



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DHS/ICE Office of Chief Counsel - CLE**  
**925 Keynote Circle, Room 201**  
**Brooklyn Heights, OH 44131**

**Name:** S [REDACTED], A [REDACTED] N [REDACTED]

**A [REDACTED]-436**

**Date of this notice: 6/11/2018**

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Cole, Patricia A.  
Wendtland, Linda S.  
Pauley, Roger

SEVEN  
User team: Docket

For more unpublished decisions, visit  
[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)

Immigrant & Refugee Appellate Center, LLC | [www.irac.net](http://www.irac.net)

*[Handwritten signature]*

Falls Church, Virginia 22041

---

File: [REDACTED] 436 – Cleveland, OH

Date: JUN 11 2018

In re: A [REDACTED] N [REDACTED] S [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Kris K. Stoker  
Assistant Chief Counsel

APPLICATION: Cancellation of removal under section 240A(a) of the Act; asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Kenya, appeals from an Immigration Judge's January 24, 2018, decision denying his applications for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a), and for asylum and withholding of removal under sections 208 and 241(b)(3) of the Act, as well as his request for protection under the Convention Against Torture. For the following reasons, the appeal will be sustained and the record will be remanded for further proceedings consistent with this order.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges, under a de novo standard of review. 8 C.F.R. § 1003.1(d)(3)(ii).

The Notice to Appear alleges that the respondent was convicted on November 9, 2006, for Mortgage Fraud in violation of section 16-8-102 of the Georgia Code, on that same date for Identity Fraud, in violation of section 16-9-121 of the Georgia Code, and on October 5, 2011, for Escape, in violation of section 16-10-52 of the Georgia Code (Exh. 1). This document also charges the respondent with removability under section 237(a)(2)(A)(ii) of the Act, as an alien who has been convicted of two or more crimes involving moral turpitude not arising out of a single scheme of misconduct.

The Immigration Judge found that the respondent had conceded the charge of removal, i.e., that the convictions for Mortgage Fraud and Escape involved moral turpitude and did not arise from a single scheme (IJ at 2). Accordingly, no discussion of whether the respondent's convictions subject him to the charge of removal appears in the record. On appeal, the respondent contests removability and the denial of his applications for relief. *See generally* Attachment to Notice of Appeal; Respondent's Brief.

In this case, the Immigration Judge sought the respondent's admission to the factual allegations in the Notice to Appear, including his admission that he was convicted as referenced herein of Mortgage Fraud, Identity Fraud, and Escape, under the aforementioned sections of Georgia law. The respondent disputed his Identity Fraud conviction, stating that it was included "under the umbrella of the mortgage fraud." See Tr. at 15. The Immigration Judge therefore considered this allegation to have been denied (*Id.*). Since the respondent admitted that he was convicted of Mortgage Fraud and of Escape, the Immigration Judge considered these allegations admitted (Tr. at 14-15). The Immigration Judge then asked the respondent if he would "agree" that "the residential mortgage fraud conviction and the escape conviction did not arise out of a single scheme of criminal misconduct" (Tr. at 16). The respondent replied "that's correct" (*Id.*). The Immigration Judge then asked the respondent if he agreed that he "could be subject to removal from the United States because you're an alien who, at any time, has been convicted of two crimes involving moral turpitude which did not arise out of a single scheme of criminal misconduct" (*Id.*). The respondent answered "yes" and it was on this basis that the Immigration Judge considered the removal charge conceded.

Aliens in removal proceedings are entitled to be given notice of the charges against them and the opportunity to be heard. 8 C.F.R. § 1240.10(a); see also *Reno v. Flores*, 507 U.S. 292, 306-09 (1993). "Even if an alien enters the United States illegally,<sup>1</sup> he or she 'may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.'" *Warner v. Ashcroft*, 381 F.3d 534, 538 (6th Cir. 2004) (quoting *Shaughnessy v. United States ex. rel. Mezei*, 345 U.S. 206, 212, 73 S.Ct. 625, 97 L.Ed. 956 (1953)). Where an alien is unrepresented, as the respondent was below, the regulations contemplate that particular attention is paid when admissions or concessions are elicited. 8 C.F.R. § 1003.25(b) (discussing under what circumstances a stipulated order of removal may be entered if alien appears pro se). In any case, the charges must be explained using non-technical language. 8 C.F.R. § 1240.10(a)(6).

The respondent appeared pro se below and also is representing himself on appeal. He contests the finding that he is removable as charged, arguing that the Identity Fraud and Mortgage Fraud convictions arose out of a single scheme, and that the Escape offense involved no moral turpitude. See Attachment to Notice of Appeal. To succeed on this due process-related claim, the respondent must show that proceedings were so fundamentally unfair as to constitute a denial of justice, thereby causing prejudice. *Vasha v. Gonzales*, 410 F.3d 863, 872 (6th Cir. 2005). The record does not reflect that the Immigration Judge advised the respondent that the extent that a given conviction involved "moral turpitude" is a legal question, subject to an analysis of a state statute's language and potential divisibility.<sup>2</sup> No definition of "moral turpitude" appears in the discussion that elicited the respondent's concession to the charge. And even if he had understood the legal implications of the term "moral turpitude," the respondent, at most, only agreed that his convictions "could" subject him to removal under section 237(a)(2)(A)(ii) of the Act (Tr. at 16). As such, we do not agree that the respondent conceded the removal charge. Under these circumstances, we find it necessary to remand this record to the Immigration Judge to permit the respondent to contest the

<sup>1</sup> The respondent is a lawful permanent resident of the United States (Exh. 1).

<sup>2</sup> Whether or not two offenses arise in a single scheme of misconduct involves factual findings as well.

charges of removal. We express no opinion on the respondent's removability or on his eligibility or fitness for any relief from removal, should a claim to relief become necessary.

Accordingly, the following order is entered.

ORDER: The appeal is sustained and the record is remanded for further proceedings consistent with this order.

  
\_\_\_\_\_  
FOR THE BOARD