U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: WALTON, WAYZARO YASHIMA... **A 041-657-485**

Date of this notice: 12/5/2019

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

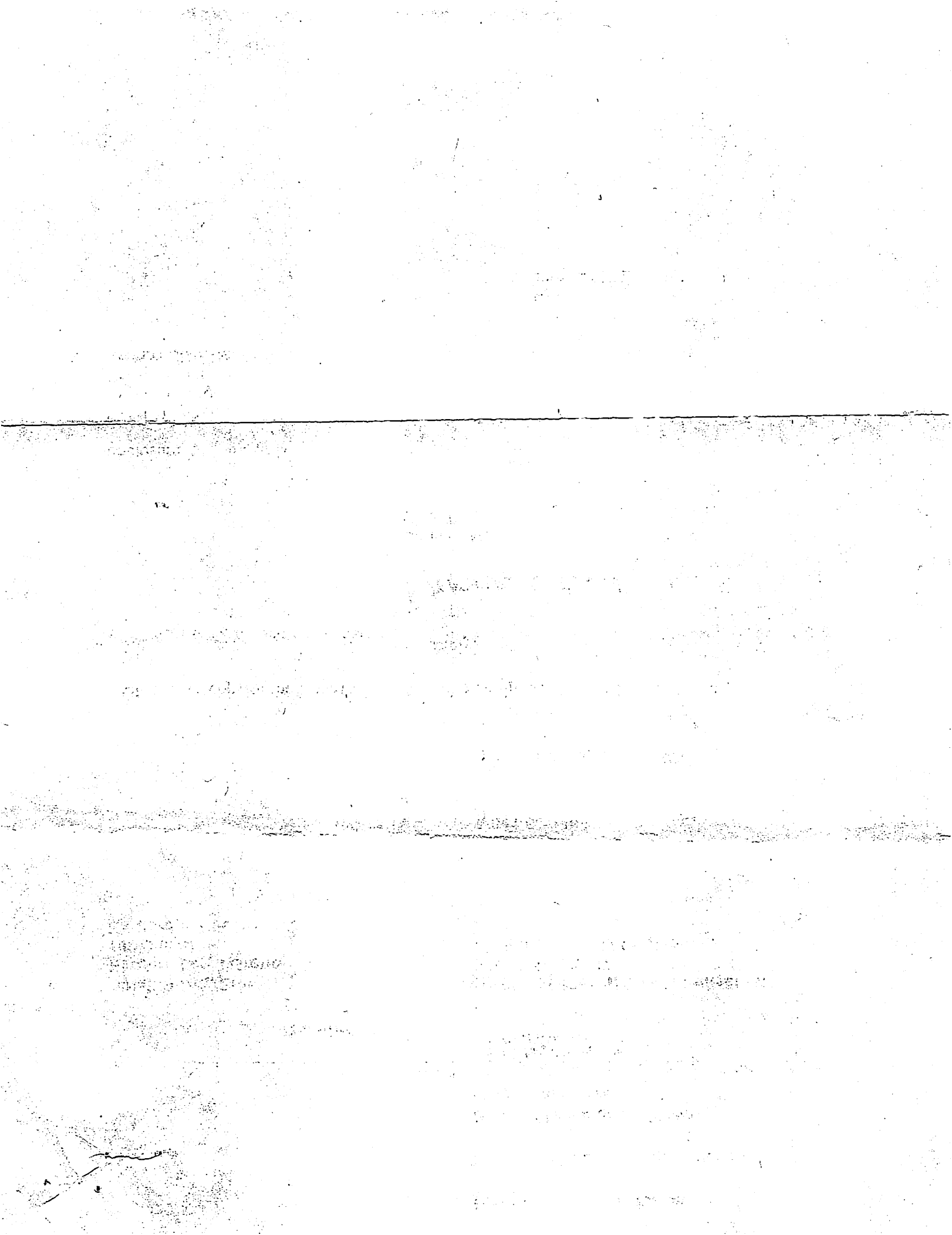
Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John
Grant, Edward R.
Kendall Clark, Molly

Humadyl
Userteam: Docket



File: A041-657-485 – Hartford, CT

Date: DEC - 5 2019

In re: Wayzaro Yashimabet WALTON

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Erin O'Neil-Baker, Esquire

ON BEHALF OF DHS: Adam E. Mattei
Assistant Chief Counsel

APPLICATIONS: Reopening; stay of removal

This case was last before us on June 26, 2014, when we dismissed the respondent's appeal from the Immigration Judge's denial of her prior motion to reopen her removal proceedings. On December 6, 2018, the respondent submitted the instant motion to reopen pursuant to 8 C.F.R. § 1003.2. On December 13, 2018, we denied the respondent's initial request for a stay of removal, but on October 15, 2019, we granted the respondent's motion to reconsider, and granted a stay of removal. The Department of Homeland Security (DHS) opposes the motion.[1] The motion will be granted, and the respondent's removal proceedings will be terminated.

The respondent is a native and citizen of the United Kingdom. She argues that reopening is warranted because she has been granted a pardon for her criminal offenses, that there have been recent decisions of the United States Court of Appeals for the Second Circuit that are applicable to her removability, and that she has a pending application for a U-nonimmigrant visa petition.

The record reflects that on February 10, 2006, the respondent was convicted by a Connecticut state court of the offense of conspiracy to commit larceny in the third degree, and that on June 10, 2011, she was convicted by a Connecticut state court of larceny in the sixth degree. On June 19, 2012, the Immigration Judge found that she was removable as charged under sections 237(a)(2)(A)(ii) and (iii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(ii) and (iii), as having been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, convicted of an aggravated felony theft offense, and convicted of an aggravated felony conspiracy offense.

[1] The State of Connecticut has submitted a request to appear as amicus curiae and offered a brief in support of the respondent's motion to reopen, and the DHS has responded opposing the arguments raised in the amicus brief.

The respondent submits evidence that on January 14, 2019, she was granted a full and absolute pardon by the Connecticut Board of Pardons and Paroles of all her convictions that formed the basis for her removal order and the termination of her permanent resident status. She contends that reopening is warranted for further consideration of whether her conviction of larceny in the third degree is an aggravated felony or a crime involving moral turpitude to support her removal order in view of the decisions of the Second Circuit in *Hylton v. Sessions*, 897 F.3d 57 (2d Cir. 2018), *Obeya v. Sessions*, 884 F.3d 442 (2d Cir. 2018), and *Bastian-Mojica v. Sessions*, 716 F. App'x 45 (2d Cir. 2017). She asserts that reopening sua sponte is warranted based on her pending application for a U-nonimmigrant visa.

Turning first to the issue of the respondent's pardon from the Connecticut Board of Pardons and Paroles, we are persuaded that her removal proceedings should be reopened on that basis.

The respondent's certificate of pardon from the State of Connecticut Board of Pardons and Paroles states that she is granted a full, complete, absolute and unconditional pardon for a list of crimes of which she was convicted, and that it does forever acquit, release and discharge her from those convictions. *See* Motion Exh. 1.

Section 237(a)(2)(A)(vi) of the Act, 8 U.S.C. § 1227(a)(2)(A)(vi), provides, in pertinent part, that clauses (i), (ii), (iii), and (iv) of that section (referring to inadmissibility based on certain criminal offenses, including crimes of moral turpitude and aggravated felonies), "shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States."

The DHS correctly points out that there is a difference in immigration proceedings between a full and unconditional pardon granted by a Governor of a state, an executive pardon, and a full and unconditional pardon granted by a legislatively created Board of Pardons and Parole, a legislative pardon. *See* DHS Opposition at 2-7. The DHS notes that Connecticut's constitution omits the mention of executive pardon authority, and that Connecticut's legislature created the Board of Pardons and Parole to exercise pardon authority. *Id.* at 4-7. The DHS argues that the plain language of section 237(a)(2)(A)(vi) of the Act refers to an executive pardon, and that a pardon by Connecticut's legislatively created Board of Pardons and Paroles, whose power is not constitutionally vested but rather legislatively created, is not an executive pardon but rather a legislative pardon. *Id.* The DHS contends that the respondent's assertion that a pardon from the Connecticut Board of Pardons and Parole is "essentially" an executive pardon because there is no provision in the Connecticut constitution for an executive pardon is not persuasive, and that simply calling a legislative pardon an executive pardon is not a substitute for amending the law of the state.

In *Matter of Nolan*, 19 I&N Dec. 539, 540-43 (BIA 1988), we recognized that some state constitutions have created two separate and distinct categories of pardons, one executive and one legislative, and that the availability of certain benefits under the Act, (in that case, withholding of removal under section 241(b)(1) of the Act), were restricted to aliens who have obtained full and unconditional pardons issued by the President or a Governor. We acknowledged that there are

limitations imposed on the type of pardon which would be sufficient to render an alien immune from removal or deportation. *Id.*; 8 U.S.C. § 1227(a)(2)(A)(vi).

In *Matter of Tajer,* 15 I&N Dec. 125 (BIA 1974), we found that where a State has a constitutional provision for pardon authority to be exercised by the Board of Pardons, and such Board so exercises that constitutionally-vested power, that pardons granted by that State Board of Pardons and Paroles may be considered a Governor's pardon.

We find that the facts in the respondent's criminal proceedings and nature of her pardon are distinguishable from the circumstances involved in *Matter of Nolan,* 19 I&N Dec. at 539. That case involved an automatic, but conditional, pardon for first time offenders, essentially a rehabilitative statute, which we found did not excuse deportability because it is neither full nor unconditional and it was not issued by the Governor or an otherwise constitutionally-recognized executive body of Louisiana. *Id.*

The circumstances present in the respondent's case are closer to those involved in *Matter of Tajer,* 15 I&N Dec. at 125. In that case, we found that the full and unconditional pardon granted by the Georgia State Board of Pardons and Paroles may be considered to be a Governor's pardon because the state has a constitutional provision for pardon authority to be exercised by the Board of Pardons and the Board exercises that constitutionally-granted power. *Id.* We acknowledge that, unlike Georgia, the Connecticut Board of Pardons is not a constitutional body. *See* DHS Opposition, Attachment B, July 20, 1998 (Memorandum on the history of the pardon authority in Connecticut).

However, the Memorandum at Attachment B relates the unique circumstances of the grant of pardon authority by the Crown during the colonial period, circumstances which establish that the authority was originally executive in nature, since it could only be exercised by the Assembly with participation by the Governor. *See also* Amicus Br. at 5-8. Given that the members of the Board of Pardons and Parole are appointed by the Governor, that executive aspect is retained. We also find convincing the opinion of the Connecticut Attorney General that the respondent's convictions have been expunged pursuant to a full and unconditional pardon, and that, under Connecticut law, her pardon should be credited as an executive pardon. *See* Motion Exh. 2; DHS Opposition, Attachment B, Memorandum; Amicus Br. at 1-2, 4-6, 10-12.

We are persuaded that the respondent's pardon by the Connecticut Board of Pardons and Paroles has the effect of an executive pardon. We will reopen and terminate the respondent's proceedings. As a result, there is no reason to address the further arguments in the respondent's motion.

ORDER: The motion is granted.

FURTHER ORDER: The respondent's removal proceedings are reopened and terminated.

FOR THE BOARD