



Falls Church, Virginia 22041

File: [REDACTED] - Newark

Date: FEB - 3 2006

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Elizabeth H. McGrail, Esquire

ON BEHALF OF DHS: Sarah L. Hartnett
Assistant Chief Counsel

CHARGE:

- Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law
- Sec. 237(a)(2)(A)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(ii)] -
Convicted of two or more crimes involving moral turpitude
- Lodged: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony
- Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] -
Convicted of controlled substance violation

APPLICATION: Withholding of removal; CAT

ORDER:

PER CURIAM. The respondent has appealed from the Immigration Judge's August 12, 2005, decision finding him removable as charged, statutorily ineligible for asylum by reason of an aggravated felony conviction, statutorily ineligible for both withholding of removal under 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), and under Article 3 of the United Nations Convention Against Torture ("CAT"), 8 C.F.R. § 1208.16; and denying him deferral of removal under the CAT, 8 C.F.R. § 1208.17. The respondent's request for waiver of the appeal fee is granted. 8 C.F.R. § 1003.8(c).

The respondent had presented evidence to the Immigration Judge that he was currently undergoing treatment for a schizoaffective disorder, bipolar type, and had experienced difficulties due to his mental

illness. This treatment included a period of hospitalization from May 21, to June 19, 2005 (Exhs. 8, 11, 12). However, without assessing the respondent's competency, on June 24, 2005, the Immigration Judge accepted an admission of removability from the respondent, who was unrepresented and appeared alone (Tr. at 15-16). We express no opinion as to the merits of the charges or the respondent's claims for relief. However, pursuant to 8 C.F.R. § 1240.10(c), we conclude that, by reason of the respondent's mental illness, the record is remanded for further proceedings, to include an assessment of the respondent's competency. If the respondent is found to be incompetent, and does not appear either represented or otherwise appropriately accompanied, the Immigration Judge should direct a hearing on the issues previous to the entry of a new decision.



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