UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
(b) (6)

IN THE MATTER OF:
(b) (6)

DATE: Jun 28, 2011

CASE NO. (b) (6)

RESPONDENT IN REMOVAL PROCEEDINGS

DECISION

Jurisdiction was established in this matter by the filing of the Notice to Appear issued by the Department of Homeland Security, with the Executive Office for Immigration Review and by service upon the respondent. See 8 C.F.R. § 1003.14(a), 103.5a.

The respondent was provided written notification of the time, date and location of the respondent's removal hearing. The respondent was also provided a written warning that failure to attend this hearing, for other than exceptional circumstances, would result in the issuance of an order of removal in the respondent's absence provided that removability was established. Despite the written notification provided, the respondent failed to appear at his/her hearing, and no exceptional circumstances were shown for his/her failure to appear. This hearing was, therefore, conducted in absentia pursuant to section 240(b)(5)(A) of the Immigration and Nationality Act.

[X] At a prior hearing the respondent admitted the factual allegations in the Notice to Appear and conceded removability. I find removability established as charged.

[ ] The Department of Homeland Security submitted documentary evidence relating to the respondent which established the truth of the factual allegations contained in the Notice to Appear. I find removability established as charged.

I further find that the respondent's failure to appear and proceed with any applications for relief from removal constitutes an abandonment of any pending applications and any applications the respondent may have been eligible to file. Those applications are deemed abandoned and denied for lack of prosecution. See Matter of Pearson, 13 I&N Dec. 152 (BIA 1969); Matter of Perez, 19 I&N Dec. 433 (BIA 1987); Matter of R-R, 20 I&N Dec. 547 (BIA 1992).

ORDER: The respondent shall be removed to MEXICO or in the alternative to on the charge(s) contained in the Notice to Appear.

MIRIAM HEWARD
Immigration Judge

cc: Assistant District Counsel
Attorney for Respondent/Respondent

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File: (b) (6) Date: NOV 22 2010

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se[1]

APPLICATION: Cancellation of removal

This case is before us pursuant to a decision of the United States Court of Appeals for the (b) (6) (b) (6) dated (b) (6) which remanded for further proceedings. (b) (6) *v. Holder*, (b) (6) We will, in turn, remand the record to the Immigration Court for further proceedings.

In October 2000, the respondent pleaded nolo contendere to misdemeanor child endangerment in violation of section 237a(b) of the California Penal Code ("CPC") (Exh. 2). On January 12, 2004, the Immigration Judge concluded that the respondent had been convicted of an offense "involving child endangerment or child abuse or child neglect" under section 237(a)(2)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(E)(i), and as a result, denied his application for cancellation of removal (I.J. at 2-3). Section 240A(b)(1)(C) of the Act, 8 U.S.C. § 1229b(b)(1)(C). On February 9, 2005, the Board affirmed the Immigration Judge's decision.

However, in its order of (b) (6), the (b) (6) determined that the respondent's conviction for misdemeanor child endangerment was not categorically a crime of "child abuse" under the Act, because the full range of conduct criminalized by section 237a(b) of the CPC was broader than the definition of "child abuse" as construed by the Board in *Matter of Velazquez-Herrera*, 24 I&N Dec. 503 (BIA 2008).[2] *Fregozo v. Holder*, *supra*, at 1036-38. The (b) (6) held that the California statute criminalized placing a child in a situation in which his or her person

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[1] During the pendency of this appeal, the respondent's attorney, Samuel U. Ogbu, was suspended from practicing before the Board, the Immigration Courts, and the Department of Homeland Security ("DHS"). Although Mr. Ogbu was later reinstated, he has not filed a new Notice of Appearance, as required by the Board, and therefore the respondent is considered as unrepresented. However, as a courtesy, a copy of this decision will be sent to Mr. Ogbu.

[2] In that case, the Board defined "child abuse," as contemplated under section 237(a)(2)(E)(i) of the Act, 8 U.S.C. § 1227(a)(2)(E)(i), as "any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a child or that impairs a child's physical or mental well-being, including sexual abuse or exploitation." *Matter of Velasquez-Herrera*, *supra*, at 512.

or health *could* be endangered, but did not necessarily require actual injury to the child to support a conviction, whereas *Velazquez-Herrera*'s definition of child abuse required *actual* injury to the child. *Id.* at 1038.

Nevertheless, the (b) (6) remanded for a modified categorical analysis of whether the respondent's conviction qualified as a crime of "child abuse" under the Act. *Id.* at 1038-40. As the last hearing in this case was more than 6 years ago and a number of subsequent precedential decisions impact the respondent's case, we will remand this matter to the Immigration Judge to apply the modified categorical approach in these proceedings. On remand, both parties will have an opportunity to present any relevant, admissible evidence in support of their respective positions for consideration by the Immigration Judge.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion, and the entry of a new decision.

FOR THE BOARD

File: D2009-229 Date: NOV 4 2009

In re: UCHENNA SAMUEL OGBU-NWOBODO, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

PETITION FOR IMMEDIATE SUSPENSION

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF DHS: Eileen M. Connolly, Appellate Counsel

On September 9, 2009, the respondent was suspended from the practice of law for 6 months, stayed, with an actual suspension of 60 days, and probation for 1 year, by the Supreme Court of California. Consequently, on October 22, 2009, the Disciplinary Counsel for the Executive Office for Immigration Review petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. The Department of Homeland Security (the "DHS") then asked that the respondent be similarly suspended from practice before that agency. The petition will be granted.

ORDER: The petition is granted, and the respondent is hereby suspended, absent a showing of good cause, from the practice of law before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding. *See* 8 C.F.R. § 1003.103(a).

FURTHER ORDER: The respondent is directed to promptly notify, in writing, any clients with cases currently pending before the Board, the Immigration Courts, or the DHS that the respondent has been suspended from practicing before these bodies.

FURTHER ORDER: The respondent shall maintain records to evidence compliance with this order.

FURTHER ORDER: The Board directs that the contents of this notice be made available to the public, including at Immigration Courts and appropriate offices of the DHS.

FOR THE BOARD