

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15-60067

United States Court of Appeals
Fifth Circuit

FILED

May 4, 2016

Lyle W. Cayce
Clerk

OMAR ALBERTO HERNANDEZ,

Petitioner,

v.

LORETTA LYNCH, U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals

Before HIGGINBOTHAM, PRADO, and GRAVES, Circuit Judges.

PER CURIAM:

Petitioner Omar Alberto Hernandez, a citizen of Mexico, was determined ineligible for cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(1)(C) after an immigration judge concluded that his conviction for deadly conduct under Texas Penal Code § 22.05(a) was categorically a crime involving moral turpitude (“CIMT”). Petitioner appealed to the Board of Immigration Appeals (“BIA”), which applied the “realistic probability” approach to hold that deadly conduct was categorically a CIMT and dismissed the appeal.¹ For the reasons explained in *Mercado v. Lynch*, 14-60539, slip op. at 3-5 (5th Cir. May 4, 2016),

¹ *Matter of Hernandez*, 26 I. & N. Dec. 464 (BIA 2015).

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we hold that the BIA applied the incorrect standard in analyzing whether Petitioner's conviction constitutes a CIMT. We reverse and remand for the BIA to analyze Petitioner's convictions under the minimum reading approach.