



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 22041

**Brunsink, Ryan David
Pennsylvania Immigration Resource Center
(PIRC)
P.O. Box 20339
York, PA 17402**

**DHS LIT./York Co. Prison/YOR
3400 Concord Road
York, PA 17402**

Name: MAJOK, MAJOK

A 094-582-812

Date of this notice: 12/20/2016

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
Greer, Anne J.
Geller, Joan B

How
User team: Docket

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Falls Church, Virginia 22041

File: A094 582 812 – York, PA

Date:

DEC 20 2016

In re: MAJOK MAJOK

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ryan D. Brunsink, Esquire

ON BEHALF OF DHS: Brian G. McDonnell
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: Termination

This matter was last before us on December 9, 2015, when we returned the record to the Immigration Judge for preparation of an oral or written decision. The Immigration Judge subsequently issued a written order on February 2, 2015, sustaining the charge of removability. The respondent has filed a brief arguing he is not removable as charged, and the Department of Homeland Security (DHS) argues the Immigration Judge's order should be summarily affirmed.¹ The appeal will be sustained and these proceedings terminated.

We defer to an Immigration Judge's findings of fact unless they are clearly erroneous, and all other issues, including the application of law and the exercise of discretion, we review under a de novo standard. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The respondent sustained two convictions, one under 18 Pennsylvania Consolidated Statutes § 3921(a), and one under 18 Pennsylvania Consolidated Statutes § 3304(a)(5). The parties do not dispute that the former conviction constitutes a crime involving moral turpitude. However, the respondent argues that his conviction for Criminal Mischief in violation of 18 Penn. Cons. Stat. § 3304(a)(5) does not constitute a crime involving moral turpitude, and that accordingly he is not removable as charged.

Under 18 Penn. Cons. Stat. § 3304(a)(5), a defendant is guilty of criminal mischief if he "intentionally damages real or personal property of another." Crimes involving purposeful or knowing acts may involve moral turpitude depending on the severity and nature of the acts

¹ Neither party has appealed the denial of the respondent's application for asylum or the Immigration Judge's grant of withholding of removal.

committed. *See Matter of Solon*, 24 I&N Dec. 239 (BIA 2007) (holding an assault statute constituted a crime involving moral turpitude where it required specific intent alongside physical injury to the victim). While 18 Penn. Cons. Stat. § 3304(a)(5) does require “damage” to real or personal property, the prosecution need not establish any minimum level of damage to the property to sustain a conviction.² This statute can be violated through an act of graffiti. *See In re N.W.*, 6 A.3d 1020 (Pa. Super. 2010). The respondent himself was convicted after he “banged on the door” of an apartment “causing damage to the door frame” (I.J. at 2). We conclude that this subsection does not inherently involve moral turpitude.

The Immigration Judge, analogizing to *Matter of M-*, 3 I&N Dec. 272 (BIA 1948), concluded that intentionality combined with some measure of property damage is sufficient to establish moral turpitude. However, *Matter of M-* was adjudicated based on the particular facts present in that case, in which the alien had killed two hogs belonging to someone else “by then and there stabbing, striking, and killing said hogs with an axe.” *Matter of M-, supra*, at 273. The Board noted the violence of the act in determining that it was morally turpitudinous, rather than setting out any general rule on property damage. *Matter of M-, supra*, at 274 (holding the crime was “vile and vicious,” and that the “fact that the delicti were animals, namely hogs, makes the offense no less tainted with baseness”). Therefore, we conclude that *Matter of M-* is distinguishable.

As we conclude that 18 Penn. Cons. Stat. § 3304(a)(5) does not inherently involve moral turpitude, only one crime involving moral turpitude has been established. We therefore agree with the respondent that DHS has not met its burden of establishing the respondent’s removability. Accordingly, we enter the following orders.

ORDER: The respondent’s appeal is sustained.

FURTHER ORDER: These proceedings are terminated.



FOR THE BOARD

² The DHS argues that dollar amounts of damage increase the severity of the crime, referencing 18 Penn. Cons. Stat. § 3304(b). However, a specific showing of a dollar amount of damage is not an element of the crime, and according to relevant state cases an individual’s conviction can likewise be graded without reference to a particular dollar amount. *See Commonwealth v. Miller*, 339 A.2d 573 (Pa. Super. 1975).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
3400 CONCORD ROAD, SUITE 2
YORK, PA 17402

PIRC
Lamberti, Matthew Joseph
PO Box 20339
York, PA 17402

IN THE MATTER OF
MAJOK, MAJOK

FILE A 094-582-812

DATE: Feb 2, 2016

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

X ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 22041

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
3400 CONCORD ROAD, SUITE 2
YORK, PA 17402

X OTHER: notice of certification to the BIA is attached

DVQ
COURT CLERK
IMMIGRATION COURT

FF

CC: DISTRICT COUNSEL, C/O YORK PRISON
3400 CONCORD ROAD
YORK, PA, 174020000

IMMIGRATION COURT
3400 CONCORD ROAD, SUITE 2
YORK, PA 17402

In the Matter of:
MAJOK, MAJOK

Case No.: A094-582-812

In Removal Proceedings

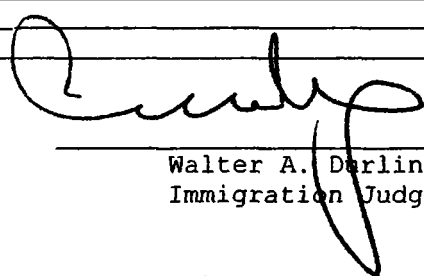
Respondent/Applicant

ORDER OF ADMINISTRATIVE RETURN/CERTIFICATION TO THE BOARD

This matter is hereby certified to the Board of Immigration Appeals for the following reason:

- (☒) This case was remanded to the Immigration Court due to a problem with the hearing tapes, transcript, or oral decision.
The problem has been resolved in the manner stated below.
The case is hereby returned to the Board for adjudication of the previously filed appeal(s).
- () This case was remanded to the Immigration Court for consideration of new relief with instructions to certify or return the record to the Board if relief is denied.
Relief was denied for the reasons stated in the decision of the Immigration Judge dated ____/____/____.
The case is hereby returned to the Board for adjudication of the previously filed appeal(s).
- () The Board, not the Immigration Court, has jurisdiction over the motion to reopen/reconsider filed on ____/____/____ by the _____

ADDITIONAL EXPLANATION


Walter A. Darling
Immigration Judge

- () Tapes Enclosed
(☒) Written Decision of the Immigration Judge enclosed.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL ☒ PERSONAL SERVICE (P)
TO: [] ALIEN [] ALIEN c/o Custodial Officer [] ALIEN's ATT/REP [] DHS
DATE: 2/24/16 BY: COURT STAFF DVQ
Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
YORK, PENNSYLVANIA**

**IN THE MATTER OF
MAJOK, Majok
Respondent**

**IN REMOVAL PROCEEDINGS
A 094-582-812**

ON BEHALF OF RESPONDENT:
Matthew Lamberti, Esq.

ON BEHALF OF DHS:
Brian McDonnell, Esq.

On Remand from the Board of Immigration Appeals

DECISION AND ORDER

On December 9, 2015, the Board remanded this record directing the court to enter a formal decision.

This respondent is 25 years old, a native and citizen of Sudan, who was admitted as a refugee in 2004; he adjusted status to lawful permanent resident in 2006 under INA § 209(b). He was properly served a Notice to Appear, Form I-862, on April 17, 2015. On July 7, 2015, the court denied respondent's application for Cancellation of Removal pursuant to INA § 240A(a) in the exercise of discretion. His *pro bono* counsel withdrew at that point, but assisted respondent in preparing his Form I-589. Respondent reappeared in court *pro per* on September 1, 2015, where his application for asylum, INA § 208(a), was denied in the exercise of discretion due to respondent's criminal record. At the conclusion of the hearing, respondent's removal to Sudan and South Sudan was ordered withheld pursuant to INA § 241(b)(3), which government counsel concurred. At first respondent indicated that he didn't wish to appeal, but then indicated he would speak to his former attorney.

A review of respondent's appeal brief reveals that he only appealed this court's ruling that his conviction constituted a crime involving moral turpitude (CMT). This decision will only address that issue.

On April 16, 2012, respondent pleaded guilty in Cumberland County, PA, of Criminal Mischief, a third degree misdemeanor, in violation of 18 Pa. Cons. Stat. § 3304(a)(5). In order to constitute morally turpitudinous behavior, the act must be reprehensible, and involve some form of scienter – either consciousness or deliberation. See Matter of Silva-Trevino, 24 I&N Dec. 687 (A.G. 2008); Partyka v. Att'y Gen., 417 F.3d 408, 414 (3d Cir. 2005). Moral turpitude "refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general."

Moreover, moral turpitude has been defined as an act which is *per se* morally reprehensible and intrinsically wrong. Matter of Franklin, 20 I&N Dec. 867, 868 (BIA 1994) (citations omitted). As the Board noted, "[t]he test to determine if a crime involves moral turpitude is whether the act is accompanied by a motive or corrupt mind." Matter of Flores, 17

I&N Dec. 225 (BIA 1980). Moral turpitude “contains an honesty component ... which includes conduct that is contrary to justice, honesty, or morality.” Smriko v. Ashcroft, 387 F.3d 279, 283 (3d Cir. 2004).

Respondent was convicted of Criminal Mischief, in violation of 18 Pa. Cons. Stat. § 3304(a)(5), which states:

(a) A person is guilty of criminal mischief if he:

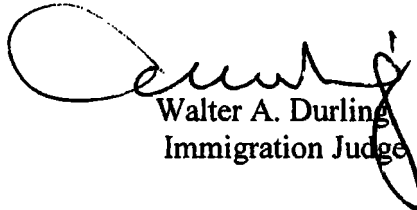
(5) intentionally damages real or personal property of another

Crimes committed intentionally or knowingly have historically been found to involve moral turpitude. Matter of Solon, 24 I&N Dec. 239, 240 (BIA 2007). Indeed, in Matter of M-, 3 I&N Dec. 272 (BIA 1948), the Board held that destruction of property (taking a hatchet to Porky Pig) constituted a CIMT where malicious intent was required under the Statute. While the term “malicious” can be defined more broadly than “intent,” for purposes of the Pennsylvania statute, there is no difference.

The accusatory instrument in this case, *exhibit 2-C*, is the Affidavit of Probable Cause. Therein it is alleged that respondent “banged on the door of apartment 62 causing damage to the door frame...” While the outcome of this issue does not need to include this document since we know the specific subsection under the statute, it does describe respondent’s wanton actions which led to him pleading guilty to intentionally damaging the real property of another.

Conclusion

The ground of INA § 237(a)(2)(A)(ii) is sustained.¹


Walter A. Durling
Immigration Judge

February 2, 2015

¹ Respondent’s other conviction in August 2014 for theft by unlawful taking, a CIMT, completes the statutory requirement for this ground of removal. If it is ultimately determined that the CIMT does not avail, termination of this case is mandated.