



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

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DHS/ICE Office of Chief Counsel - DEN
12445 East Caley Avenue
Centennial, CO 80111-5663

Name: D [REDACTED] S [REDACTED] B [REDACTED]

A [REDACTED]-274

Date of this notice: 1/11/2017

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:
Kendall-Clark, Molly

Lulsege
User team: Docket

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www.irac.net/unpublished/index/

Falls Church, Virginia 22041

File: A [REDACTED] 274 -- Denver, CO

Date:

In re: S [REDACTED] B [REDACTED] D [REDACTED]

JAN 11 2017

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Aaron C. Hall, Esquire

ON BEHALF OF DHS: Nina M. Carbone
Assistant Chief Counsel

APPLICATION: Reopening

ORDER:

The respondent requests reopening for the opportunity to reapply for cancellation of removal on the basis of a claimed intervening change in law. *See Matter of Chairez*, 26 I&N Dec. 819 (BIA 2016); *see also Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999). The Department of Homeland Security opposes reopening, but does not appear to assert that the change of law would not affect the respondent's eligibility for relief from removal. Given the particular arguments made and evidence presented in the present motion, we will exercise our sua sponte authority to reopen these proceedings. The motion to-reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.


FOR THE BOARD



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

**Falson, Cynthia K., Esq.
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Aurora, CO 80014**

**DHS/ICE Office of Chief Counsel - DEN
12445 East Caley Avenue
Centennial, CO 80111-5663**

Name: D [REDACTED] S [REDACTED] B [REDACTED]

A [REDACTED]-274

Date of this notice: 5/16/2013

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:
Pauley, Roger**

**TranC
User team: Docket**

Immigrant & Refugee Appellate Center, LLC | www.irac.net

Falls Church, Virginia 22041

File: A [REDACTED] 274 – Denver, CO

Date: MAY 16 2013

In re: S [REDACTED] B [REDACTED] D [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Cynthia K. Faison, Esquire

ON BEHALF OF DHS: Aminda B. Katz
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

Sec. 212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] -
Fraud or willful misrepresentation of a material fact

Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
Immigrant - no valid immigrant visa or entry document

APPLICATION: Cancellation of removal; voluntary departure

The respondent appeals the Immigration Judge's May 3, 2012, decision denying his applications for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b), and voluntary departure. The appeal will be dismissed.

Notwithstanding the respondent's arguments on appeal, we find no reason to disturb the Immigration Judge's decision denying his application for cancellation of removal under section 240A(b) of the Act (I.J. at 6-7). *See* 8 C.F.R. § 1003.1(d)(3)(ii) (2013) (*de novo* review). The respondent admits his conviction for the offense of assault in the third degree in violation of Colorado Revised Statutes section 18-3-204 (I.J. at 5). In his decision, the Immigration Judge found the respondent did not meet his burden in establishing his conviction is not one for a crime involving moral turpitude such that he is eligible for cancellation of removal (I.J. at 5-6). *See Matter of Almanza*, 24 I&N Dec. 771 (BIA 2009). In this regard, the Immigration Judge noted the respondent's failure to present any evidence establishing that his conviction falls outside the purview of moral turpitude (I.J. at 5-6). On appeal, the respondent contends that his offense is categorically not a crime involving moral turpitude, and the Immigration Judge erred in using evidence outside the formal record to make his determination. *See* Respondent's Brief at 3-4.

While the respondent contends that Colorado Revised Statutes section 18-3-204 is categorically *not* a crime involving moral turpitude, we agree with the Immigration Judge that the statute reaches conduct that both does and does not involve moral turpitude. *See*

Respondent's Brief at 4-5; *Garcia v. Holder*, 584 F.3d 1288 (10th Cir. 2009) (alien failed to establish eligibility for cancellation of removal because conviction documents for assault offense in violation of Colorado Revised Statutes section 18-3-204, a divisible statute, were inconclusive). Because the statute reaches conduct that does not constitute a crime involving moral turpitude and the respondent did not provide any evidence to establish that his offense does not involve moral turpitude, the respondent has failed to establish his eligibility for cancellation of removal under section 240A(b)(1)(C) of the Act (I.J. at 5-6).

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.


FOR THE BOARD