



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 20530

**Seth L. Reszko, Esq.
Reza Athari & Associates, PLLC
3365 Pepper Lane, Suite 102
Las Vegas, NV 89120-0000**

**DHS/ICE Office of Chief Counsel - LVG
3373 Pepper Lane
Las Vegas, NV 89120**

Name: TOLEDO-ALVARADO, JOSE

A 204-259-296

Date of this notice: 2/26/2014

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

**lulsegas
Userteam: Docket**

[For more unpublished BIA decisions, visit www.irac.net/unpublished](http://www.irac.net/unpublished)



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 20530

**TOLEDO-ALVARADO, JOSE
A204-259-296
HENDERSON DET. CENTER
18 EAST BASIC ROAD
HENDERSON, NV 89015**

**DHS/ICE Office of Chief Counsel - LVG
3373 Pepper Lane
Las Vegas, NV 89120**

Name: TOLEDO-ALVARADO, JOSE

A 204-259-296

Date of this notice: 2/26/2014

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John

lulsegas
Userteam: Docket

Immigrant & Refugee Appellate Center | www.irac.net

Falls Church, Virginia 20530

File: A204 259 296 – Las Vegas, NV

Date: FEB 26 2014

In re: JOSE TOLEDO-ALVARADO

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Seth L. Reszko, Esquire

The respondent, a native and citizen of Mexico, appeals the decision of the Immigration Judge, dated November 4, 2013, ordering his removal from the United States. He has also filed a motion to remand.

We will grant the respondent's motion to remand. Regardless of his criminal history, the respondent is independently subject to removal from the United States because he is an alien who is present in this country without being admitted or paroled by an immigration officer or who arrived at any time or place other than as designated by the Attorney General (I.J. at 1-2; Tr. at 8-10; Exh. 1). *See* section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i). Nonetheless, the respondent has presented evidence that, while his appeal was pending before this Board, the Nevada courts have reduced the sentence imposed upon him as a result of his conviction for attempted theft to 364 days. *See Matter of Cota-Vargas*, 23 I&N Dec. 849 (2005). In light of this new and material evidence, we will remand the record to the Immigration Judge to further review the charge of removability under section 212(a)(2)(A)(i)(I) of the Act and provide the respondent with a renewed opportunity to request relief from removal, including voluntary departure. Accordingly, the following order is entered.

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



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LAS VEGAS, NEVADA

File: A204-259-296

November 4, 2013

In the Matter of

JOSE TOLEDO-ALVARADO
RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act) - present in the United States without having been admitted or paroled.

Section 212(a)(2)(A)(i)(I) of the Act - convicted of a crime involving moral turpitude.

| **APPLICATIONS:** Continuance.

ON BEHALF OF RESPONDENT: MAYA S. TIMIS
Attorney at Law
3365 Pepper Lane, Suite 102
Las Vegas, Nevada 89120

ON BEHALF OF DHS: PATRICK W. LINDEMANN
Assistant Chief Counsel

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

The respondent is a 23-year-old male, who is a native and citizen of Mexico. On August 15, 2013, the Department of Homeland Security (DHS) issued a Notice to

Appear (NTA) against the respondent. The NTA was filed with the Immigration Court in Las Vegas, on August 16, 2013. See Exhibit 1.

The respondent, through counsel, has admitted the 7 factual allegations in the Notice to Appear, and he conceded the two charges of inadmissibility set forth above. Based upon the respondent's admissions, the Court finds that his inadmissibility has been established in accordance with Section 240(c)(2) of the Act.

The Court designated Mexico as the country for removal, because the respondent had indicated at a prior hearing that he was unable or unwilling to return to Mexico for reasons relating to persecution or torture. However, at today's hearing, the respondent withdrew the previously filed Form I-589.

The record reflects that the respondent was convicted, on June 26, 2013, of attempt theft, a Category D felony/gross misdemeanor, in violation of Nevada Revised Statute Sections 205.0832, 205.0835.3, and 193.330. For this offense, the respondent was given a 12-month suspended sentence, he was placed on probation for a period not to exceed 3 years, and he was also ordered to pay approximately \$6,500 in restitution. The respondent appears to have been convicted of an aggravated felony "theft offense" within the meaning of Sections 101(a)(43)(G) and (U) of the Act.

At today's hearing the respondent, through counsel, requested a continuance so that the District Court in Clark County, Nevada, could hold a hearing on the respondent's motion for post-conviction relief. That hearing is presently scheduled to be conducted on December 9, 2013. The law is well-settled that a motion for post-conviction relief does not constitute "good cause" for a continuance in removal proceedings. See 8 C.F.R. §1003.29; Matter of Onyido, 22 I&N Dec. 552 (BIA 1999). Moreover, the respondent previously applied for Deferred Action for Childhood Arrivals with the U.S. Citizenship and Immigration Services, but this application was denied, on

or about July 17, 2013. If the respondent is successful with his motion for post-conviction relief, he certainly could reapply for Deferred Action for Childhood Arrivals with the U.S. Citizenship and Immigration Services. However, that application is not within the jurisdiction of the Immigration Court. On the present record, the respondent appears ineligible for post-conclusion voluntary departure due to the attempt theft offense, which involved a one-year sentence. If the respondent is successful with his motion for post-conviction relief, he might qualify for post-conclusion voluntary departure, if the District Court reduces the sentence to either 6 months or 364 days, as the respondent has requested in his petition for a *writ of habeas corpus*.

However, on the present record, the respondent does not appear to be eligible for any form of relief from removal. If he is successful with his motion for post-conviction relief, then the respondent can file a motion to remand with the Board. Based on the foregoing, the Court will enter the following order.

ORDER

IT IS HEREBY ORDERED that the respondent shall be removed from the United States to Mexico, pursuant to the charges contained in the NTA.

Please see the next page for electronic

signature

JEFFREY L. ROMIG
Immigration Judge

//s//

Immigration Judge JEFFREY L. ROMIG

romigje on January 4, 2014 at 7:06 PM GMT