UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
PORTLAND, OREGON

In the Matter of

[redacted] File Number: [redacted]

Respondent.

IN REMOVAL PROCEEDINGS

Charge: INA § 212(a)(2)(A)(i)(I): Crime involving moral turpitude

Application: Motion to reconsider

On Behalf of Respondent:
Brian Patrick Conry
Attorney at Law

On Behalf of ICE:
Gina C. Emanuel
Assistant Chief Counsel

RULING OF THE IMMIGRATION JUDGE

I. Introduction & Procedural History

The Department of Homeland Security ("DHS") initiated these removal proceedings by filing a Notice to Appear ("NTA") against Respondent [redacted] with the Immigration Court in Los Angeles, California, on June 15, 2013. Ex. 1. Respondent is a native and citizen of Mexico who became a lawful permanent resident ("LPR") of the United States on July 18, 2002. *Id.* The NTA charges him as an arriving alien who is inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act ("INA" or "Act") based on a conviction for a crime involving moral turpitude ("CIMT"). In 2009, Respondent was convicted of fourth-degree assault and strangulation constituting domestic violence in violation of ORS §§ 163.160, 163.187. In 2011, Respondent was convicted of failure to perform duties of driver in violation of ORS § 811.700. All three crimes are misdemeanors. Venue was changed from Los Angeles to Portland on August 27, 2013. At a master calendar hearing on February 24, 2014, Respondent through counsel admitted all of the factual allegations. The court sustained the charge and directed Mexico as the country of removal. Respondent did not formally contest the charges at the hearing but requested the opportunity to file a motion to terminate. The motion was filed on March 27, 2014, and denied by the court in a written decision on April 10, 2014. That decision is hereby incorporated. Respondent filed a motion to reconsider on April 17, 2014. DHS did not respond. For the reasons that follow, the motion to reconsider is granted and the matter is terminated.

II. Discussion

An Immigration Judge may, upon motion of the parties, reconsider any case in which he or she has made a decision, unless jurisdiction is vested with the Board of Immigration Appeals. 8 C.F.R. § 1003.23(b)(1). A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior decision and shall be supported by pertinent authority. 8 C.F.R. § 1003.23(b)(2). Such a motion requests that the case be reexamined in light of additional legal arguments, a change in law, or an argument or aspect of the case which was overlooked. *Matter of Cerna*, 20 I&N Dec. 399, 402-03 (BIA 1991). The motion to reconsider must be accompanied by a statement of reasons and supported by pertinent authority. *See* 8 U.S.C. § 1229a(c)(6)(C); 8 C.F.R. § 1003.2(b)(1); *see also Iturribarria v. INS*, 321 F.3d 889, 895-96 (9th Cir. 2003).

Respondent was charged as an arriving alien with removability based on his conviction for a crime involving moral turpitude under INA § 212(a)(2)(A)(i)(I). His convictions for fourth-degree assault and strangulation, both constituting domestic violence, stem from the same incident. The assault conviction is not a CIMT because Respondent was convicted of acting recklessly, but the strangulation conviction is a CIMT. The court ruled previously that the petty offense exception of section 212(a)(2)(A)(ii)(II) did not apply because Respondent had been convicted of more than one crime. Respondent argues in the motion to reconsider that the "more than one crime" clause only refers to CIMTs. After consideration of this argument, I conclude that Respondent is correct, that the petty offense exception does apply, and that the charge cannot be sustained. *See Matter of Garcia-Hernandez*, 23 I&N Dec. 590, 594-96 (BIA 2003) ("the 'only one crime' proviso [refers] to 'only one *such* crime,' meaning only one crime involving moral turpitude"); *Vasquez-Hernandez v. Holder*, 590 F.3d 1053 (9th Cir. 2010) (although offenses falling under 237(a)(2) cannot be excused under the petty offense exception for cancellation of removal purposes, this rule does not apply to the removability context). Accordingly, the motion is granted and these proceedings are terminated.

ORDERS

IT IS HEREBY ORDERED that Respondent's motion to reconsider is **GRANTED**.

IT IS FURTHER ORDERED that the charge under INA § 212(a)(2)(A)(i)(I) is **NOT SUSTAINED**.

IT IS FURTHER ORDERED that these proceedings against Respondent are **TERMINATED**.

Any appeal of this decision is due to the BIA in not less than 30 calendar days (June 20, 2014).

May 21, 2014
Date

Andrea Sloan
Immigration Judge