



U.S. Department of Justice

Executive Office for Immigration Review

***Board of Immigration Appeals
Office of the Clerk***

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Name: NGUYEN, DONG VAN

A027-392-198

Date of this notice: 6/12/2012

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:
Miller, Neil P.**

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Falls Church, Virginia 22041

File: A027 392 198 - Seattle, WA

Date: **JUN 12 2012**

In re: DONG VAN NGUYEN

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Eric P. Lin, Esquire

ON BEHALF OF DHS: Jonathan Love
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony as defined in section 101(a)(F)

Lodged: Sec. 237(a)(2)(A)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(ii)] -
Convicted of two or more crimes involving moral turpitude

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony as defined in section 101(a)(43)(G)

APPLICATION: Reopening; termination of proceedings

The respondent timely moves the Board pursuant to 8 C.F.R. § 1003.2 to reopen his removal proceedings based on having been granted on March 5, 2012, a full and unconditional pardon of his three convictions by the Governor of Washington. In our decision dated December 21, 2011, we dismissed the respondent's appeal from the Immigration Judge's March 30, 2010, decision which found him removable as charged above and denied his request for a further continuance. The Department of Homeland Security ("DHS") does not oppose reopening, but does object to termination of proceedings. The motion will be granted, but we will remand the record to the Immigration Judge for further proceedings rather than terminate the proceedings.

The respondent was convicted in 1989 in a Washington criminal court of two counts of robbery in the first degree and was sentenced to 54 months incarceration (Exh. 2). The respondent was convicted in 2007 in another Washington criminal court of theft in the third degree and was sentenced to 365 days in jail (Exh. 1 to Supplement to Government's Pre-Hearing Statement filed on July 6, 2009).

The respondent presents evidence that the Governor of Washington has granted him a full and unconditional pardon of his three convictions (Motion Exh.). Section 237(a)(2)(A)(vi) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(vi), authorizes that such pardons waive the grounds of removability in clauses (i) [crime of moral turpitude], (ii) [two or more crimes of moral turpitude], (iii) [aggravated felony], and (iv) [high speed flight]. The respondent's pardon thus waives the grounds of removability for both charges under section 237(a)(2)(A)(iii) of the Act and for the charge under section 237(a)(2)(A)(ii) of the Act.

The DHS requests that we remand the record to the Immigration Judge for further proceedings so it can lodge a charge under section 237(a)(2)(C) of the Act [convicted of firearms or destructive device violation]. The DHS asserts that an element of the robbery offenses was the use of a firearm during the commission of the robberies.¹ The respondent's pardon would not waive a ground of removability based on a firearms offense. *See Matter of Suh*, 23 I&N Dec. 626 (BIA 2003) (a gubernatorial pardon waives only the grounds of removal specifically set forth in section 237(a)(2)(A)(v[i]) of the Act, and no implicit waivers may be read into the statute).

Further, the DHS is not precluded from lodging an additional or substituted charge in these proceedings. In *Bravo-Pedroza v. Gonzales*, 475 F.3d 1358, 1360 (9th Cir. 2007), the court refers favorably to 8 C.F.R. § [100]3.30 (at any time *during* removal proceedings, additional or substituted charges of deportability and/or factual allegations may be lodged by the [DHS] in writing). Upon remand the respondent may contest removability on the lodged firearms charge and, if found removable, may seek any relief he is eligible to apply for.

Accordingly, the following orders will be entered.

ORDER: The motion to reopen is granted, and the proceedings are reopened.

FURTHER ORDER: We conclude that the respondent is no longer removable under sections 237(a)(2)(A)(ii) or (iii) of the Act.

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

¹ Section 9A.56.200(1) of the Revised Code of Washington (1989) provides, in pertinent part, that a person is guilty of robbery in the first degree if in the commission of a robbery or of immediate flight therefrom, he is armed with a deadly weapon, or displays what appears to be a firearm or other deadly weapon, or inflicts bodily injury. We are unable to engage in factfinding and so we leave resolution of this issue to the Immigration Judge in the first instance.