U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: P[redacted]-R[redacted], A[redacted] **A [redacted]112**

Date of this notice: 11/6/2017

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:
Grant, Edward R.
Adkins-Blanch, Charles K.
Kelly, Edward F.

Userteam: Docket

File: [redacted] 112 – Los Angeles, CA Date: NOV - 6 2017

In re: A[redacted] H[redacted] P[redacted] R[redacted] a.k.a. [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Martin C. Fontes, Esquire

APPLICATION: Removability; cancellation of removal; special rule cancellation of removal

The respondent, a native and citizen of El Salvador, has appealed the Immigration Judge's January 29, 2015, decision finding him removable under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), and pretermitting his applications for cancellation of removal under section 240A(b) of the Act, 8 U.S.C. § 1229b(b), and for special rule cancellation of removal under 8 C.F.R. § 1240.66. The appeal will be sustained, and the record will be remanded.

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 a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

After finding the respondent to be removable as charged under section 212(a)(2)(A)(i)(I) of the Act, as an alien convicted of a crime involving moral turpitude (CIMT), the Immigration Judge determined that he was therefore ineligible for cancellation of removal under section 240A(b)(1)(C) of the Act and for special rule cancellation of removal under 8 C.F.R. § 1240.66(b)(1).

The respondent acknowledges that in 2010 he was twice convicted under section 14601.2(a) of the California Vehicle Code for Driving When Privilege Suspended or Revoked for Driving under the Influence of Alcoholic Beverage or Drug. At the time of the respondent's 2010 convictions, section 14601.2(a) provided: "A person shall not drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153 if the person so driving has knowledge of the suspension or revocation." At the time of these convictions, California Vehicle Code Sections 23152 and 23153 proscribed the operation of a motor vehicle while under the influence of alcohol or drugs or while addicted to drugs.

The United States Court of Appeals for the Ninth Circuit has stated that an offense is a CIMT if the crime "involve[s] either fraud or base, vile, and depraved conduct that shocks the public conscience." *Leal v. Holder*, 771 F.3d 1140, 1146 (9th Cir. 2014) (citations omitted). "To involve moral turpitude, a crime requires two essential elements: reprehensible conduct and a culpable mental state." *Matter of Silva-Trevino*, 26 I&N Dec. 826, 834 (BIA 2016). We have held that the

categorical and modified categorical approaches provide the proper framework for determining whether a conviction is for a CIMT. *Id.*

In reaching her conclusion that section 14601.2(a) of the California Vehicle Code categorically describes a CIMT, the Immigration Judge relied on *Marmolejo-Campos v. Holder*, 558 F.3d 903 (9th Cir. 2009). In that case, the Ninth Circuit upheld a Board determination that Arizona's aggravated DUI statute, Ariz. Rev. Stat. § 28–1383(A)(1), described a CIMT, where the elements were: "A person must (1) drive or maintain actual physical control over a vehicle, (2) while under the influence of intoxicating liquor or drugs, (3) while his or her license or privilege to drive is suspended, canceled, revoked, or refused or while a restriction is placed upon the person's driver license as a result of a prior DUI-related offense" and (4) "the offender drove with a suspended or otherwise revoked license, and . . . he knew or should have known of the suspension or revocation." 558 F.3d at 912 (omitting quotations and citations). However, the *Marmolejo* court did not hold that driving on a license one knows to have been suspended for a prior DUI was sufficient to establish moral turpitude. Rather, the court held that the aggravating factors of driving under the influence and so acting with the knowledge that one's license has been suspended for a prior DUI were sufficient, in combination, for a finding of moral turpitude. *Id.* at 917.

While driving with knowledge that one's license had been suspended was a key distinction between a mere recidivist DUI statute, as was found not to be a CIMT in *Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001), and the aggravated DUI statute at issue in *Marmolejo-Campos*, we do not believe that the underlying recidivist DUI nature of the offense in the latter case was irrelevant. To hold otherwise would be tantamount to concluding that any driving while a license is suspended or revoked would be a CIMT.

We therefore conclude that a conviction under section 14601.2(a) of the California Vehicle Code is not for a CIMT. It follows that the respondent is not removable under section 212(a)(2)(A)(i)(I) of the Act, and he is not ineligible to apply for cancellation of removal under section 240A(b)(1)(C) of the Act and for special rule cancellation under 8 C.F.R. § 1240.66(b)(1). Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

P[redacted]-R[redacted], A[redacted]
[redacted] 112

Handed out 1/29/15 IJ Bass

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

In the Matter of: P[redacted]-R[redacted], A[redacted]

File No.: [redacted] 112

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("Act") - Present without inspection
Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act ("Act") - crime involving moral turpitude.

APPLICATIONS: Cancellation of Removal for Certain Non-permanent Residents under section 240A(b)(1) of the Act;
NACARA section 203

ON BEHALF OF RESPONDENT:
Martin Fontes, Esq.
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ON BEHALF OF THE GOVERNMENT:
Jailuk Parrino, Assistant Chief Counsel
Department of Homeland Security - ICE
606 South Olive Street, 8th Floor
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DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. Procedural History

The Respondent is a male native and citizen of El Salvador who was issued a Notice to Appear (hereinafter "NTA") on November 28, 2007. See Exh. 1. At a previous master calendar hearing, the Respondent admitted the allegations in the NTA and conceded removability. See § 240(c)(1)(A) of the Act.

On July 31, 2014, the Government filed a Lodge Charge (Form I-261) to add allegations 5, in which it alleged that the Respondent was convicted on February 11, 2010, for the offense of Driving when Privilege Suspended for Prior DUI Conviction, in violation of section 14601.2(a) of the California Vehicle Code (Exh. 20) and allegation 6, in which it alleged that the Respondent was convicted on September 7, 2010, for the offense of Driving when Privilege Suspended for Prior DUI Conviction, in violation of section 14601.2(a) of the California Vehicle Code (Exh. 21). See Exhs. 1A, 20, and 21. The Respondent admitted allegations 5 and 6. The

Government added the charge of 212(a)(2)(A)(i)(I) of the Act, in which it alleged that the Respondent has been convicted of a crime involving moral turpitude ("CIMT") as a result of the convictions alleged in allegations 5 and 6. The Respondent denies the charge of CIMT.

The Respondent applied for relief from removal in the form of Cancellation of Removal for Certain Non-permanent Residents under section 240A(b)(1) of the Act and NACARA section 203. The Respondent does not seek the relief of voluntary departure under section 240B(b) of the Act. The issue before the court concerns his applications for relief from removal. On April 17, 2014, the Respondent withdrew his applications for asylum, withholding of removal, and relief under CAT.

STATEMENT OF THE LAW AND ANALYSIS

The Respondent has the following convictions.

In 1993, the Respondent was convicted of Burglary, in violation of section 459 of the California Penal Code, a misdemeanor.

In 1998, the Respondent was convicted of driving with a suspended license, in violation of section 14601.1(a). Exh. 12, page Tab Y. In this case, he admitted to a two prior convictions in 1994 and 1995 of driving with a suspended license in violation of section 14601.1(a) of the California Vehicle Code. See Exh. 12, Tab Y, page 64.

Also, in 1998, he was convicted of Failure to Stop at the Limit Line in violation of section 21453(a) of the California Vehicle Code, and Failing to Prove Financial Responsibility, in violation of section 16028(a) of the California Vehicle Code, and Driving with a Suspended License, in violation of section 14601.1(a) of the California Vehicle Code.

In 2000, he was convicted of Battery on a Spouse, in violation of section 243(e)(1) of the California Penal Code, a misdemeanor.

In 2000, he was convicted of Driving with a Suspended License, in violation of section 14601.1(a) of the California Vehicle Code, a misdemeanor.

In 2007, he was convicted of driving under the influence, in violation of section 23152(a) of the California Vehicle Code, a misdemeanor. He was also convicted of driving with a suspended license, in violation of section 14601.1(a) of the California vehicle code, a misdemeanor.

In 2007, he was convicted of driving with a suspended license, in violation of section 14601.1(a) of the California Vehicle Code, a misdemeanor.

On November 28, 2007, the Respondent was personally served with the Notice to Appear.

In 2008, he was convicted of driving with a suspended license, in violation of section 14601.1(a) of the California Vehicle Code, a misdemeanor. The date of this violation was July 26, 2008.

On February 11, 2010, the Respondent was convicted of Driving when Privilege Suspended or Revoked for Driving under the Influence of Alcoholic Beverage or Drug in violation of section 14601.2(a) of the California Vehicle Code, a misdemeanor. See Exh. 20. He was sentenced to 3 years of informal probation, 30 days jail, and fines. See Exh. 20, page 17-26 (Case number: 09HM02598). On September 20, 2010, the Respondent was found to be in violation of probation for failure to pay the fines. See Exh. 20, page 25-26. He was sentenced to a total of 15 days in jail.

On September 7, 2010, the Respondent was again convicted of Driving when Privilege Suspended or Revoked for Driving under the Influence of Alcoholic Beverage or Drug in violation of section 14601.2(a) of the California Vehicle Code, a misdemeanor. See Exh. 21, pages 27-37 (Case number: 0CP05593). He was sentenced to 36 months of summary probation. As a condition of probation, he was sentenced to serve 10 days in the Los Angeles County Jail. In addition, in lieu of fines, he was permitted to perform 10 days of Cal Trans. See Exh. 21, page 33. On September 27, 2010, the Respondent was found to be in violation of probation for failure to appear. He was sentenced to time served. See Exh. 21, page 34. On May 16, 2011, the Court found that the Respondent failed to provide proof of completion of Cal Trans. On May 17, 2011, the Respondent failed to appear in Court. Probation was revoked. See Exh. 21, page 34-35. A bench warrant in the amount of $30,000 was issued. See Exh. 21, page 35. On March 19, 2013, the Court reinstated probation and ordered the Respondent to complete the previously ordered 10 days of Cal Trans and provide proof of completion by July 17, 2013. Exh. 21, page 35. On July 25, 2013, the Respondent failed to provide proof of completion of Cal Trans. On July 29, 2013, the Respondent failed to appear in Court and the Court revoked the probation for failure to file proof of completion of Cal Trans. See Exh. 21, page 36. The Court issued a bench warrant in the amount of $60,000. On January 24, 2014, the Court found the Respondent to be in violation of probation. See Exh. 21, page 36-37. The Respondent and his counsel admitted to the violation of probation. See Exh. 21, page 36-37. The Court converted the 10 days of Cal Trans to 10 days in the Los Angeles County Jail. In addition, the Court sentenced the Respondent to an additional 5 days in jail for the violation of probation. Therefore, he was sentenced to serve 15 days in jail.

At issue in this case is whether the Respondent's two convictions (February 11, 2010 and September 7, 2010) for the offense of Driving when Privilege Suspended or Revoked for Driving under the Influence of Alcoholic Beverage or Drug in violation of Vehicle Code section 14601.2(a) are CIMT's, thereby rendering the Respondent ineligible for Cancellation of Removal pursuant to section 240A(b) of the Act and NACARA.

If a violation of section 14601.2(a) of the California Vehicle Code is a CIMT, then the Respondent having been convicted twice of violating section 14601.2(a) of the California Vehicle Code, would not fall under the petty offense exception, and therefore, would be ineligible for Cancellation of Removal under section 240A(b)(1)(C) of the Act for being inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Under section 240(b)(1)(C) of the Act, the Respondent is eligible for Cancellation of Removal if he "has not been convicted of an offense under section 212(a)(2), 237(a)(2), or 237(a)(3) of the Act. A CIMT is an offense that is referenced under both section 212(a)(2) and 237(a)(2) of the Act.

In addition, if a violation of section 14601.2(a) of the California Vehicle Code is a CIMT, then the Respondent would be ineligible for NACARA under the regular standard, and would have to meet the heightened standard for NACARA. See 8 C.F.R. § 1240.66(c). The Respondent would be ineligible for the heightened standard for NACARA because he would not be able to meet the 10 year requirement at 8 C.F.R. § 1240.66(c). He would not be eligible for heightened NACARA until March 3, 2019, in that his first offense was committed on March 3, 2009, and his second offense was committed on May 6, 2010. The second offense would constitute the second CIMT, making him removable under section 212(a)(2)(A)(i)(I) of the Act. On March 3, 1919, he would then no longer be removable for two CIMT's.

It is the Respondent's burden to show that he is eligible for the relief requested. 8 C.F.R. § 1240.8(d). If the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the alien shall have the burden of proving by a preponderance of the evidence that such grounds do not apply. Id.

In determining whether misconduct for which the alien was convicted constitutes a crime involving moral turpitude, the Immigration Court is guided by Matter of Guevara Alfaro, 25 I&N Dec. 417 (BIA 2011). The Court must first employ a categorical approach by "looking to the statute defining the crime of conviction, rather than to the specific facts underlying the crime." Kawashima v. Holder, 132 S.Ct. 1166, 1172 (2012). If the statute is not a "categorical match," the Court then applies a modified categorical approach. Marmolejo-Campos, 558 F.3d 903, 912 (9th Cir. 2009). Under the categorical approach outlined in Taylor v. United States, 495 U.S. 575 (1990), a Court compares the statute of conviction to the generic definition of moral turpitude. The generic definition of "crimes involving moral turpitude" encompasses crimes that are "base, vile, or depraved," and "if they offend society's most fundamental values, or shock society's conscience." Navarro-Lopez v. Gonzales, 503 F.3d 1063, 1074 (9th Cir. 2007) (en banc) (overruled on other grounds by United States v. Aguila-Montes de Oca, 655 F.3d 915 (9th Cir. 2011). The Court should identify the elements of the statute and compare those elements to the generic definition of a crime involving moral turpitude. In order to find the existence of a CIMT under the Act, "a crime must involve both reprehensible conduct and some degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness." Matter of Silva-Trevino, 24 I&N Dec. 687, 689 n.1. (A.G. 2008), overruled on other grounds by Olivas-Motta v. Holder, 716

F.3d 1199 (9th Cir. 2013). Therefore, the Court must look at the specific California Vehicle Code section to determine whether the proscribed conduct constitutes a CIMT.

Cal. Veh. Code § 14601.2(a) provides as follows:

> A person shall not drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of section 23152 or 23153 if the person so driving has knowledge of the suspension or revocation.

Cal. Veh. Code § 14601.2(a).

A conviction under California Vehicle Code section 14601.2(a) requires a showing that the offender was "knowingly" driving with a suspended or revoked license for having a prior conviction for a DUI. Therefore, a conviction under this statute only requires 3 elements: 1) driving a motor vehicle, 2) when one's driving privilege is suspended or revoked for a prior DUI conviction, and 3) having the knowledge of the suspension or revocation.

The "knowing" element satisfies the "scienter" requirement for finding an offense to be a CIMT and the act of driving with the suspended or revoked driving privilege for a prior DUI conviction is the "reprehensible conduct" because it shows a deliberate disregard for the law.

The Government is correct. When an individual is previously convicted of a DUI offense and all of the various entities (such as law enforcement, the Department of Motor Vehicles, and the Court) have all deemed the individual unfit for driving, and has revoked or suspended his driving privileges, the individual is strictly prohibited from driving. Therefore, knowingly driving when one's driving privileges have been suspended or revoked is committing a morally turpitudinous offense. Matter of Danesh, 19 I&N Dec. 669, 673 (BIA 1988) (explaining that knowing violation of the law "exhibits a deliberate disregard for the law, which we consider to be a violation of the accepted rules of morality and the duties owed to society"); see also Marmolejo Campos v. Holder, 558 F.3d 903 (9th Cir. 2009) (an alien who was convicted twice under the state statute for aggravated driving under the influence, which required showing that the defendant knowingly drove with a suspended, cancelled, or revoked driver's license committed crimes involving moral turpitude).

The Respondent argues that a violation of section 14601.2(a) of the California Vehicle Code is not morally turpitudinous because "knowledge of a suspended license does not necessarily involve evil intent," and that even though an individual is driving in violation of law, that individual may "very well be physically and mentally capable of driving safely and not place other people in danger." The Respondent's argument is misplaced. When an individual's driving privileges have been revoked because society has determined that individual not safe or fit to drive on the streets, that individual's knowing and deliberate decision to get into a vehicle and still drive, is deemed to be conduct that is base and reprehensible because he is blatantly

disregarding the laws of society and is placing others in harm's way, specifically a danger to the community.

The Respondent argues that the knowledge element of section 14601.2(a) is not an aggravating factor for determining whether the offense is one that is morally turpitudinous. The Government argues that the knowledge element is an aggravating factor that is morally turpitudinous. The Court finds that the Government is correct. The Circuit Court in Marmolejo stated, "a simple DUI alone does not rise to the level of a CIMT, but it is the defendant's knowledge that he was not entitled to drive, and his conscious disregard of that decision, that renders the criminal misconduct under the Arizona State statue in a CIMT." Marmolejo-Campos, 558 F.3d at 914. Similarly, it is not the mere act of driving without a license that makes a violation of Vehicle Code section 14601.2(a) a CIMT, but it is the knowledge that the individual was not entitled to drive because of a prior conviction for a DUI coupled with his decision to continue to drive regardless of the prohibition on his driving privileges that makes the offense a CIMT. See Lopez v. Meza, 22 I&N Dec. 1188, 1195-96 (BIA 1999) (the offense of aggravated DUI under Arizona state law is deemed to be a crime involving moral turpitude because there is the additional "aggravating" element which requires the driver to know that he or she is prohibited from driving under any circumstances.)

The Respondent cites to an unpublished Board case dated March 10, 2014. That case held that an "aggravated DUI" offense under an Arizona statute, specifically, Ariz. Rev. Stat. § 28-1383(A)(1), is not categorically a CIMT. The decision is unpublished and, therefore, does not have a binding effect. Even if assuming arguendo that the decision was published, it deals specifically with the Arizona statute. Under the Arizona state statute, section 28-1383(A)(1), the offense of "aggravating DUI," can be violated by either "driving" or "exercising actual physical control" over a motor vehicle. Since that statute encompasses some conduct that is morally turpitudinous and other conduct that is not, it would require the Court to consider whether it is allowed to possibly proceed to the use of the "modified categorical" approach in light of Descamps v. United States, 133 S.Ct. 2276 (2013) to make that determination. However, the California statute, California Vehicle Code section 14601.2(a), contains elements that are a categorical match to the generic definition of a CIMT (scienter and an "act" that offends society's most fundamental values or violates the accepted rules of morality and the duties owed to society). As noted above, the "scienter" element of the generic definition of CIMT is met by the "knowledge" requirement that one's license has been suspended or revoked under California Vehicle Code section 14601.2(a). The "offending act" that goes against the duties owed to society is the deliberate driving in disregard of the law when one's license has been suspended or revoked for a prior DUI. Therefore, the California statute is neither overbroad nor divisible like the Arizona statute.

The Court, therefore, finds that a violation of section 14601.2(a) of the California Vehicle Code is categorically a crime involving moral turpitude. Since the Respondent has been convicted twice of violating section 14601.2(a) of the California Vehicle Code, he has, therefore,

been convicted of two crimes involving moral turpitude. He is ineligible for the petty offense exception. He is inadmissible under 212(a)(2)(A)(i)(I) of the Act and is therefore barred from cancellation of removal under section 240A(b)(1)(C) of the Act.

The petty offense exception contained within section 212(a)(2)(A)(ii) does not affect this result in that the Respondent was convicted of two CIMT's.

Therefore, the Respondent's application for Cancellation of Removal is denied on statutory grounds.

NACARA § 203

To be eligible for special rule cancellation of removal under 8 C.F.R. § 1240.66(c), the Respondent must be described in 8 C.F.R. § 1240.61.

8 C.F.R. 1240.61 provides that a Respondent is eligible for special rule cancellation of removal under NACARA if he or she is:

1) a Guatemalan national who first entered the United States on or before October 1, 1990 or

2) a Salvadoran national who first entered the United States on or before September 19, 1990; and

3) is a registered ABC class member who has not been apprehended at the time of entry after December 19, 1990; or

4) If Salvadoran, applied for TPS; or

5) filed an application for asylum with the Service on or before April 1, 1990, either by filing an application with the Service or filing the application with the Immigration Court and serving a copy of that application on the Service.

In addition, the following requirements apply under 8 C.F.R. 1240.66(c):

- The Respondent is inadmissible under section 212(a)(2) of the Act (relating to criminal activity), or deportable under 237(a)(2) (other than section 237(a)(2)(A)(iii) relating to aggravated felony convictions), or 237(a)(3) (relating to criminal activity, document fraud, and failure to register); and

- The Respondent has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status constituting a ground for removal; and

- The Respondent has been a person of good moral character during the required period of continuous physical presence; and

- The Respondent's removal from the United States would result in exceptional and extremely unusual hardship to the alien or to the alien's spouse, parent, or child, who is a United States citizen or an alien lawfully admitted for permanent residence.

- In addition, the Respondent must not have been convicted of an aggravated felony under section 237(a)(2)(A)(iii) of the Act or be an alien described in former section 241(b)(3)(B)(I) of the Act (relating to persecution of others).

In the instant case, the Respondent is ineligible for the lower standard NACARA because he has been convicted of two CIMT's. He is ineligible for the heightened standard NACARA because he is unable to meet the 10 year requirement at 8 C.F.R. § 1240.66(c). He would not be eligible for heightened NACARA until March 3, 2019, in that his first offense was committed on March 3, 2009, and his second offense was committed on May 6, 2010. The second offense would constitute the second CIMT, making him removable under section 212(a)(2)(A)(i)(I) of the Act.

Therefore, the Respondent's application for NACARA is denied on statutory grounds.

Cancellation of Removal under Section 240A(b)(1) of the Act

To be eligible for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, an applicant must establish that: he has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of the application;

2) he has been a person of good moral character throughout that period of time;
3) he has not been convicted of an offense under INA sections 212(a), 237(a)(2), or 237(a)(3); and,
4) his removal would result in exceptional and extremely unusual hardship to his United States citizen or lawful permanent resident spouse, parent, or child.

Additionally, the applicant must establish that he warrants cancellation of removal as a matter of discretion. See INA § 240A(b)(1).

Disqualifying Offenses Under sections 212(a), 237(a)(2), or 237(a)(3) of the Act

As analyzed above, the Court finds that a violation of section 14601.2(a) of the California Vehicle Code is a crime involving moral turpitude. The Respondent has been convicted twice of violating section 14601.2(a) of the California Vehicle Code. Therefore, he has been convicted of two crimes involving moral turpitude. He is ineligible for the petty offense exception. He is inadmissible under 212(a)(2)(A)(i)(I) of the Act and is therefore barred from cancellation of removal under section 240A(b)(1)(C) of the Act.

Good Moral Character, Continuous Physical Presence, and Exceptional and Extremely Unusual Hardship

The Court does not need to rule on these statutory requirements because it finds that the Respondent is statutorily ineligible for Cancellation of Removal under section 240A(b)(1)(C) of the Act.

Therefore, the Respondent's application for Cancellation of Removal is denied on statutory grounds.

ORDERS

IT IS HEREBY ORDERED that the Respondent's application for Cancellation of Removal pursuant to section 240A(b)(1) of the Act is denied.

IT IS HEREBY ORDERED that the Respondent application for NACARA section 203 is denied.

IT IS FURTHER ORDERED that Respondent be removed to El Salvador as charged in the Notice to Appear. If the Respondent fails to appear pursuant to a final order of removal at the time and place ordered by the Department of Homeland Security, other than because of exceptional circumstances beyond his control, such as serious illness to the Respondent or death of an immediate relative, but nothing less compelling, the Respondent will become ineligible for certain forms of relief for a period of 10 years from the date the Respondent was scheduled to appear for removal, such as voluntary departure, cancellation of removal, change or adjustment of status.

APPEAL RIGHTS: Appeal rights are reserved on behalf of both parties. Any party wishing to appeal the Court's issued decision must ensure that the appeal documents are properly completed and received by the Board of Immigration Appeals no later than 30 calendar days from the mailing of this decision, pursuant to 8 C.F.R. § 1003.38(b).

Date: January 29, 2015

Lori R. Bass

Lori R. Bass
Immigration Judge