



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**Mahon, Andrew Joseph  
Law Office of Troy J. Mattes  
132 East Chestnut Street  
Lancaster, PA 17602**

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

**Name: SHERIFF, ZAKARIA**

**A 060-519-204**

**Date of this notice: 4/25/2016**

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:  
O'Leary, Brian M.

Userteam: Docket

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Falls Church, Virginia 22041

**SHERIFF, ZAKARIA  
A060-519-204  
PIKE COUNTY JAIL  
175 PIKE COUNTY BOULEVARD  
LORDS VALLEY, PA 18428**

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

**Name: SHERIFF, ZAKARIA**

**A 060-519-204**

**Date of this notice: 4/25/2016**

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:  
O'Leary, Brian M.

Userteam:

Falls Church, Virginia 22041

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File: A060 519 204 – York, PA

Date:

**APR 25 2016**

In re: ZAKARIA SHERIFF

IN REMOVAL PROCEEDINGS

APPEAL/MOTION

ON BEHALF OF RESPONDENT: Andrew J. Mahon, Esquire

ON BEHALF OF DHS: Jeffrey Forrest Boyles  
Assistant Chief Counsel

APPLICATION: Motion to remand

The respondent, a native and citizen of Guinea, has appealed from the Immigration Judge's October 14, 2015, decision ordering the respondent removed from the United States. The Department of Homeland Security (DHS) filed a motion for summary affirmance of the Immigration Judge's decision. During pendency of the appeal, the respondent filed a motion to remand; DHS has filed an opposition to the motion. The record will be remanded to the Immigration Judge for further proceedings.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The respondent has filed a motion to remand based on new evidence that he argues demonstrates he may have derived United States citizenship from his father. The DHS opposes the motion arguing the newly submitted evidence is likely fraudulent. As this is a question of fact that must be determined by the Immigration Judge, we will remand the record for further proceedings before the Immigration Judge. *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). Upon remand, the parties should be afforded the opportunity to raise any other issues related to the respondent's removability or eligibility for relief from removal. As we are remanding for further proceedings, we decline to address the other issues raised by the respondent on appeal. Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings and the entry of a new order.

  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT

File: A060-519-204

October 14, 2015

In the Matter of

ZAKARIA SHERIFF

RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES: 237(a)(2)(A)(I)(ii).

APPLICATIONS:

ON BEHALF OF RESPONDENT: ANDREW MAHON

ON BEHALF OF DHS: BRIAN G. MCDONNELL

ORAL DECISION OF THE IMMIGRATION JUDGE

TERMINATION BY RESPONDENT

This respondent is a 25-year-old male alien, native and citizen of Guinea, who was placed in removal proceedings by personal service of a Notice to Appear, Form I-862<sub>1</sub> on June 11, 2015. On August 17, 2015, the Court received a motion to terminate removal proceedings submitted by the respondent. On or about September 1, 2015, the Government responded with a "DHS brief, ~~response-brief~~" opposed to the termination. Based on the following, the respondent's motion to terminate will be denied.

Essentially, the Court hereby adopts the reasoning and legal argument of the Government pertaining to the respondent's convictions as set forth in its brief.

Essentially, the respondent ~~is~~ ~~has been a~~ lawful permanent resident and been in such status since July 2009. He was convicted of two counts of attempted criminal simulation ~~in Tennessee under Tennessee Statute Section 39-14-115~~. This occurred on December 17, 2013. He was subsequently convicted on June 10, 2015, in Pennsylvania for theft by deception in violation of 18 Pennsylvania Code Section 39-22(a)(1), and ~~in~~ conspiracy to commit theft by deception under 18 Pennsylvania Code 903.

With respect to respondent's convictions in Tennessee, while he argues that the least culpable conduct under the Tennessee Statute is mere possession of illegal objects, the Court concurs with Government Counsel that the statute does not criminalize mere possession. Rather, ~~But~~ under Section (a)(2), it proscribes possession of machinery to create fraudulent credit and debit cards and other illegal instruments. The Board has held that criminal possession of the crime involving moral turpitude when it is accompanied by an intent to commit, is a crime involving moral turpitude. See Matter of Jimenez, 14 I&N Dec. 442 (BIA 1973).

The holding in Jimenez applies here. The respondent's offenses were committed within five years of his admission in June of 2009. Consequently, the INA Section 237(a)(2)(A)(i) ground of removability is sustained.

Turning now to the Pennsylvania theft convictions, respondent's focus, as Government Counsel points, ~~out~~ on the temporal nature of his taking under the statute, is irrelevant. It has been held that theft by deception has been held to be a crime involving moral turpitude because of the underlying fraud involved. See Mahn v. Attorney General, 767 F.3d 170 (3rd Cir. 2013). In Matter of Flores, 17 I&N Dec. 225

(BIA 1980), the Board held if the underlying substantive offense is a crime involving moral turpitude, the conspiracy to commit such an offense also constitutes a CIMT. These offenses also were committed within five years of respondent's June 2009 admission as a permanent resident. Taken together with the Tennessee convictions, the ground of removability under INA Section 237(a)(2)(A)(ii) is sustained.

The respondent applies for no other relief, and the following orders are hereby entered:

**ORDERS**

The respondent is hereby ordered removed from the United States to Guinea.

**Please see the next page for electronic**

**signatureWD**

WALTER A. DURLING  
Immigration Judge

.. //s//

Immigration Judge WALTER A. DURLING

durlingw on November 20, 2015 at 7:34 PM GMT

Immigrant & Refugee Appellate Center, LLC | [www.irac.net](http://www.irac.net)