



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: W [REDACTED], S [REDACTED] S [REDACTED] ... A [REDACTED]-447**

**Date of this notice: 4/17/2019**

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:  
Donovan, Teresa L.  
O'Connor, Blair  
Wendtland, Linda S.

User team: Docket

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Falls Church, Virginia 22041

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File: A-447 – Baltimore, MD

Date:

APR 17 2019

In re: S-S-G-W

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Benjamin R. Winograd, Esquire

ON BEHALF OF DHS: Nicole Lomartire  
Deputy Chief Counsel

APPLICATION: Cancellation of removal

The respondent, a native and citizen of Jamaica, appeals from the Immigration Judge's October 5, 2018, decision. In that decision, the Immigration Judge determined that the respondent is removable under section 237(a)(2)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(ii), and denied his application for cancellation of removal under section 240A(a) of the Act, 8 U.S.C. § 1229b(a). The record will be remanded.

We review an Immigration Judge's findings of fact under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, judgment or discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii). *See Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015).

On appeal, the respondent argues that the Immigration Judge erred in determining that he is removable under section 237(a)(2)(A)(ii) of the Act. Specifically, the respondent contends that his conviction for the offense of malicious destruction of property in violation of Maryland Code Annotated section 6-301 does not constitute a crime involving moral turpitude.

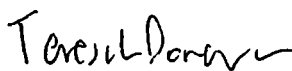
We disagree with the Immigration Judge's decision determining that the respondent is removable under section 237(a)(2)(A)(ii) of the Act. Specifically, we conclude that the respondent's conviction for the offense of malicious destruction of property in violation of Maryland Code Annotated section 6-301 does not constitute a crime involving moral turpitude under section 237(a)(2)(A)(ii) of the Act. The statute under which the respondent was convicted provides that "[a] person may not willfully and maliciously destroy, injure, or deface the real or personal property of another." Md. Code Annotated § 6-301(a). To determine whether an offense constitutes a crime involving 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 statute of conviction, rather than on the facts underlying the respondent's particular violation of that statute." *Matter of Silva-Trevino*, 26 I&N Dec. 826, 831 (BIA 2016) (citing *Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013)). "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. at 834.

We conclude that section 6-301 of the Maryland Code Annotated is too broad to categorically constitute a crime involving moral turpitude. *See Matter of N-*, 8 I&N Dec. 466 (BIA 1959) (holding that an alien's vandalism offense was not a crime involving moral turpitude). While we have determined that other vandalism statutes constituted crimes involving moral turpitude, those statutes involved other aggravating factors, which are not present here. *Cf. Matter of M-*, 3 I&N Dec. 272, 273 (BIA 1948) (holding that an alien who was convicted of an offense involving the killing or injuring of animals was convicted of a crime involving moral turpitude); *Matter of R-*, 5 I&N Dec. 612 (BIA 1954) (holding that an alien who wantonly, willfully and maliciously destroyed, damaged, or injured property with an explosive device was convicted of a crime involving moral turpitude); *Matter of E.E. Hernandez*, 26 I&N Dec. 397 (BIA 2014) (holding that malicious vandalism involving a benefit to a criminal street gang constituted a crime involving moral turpitude). We further conclude that section 6-301 of the Maryland Code Annotated is not divisible as "destroy, injure, or deface" are alternate means rather than elements of the offense. *Mathis v. United States*, 136 S. Ct. 2243 (2016); *Descamps v. United States*, 570 U.S. 254 (2013); *see also Matter of Chairez*, 26 I&N Dec. 819 (BIA 2016).

We conclude, however, that remand of the record is warranted. In addition to the respondent's malicious destruction of property offense, he was also convicted in 2015 for the offense of first degree assault in violation of section 3-202 of the Maryland Code Annotated (IJ at 1). The record reveals that both parties briefed before the Immigration Judge the issue of whether the respondent's assault offense constituted a crime of violence under both 18 U.S.C. sections 16(a) and (b), which rendered the respondent removable under section 237(a)(2)(A)(iii) of the Act. While the Immigration Judge initially determined that the respondent's assault offense constituted a crime of violence under 18 U.S.C. section 16(b), she later granted the respondent's motion to reconsider based on *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), and determined that the assault offense did not render the respondent removable as an aggravated felon. However, in reaching this determination, the Immigration Judge did not determine whether the respondent's assault offense constitutes a crime of violence under 18 U.S.C. section 16(a). We therefore conclude that remand of the record is warranted for the Immigration Judge to reach this determination in the first instance. Because we conclude that remand of the record is warranted for the Immigration Judge to reassess the respondent's removability based on the aforementioned grounds, we need not address at this time the respondent's application for cancellation of removal.

Accordingly, the following order will be entered.

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



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FOR THE BOARD