IMMIGRATION COURT

In the Matter of

(b) (6)

Respondent

Case No.: (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Nov. 29, 2011
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to or in the alternative to .

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to .

[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of $ _____ with an alternate order of removal to .

Respondent's application for:

[ ] Asylum was ( )granted ( )denied( )withdrawn.

[ ] Withholding of removal was ( )granted ( )denied ( )withdrawn.

[ ] A Waiver under Section _____ was ( )granted ( )denied ( )withdrawn.

[X] Cancellation of removal under section 240A(a) was [X]granted ( )denied ( )withdrawn.

Respondent's application for:

[ ] Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Cancellation under section 240A(b) (2) was ( )granted ( )denied ( )withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section ____ was ( )granted ( )denied ( )withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application of ( ) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: _____.

Date: Nov 29, 2011

ROSALIND K. MALLOY
Immigration Judge

Appeal: ~~Waived~~/Reserved Appeal Due By:

DHS 12-29-11

File: (b) (6) Date: FEB 25 2011

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Craig R. Shagin, Esquire

ON BEHALF OF DHS: Geraldine K. Richardson
Assistant Chief Counsel

APPLICATION: Cancellation of removal

This case was last before the Board on July 5, 2007, when we affirmed an Immigration Judge's December 16, 2005, decision, issued on January 31, 2006, denying the respondent's application for cancellation of removal. The Immigration Judge found that the respondent's conviction for simple assault on a child under 12 years of age, in violation of Pennsylvania Consolidated Statutes Annotated title 18, section 2701(b)(2), was a crime involving moral turpitude described under section 212(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2), prevented the respondent from establishing the 7 years of continuous residence in the United States necessary to qualify for cancellation. *See* sections 240A(a)(2) and 240A(d)(1) of the Act, 8 U.S.C. §§ 1229b(a)(2) and 1229b(d)(1).

On (b) (6) the United States Court of Appeals for the (b) (6) wherein this matter arises, granted the respondent's petition for review and remanded the case to the Board, finding that a violation of 18 Pa.C.S.A. § 2701(b)(2) is not categorically a crime involving moral turpitude ("CIMT"). More specifically, the Court found that an offense under the statute does not require scienter (i.e., knowledge of the victim's age) and there does not necessarily involve moral turpitude. In doing so, it explicitly rejected the analytical model for evaluating potential CIMTs outlined in the Attorney General's decision in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008) (allowing examination of facts outside the formal record of conviction, and consideration of whether there is a "realistic probability" that a statute may be applied to reach conduct that does not involve moral turpitude). The Court held that the proper method of analysis is to determine the minimum culpability required for conviction of a given statute, as set forth in its decision in *Partyka v. Att'y Gen.*, 417 F.3d 408 (3d Cir. 2005).

The Department of Homeland Security has now filed a motion with the Board requesting a return to an Immigration Judge to reconsider the question of whether the respondent has been convicted of conduct constituting a CIMT in light of the (b) (6) order of remand. The respondent does not object to the motion. The motion will be granted. If the Immigration Judge finds that the respondent has not been convicted of a crime involving moral turpitude, he or she will then

determine if the respondent is otherwise eligible for cancellation and deserving of a favorable exercise of discretion.

Accordingly, the following orders will be entered.

ORDER: The motion to remand is granted.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion.

FOR THE BOARD