



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: R [REDACTED] -A [REDACTED], M [REDACTED]

A [REDACTED] -197

Date of this notice: 3/18/2019

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Greer, Anne J.
Wendtland, Linda S.
Donovan, Teresa L.

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Falls Church, Virginia 22041

File: A [REDACTED]-197 – Seattle, WA

Date:

MAR 18 2019

In re: M [REDACTED] R [REDACTED]-A [REDACTED] a.k.a. [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Stephen C. Robbins, Esquire

ON BEHALF OF DHS: Margaret LaDow
Assistant Chief Counsel

APPLICATION: Cancellation of removal

In a decision dated November 8, 2017, an Immigration Judge pretermitted and denied the respondent's application for cancellation of removal pursuant to section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1) (2012). The respondent, a native and citizen of Mexico, has appealed from this decision. The appeal will be sustained and the record will be remanded for further proceedings.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The issue on appeal is whether the Immigration Judge properly determined that the respondent is statutorily ineligible for cancellation of removal pursuant to section 240A(b)(1)(C) of the Act because his 2013 conviction for social security number misuse in violation of 42 U.S.C. § 408(a)(7)(B) is one for a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) (IJ at 2-6; Exh. 2 at 7, 50; Respondent's Br. at 3). "To involve moral turpitude, a crime requires two essential elements: reprehensible conduct and a culpable mental state." *Matter of J.M. Acosta*, 27 I&N Dec. 420, 422 (BIA 2018).

We agree with the respondent that the decision of the United States Court of Appeals for the Ninth Circuit, in whose jurisdiction this case arises, in *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000), governs this case (Respondent's Br. at 3-6). In *Beltran-Tirado*, the United States Court of Appeals for the Ninth Circuit declined to defer to our conclusion that an alien's conviction under the predecessor of 42 U.S.C. § 408(a)(7)(B) was one for a crime involving moral turpitude because the legislative history of that provision reflected that Congress did not view social security number misuse as reprehensible conduct that "establish[es] 'moral turpitude.'" *Id.* at 1184.

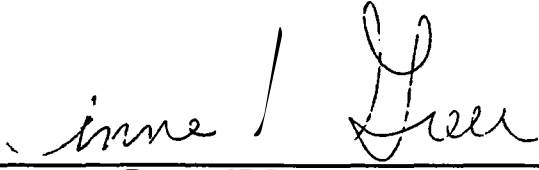
The Immigration Judge acknowledged the Ninth Circuit's decision in *Beltran-Tirado* but concluded that it was no longer controlling precedent because it was decided before the Supreme

Court refined its articulation of the categorical approach in *Mathis v. United States*, 136 S. Ct. 2243 (2016), and *Descamps v. United States*, 570 U.S. 254 (2013) (IJ at 4-5). However, as the Immigration Judge recognized, the Ninth Circuit has not explicitly overruled *Beltran-Tirado* and continues to view that holding as precedential and thus binding (IJ at 4). See *Espino-Castillo v. Holder*, 770 F.3d 861, 865 (9th Cir. 2014) (“The case now stands, at best, as an isolated exception to the prevailing rule that a conviction for a fraud offense is categorically a crime involving moral turpitude.”).

It is well settled that “while we have the authority to apply intervening Supreme Court precedent that supersedes contrary circuit court authority, we may not extend the rationale of a Supreme Court decision in the face of contrary precedent from the controlling circuit.” *Matter of Chairez*, 27 I&N Dec. 21, 22 (BIA 2017). Consequently, the Immigration Judge was bound to follow the court’s precedential decision in *Beltran-Tirado* that 42 U.S.C. § 408(a)(7)(B) does not define a crime involving moral turpitude. Thus, the respondent’s offense in violation of 42 U.S.C. § 408(a)(7)(B) does not bar him from applying for cancellation of removal under section 240A(b)(1)(C) of the Act.

We will therefore reverse the Immigration Judge’s decision to pretermite and deny the respondent’s application for cancellation of removal under section 240A(b)(1) of the Act and remand the record for further consideration of the respondent’s eligibility for this form of relief and any other issues the Immigration Judge deems appropriate. Accordingly, the following order will be entered.

ORDER: The appeal is sustained and the record is remanded for further proceedings and for the entry of a new decision.



FOR THE BOARD