



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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***S-UGARTE DELGADO, OCTAVIO
231886/A205-829-687
PUTNAMVILLE CORR. FAC
1946 WEST US HIGHWAY 40
GREENCASTLE, IN 46135**

**DHS/ICE Office of Chief Counsel - CHI
525 West Van Buren Street
Chicago, IL 60607**

Name: *S-UGARTE DELGADO, OCTAVIO A 205-829-687

Date of this notice: 3/13/2014

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:
Pauley, Roger

williams
Userteam: Docket

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AS

Falls Church, Virginia 20530

File: A205 829 687 – Plainfield, IN

Date: MAR 13 2014

In re: OCTAVIO UGARTE DELGADO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Kristin Linsley
Assistant Chief Counsel

In an oral decision dated November 25, 2013, an Immigration Judge found the respondent removable; determined that he did not demonstrate eligibility for any relief from removal; and ordered him removed from the United States to Mexico. The respondent appealed from that decision. The record will be remanded.

The now 36-year-old respondent was found removable on both charged inadmissibility grounds, as convicted of a crime involving moral turpitude (“CIMT”) 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 as present without being admitted or paroled under section 212(a)(6)(A)(i) of the Act. As substantiated by conviction documents, he has a March 6, 2013, conviction upon a guilty plea for “synthetic identity deception” under Ind. Code § 35-43-5-3.8(a)(3). For such crime, he was sentenced to imprisonment of 2 years, with imposition of 18 months of that sentence suspended subject to completion of probation. *See* Ex. 2. He arrived in the United States in about 1998. *See* I.J. at 3; Tr. at 3-4, 8.

The Immigration Judge found the respondent removable under section 212(a)(2)(A)(i)(I) of the Act based on his 2013 Indiana conviction for “synthetic identity deception.” In addition, the Immigration Judge noted that, in view of such conviction, the respondent was ineligible for cancellation of removal. *See* sections 240A(b)(1)(B), 8 U.S.C. § 1229b(b)(1)(B); *see also* section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3); I.J. at 2.

This Board reviews an Immigration Judge’s findings of fact, including findings as to the credibility of testimony, under the “clearly erroneous” standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of R-S-H-*, 23 I&N Dec. 629 (BIA 2003); *Matter of S-H-*, 23 I&N Dec. 461 (BIA 2002). We review questions of law, discretion and judgment, and all other issues *de novo*. *See* 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

The statute under which the respondent was convicted, Ind. Code § 35-43-5-3.8(a)(3), provides, “A person who knowingly or intentionally obtains, possesses, transfers, or uses the synthetic identifying information. . .with intent to profess to be another person. . .commits synthetic identity deception. . . .” Further, Ind. Code § 35-43-5-3.8(d) provides, “It is not a defense in a prosecution under subsection (a) or (b) that no person was harmed or defrauded.”

It is well-established that offenses involving fraud and theft constitute CIMTs. *See, e.g., Matter of Pinzon*, 26 I&N Dec. 189, 193-95 (BIA 2013) (knowingly and willfully making any material false, fictitious, or fraudulent statement to obtain a United States passport); *Matter of Jurado*, 24 I&N Dec. 29, 33 (BIA 2006) (retail theft); *Matter of Alarcon*, 20 I&N Dec. 557, 559-60 (BIA 1992) (petty theft and mail fraud); *Matter of Adetiba*, 20 I&N Dec. 506, 507-08 (BIA 1992) (mail fraud); *Matter of Correa-Garces*, 20 I&N Dec. 451, 454 (BIA 1992) (fraud); *Matter of Esfandiary*, 16 I&N Dec. 659, 660-61 (BIA 1979) (malicious trespass with intent to commit petit larceny); *Matter of Chouinard*, 11 I&N Dec. 839, 840-41 (BIA 1996) (simple larceny and illegal use of a credit card).

We find that a remand is necessary in this case. Pursuant to *Descamps v. United States*, ___ U.S. ___ (2013), the respondent could be found removable under section 212(a)(2)(A)(i)(I) of the Act if a conviction under the Indiana statute pertaining to “synthetic identity deception” either is categorically a fraud or theft offense or is divisible with fraud or theft demonstrated by the conviction documents.¹ The November 2013 oral decision includes the Immigration Judge’s statement that “identity deception may be a divisible statute,” but such decision does not indicate which conviction documents may have been consulted and does not contain a detailed analysis regarding the categorical and modified categorical approaches. On remand, the Immigration Judge should reconsider his decision in light of *Descamps v. United States*, *supra*, and other applicable case precedent. Both the respondent and the Department of Homeland Security may submit any and all available relevant evidence, as appropriate.

Accordingly, we enter the following order.

ORDER: The record is remanded to the Immigration Court for further proceedings and for the issuance of a new decision, consistent with this opinion.


FOR THE BOARD

¹ For example, on its face the statute would appear to apply to a person who presented documents pertaining to another person in order to gain access to a nightclub or area in an airport reserved for preferred airline customers while awaiting departure.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
CHICAGO, ILLINOIS

File: A205-829-687

November 25, 2013

In the Matter of

OCTAVIO UGARTE DELGADO

RESPONDENT

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)
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)

IN REMOVAL PROCEEDINGS

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: CHRISTINE LINSLEY

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 36-year-old single male alien, a native and citizen of Mexico. Respondent last entered the United States without inspection in approximately 1998. He came to the attention of the Department of Homeland Security because of his criminal record. The respondent was convicted in March of 2013, in the Elkhart County Court at Indiana for the offense of identity deception. For this offense the respondent received a two year sentence to confinement. In addition the respondent received an eight year sentence for failure to pay child support or to report to court.

At a removal hearing completed on November 25, 2013, the respondent admitted

the allegations contained in the Notice to Appear. The Government attorney presented a copy of the respondent's conviction records. Based upon respondent's testimony and the Court's review of the conviction records I find removability has been established by evidence which is clear and convincing. Although identity deception may be a divisible statute it is clear from the conviction record that the respondent assumed the identity of another person and used that identity without authorization. I find that this offense constitutes a crime involving moral turpitude and therefore the respondent is subject to removal from the United States as charged in the Notice to Appear.

Although the respondent has lived in the United States for approximately 15 years he does not qualify to remain in the United States under any provision of the law. The respondent's period of incarceration and criminal convictions make him ineligible to apply for cancellation of removal or any other relief. This Court would find respondent does not merit voluntary departure as a matter of discretion even when considering the favorable factors versus the unfavorable factors. Therefore the following order will be entered.

ORDER

IT IS ORDERED that the respondent be deported and removed from the United States to Mexico on the charges contained in the Notice to Appear.

ROBERT D. VINIKOOR
Immigration Judge

CERTIFICATE PAGE

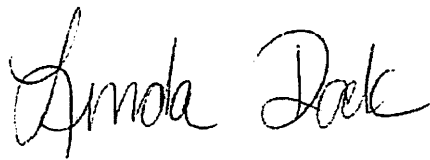
I hereby certify that the attached proceeding before JUDGE ROBERT D.
VINIKOOR, in the matter of:

OCTAVIO UGARTE DELGADO

A205-829-687

CHICAGO, ILLINOIS

was held as herein appears, and that this is the original transcript thereof for the file of
the Executive Office for Immigration Review.



LINDA DOCK (Transcriber)

FREE STATE REPORTING, Inc.-2

JANUARY 19, 2014

(Completion Date)