U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: RAMIREZ MOZ, LUIS MIGUEL

A 072-377-892

Date of this notice: 9/19/2019

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:
Cole, Patricia A.
Wendtland, Linda S.
Noferi, Mark

Userteam: Docket

File: A072-377-892 – Farmville, VA

Date: SEP 19 2019

In re: Luis Miguel RAMIREZ MOZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Benjamin G. Messer, Esquire

ON BEHALF OF DHS: Julianna Bae
Assistant Chief Counsel

APPLICATION: Removability

The respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's April 11, 2019, decision. In that decision, the Immigration Judge ordered the respondent removed to El Salvador after determining in a March 19, 2019, decision that the respondent was removable under section 237(a)(2)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(ii). The respondent's request for oral argument is denied. The appeal will be sustained.

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

On appeal, the respondent argues that the Immigration Judge erred in determining that he is removable as charged. Specifically, the respondent contends that his 2018 conviction for the offense of eluding in violation of section 46.2-817(B) of the Virginia Code does not categorically constitute a crime involving moral turpitude.[1]

We agree with the respondent that his conviction for the offense of eluding in violation of section 46.2-817(B) does not categorically constitute a crime involving moral turpitude. Section 46.2-817(B) of the Virginia Code provides as follows:

> Any person who, having received a visible or audible signal from any law-enforcement officer to bring his motor vehicle to a stop, drives such motor vehicle in a willful and wanton disregard of such signal so as to interfere with or endanger the operation of the law-enforcement vehicle or endanger a person is guilty of a Class 6 felony. It shall be an affirmative defense to a charge of a violation of this

[1] The respondent does not dispute that his 2008 conviction for the offense of larceny constitutes a crime involving moral turpitude.

> subsection if the defendant shows he reasonably believed he was being pursued by a person other than a law-enforcement officer.

Interpreting this statute, the Virginia Court of Appeals has held that a conviction requires proof beyond a reasonable doubt that the accused received a visible or audible signal from a law enforcement officer to bring the motor vehicle to a stop, drove the motor vehicle in a willful and wanton disregard of the visible or audible signal from a law-enforcement officer to bring the motor vehicle to a stop, and drove the motor vehicle in a way that interfered with or endangered the operation of the law enforcement vehicle or in a way that endangered a person. *Jones v. Commonwealth*, 64 Va. App. 361, 367-68 (Va. Ct. App. 2015).

To determine whether this crime involves moral turpitude, "we employ the categorical approach, which requires us to 'focus on the minimum conduct that has a realistic probability of being prosecuted under the [elements of a] statute of conviction, rather than on the facts underlying the respondent's particular violation of that statute.'" *Matter of J.M. Acosta*, 27 I&N Dec. 420, 422 (BIA 2018) (*quoting Matter of Silva-Trevino*, 26 I&N Dec.826, 831 (BIA 2016)); *see also Prudencio v. Holder*, 669 F.3d 472 (4th Cir. 2012) (discussing the categorical approach when determining whether an offense constitutes a crime involving moral turpitude). "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. at 422.

In this case, we agree with the respondent's argument on appeal that the requisite willful or wanton mens rea applies only to disregarding the visible or audible signal from a law-enforcement officer. *See Jones v. Commonwealth*, 64 Va. App. at 367-68. Since the endangerment of the law-enforcement vehicle or a person requires only that the accused be negligent, we agree with the respondent that his offense is not categorically a crime involving moral turpitude. *See Ramirez v. Sessions*, 887 F.3d 693 (4th Cir. 2018) (holding that simply refusing to comply with an order from law enforcement does not constitute a crime involving moral turpitude). Although the Immigration Judge relies on *Matter of Ruiz-Lopez*, 25 I&N Dec. 551 (BIA 2011), we conclude that this case is distinguishable because the willful or wanton mens rea in that case applied to disregarding the lives or property of others, not to simply disregarding the order of the law-enforcement officer (3/19/19 IJ at 4-5). We therefore disagree with the Immigration Judge's determination that the respondent is removable under section 237(a)(2)(A)(ii) of the Act.

Accordingly, the following order will be entered.

ORDER: The appeal is sustained, the Immigration Judge's April 11, 2019 and March 19, 2019, decisions are vacated, and proceedings are terminated.

FOR THE BOARD