



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: GOMEZ SEGURA, EMANUEL

A087-540-725

Date of this notice: 7/7/2010

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:

Cole, Patricia A.
Filppu, Lauri S.
Pauley, Roger

RECORDED

Falls Church, Virginia 22041

File: A087 540 725 - Florence, AZ

Date:

JUL - 7 2010

In re: EMANUEL GOMEZ SEGURA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rebecca McCarthy, Esquire

ON BEHALF OF DHS: Robert C. Bartlemay Sr.
Assistant Chief Counsel

CHARGES:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] -
Crime involving moral turpitude

APPLICATION: Removability

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's December 10, 2009, decision finding him inadmissible as charged and ordering him removed from the United States to Mexico. The respondent's appeal will be sustained, and the record will be remanded for further proceedings.

The record reflects that on August 21, 2009, the respondent was convicted for the offense of Solicitation to Take the Identity of Another, a class 6 felony, in violation of Arizona Revised Statutes sections 13-2008, 13-1002, 12-114.01, 13-610, 13-701, 13-702, 13-702.01, and 13-801, and sentenced to 18 months probation (Exh. 2). The Immigration Judge found that the respondent's conviction constitutes a crime involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). The respondent challenges this finding on appeal.¹

We review question of law *de novo*. See 8 C.F.R. § 1003.1(d)(3)(ii). Here, we disagree with the Immigration Judge that the respondent is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

¹ The respondent does not challenge the Immigration Judge's determination that he is inadmissible under section 212(a)(6)(A)(i) of the Act.

As a preliminary matter, we note that in *Barragan-Lopez v. Mukasey*, 508 F.3d 899, 903 (9th Cir. 2007), the United States Court of Appeals for the Ninth Circuit, the jurisdiction in which this case arises, held that where the crime involves solicitation of specified criminal conduct, the underlying criminal offense must be examined in order to determine whether an alien has been convicted of a crime involving moral turpitude.

Here, the underlying criminal offense is Taking the Identity of Another in violation of section 13-2008 of Arizona Revised Statutes, which provides in pertinent part:

A person commits taking the identity of another person or entity if the person knowingly takes, purchases, manufactures, records, possesses or uses any personal identifying information or entity identifying information of another person or entity, including a real or fictitious person or entity, without the consent of that other person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose or to cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense, or with the intent to obtain or continue employment.

We find that the Arizona statute at issue is not categorically a crime involving moral turpitude, as there is a "realistic probability" that an individual might be prosecuted under the statute for conduct that is not turpitudinous. *See Matter of Silva-Trevino*, 24 I&N Dec. 687, 689-90, 696-97 (A.G. 2008). The determinative issue, then, is whether the conviction record submitted by the Department of Homeland Security ("DHS") is sufficient to establish under the modified categorical approach that the nature of the underlying convictions involve moral turpitude. *Id.* at 690, 698-701.

The record reflects the respondent pled guilty to count 1 of the Criminal Information, which states:

EMMANUEL GOMEZ SEGURA, on or between the 2d day of August, 2002 and the 3rd day of February, 2009, knowingly took, used, sold, or transferred any personal identifying information of GABRIEL GOMEZ, without consent, with intent to obtain, use, sell, or transfer the identity for any unlawful purpose or to cause loss to a person, in violation of A.R.S. §§ 13-208, 13-701, 13-702, 13-702.01, and 13-801 (Exh. 2-G).

The pre-sentence information, which may be considered under the expanded modified categorical approach articulated in *Matter of Silva-Trevino*, *supra*, indicates that the "personal identifying information" was the victim's social security number, which was in turn used by the respondent to obtain employment (Exhs. 2-C, 2-E).

In *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000), the Ninth Circuit held that the crimes of using a false social security number under 42 U.S.C. § 408(g)(2) (recodified at section 408(a)(7)(B)) and "false attestation with such a number in violation of 18 U.S.C. § 1546(b)(3)" were not crimes of moral turpitude. In so holding, the Ninth Circuit examined a 1990 statutory amendment to section 408, which provided that aliens who had been granted permanent resident status under the amnesty or registry statutes were exempt from prosecution for certain past uses

of false social security numbers, including using a false social security number to obtain employment resulting in eligibility for social security benefits. *See Beltran-Tirado, supra*, at 1183, 1184 n.8. Relying on a congressional conference report accompanying the statutory amendment, in which Congress indicated that “individuals provided exemption from prosecution under this proposal should not be considered to have exhibited moral turpitude with respect to the exempted acts for purposes of determinations made by the Immigration and Naturalization Service,” the Ninth Circuit concluded that an alien’s conduct of making false attestations on employment verification forms and using a false social security number did not involve moral turpitude. *Id.* at 1184.

Although the respondent in this case was not convicted under either of the statutes at issue in *Beltran-Tirado, supra*, we find that the Ninth Circuit’s decision is nonetheless controlling. Specifically, the Ninth Circuit concluded that Congress clearly intended that the use of a false Social Security number to further otherwise legal behavior (employment) is not a crime involving moral turpitude. *See Beltran-Tirado, supra*, at 1184-85. As the respondent was convicted for similar conduct, we find, contrary to the Immigration Judge, that the respondent is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. We will therefore vacate the Immigration Judge’s decision in this respect and remand the record for consideration of relief. Accordingly, the following orders are entered.

ORDER: The respondent’s appeal is sustained and the Immigration Judge’s determination that the respondent is inadmissible under section 212(a)(2)(A)(i)(I) of the Act is vacated.

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



FOR THE BOARD

Falls Church, Virginia 22041

File: A087540725 - Florence, AZ

Date:

In re: EMANUEL GOMEZ SEGURA

JUL - 7 2010

DISSENTING OPINION: Roger A. Pauley

Although acknowledging that the respondent was not convicted under either of the statutes addressed in *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000), the majority conclude that that decision is controlling and requires the conclusion that the respondent's conviction for solicitation to take another's identity under Arizona law is not a crime involving moral turpitude. *Beltran-Tirado* has been rejected (in my view for reasons that are convincing) by all three circuits that have subsequently considered it. See *Hyder v. Keisler*, 506 F.3d 388 (5th Cir. 2007); *Serrato-Soto v. Holder*, 570 F.3d 686 (6th Cir. 2009); *Lateef v. Department of Homeland Sec.*, 592 F.3d 926 (8th Cir. 2010). *Beltran-Tirado* was itself a 2-1 decision. While there is no indication that the Ninth Circuit would retreat from *Beltran-Tirado*, such that we are free to disregard it, at the same time there is no reason to believe that the Ninth Circuit would apply it beyond its boundaries to reach the same result here.

The solicitation offense in this case, of which the respondent was convicted, categorically involves moral turpitude because the offense solicited requires the knowing taking of *another's* identity information with intent to use it for any unlawful purpose or with intent to obtain or continue employment. Notably, the underlying statute at issue differs from the ones involved in *Beltran-Tirado* in that it requires that the social security number be not merely one to which the user is not entitled but that it belong to **another person**.¹ See *Flores-Figueroa v. United States*, 129 S. Ct. 1886 (2009). The fact that the offense requires misuse of *another's* identity insures at least the potential that the offense will harm another individual. Thus, the fact that obtaining employment may not itself be pernicious is not controlling as to whether it is morally turpitudinous.² Even a morally laudable objective may not be pursued by means of wrongfully acquiring another person's property; thus a theft or fraud offense would not escape being turpitudinous simply because the offender proved that the objective was to send the money thereby obtained to feed the homeless or to care for the sick.

I therefore respectfully dissent.



FOR THE BOARD

¹ The facts in *Beltran-Tirado* showed that the social security number there was that of another person, but that was not an element of the offense and the court did not therefore rely on it.

² In *Beltran-Tirado*, evidently the offense caused tax problems for the true holder of the social security number, who asked unavailingly that the offender cease his use. The potential for similar harm exists categorically under the statute of conviction here.