File: (b) (6)

Date: APR 27 2012

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew L. Hoppock, Esquire

ON BEHALF OF DHS: Jayme Salinardi
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

APPLICATION: Cancellation of removal; voluntary departure

The respondent has appealed an Immigration Judge's January 13, 2012, decision, finding the respondent statutorily ineligible for cancellation of removal under section 240A(b) of the Act, 8 U.S.C. § 1229b(b).[1] The Department of Homeland Security ("DHS") has not opposed the appeal. The appeal will be dismissed, and the request for oral argument is denied. 8 C.F.R. § 1003.1(e)(7).

We review the findings of fact made by the Immigration Judge, including any determination of credibility, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met their burdens of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii). As the respondent submitted his applications after May 11, 2005, they are governed by the provisions of the REAL ID Act. *See Matter of S-B-*, 24 I&N Dec. 42, 43 (BIA 2006).

We adopt and affirm the Immigration Judge's decision pretermitting the respondent's application for cancellation of removal. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). The Immigration Judge properly determined that the respondent had been convicted of a crime involving moral turpitude ("CIMT"), which renders the respondent ineligible for cancellation of removal under section 240A(b)(1)(C) of the Act (barring an alien from cancellation of removal if he has been "convicted of an offense under sections 212(a)(2), 237(a)(2) or 237(a)(3)"). On (b) (6) the respondent was convicted of the offense of "Use of Fraudulent Documents to Be Present or

[1] The respondent does not contest the finding that he is removable under section 212(a)(6)(A)(i) of the Act, as an alien who is present in the United States without being admitted or paroled, nor does he challenge the denial of voluntary departure. Therefore, those issues are not presently before us.

Employed in the United States," in violation of 18 U.S.C. § 1546(a) (Exh. 4).[2] The respondent pled guilty to Count 1 of the criminal indictment, which charged that the respondent "knowingly and intentionally used and possessed documents prescribed by statute and regulation as evidence of authorized stay and employment in the United States knowing them to have been procured by fraud, false claim, false statement and unlawfully obtained" (Exh. 4).

In assessing whether the respondent's offense qualifies as a CIMT, the Immigration Judge applied the methodology set forth in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008). In that decision, the Attorney General held that a CIMT is a crime that "involves both reprehensible conduct and some form of scienter," whether specific intent, deliberateness, willfulness, or recklessness. *Id.* at 706 n.5. The Attorney General further held that if all cases that have a "reasonable probability" of being prosecuted under the statute involve the requisite "reprehensible conduct" and "scienter," then the offense qualifies categorically as a CIMT. *Id.* at 697-698. If the issue cannot be resolved under the categorical approach, a modified categorical approach is to be taken, which requires inspection of the alien's record of conviction to discern the nature of the underlying conviction. *Id.* at 690, 698-99. Finally, if the record of conviction is inconclusive, evidence beyond the record of conviction may be considered to resolve the issue of moral turpitude. *Id.* at 690, 699-701.

Crimes involving the intent to deceive or defraud are generally considered to involve moral turpitude. *Jordan v. De George*, 341 U.S. 223, 232, 71 S.Ct. 703, 95 L.Ed. 886 (1951); *see also Matter of Kochlani*, 24 I&N Dec. 128, 130 (BIA 2007); *Matter of Flores*, 17 I&N Dec. 225, 227-28. Because the statute under which the respondent was convicted encompasses conduct that is both morally turpitudinous, and conduct that is not, such as mere possession of a fraudulent document, we agree with the Immigration Judge that the statute is not categorically a CIMT (I.J. at 3). *See Matter of Serna*, 20 I&N Dec. 579 (BIA 1992) (holding that a conviction under 18 U.S.C. § 1546 for possession of an altered immigration document with knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a conviction for a CIMT).

In accordance with *Matter of Silva-Trevino*, *supra*, the Immigration Judge properly turned to the conviction records to conduct a modified categorical analysis (I.J. at 3). Specifically, he relied upon the factual basis for the respondent's guilty plea, in which the respondent admits that he "used a social security card, knowing that card was not assigned to him and had been unlawfully obtained, to secure and maintain employment" (Exh. 4; I.J. at 3-4). The plea goes on to state that "[s]uch a document,

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[2] The statute at 18 U.S.C. § 1546(a), entitled "Fraud and misuse of visas, permits, and other documents," states, in pertinent part, that "whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained shall be fined under this title or imprisoned . . . ."

when authentic, is evidence that a person is authorized to be employed in the United States. The defendant used the fraudulent card for that purpose." *Id.*

We agree with the Immigration Judge that the factual basis for the guilty plea is sufficient to establish that the respondent was convicted of knowingly using a fraudulent social security card with the intent to defraud his employer as to his authorization to legally work in the United States. *See also Lateef v. DHS,* 592 F.3d 926, 929 (8th Cir. 2010) (alien's conviction for using an unlawfully obtained social security number was a crime involving moral turpitude).[3]

The respondent contends that there is no evidence that the crime for which he was convicted necessarily involved any fraud or deceit, and that therefore, the crime was not *malum in se*, as is required for moral turpitude to inhere (Resp. Br. at 1, 6-7). In this regard, he argues that there is no proof that he used the fraudulent social security card to defraud his employer, noting that an employer may be aware of an alien's illegal status and may be "merely looking the other way" (Resp. Br. at 3).

However, the burden is on the respondent to establish that his offense is not a crime involving moral turpitude. *Matter of Almanza-Arenas*, 24 I&N Dec. 771, 774-75 (BIA 2009) (under REAL ID Act, alien who seeks discretionary relief, such as cancellation of removal, bears burden of proof under sections 240(c)(4)(A)(i) and 240A(b)(1)(C) of the Act to establish that he has not been convicted of a CIMT); *see also* 8 C.F.R. § 1240.8 ("If the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the alien shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.") The respondent has not presented any testimony or evidence in support of the argument that his crime did not involved any actual fraud or deceit, even though the respondent was granted a continuance to present such evidence (Tr. at 20-21, 24). *See also Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (statements made by counsel in a brief or motion are not consider evidence and thus are not entitled to any evidentiary weight). In the absence of any evidence to the contrary, the record of conviction is sufficient in this case to establish that the respondent defrauded, or at least intended to defraud, his employer by using the false social security card.

In support of his argument that his conviction under 18 U.S.C. § 1546(a) is not a conviction for a CIMT, the respondent cites to the legislative history of an amendment made to a different statute relating to social security fraud, 18 U.S.C. § 408. That amendment provided that aliens who had been granted permanent resident status under the amnesty or registry statutes were exempt from prosecution for certain past uses of false social security numbers. In the legislative history to that amendment, 18 U.S.C. § 408(d)(1), Congress indicated that "individuals provided exemption from prosecution under this proposal should not be considered to have exhibited moral turpitude with respect to the exempted acts for purposes of determinations made by the Immigration and Naturalization Service." However, the respondent admits that he does not fall within the limited class

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[3] Although the respondent argues that the indictment is insufficient to establish the requisite intent to defraud (Resp. Br. at 3-4), the Immigration Judge did not only rely on the indictment, but also on the factual basis for the guilty plea in finding that the respondent had been convicted of a CIMT. Notably, on appeal, the respondent does not challenge, or even address, the Immigration Judge's reliance on the guilty plea.

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of individuals exempted from prosecution under that exception (Resp. Br. at 3). *See* (b) (6) *DHS,* (b) (6) (finding that because the petitioner did not qualify for the 18 U.S.C. § 408(d) exemption, the legislative history of that statute does not apply to the moral turpitude issue in his case). The respondent argues that if some classes of aliens can commit these acts and not be considered to have exhibited moral turpitude, then Congress did not intend for the crime of social security fraud to a CIMT (Resp. Br. at 3). However, the (b) (6) Court of Appeals has explicitly rejected this argument, explaining that "[t]he mere fact that Congress chose to exempt a certain class of aliens from prosecution for certain acts does not necessarily mean that those acts do not involve moral turpitude in other contexts." (b) (6) *v. DHS, supra,* at (b) (6)

Therefore, on the record before us, we conclude that Immigration Judge properly found the respondent ineligible for cancellation of removal for having been convicted of a CIMT. Accordingly, the appeal will be dismissed.

ORDER: The respondent's appeal is dismissed.

FOR THE BOARD

UNITED STATES DHS OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

(b) (6)

IN THE MATTER OF	)	January 13, 2012
(b) (6)	)	File No. (b) (6)
RESPONDENT	)	IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended: Alien Present Without Being Admitted or Paroled.

APPLICATIONS: Section 240A(b)(1) of the Immigration and Nationality Act, as amended: Cancellation of Removal for Certain Nonpermanent Residents.

Section 240B(b) of the Immigration and Nationality Act, as amended: Voluntary Departure.

ON BEHALF OF THE RESPONDENT:
Matthew L. Hoppock, Esq.
(b) (6)

ON BEHALF OF THE GOVERNMENT:
Jayme Salinardi, Esq.
Senior Attorney
(b) (6)

WRITTEN DECISION OF THE IMMIGRATION JUDGE

I. Procedural History

The respondent is a native and citizen of Mexico who entered the United States without inspection in 1988. On July 27, 2005, the Department of Homeland Security (Department) personally served the respondent with a Notice to Appear (NTA), charging him with being removable pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended (the Act). Several months later, on (b) (6) the respondent pled guilty to the "use of fraudulent documents to be employed in the United States" in violation of 18 U.S.C. § 1546(a). *See* Group Exhibit 4, Respondent's Plea Agreement.

On August 30, 2006, the respondent appeared with counsel for a master calendar hearing and acknowledged receipt of the NTA, admitted the allegations contained therein, and conceded the charge of removal. On the basis of these admissions, and there being no other issue of law or fact relating to the charge, removability is established by clear and convincing evidence. *See* INA § 240(c)(2); 8 C.F.R. § 1240.10(c). The respondent designated Mexico as the country of removal, should removal become necessary.

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As relief from removal, the respondent has applied for cancellation of removal for certain nonpermanent residents under section 240A(b)(1) of the Act. In the alternative, he requests post-conclusion voluntary departure under section 240B(b). The respondent's Form EOIR-42, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, was received by the (b) (6) Immigration Court on October 15, 2007. *See* Group Exhibit 2.

On November 13, 2007, an Immigration Judge rendered an oral decision denying the respondent's application for cancellation of removal, due to his failure to comply with the pertinent biometric requirements. He also denied the respondent's request for post-conclusion voluntary departure, finding that his conviction under 18 U.S.C. § 1546(a) constituted a crime involving moral turpitude and precluded him from establishing his good moral character.

The respondent appealed the Immigration Judge's decision, after which a flood of litigation—and a series of decisions issued by both the Board of Immigration Appeal (Board) and the (b) (6) Court of Appeals—ensued. *See, e.g.* (b) (6) (b) (6) (recounting procedural history of these proceedings). Those decisions, however, addressed the validity of the departure bar at 8 C.F.R. § 1003.2(d)—an issue that has since been resolved. Most recently, on August 10, 2011, the Board remanded these proceedings "to evaluate the respondent's conviction [under 18 U.S.C. § 1546(a)] in light of *Matter of Silva Trevino*, 24 I&N Dec. 687 (A.G. 2008)," and to determine whether the offense constitutes a crime involving moral turpitude. In general, both parties agree that the respondent's eligibility for both cancellation of removal and post-conclusion voluntary departure hinges on whether his crime involves moral turpitude.

For the reasons discussed below, the Court finds that the respondent's offense is a crime involving moral turpitude. Therefore, his requests for relief will be denied.

II. The Respondent's Statutory Eligibility for Cancellation of Removal

An applicant for cancellation of removal must establish that, *inter alia*, he "has not been convicted of an offense under section 212(a)(2)." *See* INA §§ 240(c)(4)(A), 240A(b)(1)(C). Section 212(a)(2)(A)(i)(I), in turn, encompasses crimes involving moral turpitude.

The Eighth Circuit Court of Appeals has defined a crime of moral turpitude as "involving an act of baseness, vileness, or depravity in the private and social duties that people owe each other or society in general, and is contrary to the accepted rule of right and duty." *Godinez-Arroyo v. Mukasey*, 540 F.3d 848, 851 (8th Cir. 2008) (citations and quotations omitted). Further, the Board of Immigration Appeals (Board) has held that "an analysis of an alien's intent is critical to a determination regarding moral turpitude." *Matter of Fualaau*, 21 I&N Dec. 475, 478 (BIA 1996).

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General set forth a three-step analysis that immigration judges are to use in determining whether a crime involves moral turpitude. First, judges should look to the statute of conviction under the categorical inquiry and determine whether there is a "realistic probability" that the State or Federal criminal

statute pursuant to which the alien was convicted would be applied to reach conduct that does not involve moral turpitude. *Matter of Silva-Trevino* at 696. Second, if the categorical inquiry does not resolve the question, judges should engage in a modified categorical inquiry and examine the record of conviction, including documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698. Finally, if the record of conviction is inconclusive, judges should consider any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. *Id.* at 699. Under this "hierarchical approach," immigration judges need not proceed to the second or third step of the analysis if the preceding step resolves the inquiry. *See Matter of Ahortalejo-Guzman*, 25 I&N Dec. 465, 468 (BIA 2011).

A. Crimes Involving Fraud

In (b) (6) *v. Dep't of Homeland Sec.* (b) (6) (citing *Jordan v. De George*, 341 U.S. 223, 232 (1951)), th(b) (6) of Appeals pointed out that "[c]rimes involving the intent to deceive or defraud are generally considered to involve moral turpitude." Therefore, the court in *Lateef* determined that "the crime of using an unlawfully obtained social security number...is one of moral turpitude." *Id.* In *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), the Board addressed whether an alien's conviction for possession of fraudulent documents under 18 U.S.C. § 1546(a) had been convicted of a crime involving moral turpitude. In relevant part, the Board interpreted moral turpitude as requiring more than mere possession of illegal immigration documents; for there to be such a crime, the alien also must intend to use the documents. *See Serna* at 584 ("Accordingly, we find that the crime of possession of an altered immigration document with the knowledge that it was altered, *but without its use or proof of any intent to use it unlawfully*, is not a crime involving moral turpitude) (emphasis added).

B. Analysis

The criminal statute at issue, 18 U.S.C. § 1546(a), is broad and encompasses conduct that does and does not involve moral turpitude. Hence, it is necessary to consult the respondent's record of conviction to identify the conduct that led to his conviction. According to his plea agreement, the respondent pled guilty to Count I of the Indictment, which alleges that he "knowingly and intentionally *used and possessed* documents prescribed by the statute and regulation as evidence of authorized stay and employment in the United States knowing them to have been procured by fraud." *See* Group Exhibit 4, Rebuttal Evidence for the Department. Further, the factual basis for the respondent's guilty plea states:

> Between January 1999 and May 2005, the [respondent] ... used a social security card, knowing that the card was not assigned to him and had been unlawfully obtained, to secure and maintain employment at Coca-Cola Bottling Co, Inc. in Wichita ... Such a document, when authentic, is evidence that a person is authorized to be employed in the United States. The [respondent] used the fraudulent card for that purpose.

Id. Thus, the respondent's record of conviction clearly establishes that his crime involved the knowing use of a fraudulent social security card, as opposed to the mere possession of such a document. Given the similarities between this conviction and the crime at issue in (b) (6) *supra*, as well as the language in *Matter of Serna*, *supra*, that suggests the knowing use of an altered

document in violation of 18 U.S.C. § 1546(a) does involve moral turpitude, the Court finds the respondent's offense constitutes a crime involving moral turpitude under the second step of the *Silva-Trevino* analysis. *See also Omagah v. Ashcroft*, 288 F.3d 254 (5th Cir. 2002) (agreeing with Board's decision that alien's prior conviction for conspiring to obtain, possess and use illegal immigration documents was for crime of moral turpitude); *Montero-Ubri v. INS*, 229 F.3d 319, 321 (1st Cir. 2000) (finding indictment for use of false driver's license sufficient to prove moral turpitude even though mere possession would not be); *Michel v. INS*, 206 F.3d 253, 263 (2d Cir. 2000) (classifying criminal possession of stolen bus passes as moral turpitude because statute required knowledge of stolen status as an element); *Zaitona v. INS*, 9 F.3d 432, 437-38 (6th Cir. 1993) (opining that making a false statement on a driver's license application is moral turpitude); *Lozano-Giron v. INS*, 506 F.2d 1073, 1076 (7th Cir. 1974) (classifying possession of counterfeit money with intent to distribute as a crime involving moral turpitude). As such, the Court finds the respondent's conviction renders him statutorily ineligible for cancellation of removal under section 240A(b)(1)(C).

III. Voluntary Departure

An alien may voluntarily depart the United States at the alien's own expense if, at the conclusion of a proceeding under section 240B(b) of the Act, he demonstrates that he (1) has been physically present in the United States for a period of at least one year immediately preceding the date the NTA was served under section 239(a); (2) is, and has been, a person of good moral character for at least five years immediately preceding his application for voluntary departure; (3) is not deportable under section 237(a)(2)(A)(iii) or 237(a)(4) of the Act; and (4) has established by clear and convincing evidence that he has the means to depart the United States and intends to do so. INA § 240B(b)(1). The alien must also demonstrate he merits voluntary departure as a matter of discretion. *Matter of Thomas*, 21 I&N Dec. 20, 22 (BIA 1995).

One of the statutory bars to good moral character applies to "a member of one or more of the classes of persons ... described in ... subparagraphs (A) and (B) of section 212(a)(2)." As discussed, the Court has already determined the respondent was convicted of a crime involving moral turpitude, which is described in subparagraph (A) of section 212(a)(2). Moreover, the respondent originally applied for voluntary departure at his individual hearing on November 13, 2007, approximately two-and-a-half years after he entered his guilty plea. *See also* Group Exhibit 4, Respondent's Plea Agreement, pg. 2 (noting respondent's offense was ongoing between January 1999 and May 2005). Therefore, the crime was committed during the five year period immediately preceding the application for voluntary departure. *See Griffiths v. INS*, 243 F.3d 45, 56 (1st Cir. 2001) ("[T]he relevant period for which [an applicant for voluntary departure] must show good behavior is the five years 'immediately preceding' his application, not those preceding the final decision."). In light of these circumstances, the Court finds that the respondent's conviction under 18 U.S.C. § 1546(a) also renders him ineligible for voluntary departure.

Accordingly, after careful consideration, the following orders shall be entered:

ORDERS OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that the respondent's request for cancellation of removal under section 240A(b)(1) of the Act is **DENIED.**

IT IS FURTHER ORDERED that the respondent's application for post-conclusion voluntary departure is **DENIED.**

IT IS FINALLY ORDERED that the respondent be **REMOVED** from the United States to **MEXICO** on the charge contained in the Notice to Appear.

January 13, 2012

John R. O'Malley
United States Immigration Judge

The Court reserves the right of both parties to appeal this decision to the Board of Immigration Appeals (BIA). A Notice of Appeal (Form EOIR-26) must be received by the BIA within 30 calendar days of the mailing of this decision.

All future hearings are CANCELED.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ( ) ALIEN ( )ALIEN C/O CUSTODIAL OFFICER ( )ALIEN'S ATTY/REP (P) DHS
DATE: 1-13-12 BY: COURT STAFF
ATTACHMENTS: ( ) EOIR-33 ( ) EOIR-28 ( ) LEGAL SERVICES LIST (X) OTHER

Appeal Packet

(b) (6)

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File: (b) (6) Date: AUG 10 2011

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Matthew L. Hoppock, Esquire

ON BEHALF OF DHS: Jayme Salinardi
Acting Deputy Chief Counsel

APPLICATION: Reconsideration

The Department of Homeland Security ("DHS") has filed a timely motion to reconsider the Board's January 26, 2011, decision. The respondent opposes the motion, and asks that the Board deny the motion so that the Immigration Judge may conduct further proceedings consistent with the January 26, 2011, decision.

A motion to reconsider shall specify "errors of fact or law in the prior Board decision and shall be supported by pertinent authority." 8 C.F.R. § 1003.2(b); *see also Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006). In its motion, the DHS argues that we erred in remanding the respondent's case to the Immigration Judge to allow the respondent the opportunity to apply for cancellation of removal. The DHS is correct that the Immigration Judge previously found that the respondent was convicted of a crime involving moral turpitude, which would render the respondent ineligible for cancellation of removal. However, given relevant intervening case law since the Immigration Judge's decision, we find it appropriate to remand the case to the Immigration Judge to evaluate the respondent's conviction in light of *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008). *See Mata-Guerrero v. Holder*, 627 F.3d 256 (7th Cir. 2010) (expressly deferring to the methodology for assessing crimes involving moral turpitude in *Silva-Trevino, supra*, and observing that the Attorney General's determination on such a question of law is "controlling" under section 103(a)(1) of the Act, 8 U.S.C. § 1103(a)(1) (2011). Thus, the DHS' motion does not convince us of any error in our decision.

Accordingly, the following order is entered.

ORDER: The motion to reconsider is denied, and the record is remanded to the Immigration Court for further proceedings consistent with this decision and with the Board's January 26, 2011, decision.

FOR THE BOARD

File: (b) (6) Date: JAN 26 2011

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Matthew L. Hoppock, Esquire

APPLICATION: Reconsideration

ORDER:

This case has been the subject of multiple Board decisions and is now before the Board on remand from the United States Court of Appeals for th(b) (6) The Board issued a decision on April 29, 2009, granting the respondent's motion to reconsider, and remanded the case to the Immigration Judge. On July 31, 2009, the Board vacated the April 29, 2009, decision on motion from the Department of Homeland Security (DHS), finding that under 8 C.F.R.§ 1003.2(d) we lacked jurisdiction to consider the respondent's motion to reconsider because the respondent had been removed. The court granted a petition for review, finding in (b) (6) (b) (6) that the deny on departure regulation did not deprive the Board of jurisdiction over the respondent's motion to reconsider, and remanding the case to the Board for further consideration.

In view of the court's decision in this case, the Board's July 31, 2009, decision is vacated, and the motion of the respondent, a native and citizen of Mexico, to reconsider our September 30, 2008, decision is again pending. The motion to reconsider will be granted. The respondent claims that his confusion about the fingerprints led to his failure to comply with requirements and resulted in a finding that he had abandoned his cancellation application. Considering the contentions and entirety of the evidence, including the respondent's compliance with the fingerprint requirement submitted with the motion to remand, we grant the motion to reconsider our September 30, 2008, decision and remand the record to the Immigration Court for further proceedings to provide the respondent with an opportunity to apply for cancellation of removal.

Molly Dwyer Clark
FOR THE BOARD