



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: FLORES RAZO, TERESA

A 092-326-584

Date of this notice: 1/31/2014

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:
Guendelsberger, John

schwarzA
User team: Docket

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Handwritten initials

Falls Church, Virginia 20530

File: A092 326 584 – Los Angeles, CA

Date:

JAN 31 2014

In re: TERESA FLORES RAZO

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Houman Varzandeh, Esquire

APPLICATION: Reopening

On December 19, 2013, the respondent filed a “motion to reconsider” the Board’s December 3, 2013, decision dismissing her appeal. The record will be remanded.

Although entitled otherwise, the respondent's motion is more accurately characterized as one seeking reopening as she wishes to introduce evidence for the Board’s consideration. Section 240(c)(7)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C); *Matter of Cerna*, 20 I&N Dec. 399 (BIA 1991); 8 C.F.R. § 1003.2(c). Specifically, she has submitted a copy of a minute order from a state court reflecting that it granted her motion to strike “by embezzlement” and “while said defendant was an agent, servant and employee of South Bay Urology” language in the complaint on September 26, 2013. She contends that she is, therefore, not removable as charged.

In dismissing the appeal, the Board essentially noted that the term “embezzlement” was defined to include a fraudulent act, while Cal. Penal Code § 484(a), defining the term “theft,” is a divisible statute. Given this evidence, we find that further fact-finding is necessary. The record is not clear as to why the California criminal court granted the respondent's motion to strike the noted language. On remand the burden will be on the Department of Homeland Security (DHS) to show that the criminal court granted the respondent's motion solely so he could avoid immigration consequences. *See Nath v. Gonzales*, 467 F.3d 1185, 1188-89 (9th Cir. 2006). If the DHS does not meet its burden, further examination of the conviction records will be necessary. On remand the Immigration Judge should apply the modified categorical approach to the respondent's conviction at issue to determine if he is still removable under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(iii), in conjunction with section 101(a)(43)(M)(i) of the Act, 8 U.S.C. § 1101(a)(43)(M)(i), for an offense involving fraud or deceit in which the loss to the victim or victims exceeds \$10,000. Both parties may submit evidence on this issue.

Accordingly, the following orders will be entered.

ORDER: The respondent's motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings not inconsistent with the foregoing opinion, and for the entry of a new decision.



FOR THE BOARD