File: (b) (6)

Date: AUG 31 2009

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ramon J. Ferrer, Esquire

APPLICATION: Termination of proceedings

The respondent is a male native and citizen of Tonga whose case was last before us on September 13, 2005, when we dismissed his appeal of an Immigration Judge's order of removal. The respondent filed a petition for review of that decision with the United States Court of Appeals for the (b) (6) In an opinion dated (b) (6) the (b) (6) found that the respondent's conviction was not a crime involving moral turpitude (CIMT) under the categorical approach and observed that the government had not requested application of the modified categorical approach before granting the alien's petition. The (b) (6) declined the Government's request to remand for the Board to determine whether the offense qualified as a CIMT under the modified categorical approach. The Notice to Appear charged the respondent with removability solely based upon the crime involving moral turpitude charge, the proceedings against the respondent will be terminated. Accordingly, the following order shall be entered:

ORDER: The removal proceedings against the respondent are hereby terminated.

FOR THE BOARD