U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: RUIZ-ESTRADA, JESUS IVAN

A 095-129-850

Date of this notice: 7/11/2013

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.
Greer, Anne J.
Pauley, Roger

lucasd
Userteam: Docket

File: A095 129 850 – Tucson, AZ

Date: JUL 11 2013

In re: JESUS IVAN RUIZ-ESTRADA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Hugo F. Larios, Esquire

ON BEHALF OF DHS: Matthew W. Kaufman
Senior Attorney

CHARGE:

Notice: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] - Convicted of crime involving moral turpitude

APPLICATION: Termination

The respondent, a native and citizen of Mexico, appeals from an Immigration Judge's October 11, 2011, decision finding that his August 2009 conviction for money laundering under section 13-2317(B)(1) of the Arizona code is a crime involving moral turpitude, and renders him removable under the above-captioned charge since he committed it within 5 years of his admission to the United States. The record will be remanded for further proceedings consistent with this order.

We review an Immigration Judge's factual determinations, including credibility determinations, for clear error. *See* 8 C.F.R. § 1003.1(d)(3)(i). The Board uses a de novo standard of review for questions of law, discretion, judgment, and all other issues in appeals from decisions of Immigration Judges. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

Pursuant to the record of conviction, including the plea agreement, minute order, and the transcript of the respondent's plea (Exh. 11), the Immigration Judge found that the respondent's conviction arises under section 13-2317(B)(1) of the Arizona statutes (I.J. at 7-8). As to this discrete factual determination, we find no clear error, since the "Plea Agreement" dated and signed August 4, 2009, by both parties indicates that the respondent was charged under "amended count one" of violating, inter alia, sections 13-1001, 13-2317(B)(1) and (E) of the Arizona Revised Statutes.[1] *See* Exh. 11.[2]

[1] We note that (1) section 13-1001 of the Arizona Revised Statutes relates to attempts, (2) section 13-2317(E) of the Arizona Revised Statutes categorizes the respondent's conviction
(Continued . . . .)

Section 13-2317(B)(1) of the Arizona Revised Statutes provides that "a person is guilty of money laundering in the second degree if the person does any of the following: [a]cquires or maintains an interest in, transacts, transfers, transports, receives or conceals the existence or nature of racketeering proceeds knowing or having reason to know that they are the proceeds of an offense." *See* Ariz. Rev. Stat. § 13-2317(B)(1).

Amended count one tracks the statutory language, except that it adds, after the word "offense," a phrase specifying that the offense at issue in the respondent's case was "to wit: Sale of Cocaine." *See* Exh. 11 (Plea Agreement). The respondent pled guilty to this charge as reflected in the August 4, 2009, transcript of the "Change of Plea." *See* Exh. 11. This transcript also reflects the respondent's admissions to the underlying facts as reflected in the "state's evidence," i.e., that the respondent was observed at his place of employment throwing items over a fence, was then found to have more than ten packets of cocaine in his pocket, and then admitted that he was attempting to sell the cocaine. *See* Exh. 11 (Change of Plea – at 10). The respondent also admitted attempting to sell certain items from the salvage business for which he was working. *Id.* at 11.

The Immigration Judge found that the statutory section under which the respondent was convicted did not present a categorical crime of moral turpitude, due to the fact that the "scienter" requirement is written in the disjunctive, i.e., "knows or has reason to know." *See* I.J. at 7-8. However, due to the respondent's factual admissions, as reflected in the plea transcript, the Immigration Judge found that the respondent "*clearly knew* that his conduct demonstrated he was acquiring, or maintaining an interest in transaction [sic], transferring, transporting, receiving, or concealing the existence of the nature of racketeering proceeds, knowing that they were the proceeds of an offense, to wit, sale of cocaine." *See* I.J. at 8 (emphasis added). The Immigration Judge found that this indicated that the respondent was convicted of money laundering, knowing that the offense from which the proceeds were derived was the sale of cocaine. I.J. at 9.

While we find no cause to disturb the Immigration Judge's analysis of the record of conviction for the purpose of determining whether the respondent's conviction involved the requisite level of "scienter," as discussed by the Attorney General in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), we find that further proceedings are necessary to clarify the basis on which the Immigration Judge determined that the Arizona statute at issue reaches the type of "reprehensible conduct" necessary for a finding that an offense involved moral turpitude.

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as a class 3 felony, and (3) other sections of the Arizona code were referenced in the amended count one, but these are not at issue in this appeal.

[2] The Immigration Judge indicated that the record of conviction, including "the initial indictment, as well as the plea agreement, and the minute entry, and finally the change of plea transcript" was offered into evidence by the Department of Homeland Security and is Exhibit 11 (although the documents are not marked).

In this regard, the Immigration Judge cites the DHS's brief (filed below in support of the removal charge) for the proposition that the Board has found money laundering to be a crime involving moral turpitude where the offense "involves the exchange of monetary instruments that are known to be proceeds of any criminal conduct with the intent to conceal those proceeds." I.J. at 6. *See Matter of Tejwani*, 24 I&N Dec. 97, 98-99 (BIA 2007).[3] In *Matter of Tejwani, supra*, we indicated that regardless of whether the underlying crime involved moral turpitude, the "intent to conceal" the proceeds of the crime involved moral turpitude. *Id.* at 98-99. We also focused on the fact that "affirmative acts to conceal criminal activity and impede law enforcement have been found to be crimes involving moral turpitude." *Id.* at 98 (*citing Matter of Robles*, 24 I&N Dec. 22, 26 (BIA 2006) (misprision of a felony under 18 U.S.C. § 4 is a crime involving moral turpitude because the knowing concealment of the commission of a federal felony was "inherently base or vile and contrary to the accepted rule or morality and the duties owed between persons or to society in general")).

We find that the Immigration Judge's analysis and apparent reliance on *Matter of Tejwani, supra*, raises questions that require remand in this case. Specifically, the conduct at the center of *Matter of Tejwani, supra*, was the "exchange of money instruments that are known to be the proceeds of any criminal conduct with the intent to conceal those proceeds." *Matter of Tejwani, supra*, at 99. The operative aspects of the New York statute at issue in that case were the exchange and the intent to conceal the proceeds, i.e., conduct that had, at its base, the goal of "imped[ing] law enforcement" and "obstruct[ing] a function of a department of government." *Id.* at 98. We noted that this conduct was "inherently deceptive." *Id.* at 99. Such "crimes of concealment" have been found to involve moral turpitude, as recognized by the United States Court of Appeals for the Ninth Circuit. *See Robles-Urrea v. Holder*, 678 F.3d 702, 710 (9th Cir. 2012) (*vacating Matter of Robles, supra*) (distinguishing crimes with intent to conceal from crimes requiring mere "knowledge of a felony").[4]

However, the Immigration Judge's analysis does not focus on the extent to which the Arizona statute at issue here involved concealment, deceit, and the impeding of law enforcement functions. Rather, the Immigration Judge's analysis appears to find adequate the fact that the statute targets concealment, *among other things*, and concludes that the respondent's offense, like that in *Matter of Tejwani, supra*, was turpitudinous. Yet this analysis is inadequate because the Arizona statute also reaches a person who "acquires or maintains an interest in, transacts, transfers, transports, receives *or conceals* the existence or nature of racketeering proceeds knowing or having reason to know that they are the proceeds of an offense." Ariz. Rev. Stat. § 13-2317(B)(1). Therefore, even if we assume that the respondent acted knowingly, a question still would arise as to whether knowingly "maintaining an interest in" or "receiving" such racketeering proceeds would involve moral turpitude. The Immigration Judge did not look to the

[3] The United States Court of Appeals for the Third Circuit vacated this decision in an unpublished order, 349 Fed. Appx. 719 (3d Cir. 2009), but the reasoning remains binding as to the Board and for cases arising in other circuits.

[4] In *Robles-Urrea v. Holder, supra*, the Ninth Circuit noted that the "rationale" central to the holding in *Matter of Tejwani, supra*—i.e., that affirmative concealment of a crime involves fraudulent behavior—was not at issue.

record of conviction to determine whether the charge and the respondent's admissions establish the level of concealment, deceit, and attempt to obstruct law enforcement that was at the core of our decision in *Matter of Tejwani, supra*. We also note that the Immigration Judge did not have the benefit of *Robles-Urrea v. Holder*, *supra*, discussed above.

Accordingly, we find that remand of the record is required, for further fact-finding and analysis as to the questions discussed above. The following order will be entered.

ORDER: The record is remanded for further proceedings consistent with this order.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
TUCSON, ARIZONA

File: A095-129-850 October 11, 2011

In the Matter of

JESUS IVAN RUIZ-ESTRADA	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Section 237(a)(1)(D)(i) of the Immigration and Nationality Act (INA): alien who, after admission or adjustment as an alien, lawfully admitted for permanent residence on a conditional basis under Section 216 or 216(a) of the Act, whose status has been terminated under such respective section (WITHDRAWN).

Section 237(a)(2)(A)(i) of the Immigration and Nationality Act (INA): an alien who has been convicted of a crime involving moral turpitude committed within five years after admission for which a sentence of one year or longer may be imposed.

APPLICATIONS: Motion to terminate.

ON BEHALF OF RESPONDENT: HUGO F. LARIOS

ON BEHALF OF DHS: MATTHEW KAUFMAN

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

Respondent is an adult male alien, native and citizen

of Mexico, who was placed into removal proceedings by the issuance of a Notice to Appear dated September 3, 2009. That document was served upon the respondent on September 3, 2009, and has been admitted into the record of proceedings.

At a previous hearing through written pleadings, respondent admitted allegations 1, 2, 3, and 4 on the Notice to Appear, and denied allegations 5, 6, and 7, as well as both charges of removability.

The Government had cause to initially introduce an offer to the Court an additional charging document which proved to be totally moot. That document was marked into evidence as Exhibit 1A; however, it is not being considered for any purposes other than to clarify the withdrawal of certain allegations and additional charges before the Court. That document indicates that allegation 5 on the Notice to Appear, which is that the respondent's status was terminated on December 14, 2006, because he failed to file an I-751 in a timely manner was withdrawn. Therefore, having withdrawn that allegation, the Government also indicated that the charge under Section 237(a)(1)(D)(i) would also be withdrawn, as it would have been inherently impossible to find that charge was correct when the allegations stating it was withdrawn.

The Government did introduce an additional charge into the mix, however, under Section 237(a)(2)(A)(iii) of the Act, that respondent, after admission, had been convicted of an

aggravated felony, an offense relating to illicit trafficking of a controlled substance. However, the Government has also withdrawn that charge. And, therefore, everything on the document has been withdrawn, either orally or in writing. And therefore, the document is moot before the Court.

The only question the Court has to decide is whether the respondent has been convicted of a crime involving moral turpitude committed within five years of his receiving status of admission to the United States as a lawful permanent resident.

In addition to Exhibits 1 and 1A, the Court will note that the record concludes Exhibit 2 and 3, which are a notice of hearing, and an indication respondent was released on his own recognizance. Exhibit 4 is a copy of the notice of the filing of the Notice to Appear, as well as that previously referenced or of recognizance, and the previous Exhibit 1, the Notice to Appear.

Exhibit 5 in the record is a motion to continue, which was granted, and Exhibit 6 are the respondent's written pleadings.

Exhibit 7 is the respondent's brief in support that the respondent's conviction is not due to a removal offense, and the Court will give great weight to this. In that document, the respondent states that in support of the allegation, the Department has submitted [a] an indictment, [b] a plea agreement, [c] a Court-submitted entry and disposition for it,

and [d] transcripts of respondent's plea colloquy for the Pima Superior Court. However, none of these documents indicate that respondent was convicted for money laundering arising from a controlled substance offense. When determining whether an offense constitutes a crime involving moral turpitude, we first looked only to the language of the statute of the conviction to determine whether the offense constitutes a crime involving moral turpitude, and the respondent quotes Taylor v. United States, 495 U.S. 575 (1990).

Respondent continues that if and only if the language of the statute conviction is ambiguous, then we apply the modified categorical approach, where documents of the record of conviction may be suited. Id. Finally, if the record of conviction does not resolve the inquiry, then we may look beyond the record of conviction. Matter of Silva-Trevino, 24 I&N Dec. 687 (A.G. 2008).

In the (instant) case, the language of the statute is clearly and unambiguously not a crime involving moral turpitude. Thus, because under the categorical approach, the statute under which respondent was convicted is unambiguously not a crime involving moral turpitude, the Department has failed to meet its burden of proving respondent's removability.

Counsel has been given the opportunity to elaborate on that with oral argument, and has done so very well.

Exhibit 8 in the record is proof of the respondent's

ongoing marriage, and Exhibit 9 are the documents.

Exhibit 10 is the Government's brief on attempted money laundering is a CIMT, and on page 4, it begins its analysis. The Government says in Matter of Cristoval Silva-Trevino, supra, the Attorney General promulgated a new framework for use when determining whether convictions for a crime involving moral turpitude (a CIMT). In order to be a CIMT under the Act, "the crime must involve both reprehensible conduct and some degree of scienter, whether a specific intent, deliberateness, willfulness, or recklessness." Silva-Trevino, supra.

To make that determination, the Immigration Judge must first make a "categorical" assessment of the criminal statute (or criminal acts) to see if, at the time of the alien's removal proceeding, any actual (as opposed to hypothetical) case exists in which irrelevant criminal statute was applied to conduct that did not involve moral turpitude. Id., 697. [Citing Gonzalez v. Duenas-Alvarez, 549 U.S. 183, 193 (2007).]

If the statute had not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude. Id., 697.

The Government goes on to cite the change of plea transcripts, page 9 through 11, which the Court has addressed in

court. The Department asserts that participating in a transaction that involves the proceeds of an offense involving the attempt or actual sale of a narcotic drug, cocaine, and knowing that the transaction is intended to hide the existence or nature of the cocaine sale proceeds is reprehensible conduct. An individual intentionally takes affirmative steps to conceal the proceeds of criminal conduct acts in an inherently deceptive manner, and impairs the Government ability to detect and combat criminal activity. The Government then cites that the Board of Immigration Appeals has proved that money laundering is a crime involving moral turpitude, and refers the Court to see Matter of Tejwani, 24 I&N Dec. 97 (BIA 2007), finding that money laundering involves the exchange of monetary instruments that are known to be proceeds of any criminal conduct with the intent to conceal those proceeds are categorically a crime involving moral turpitude.

Exhibit 11 in the record are the documents the Government has submitted to support the conviction, and they include, of course, the initial indictment, as well as the plea agreement, and the minute entry, and finally the change of plea transcript.

To determine whether respondent's offense qualifies as a crime involving moral turpitude, the Court applies the methodology adopted by the Attorney General in Matter of Silva-Trevino, supra. In that decision, the Attorney General held

that a crime involving moral turpitude is a crime that "involves both reprehensible conduct and some form of scienter, whether specific intent, deliberateness, willfulness, or recklessness." Id., 706 and 5.

Furthermore, the Attorney General determined that if all cases that have a "reasonable probability" of being prosecuted under statute of conviction involves a requisite "reprehensible conduct", and "scienter," then the offense qualifies categorically as a crime involving moral turpitude, notwithstanding the "theoretical possibility" that some non-turpitudinous crimes could also be prosecuted under the same statute. Id., 697-698 [quoting Gonzalez v. Duenas-Alvarez, 549 U.S. 183, 193 (2007).]

In that case, the Court has to agree with the conclusion that Arizona revised statute 13-2317 does not constitute a categorical crime involving moral turpitude. But the Court must then determine whether the Department of Homeland Security has submitted sufficient evidence for the Court to determine under the modified categorical analysis whether the respondent's conviction was based upon turpitudinous conduct. The Department of Homeland Security has submitted to the Court a transcript of the plea proceedings, and the Court is able to state that it determines that the elements of the statute that respondent was ultimately convicted of, the Court is able to state that it is able to fully understand the elements of the

statute of the respondent's ultimate conviction. Arizona advised statute 13-2317(b)(1) covers cases where an offender engages in money laundering, "knowing or having reason to know" the proceeds are proceeds of an offense. The "having reason to know" standard under ARS 13-2317 has been held to be the equivalent of criminal negligence standard. See State of Arizona v. Lefevre, 193 Arizona 385, 390 (July 21, 1998). Therefore, the statute reaches some offense that do not have the requisite reprehensible conduct and scienter to constitute a crime involving moral turpitude. See also Matter of Silva-Trevino, supra, 689.1.

However, in this case, the Court is quite able to determine that based upon the plea transcript, that the respondent clearly knew that his conduct demonstrated he was acquiring, or maintaining an interest in transaction, transferring, transporting, receiving, or concealing the existence of the nature of racketeering proceeds, knowing that they were the proceeds of an offense, to wit, sale of cocaine. This Court finds that the actions that the respondent admitted in court were very clear. He admitted that on the 17th day of September 2004, he was at work, and was observed talking to people over a fence. He admitted that he was brought into the office and searched, and there 10 or more packets of cocaine in his possession, and he admitted to attempting to sell them, and to selling them. And that is, as counsel stated, and he admits,

the money was going to be the proceeds of cocaine selling. He also admitted that he was working in the salvage business, and an employer saw him on videotape tossing things over a fence from where he was working. And it was determined from him that due to financial difficulties, he was selling things from the business, along with baggies of coke. Thus, this Court has no qualms in finding that the respondent was convicted of money laundering, knowing that the offense from which the proceeds were being derived was sale of cocaine. And, therefore, the Court finds that the offense constitutes a crime involving moral turpitude under the law.

Thus, at this point in time, the Court will make the following findings, and the following conclusions of law.

On September 2, 2009, in the Pima County Superior Court in Tucson, Arizona, the respondent was convicted for the offense of attempted money laundering in the second degree, a class 4 felony, which was committed on or about December 17, 2004, in violation of Arizona revised statute 13-2317(b)(1)(e), and sentenced to four years' probation beginning on September 2, 2009.

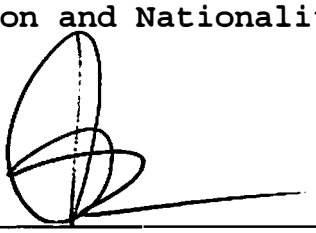
The Court finds that for that offense, a sentence of one year or longer could have been imposed. And therefore, the Court makes the conclusion of the law that the respondent, having become a permanent resident on February 3, 2004, and having committed this offense on December 17, 2004, has been

convicted of a crime involving moral turpitude committed within five years after admission, for which a sentence of one year or longer may be imposed.

The Court finds that the offense of which the respondent was convicted under Arizona revised statute 13-2317(b)(1)(E) constitutes a crime involving moral turpitude. And therefore, the Court issues the following order:

ORDER

THEREFORE, IT IS ORDERED that the charge under Section 237(a)(2)(A)(i) of the Immigration and Nationality Act shall be SUSTAINED.



THOMAS MICHAEL O'LEARY
United States Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
TUCSON, ARIZONA

File: A095-129-850 October 11, 2011

In the Matter of

JESUS IVAN RUIZ-ESTRADA	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Section 237(a)(1)(D)(i) of the Immigration and Nationality Act (INA): alien who, after admission or adjustment as an alien, lawfully admitted for permanent residence on a conditional basis under Section 216 or 216(a) of the Act, whose status has been terminated under such respective section (WITHDRAWN).

Section 237(a)(2)(A)(i) of the Immigration and Nationality Act (INA): an alien who has been convicted of a crime involving moral turpitude committed within five years after admission for which a sentence of one year or longer may be imposed.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: HUGO F. LARIOS

ON BEHALF OF DHS: MATTHEW KAUFMAN

ORAL DECISION OF THE IMMIGRATION JUDGE

The Court having found that the respondent has been

convicted of a crime involving moral turpitude, and having denied the motion to terminate, sustains the charge of removability under Section 237(a)(2)(A)(i) of the Act. Having done that, the Court then determined that the respondent would designate Mexico as the country of removal, and have determined that there is no fear of returning to Mexico as described among Section 208 or 241(b)(3) of the Act, or under Article 3 of the Convention Against Torture, and therefore no possibility of any form of relief under Section 208 or restriction of removal either under the Immigration Act or under the Convention Against Torture, the Court also finds that there is no other form of relief available to the respondent. And, therefore, the Court will issue the following order:

ORDER

THEREFORE, IT IS ORDERED that the respondent shall be removed from the United States to Mexico based upon the charge sustained in the Notice to Appear.

THOMAS MICHAEL O'LEARY
United States Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE THOMAS MICHAEL O'LEARY, in the matter of:

JESUS IVAN RUIZ-ESTRADA

A095-129-850

TUCSON, ARIZONA

is an accurate, verbatim transcript of the recording as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

Camille Miller

CAMILLE G. MILLER (Transcriber)

DEPOSITION SERVICES, Inc.

NOVEMBER 30, 2011

(Completion Date)