



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041

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**DHS/ICE
606 S. Olive Street, 8th Floor
LOS ANGELES, CA 90014**

Name: [REDACTED] [REDACTED]

Date of this notice: 2/14/2019

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Adkins-Blanch, Charles K.

GilbeauR
Userteam: Docket

Falls Church, Virginia 22041

File: [REDACTED] – Los Angeles, CA

Date: FEB 14 2019

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Anish Vashistha, Esquire

ON BEHALF OF DHS: Sari Maltz
Assistant Chief Counsel

APPLICATION: Removability

This case is before the Board pursuant to an August 10, 2018, order of the United States Court of Appeals for the Ninth Circuit, which granted the Government's motion to remand. In its motion, the Government sought remand for the Board to consider whether the respondent's California burglary conviction is an aggravated felony-crime of violence in light of the Supreme Court's decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018). In *Dimaya*, the Supreme Court held that the federal criminal code's definition of a crime of violence, at 18 U.S.C. § 16(b), as incorporated into the definition of an aggravated felony at section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(F), was unconstitutionally vague. The Government also sought remand for the Board to consider its determinations that the respondent did not submit evidence that he was issued a law enforcement certificate in support of his request for reopening based upon eligibility for a U-visa and that he had not been to Fiji since he was 6 years old.

Subsequently, the respondent filed a motion to terminate proceedings. The Department of Homeland Security (DHS) filed a motion to remand to lodge an additional factual allegation and charge of removability and attached a Form I-261 (Additional Charges of Inadmissibility/Deportability) to the motion. The DHS filed a second motion to remand to allow the parties to update the record and make any additional arguments. As DHS may lodge additional charges at any time, the motion will be granted and the record remanded. 8 C.F.R. §1003.30. As the DHS's motion to remand is being granted, the respondent's motion to terminate will be denied.

Accordingly, the following orders will be entered:

ORDER: The respondent's motion to terminate is denied.

FURTHER ORDER: The DHS's motion to remand is granted and the record is remanded to the Immigration Judge for further proceedings and the entry of a new decision.



FOR THE BOARD