



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041*

**ESPINOZA, KARLA G
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**DHS/ICE Office of Chief Counsel - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014**

Name: ESPINOZA, KARLA G

A029-184-276

Date of this notice: 12/23/2011

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

Falls Church, Virginia 22041

File: A029 184 276 - Los Angeles, CA

Date: **DEC. 23 2011**

In re: KARLA G. ESPINOZA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: James R. Board
Assistant Chief Counsel

CHARGE:

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

APPLICATION: Contested removal

The Department of Homeland Security ("DHS") appeals the decision of the Immigration Judge dated September 22, 2009, terminating these removal proceedings based upon the conclusion that the DHS had not established that the respondent was subject to removal as an alien who, at any time after admission, has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. *See* section 237(a)(2)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(ii). While we recognize that the Immigration Judge previously determined that the respondent was subject to removal, the Immigration Judge had the discretion to reconsider her prior decision. *See* 8 C.F.R. § 1003.23(b)(1). Turning to the merits of the charge of removability, upon de novo review, we are not persuaded that the DHS has demonstrated that the respondent is subject to removal as charged. *See* section 240(c)(3)(A) of the Act, 8 U.S.C. § 1229a(c)(3)(A). While the respondent was convicted of a crime involving moral turpitude in 2004, we agree with the Immigration Judge that the DHS has not established that the respondent's 2005 conviction was for a crime involving moral turpitude. Accordingly, the Immigration Judge's decision is affirmed pursuant to this Board's authority under 8 C.F.R. § 1003.1(e)(5) and the following order will be entered.

ORDER: The Department of Homeland Security's appeal is dismissed.



FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

Los Angeles, California

File A 29 184 276

Date: September 22, 2009

In the Matter of

KARLA G. ESPINOZA

Respondent

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)
)
)

IN REMOVAL PROCEEDINGS

CHARGE:

Section 237(a)(2)(A)(ii) of the Immigration &
Nationality Act - alien who has been convicted
of two crimes involving moral turpitude

APPLICATION:

APPEARANCES:

ON BEHALF OF RESPONDENT:

Julie Goldberg, Esquire

ON BEHALF OF THE DEPARTMENT
OF HOMELAND SECURITY:

Jo Ann Platel, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

The Respondent is a female, native and citizen of Honduras, who was placed in removal proceedings pursuant to a Notice to Appear dated June 25, 2008. It was filed with the Court on January 24, 2008. It has been included in the record as Exhibit #1.

Respondent has appeared before this Court and a lodge

charge has also been filed with this Court which has been marked into the record as Exhibit #1A. And it is dated April 8, 2009. Respondent has still been charged with two crimes involving moral turpitude, one for a November 16, 2004 conviction for petty theft under Section 488 under the California Penal Code, and a conviction on January 21, 2005 in Superior Court State of California for unlawful use of identifying information in violation of Section 530.5(a) of the California Penal Code.

It is clear from the record that the Respondent's conviction is a crime involving moral turpitude. See Matter of U.S. v. Esparsa-Ponce, 193 F.3rd 1133 (9th Cir. 1999); Flores-Guarez v. Mukasey, F.3rd, 2008 WestLaw 2521924 (2008) established that the Respondent's conviction for petty theft is in fact a crime involving moral turpitude. However, her subsequent crime of unlawful use of identity information, I have reviewed the briefs. However, there is not a distinctive case that would qualify to establish that this is in fact categorically or modified categorically a crime involving moral turpitude based upon the briefs I reviewed and the Ninth Circuit case law.

So in order to assess whether or not this is in fact a crime involving moral turpitude, the Court must look to Matter of Silver-Trevino, which is what the Government has done, under 24 I&N Dec. 687 (A.G. 2008) which has also been cited by Matter of Louis Saint, 24 I&N Dec. 754 (BIA 2009). In Matter of Lussian-Latan, the Board stated that there is a requirement that the

traditional categorical analysis be made that is required by the Supreme Court and includes an inquiry into whether there is a realistic probability that the statute under which the alien was convicted would be applied to reach conduct that does not involve moral turpitude. Under Matter of Silver-Trevino, the A.G. stated that an Immigration Judge is to look to the statute of conviction under the categorical inquiry and determine whether there is a realistic probability that the state or federal criminal statute pursuant to which the alien was convicted would be applied to reach conduct that does not involve moral turpitude.

Number two, if the categorical inquiry does not resolve this inquiry, the question engaged in the modified categorical inquiry and examination of records of conviction including documents such as indictment, the judgment of conviction, the jury instructions, a signed guilty plea, and a plea transcript, in addition to records of conviction that is inconclusive, considering any such additional evidence be necessary or appropriate to resolve accurately the moral turpitude issue.

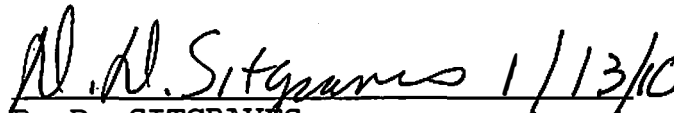
Respondent's conviction falls under 530.5(a). And under this section it states that every person who willfully obtains personal identifying information as defined in Subsection B of Section 530.55 of another person and uses the information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, real property, or medication without the consent of the owner is guilty of a public offense and upon conviction

thereof shall be punished by a fine, by imprisonment in the county jail not to exceed one year, or both a fine and imprisonment.

It is clear under this section that a person must for an unlawful purpose use or obtain credit, goods, services, real property, or medical information without the consent of the owner. And they are guilty of this public offense. However, it does not show based upon the record of convictions for this offense that are part of the record anything other than that information that tracks the statute under count one under the felony complaint. And this Court cannot conclude based upon these documents and the statute that the alien has been convicted of elements that she has been categorically or under the modified categorical approach of a crime involving moral turpitude. Normally a crime involving moral turpitude requires depraved acts and actions that would necessarily involve moral turpitudeness. I do not find that the evidence presented for this statute or the statute in general has sufficient information to establish that it is per se a crime involving moral turpitude. I therefore find that the Government has failed to meet their burden of proof in establishing allegation number five. And I therefore do not sustain allegation five and I do not sustain allegation number six. I therefore do not find that the Respondent is removable as charged and hereby terminate proceedings against her. Therefore the following is the order of this Court.

It is therefore the order of this Court that the NTA and

lodge charge filed by the Government are not sustainable based upon the conviction documents of record. And I therefore find that her request for a Motion for Termination of Proceedings is hereby granted.


D. D. SITGRAVES
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before
D.D. SITGRAVES, in the matter of:

KARLA G. ESPINOZA

A 29 184 276

Los Angeles, California

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



Keri Seeley, Transcriber

YORK STENOGRAPHIC SERVICES, INC.
34 North George Street
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December 16, 2009

Completion Date

khs/bjn