File: (b) (6) Date: MAY 28 2014

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Holli B. Wargo, Esquire

ON BEHALF OF DHS: Gwendylan Tregerman
Deputy Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(E)(i), I&N Act [8 U.S.C. § 1227(a)(2)(E)(i)] - Convicted of crime of domestic violence, stalking, or child abuse, neglect, or abandonment

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony (crime of violence)

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony (sexual abuse of a minor)

APPLICATION: Termination; cancellation of removal

This case is presently before us on remand pursuant to an order of the United States Court of Appeals for the (b) (6) dated (b) (6) The court reversed and vacated this Board's October 31, 2011, decision dismissing the respondent's appeal of the Immigration Judge's May 26, 2011, decision denying his motion to terminate the removal proceedings and pretermitting his application for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a). The record will be remanded for further proceedings.

The (b) (6) held that the Board erred in affirming the Immigration Judge's determination that the Department of Homeland Security ("DHS") met its burden of establishing the respondent's removability under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(iii), as having been convicted of an aggravated felony sexual abuse of a minor offense under section 101(a)(43)(A) of the Act, 8 U.S.C. § 1101(a)(43)(A), and in affirming the Immigration Judge's determination that the respondent was therefore statutorily ineligible for cancellation of removal.[1] *See* (b) (6) *v. Holder*, (b) (6)

[1] In light of affirming the Immigration Judge's determination that the respondent was convicted of an aggravated felony sexual abuse of a minor offense, and was thus removable and ineligible for cancellation of removal, the Board, in its October 31, 2011, decision, declined to reach the

In addition to remanding this matter to the Board to address the alternative grounds of removability, the (b) (6) issued an order on (b) (6) granting the Government's request that, on remand, we consider in the first instance whether there is any inconsistency between *Descamps v. United States*, 133 S.Ct. 2276 (2013), and the (b) (6) holding that the rule that the modified categorical approach applies only to "divisible" statutes does not apply where the corresponding offense under section 101(a)(43) of the Act is phrased so as to require a "fact-specific determination."

As additional fact finding may be needed to resolve the outstanding issues in this case, the record will be remanded to the Immigration Judge. He should render additional findings and determine in the first instance whether the DHS has met its burden to establish the respondent's removability under section 237(a)(2)(E)(i) of the Act, as having been convicted of a crime of child abuse. The Immigration Judge should also make findings and reach a new determination, consistent with the (b) (6) decision in (b) (6) *v. Holder*, *supra*, as to whether the respondent is removable as having been convicted of an aggravated felony crime of violence. If on remand the Immigration Judge determines that the respondent is removable, then he should make additional findings and adjudicate the respondent's application for cancellation of removal, or for any other relief for which he may be eligible. On remand, the parties should be given the opportunity to submit 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

Immigration Judge's additional determination that the respondent's conviction also qualified as an aggravated felony crime of violence. The Board also noted in that decision that the Immigration Judge had declined to reach whether the respondent was removable as having been convicted of a crime of child abuse under section 237(a)(2)(E)(i) of the Act.