* at 761–62. We imposed a 90-day suspension. *Id.* at 764.

In *Paul*, the attorney committed similar misconduct: he attempted to obtain a last-minute continuance for a meritless reason, failed to attend a hearing and argued that it was not misconduct because it was due to a miscommunication, and failed to follow court instructions to properly file a petition for custody. 809 N.W.2d at 702–03. We found that Paul neglected multiple matters and failed to obey court rules, and we agreed with the referee that Paul “rationalize[d] any failure of his duty to his client as somehow benefiting the client.” *Id.* at 705–06. Unlike Nwaneri, Paul failed to cooperate with disciplinary investigations and we found that his extensive disciplinary history for similar conduct substantially aggravated his sanction. *Id.* We imposed an indefinite suspension for a minimum of 4 months. *Id.* at 706.

Based on all of these factors and considerations, we conclude that a 90-day suspension followed by 2 years of supervised probation is appropriate discipline for Nwaneri’s misconduct.

Accordingly, we order that:

1. Respondent Patrick Chinedu Nwaneri is suspended from the practice of law for a minimum of 90 days, effective 14 days from the date of this opinion.
2. Respondent shall pay \$900 in costs, pursuant to Rule 24(a), Rules on Lawyers Professional Responsibility (RLPR), and comply with the requirements of Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals).
3. Respondent shall be eligible for reinstatement to the practice of law following the expiration of the suspension, provided that respondent files with the Clerk of

Appellate Courts and serves upon the Director an affidavit establishing that he is current in continuing legal education requirements, and has complied with Rules 24 and 26, RLPR.

4. Within 1 year of the date of this opinion, respondent shall file with the Clerk of the Appellate Courts and serve upon the Director proof of successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. Failure to timely file the required documentation shall result in automatic suspension, as provided in Rule 18(e)(3), RLPR.

5. Upon reinstatement, respondent shall be on supervised probation for a period of 2 years on the following terms and conditions:

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

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

c. Respondent shall be supervised by a licensed Minnesota attorney, appointed by the Director to monitor compliance with the terms of this probation. Respondent shall provide to the Director the names of four attorneys who have agreed to be nominated as respondent's supervisor within two weeks from the date of our order reinstating respondent to the practice of law. If, after diligent effort, respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, the respondent shall on the first day of each month provide the Director with an inventory of active client files described in paragraph d. below. Respondent shall make active client files available to the Director upon request;

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

So ordered.