



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Washington, DC 20536**

Name: YANEZ, EDUARDO

A 076-593-027

Date of this notice: 10/18/2012

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:
Malphrus, Garry D.

schwarzA
User team: Docket

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500 12th St., SW, Mail Stop 5902
Washington, DC 20536**

Name: YANEZ, EDUARDO

A 076-593-027

Date of this notice: 10/18/2012

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:
Malphrus, Garry D.

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Userteam: Docket

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Falls Church, Virginia 22041

File: A076 593 027 - Arlington, VA

Date: **OCT 18 2012**

In re: EDUARDO YANEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Edward Summers, Esquire

ON BEHALF OF DHS: Pamela P. Ataii
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

The respondent, a native and citizen of Mexico, and lawful permanent resident, appeals the Immigration Judge's June 7, 2012, decision sustaining the charge of removability and denying his motion to terminate the removal proceedings. The record will be remanded.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

There is no dispute that the respondent's 2006 conviction for embezzlement was for a crime involving moral turpitude ("CIMT") (I.J. at 1). The only issue on appeal is whether the Immigration Judge erred in concluding that the respondent's 2006 conviction for failure to stop in the event of an accident, VA. CODE ANN. § 46.2-894 (2006), was also for a CIMT, which would render him removable as having committed two or more CIMTs under section 237(a)(2)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(ii).

In concluding that the respondent's conviction under section 46.2-894 of the Code of Virginia was categorically for a CIMT, the Immigration Judge relied on an unpublished Board decision that applied the procedural framework set forth in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008) (I.J. at 2). However, the United States Court of Appeals for the Fourth Circuit, under whose jurisdiction this matter arises, has since rejected the *Silva-Trevino* procedural framework, and instead has held that the categorical and modified categorical approaches, as set forth in *Taylor v. United States*, 495 U.S. 575 (1990), and *Shepard v. United States*, 544 U.S. 13 (2005), should be applied

in determining whether a conviction was for a crime involving moral turpitude. *See Prudencio v. Holder*, 669 F.3d 472, 484 (4th Cir. 2012).

Accordingly, the record will be remanded to the Immigration Judge to apply the categorical and modified categorical approaches and make a new determination as to whether the DHS met its burden of establishing that the respondent's failure to stop conviction was for a CIMT. On remand, the parties should be given the opportunity to present additional relevant evidence and to make additional arguments. The following order will be entered.

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