



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

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Washington, DC 20009**

**DHS/ICE Office of Chief Counsel - WAS
901 North Stuart St., Suite 1307
Arlington, VA 22203**

Name: SIDHU, VIKRAMJEET

A044-238-062

Date of this notice: 11/30/2011

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:

Adkins-Blanch, Charles K.
Guendelsberger, John
Hoffman, Sharon

Immigrant & Refugee Appellate Center | www.irac.net

11/30/2011
[Signature]

Falls Church, Virginia 22041

File: A044 238 062 - Arlington, VA

Date: NOV 30 2011

In re: **VIKRAMJEET SIDHU**

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Fabienne Chatain, Esquire

APPLICATION: Reopening and reconsideration

The respondent, a native and citizen of India, has appealed from an Immigration Judge's decision dated June 9, 2011, denying the applicant's motion to reconsider his decision denying his motion to reopen proceedings. The appeal will be sustained and the proceedings terminated.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under a clearly erroneous standard. See 8 C.F.R. § 1003.1(d)(3)(i); *Matter of R-S-H*, 23 I&N Dec. 629, 637 (BIA 2003); *Matter of S-H*, 23 I&N Dec. 462 (BIA 2002). The Board reviews questions of law, discretion, and judgment, and all other issues raised in an Immigration Judge's decision de novo. See 8 C.F.R. § 1003.1(d)(3)(ii).

The record reflects that an Immigration Judge entered an order of removal against the respondent on May 13, 2004. Removal was based on the charge that the respondent was subject to deportation under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien who has been convicted of an aggravated felony theft offense for which a term of imprisonment of at least 1 year was imposed. See section 101(a)(43)(G) of the Act, 8 U.S.C. § 1101(a)(43)(G). The removal charge in turn was based upon the respondent's May 2, 2003, conviction for embezzlement under section 18.2-111 of the Virginia Code, for which the respondent was sentenced to a term of imprisonment of 3 years. As related in his brief on appeal, the respondent was physically removed from the United States in June 2004, but subsequently returned to this country under a grant of humanitarian parole (Brief at 2). On May 20, 2011, the respondent filed a motion with the Immigration Judge to sua sponte reopen proceedings based on an argument that his conviction under VA Criminal Code § 18.2-111 does not qualify as an aggravated felony theft offense.

As an initial matter, we find that the Board has jurisdiction over this matter even though the respondent's appeal brief reflects that his grant of humanitarian parole is shortly to expire, and that he may no longer be physically present in the United States when this decision issues. See *Williams v. Gonzales*, 499 F.3d 329 (4th Cir. 2007) (invalidating 8 C.F.R. 1003.2(d), the regulation treating an alien's removal from the United States after filing a motion to reopen as withdrawal of the motion); *Matter of Armandarez*, 24 I&N Dec. 646 (BIA 2008) (acknowledging that the Board will apply the holding in *Williams v. Gonzales* to cases arising in the Fourth Circuit).

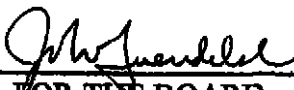
On de novo review, we find that the respondent has correctly argued that his conviction for embezzlement is distinguishable from a theft offense because the version of the statute under which he was charged and convicted does not define the crime of embezzlement to require a trespassory or non-consensual taking (Brief at 7-10). See *Commonwealth v. Bruhn*, 570 S.E.2d 866, 868-869 (2002) (proof of embezzlement under 1994-2003 version of Va Code § 18.2-111, which deleted language allowing a defendant to be “indicted as for larceny,” was insufficient to sustain charge under the common law definition of larceny because embezzlement requires no trespassory taking). Absent evidence that the respondent’s offense included the element of a non-consensual taking of property, the respondent’s crime does not qualify as an aggravated felony theft offense.¹ See *Soliman v. Gonzales*, 419 F.3d 276, 283 (4th Cir. 2005) (the taking of property without consent is a key element of the crime of theft); *Matter of Garcia-Madruga*, 24 I&N Dec. 436 (BIA 2008) (clarifying that a theft offense within the meaning of section 101(a)(43)(G) consists of the taking of, or exercise of control over, property without consent). Based on the foregoing, we conclude that the Immigration Court erred in sustaining the removal charge in this case. We find that the respondent has presented exceptional circumstances warranting sua sponte reopening, and that the Immigration Judge should not have denied the respondent’s motion to reopen proceedings, or subsequently refused to reconsider that decision. See 8 C.F.R. § 1003.23(b); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). Accordingly, the proceedings will be reopened.

Inasmuch as the aggravated felony ground of removal is the sole charge in this matter, there now exists no basis to continue the reopened proceedings. Accordingly, the proceedings will be terminated.

ORDER: The appeal is sustained.

FURTHER ORDER: The Immigration Judge’s decision is vacated and the proceedings are reopened.

FURTHER ORDER: The proceedings are terminated.



FOR THE BOARD

¹ As in *Commonwealth v. Bruhn*, *supra*, the record does not reflect that the respondent was indicted for or proven to have embezzled funds that were owned by or belonged to the person or entity that entrusted him with the funds. Therefore, a non-consensual taking of property is not shown.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

LICHTMAN & ELLIOT, P.C.
CHATAIN, ESQ., FABIENNE
1666 CONNECTICUT AVE, NW, 5TH FLOOR
WASHINGTON, DC 20009

Date: Jun 14, 2011

File A044-238-062

In the Matter of:
SIDHU, VIKRAMJEET

____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before ____.

The appeal must be accompanied by proof of paid fee (\$110.00).

____ Enclosed is a copy of the oral decision.

____ Enclosed is a transcript of the testimony of record.

____ You are granted until _____ to submit a brief to this office in support of your appeal.

____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

✓ ____ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,



Immigration Court Clerk

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cc: JAVIER E. BALASQUIDE, ESQ. DISTRICT COUNSEL
901 N. STUART ST., SUITE 708
ARLINGTON, VA 22203

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ARLINGTON, VIRGINIA

In the Matter of: Vikramjeet SIDHU

A Number: A044 238 062

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Respondent's Motion to Reconsider Denial of Respondent's Motion to Reopen, it is HEREBY ORDERED that the motion be GRANTED **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____

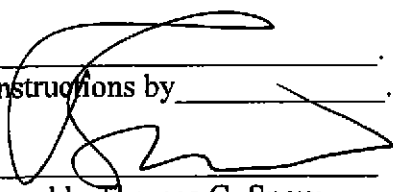
☒ Other: *I respectfully disagree with R's content and well written motion. Even the older version of the entrapment statute under which R' was convicted appears to constitute a theft offense under §101(a)(43)(G).*

Deadlines:

- ☐ The application(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics instructions by _____.

Date

6/9/11


The Honorable Thomas G. Snow
Immigration Judge