Detail

Complaint Number: 146 **Immigration Judge:** Cassidy, William A. **Complaint Date:** 04/27/10

Current ACIJ	Base City	Status	Final Action	Final Action Date
Smith, Gary W.	(b)	CLOSED	Complaint dismissed as merits-related	05/04/10

A-Number(s)	Complaint Nature(s)	Complaint Source(s)
(b) (6)	Bias Due process In-court conduct Legal	Respondent (b) (6)

Complaint Narrative: R alleges ij operates under unique rules not following due process, federal law, fair practices and federal regulations.

Complaint History	
03/31/10	Alleged conduct occurred
04/28/10	Complaint referred to ACIJ
04/28/10	Database entry created
05/04/10	ACIJ sends order to respondent
05/04/10	Complaint dismissed as merits-related - ACIJ responded in writing advising case is pending at the Board.

(b) (6)

April 22, 2010

2010 APR 27 PM 2:19

The Chief Immigration Judge
The Office of the Chief Immigration Judge
Executive Office for Immigration Review
5107 Leesburg Pike,
Falls Church, VA 22041

Re: REQUEST FOR ASSISTANCE IN OBTAINING COPY OF IMMIGRATION JUDGE'S REMOVAL ORDER

Dear Chief Judge,

I respectfully and very urgently seek your assistance in directing the Immigration Judge, Hon. William Cassidy, at the (b) (6) Immigration Court, to immediately provide me with a copy of the "Removal Order" entered against me on March 31, 2010.

This IJ operates under very unusual and unique rules that appear to be contrary to the rudimentary demands of due process, federal law, codes of federal regulations and the fair equity practice of federal courts. I will briefly explain.

I was taken into DHS custody on July 2, 2009, and an "NTA" was filed with the IJ without any "Certificate of Service" and while my conviction was still on "Direct Appeal"[1]. At my initial televideo appearance on August 11, 2009, I informed the IJ that I was not ***{served}*** with the "NTA" and that my conviction was on "Direct Appeal" and motioned for termination of proceedings and release on Bond. He took no pleadings but denied "bond" and asked that I file a written "Motion to Terminate". The IJ refused to provide me with the Order denying my "Bond" request which I subsequently received through **FOIA** and discovered that the IJ, on his own, waived my right to appeal. I later filed the motion to terminate as directed but the IJ refused to rule on it.

On January 12, 2010, I appeared before another IJ, Hon. (b) (6) who took "pleadings" for the first time, dismissed part of the charges in the NTA and promised to schedule an Individual Calendar Hearing at a future date for the DHS to prove the charges in the NTA.

On January 20, 2010, I filed a second Motion for Bond which the first IJ summarily denied in 2 minutes without any meaningful hearing. He promised to send

[1] My conviction became final on December 07, 2009. *See* (USCA9 (b) (6)

me a written Order but never did despite repeated request. BIA later sent me a copy of this Order

On February 23, 2010, I appeared at scheduled **Individual Calendar Hearing** on challenges to removability and application for relief. At this hearing, the IJ, Hon. Cassidy, ruled that "**there will no hearing**" on my challenge to removability but merely reviewed his application for relief and effectively concluded that it will be denied. There was no case or evidence presented by DHS to support the charges in the NTA, and I was not allowed to present any defense. ***There was no trial.***

The IJ stated that a written decision will be made from documents filed before ***December 7, 2009***, when my conviction became final at which time he had no JURISDICTION, and from my "Pre-Hearing Brief" filed on February 12, 2010, even though DHS filed no "Pre-Hearing Brief". I was advised of (b) (6) right to appeal.

On March 31, 2010, the IJ issued an ORDER OF REMOVAL against me. I found this out on the Immigration Court Telephone Hotline. I immediately filed a Notice of Appeal to the BIA. I have made two requests to the IJ now over the last three weeks for a copy of this Order of Removal with no response from the IJ.

I now ask for your assistance to order the IJ to provide me with a copy of this Order to facilitate meaningful preparation for my appeal to the BIA.

I also ask that you look further into the very unique circumstances of this case and the conduct of this IJ, Hon. William Cassidy, who appears not to have a good understanding of the Immigration Law which requires DHS to establish deportability by way of evidence, in a ***merit hearing***, for lawfully admitted aliens to the United States. INA §240(c)(3)(A). *Woodby v. INS*, 385 U.S. 276 (1996). Please see Memo to BIA members from the United States Attorney General. (Attachment 1).

I thank you very sincerely in anticipation for your urgent attention to this very serious matter.

Very truly yours,

(b) (6)

U. S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2500

Falls Church, Virginia 22041

May 4, 2010

(b) (6)

Reference: Matter of (b) (6) A (b) (6)

Dear (b) (6)

Your letter of April 22, 2010, was received in the Office of the Chief Immigration Judge on April 27, 2010, and was referred to me as the Assistant Chief Immigration Judge supervising the (b) (6) and (b) (6) Immigration Courts. In your letter, you complain of not having received a copy of the order of removal in your case and complained of the conduct of the proceedings before the Immigration Court. I have reviewed the information in our database concerning your case, as well as the Record of Proceedings. In the event you did not receive it, attached is a complete copy of the written decision of the Immigration Judge, including the Immigration Judge's order therein. As you appealed your case to the Board of Immigration Appeals and that appeal is now pending, it would be inappropriate for me to intercede in that process.

Thank you again for your letter, and I hope this response is of assistance to you.

Sincerely,

Gary W. Smith
Assistant Chief Immigration Judge

Enclosure: As stated

cc: Court Administrator, (b) (6) Immigration Court

COPY

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

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
(b) (6)	)	**File No. A#** (b) (6)
	)	
Respondent	)	
	)	

CHARGES: Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA" or "Act"), as amended, in that any time after admission, Respondent has been convicted of an aggravated felony as defined in section 101(a)(43)(M) of the Act, an offense that (i) involves fraud or deceit in which the loss to the victim(s) exceeds $10,000 or (ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss exceeds $10,000.

Section 237(a)(2)(A)(i) of the Act, in that Respondent has been convicted of a crime involving moral turpitude committed within five years after admission for which a sentence of one year or longer may be imposed.

Section 237(a)(2)(A)(iii) of the Act, in that any time after admission, Respondent has been convicted of an aggravated felony as defined in section 101(a)(43)(D) of the Act, an offense described in section 1956 of title 18, United States Code (relating to the laundering of monetary instruments) ... if the amount of the funds exceeded $10,000.

Section 237(a)(2)(A)(iii) of the Act, in that any time after admission, Respondent has been convicted of an aggravated felony as defined in section 101(a)(43)(U) of the Act, for a conviction of an attempt or conspiracy to commit an offense described in section 101(a)(43) of the Act.

APPLICATION: Respondent's Motion to Terminate

APPEARANCES

ON BEHALF OF THE RESPONDENT:

Pro Se

ON BEHALF OF THE GOVERNMENT:

Assistant Chief Counsel
Department of Homeland Security
(b)(6) & (b)(7)(C)

DECISION OF THE IMMIGRATION JUDGE

I. Procedural History

Respondent is a male native and citizen of Nigeria. Respondent was admitted to the United States on or about April 17, 1995 as the spouse of a United States citizen. On or about February 14, 1997, Respondent adjusted his status to that of lawful permanent resident. Respondent naturalized as a United States citizen on May 31, 2001.

On March 11, 2005, Respondent was convicted in the United States District Court for the (b) (6) of the offense of Unlawful Procurement of Citizenship or Naturalization and False Statement, in violation of 18 U.S.C. §§ 1425(a) & 1001. For this offense, Respondent was sentenced to ninety-seven (97) months imprisonment. As a result of this conviction, Respondent's final order of admission to citizenship was revoked, set aside, declared void and his certificate of citizenship was cancelled.[1]

On May 16, 2007, Respondent was convicted in the United States District Court for the (b) (6) of the offense of Conspiracy to Commit Mail Fraud and Wire Fraud and Conspiracy to Launder to Money, in violation of 18 U.S.C. §§ 371 & 1956(h). For this offense, Respondent was sentenced to ninety-seven (97) months imprisonment.

Based on these convictions, the Department of Homeland Security ("Department" or "DHS") placed Respondent in removal proceedings through the issuance of a Notice to Appear ("NTA") dated July 2, 2009. The Department charged Respondent with removability pursuant to section 237(a)(2)(A)(iii) of the Act for having been convicted of an aggravated felony as defined in section 101(a)(43)(M) of the Act, an offense which (i) involves fraud or deceit in which the loss to the victim(s) exceeds $10,000 or (ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss exceeds $10,000.

On September 21, 2009, the Department filed a Form I-261, Additional Charges of Inadmissibility/Deportability. In addition to the charge in the NTA, the Department filed three

[1] Respondent appealed this decision. On June 29, 2006, the United States Court of Appeals for (b) (6) Circuit affirmed Respondent's conviction and sentence but vacated the forfeitures ordered by the District Court. On May 16, 2007, the United States District Court for the (b) (6) issued an amended judgment and, on March 9, 2009, issued another order revoking Respondent's citizenship.

additional charges of removability. Specifically, Respondent was charged with removability pursuant to section 237(a)(2)(A)(iii) of the Act for having been convicted of an aggravated felony as defined in section 101(a)(43)(D), an offense described in section 1956 of title 18, United States Code (relating to the laundering of monetary instruments) ... if the amount of the funds exceeded $10,000. Respondent was also charged with removability pursuant to section 237(a)(2)(A)(iii) of the Act for having been convicted of an aggravated felony as defined in section 101(43)(U), relating to an attempt or conspiracy to commit an offense described in section 101(43) of the Act. Lastly, Respondent was charged with removability pursuant to section 237(a)(2)(A)(i) of the Act for having been convicted of a crime involving moral turpitude within five years after admission for which a sentence of one year or longer may be imposed.

Respondent requested that proceedings be terminated. Among other claims, Respondent alleged that proceedings should be terminated because the court lacks the authority to remove him from the United States as he was not properly served with the NTA. Respondent also claimed that the charges of removability cannot be sustained and, therefore, proceedings should be terminated. The court previously denied Respondent's request to terminate and found that Respondent was properly in removal proceedings. Respondent again requests that proceedings be terminated and has filed multiple briefs in support of his claim. The Department has filed a response in opposition to Respondent's request to terminate proceedings. For the following reasons, the court finds that Respondent is properly in removal proceedings.

II. Discussion

A motion to terminate may be filed by either party after jurisdictional authority has been vested in the Immigration Judge with the commencement of the removal proceedings. See Matter of G-N-C, 22 I. & N. Dec. 281 (BIA 1988). A motion to terminate will not be granted by the Immigration Judge if it is determined that the Respondent is properly in removal proceedings.

Respondent, who is not represented by counsel, makes several arguments as to why he is not properly in removal proceedings. However, in the interests of judicial economy and in order to minimize Respondent's time in detention, the court will only address Respondent's arguments as to whether notice of his hearing was proper and whether Respondent is removable as charged.

A. Respondent was properly served with notice of his removal hearing.

Respondent claims that he was not served with the NTA, thus, he is not properly in removal proceedings. See 8 C.F.R. § 1003.14. In support of his claim, Respondent references his NTA, dated July 2, 2009, which lacks a certificate of service. The court does not dispute that Respondent's NTA has no indication as to service on Respondent. However, Respondent was detained by the Department at the time the NTA was issued and was, therefore, aware the he was placed in removal proceedings. Further, the record before the court indicates that Respondent appeared for his first Master Calendar hearing on August 11, 2009 and was notified of the allegations and charges against him. The record before the court also indicates that Respondent

was personally served with a Form I-261, Additional Charges of Inadmissibility/Deportability, on September 21, 2009.

Respondent subsequently appeared for several Master Calendar hearings where he was given ample time to respond to the allegations against him. Respondent has not been denied access to the NTA or the record of proceedings. As the court's decision that Respondent is properly in removal proceedings is based on Respondent's record of conviction and the arguments and evidence contained in the record of proceedings, and Respondent was not denied access to such record, he has failed to show that any deficiency caused him prejudice in the instant removal proceedings. As such, the court finds that the Respondent was given sufficient notice of the charges filed against him and a reasonable opportunity to respond to them.

B. Respondent is removable as charged under sections 237(a)(2)(A)(iii) and 237(a)(2)(A)(i) of the Act.

The Department has charged Respondent with removability pursuant to 237(a)(2)(A)(iii) of the Act for a conviction of an aggravated felony as defined in sections 101(a)(43)(M), 101(a)(43)(D), and 101(a)(43)(U) of the Act. The Department alleges that Respondent conspired to commit an offense listed under section 101(a)(43)(M) of the Act, which defines an aggravated felony to include "an offense that ... involves fraud or deceit in which the loss to the victim or victims exceeds $10,000." INA § 101(a)(43)(M)(i). The Department also argues that Respondent conspired to commit an offense listed under section 101(a)(43)(D) of the Act, which defines an aggravated felony to include "an offense described in section 1956 of title 18, United States Code (relating to the laundering of monetary instruments) ... if the amount of the funds exceeded $10,000." INA § 101(a)(43)(D).

To determine whether Respondent's conviction constitutes an aggravated felony, the court must first look to the language of the statute of conviction. See (b) (6) (b) (6) see also Matter of Ajami, 22 I. & N. Dec. 949, 950 (BIA 1999). If a statute is divisible, meaning that the statutory language contains some offenses that would qualify as aggravated felonies and others that would not, then the court must look to "the record of conviction, meaning the indictment, plea, verdict, and sentence, to determine the offense of which the respondent was convicted." (b) (6) & N. Dec at 950); (b) (6) Matter of Sweetser, 22 I. & N. Dec. 709, 713-14 (BIA 1999). The court's finding that a prior conviction constitutes an "aggravated felony" must be supported by "clear, unequivocal, and convincing evidence." (b) (6) see also Woodby v. INS, 385 U.S. 276, 286 (1966); INA § 240(c)(3)(A).

In this case, Respondent was convicted of Conspiracy to Commit Mail Fraud and Wire Fraud and Conspiracy to Launder to Money, in violation of 18 U.S.C. §§ 371 & 1956(h). The statutes of conviction clearly indicate that Respondent's offenses involved fraud and money laundering. See 18 U.S.C. §§ 371 & 1956(h).

Given this starting point, the issue before this court is whether Respondent's offenses meet the threshold amount of at least $10,000. See INA § 101(a)(43)(M)(i) (fraud offense must result in loss of $10,000 to victims); INA § 101(a)(43)(D) (money laundering offense must involve funds in excess of $10,000). The elements of an offense under 18 U.S.C. §§ 371 & 1956(h) do not require that any threshold amount. Id. Consequently, the court must look to the record of conviction to determine the nature of Respondent's offense. (b) (6) (b) (6) The judgment in Respondent's case indicates that the loss to his victims was $1,201,092.80. See Amended Judgment of the United States District Court for the (b) (6) (b) (6) (May 16, 2007). Further, the judgment indicates that Respondent was ordered to pay restitution in the amount of $1,201,092.80. Id.

As such, the amount of loss to Respondent's victims, of approximately $1,201,092.80, as specified in the judgment information, clearly meets the threshold amount in sections 101(a)(43)(M)(i) and 101(a)(43)(D) of the Act. See (b) (6) see also Matter of Babaisakov, 24 I. & N. Dec. 306 (BIA 2007). Moreover, the Factual Basis to Respondent's Plea Agreement indicates that he laundered approximately $235,000. Lastly, evidence that Respondent's crimes were committed while he was a lawful permanent resident is found in the Indictment and the Factual Basis to the Plea Agreement. Therefore, the court finds that Respondent has been convicted of an aggravated felony as defined in sections 101(a)(43)(M)(i), 101(a)(43)(D), and 101(a)(43)(U) of the Act and is removable under section 237(a)(2)(A)(iii) of the Act.

Respondent's convictions for Conspiracy to Commit Mail Fraud and Wire Fraud, Conspiracy to Launder to Money, and for Unlawful Procurement of Citizenship or Naturalization and False Statement are clearly crimes involving moral turpitude. See Jordan v. De George, 341 U.S. 223 (1951) (finding offenses in which fraud is an ingredient have always been regarded as crimes involving moral turpitude). Moreover, Respondent was sentenced to ninety-seven (97) months imprisonment for these offenses. Thus, the court finds that Respondent is also removable under section 237(a)(2)(A)(i) of the Act.

C. Respondent's convictions render him ineligible for relief and, therefore, the court will terminate proceedings.

In this case, given his serious criminal history, Respondent is ineligible for many forms of relief. Respondent has been convicted of an aggravated felony and is ineligible for asylum and cancellation of removal. Respondent has also not expressed a fear of persecution or torture upon his return to Nigeria. Respondent has requested no other form of relief. As such, the court will terminate proceedings. Accordingly, the court enters the following order:

ORDER

It is ordered that:

Respondent's Motion to Terminate be **DENIED;**

It is further ordered that:

Respondent be **REMOVED** to Nigeria on the charges contained in the NTA and I-261.

3/31/10
Date

William A. Cassidy
United States Immigration Judge
Atlanta, Georgia