

Annotated Table of Contents

Non-LPR Cancellation of Removal Case File

The following case file is for a respondent who last entered the country without inspection in 1997, and who was placed in removal proceedings in 2009. The respondent applied for Non-LPR Cancellation of Removal under INA § 240A(b). After the respondent's initial application was denied by the Immigration Judge, the Board of Immigration Appeals (BIA) sustained his appeal and granted his application for Cancellation of Removal.

Presented here are portions from his case file that help explain the process of applying for Non-LPR Cancellation of Removal, demonstrate some common difficulties in the process, and show that extensive attorney preparation in developing the factual record can lead to success.

PDF Page Number	Document	Annotation
1	Annotated Table of Contents	
2	Notice to Appear	This document initiated removal proceedings against the respondent.
4	Transcript – Master Calendar Hearings	These are transcripts of the initial phase of the respondent's removal proceedings, including his first appearance without counsel, pleadings, and the submission of his application for relief.
22	Application for Cancellation of Removal	This includes the table of contents and the full EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Non-Permanent Residents.
37	Transcript – Individual Hearing	This is the full transcript of the respondent's individual hearing, including his testimony and the testimony of multiple experts.
340	Respondent's Summation in Support of Application	Some immigration judges permit the submission of summations following an individual hearing.
349	DHS Summation in Opposition	Practitioners should review this to help identify issues that DHS may raise in their own cases.
362	Immigration Judge's Decision	This is the decision denying respondent's application.
372	BIA Respondent's Brief	Following the denial, the respondent filed an appeal to the BIA, submitting this brief in support.
398	BIA Decision Sustaining Appeal	The Board of Immigration Appeals overturned the Immigration Judge in this decision and directed her to enter an order granting the respondent's application.

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID : [REDACTED]

File No: A [REDACTED]

DOB: [REDACTED] 1967

Event No: [REDACTED]

In the Matter of:

[REDACTED]

Respondent: [REDACTED] currently residing at:

[REDACTED]

(Number, street, city and ZIP code)

(Area code and phone number)

- 1. You are an arriving alien.
- 2. You are an alien present in the United States who has not been admitted or paroled.
- 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

- 1. You are not a citizen or national of the United States;
- 2. You are a native of MEXICO and a citizen of MEXICO;
- 3. You arrived in the United States at or near Unknown, on or about unknown date;
- 4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30(f)(2) 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
26 Federal Plaza 12th Floor Room 1237 New York NEW YORK US 10278

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set at a time to be set to show why you should not be removed from the United States based on the charge(s) set forth above.

(Date)

(Time)

WYVETTE COVINGTON

Assistant Center Director

(Signature and Title of Issuing Officer)

Date: 4/10/09

Dallas, Texas

(City and State)

See reverse for important information

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before:

(Signature of Respondent)

Date:

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on 4/1/09, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

- in person, by certified mail, returned receipt requested, by regular mail
Attached is a credible fear worksheet.
Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

Charles Walters, Adjudications Officer

(Signature of Respondent if Personally Served)

(Signature and Title of officer)

U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

In the Matter of

File: [REDACTED]

[REDACTED])
[REDACTED]) IN REMOVAL PROCEEDINGS
RESPONDENT)
) Transcript of Hearing

Before ELIZABETH A. LAMB, Immigration Judge

Date: May 14, 2009

Place: NEW YORK, NEW YORK

Transcribed by FREE STATE REPORTING, Inc.-2

Official Interpreter:

Language:

Appearances:

For the Respondent: PRO SE
For the DHS: PAULA DONNOLO

1 JUDGE FOR THE RECORD

2 We're on the record on the 14th of May, 2009. Elizabeth Lamb in New York.

3 This is a removal proceeding, [REDACTED], [REDACTED] Ms. Donnolo for the
4 Department.

5 JUDGE TO MR. [REDACTED]

6 Good morning, sir. What is your best language?

7 MR. [REDACTED] TO JUDGE

8 Spanish.

9 JUDGE TO MR. [REDACTED]

10 Do you have a lawyer?

11 MR. [REDACTED] TO JUDGE

12 Not yet.

13 JUDGE TO MR. [REDACTED]

14 You need some time to get one?

15 MR. [REDACTED] TO JUDGE

16 I need some time.

17 JUDGE TO MR. [REDACTED]

18 What is your address?

19 MR. [REDACTED] TO JUDGE

20 My address is [REDACTED].

21 JUDGE TO MR. [REDACTED]

22 Thank you. Take that blue paper. It's a change of address form. If you move,
23 send it in within five days of your move and there's a list of volunteer lawyers under, the
24 green. That's the one. So I don't have the authority to appoint a lawyer for you, but I'm
25 going to give you a day when you must come back to court with or without the lawyer,

1 and I'm writing it down for you. You must come back to court on the -- well, no. Let me
2 keep away from that. I may be away. Okay. The 20th of August, 2009 at 10:00. Make
3 sure you come back on that day or I would have to order you removed in your absence.
4 If that happens, you lose for ten years any remedies you might have had. The names of
5 some of these remedies, voluntary departure, cancellation of removal and adjustment of
6 status. Okay? All right. If there's nothing further, I'm writing this down and giving this to
7 you.

8 JUDGE FOR THE RECORD

9 And these proceedings in New York continue.

10 JUDGE TO MR. [REDACTED]

11 Thank you. There you go. Thank you.

12 MR. [REDACTED] TO JUDGE

13 Thank you.

14 HEARING ADJOURNED

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U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

In the Matter of

File: [REDACTED]

[REDACTED])
[REDACTED]) IN REMOVAL PROCEEDINGS
RESPONDENT)
) Transcript of Hearing

Before NOEL BRENNAN, Immigration Judge

Date: August 20, 2009

Place: NEW YORK, NEW YORK

Transcribed by FREE STATE REPORTING, Inc.-2

Official Interpreter:

Language:

Appearances:

For the Respondent: JASON CADE

For the DHS: SARI MALTZ

1 JUDGE FOR THE RECORD

2 This is Noel Brennan in [REDACTED], [REDACTED] [REDACTED] His
3 attorney, Jason Cade, C A D E, is here. This is Noel Brennan for Betty [phonetic sp.],
4 Judge Lamb on August 20th.

5 JUDGE TO MS. MALTZ

6 I'm just having a senior moment.

7 JUDGE FOR THE RECORD

8 Maltz. Ms. Maltz is here for the Department of Homeland Security.

9 JUDGE TO MR. CADE

10 Have you reviewed the pleadings with your client, sir?

11 MR. CADE TO JUDGE

12 Judge, we have, but we were recently retained on the case and we filed a FOIA
13 for the Immigration file. There was a prior attorney and there's been activity in the case.

14 JUDGE TO MR. CADE

15 Okay. Thank you. Is he properly named and served?

16 MR. CADE TO JUDGE

17 Yes.

18 JUDGE TO MR. CADE

19 Do you admit allegation 1?

20 MR. CADE TO JUDGE

21 We would rather not do the pleadings if that's possible until we get the --

22 JUDGE TO MR. CADE

23 Okay.

24 JUDGE TO MS. MALTZ

25 Can I have a copy of the I-213 in this case?

1 MS. MALTZ TO JUDGE

2 Yes, Your Honor. I have also have, Your Honor, the decision on the, on the I-
3 140.

4 JUDGE TO MS. MALTZ

5 Okay. Thank you.

6 MR. CADE TO MS. MALTZ

7 Thank you.

8 JUDGE TO MR. CADE

9 So I know you've done a FOIA and now you've saved yourself, you know, gotten
10 a lot of information.

11 JUDGE TO MS. MALTZ

12 Thank you, Ms. Maltz, for doing that.

13 JUDGE FOR THE RECORD

14 All right. On the basis to me, the I-213 and the September 30th letter from the
15 denial of the worker petition, I'm finding that respondent is a native and citizen of
16 Mexico. It's his obligation to either show me that he's here legally.

17 JUDGE TO MR. CADE

18 I assume there's nothing for you to proffer.

19 JUDGE FOR THE RECORD

20 I find the respondent removable.

21 JUDGE TO MR. CADE

22 What is the relief your client is seeking? I'm noting that you've denied everything
23 now, just as, for your record, okay?

24 MR. CADE TO JUDGE

25 Thank you.



1 JUDGE TO MR. CADE

2 To preserve your record.

3 MR. CADE TO JUDGE

4 Thank you. I appreciate that. We will --

5 JUDGE TO MR. CADE

6 All right. What is the --

7 MR. CADE TO JUDGE

8 -- be seeking cancellation of removal.

9 JUDGE FOR THE RECORD

10 They're Exhibit 2-A, 2-B.

11 JUDGE TO MR. CADE

12 Okay. Cancellation of removal B, 42B, right?

13 MR. CADE TO JUDGE

14 That's right.

15 JUDGE TO MR. CADE

16 Okay. And who --

17 MR. CADE TO JUDGE

18 Non-LPR.

19 JUDGE TO MR. CADE

20 -- are the qualifying relatives?

21 MR. CADE TO JUDGE

22 He has a U.S. citizen daughter who's here in the courtroom.

23 JUDGE TO RESPONDENT'S DAUGHTER

24 Do you go to school, ma'am?

25 RESPONDENT'S DAUGHTER TO JUDGE



1 Yes.

2 JUDGE TO RESPONDENT'S DAUGHTER

3 Where do you go to school?

4 RESPONDENT'S DAUGHTER TO JUDGE

5 [REDACTED], New York.

6 JUDGE TO RESPONDENT'S DAUGHTER

7 Good. And you're on holiday right now?

8 RESPONDENT'S DAUGHTER TO JUDGE

9 Yeah.

10 JUDGE TO RESPONDENT'S DAUGHTER

11 Okay. What are you doing for the summer?

12 RESPONDENT'S DAUGHTER TO JUDGE

13 Nothing really.

14 JUDGE TO RESPONDENT'S DAUGHTER

15 Uh-huh. Okay.

16 JUDGE TO MR. CADE

17 All right. Is he have any other children in Mexico?

18 MR. CADE TO JUDGE

19 He does not have other children in Mexico that I understand.

20 JUDGE TO MR. CADE

21 Okay. No other children. And does he have a wife?

22 MR. CADE TO JUDGE

23 He has other children, but they're not in Mexico.

24 JUDGE TO MR. CADE

25 Okay.

1 MR. CADE TO JUDGE

2 As I understand.

3 JUDGE TO MR. CADE

4 Where are his children?

5 MR. CADE TO JUDGE

6 They're here in the United States.

7 JUDGE TO MR. CADE

8 Okay. And they're Mexican citizens? Because he has one U.S.C. citizen?

9 MR. CADE TO JUDGE

10 Right.

11 JUDGE TO MR. CADE

12 What are the other?

13 MR. CADE TO JUDGE

14 They are also Mexican citizens.

15 JUDGE TO MR. CADE

16 Okay. So he has Mexican citizen children? And how many Mexican children?

17 MR. CADE TO JUDGE

18 Two.

19 JUDGE TO MR. CADE

20 All right. And what's his, does he have a wife?

21 MR. CADE TO JUDGE

22 Judge, he does.

23 JUDGE TO MR. CADE

24 All right. Are they together or separated?

25 MR. CADE TO JUDGE



U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

In the Matter of

File: [REDACTED]

[REDACTED])
[REDACTED]) IN REMOVAL PROCEEDINGS
RESPONDENT)
Transcript of Hearing

Before MARY CHENG, Immigration Judge

Date: January 14, 2010

Place: NEW YORK, NEW YORK

Transcribed by FREE STATE REPORTING, Inc.-2

Official Interpreter:

Language:

Appearances:

For the Respondent: JASON CADE

For the DHS: PAULA DONNOLO

1 JUDGE FOR THE RECORD

2 Today is January 14, 2010. This is Immigration Judge Mary Cheng sitting in
3 Immigration Court in New York City, New York in the removal proceedings of [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED]. The respondent is present in court with counsel.

5 JUDGE TO MR. CADE

6 Counsel, identify yourself for the record, please?

7 MR. CADE TO JUDGE

8 Jason Cade from the Law Offices of Claudia Slovinsky.

9 JUDGE TO MS. DONNOLO

10 And for the Department today?

11 MS. DONNOLO TO JUDGE

12 Paula Donnolo.

13 JUDGE TO MS. DONNOLO

14 Thank you.

15 JUDGE TO MR. CADE

16 Counsel, what is your client's best language?

17 MR. CADE TO JUDGE

18 Spanish.

19 JUDGE TO MR. CADE

20 Current address, please?

21 MR. CADE TO JUDGE

22 It has not changed. [REDACTED].

23 JUDGE TO MR. CADE

24 Thank you, counsel. Could you take a blue change of address form, advise him
25 if he moves he must complete that form within five business days and return it back to

1 Immigration Court?

2 MR. CADE TO JUDGE

3 Of course.

4 JUDGE TO MR. CADE

5 Do you have the relief applications today?

6 MR. CADE TO JUDGE

7 Yes, I do.

8 JUDGE TO MR. CADE

9 Could you please hand them up?

10 MR. CADE TO MS. DONNOLO

11 Here you go.

12 MS. DONNOLO TO MR. CADE

13 Thank you.

14 MR. CADE TO JUDGE

15 Judge?

16 JUDGE TO MR. CADE

17 Thank you. And you gave a copy of everything to Ms. Donnolo, right?

18 MR. CADE TO JUDGE

19 I did.

20 JUDGE TO MR. CADE

21 Ms. Donnolo, you just handed him the biometrics?

22 MS. DONNOLO TO JUDGE

23 Yes, Your Honor. The --

24 JUDGE TO MR. CADE

25 Counsel, I'm going to give you two weeks to comply with that, which means proof

1 that you submitted to Texas. Two weeks from today is January 28, 2010, okay?

2 MR. CADE TO JUDGE

3 Judge, it's included in that packet right there as Exhibit A. The, the, we don't
4 have the receipt notice yet, but we've, we've got the cancellation --

5 JUDGE TO MR. CADE

6 Okay. I don't, this is not, I know you're showing, you're showing me a cashed
7 check, but I, I need --

8 MR. CADE TO JUDGE

9 It, it has, says Texas Service Center on the check.

10 JUDGE TO MR. CADE

11 I understand. But I would like to see the actual receipt when you get it back --

12 MR. CADE TO JUDGE

13 Okay.

14 JUDGE TO MR. CADE

15 -- at the, at the Master, I mean at the merits, okay?

16 MR. CADE TO JUDGE

17 Yeah. No problem. And, and Judge, if I may, we, here we've submitted proof of
18 the qualifying relationship and the continuous presence for ten years and we'll, we'll
19 submit proof of the hardship that will befall the qualifying relative --

20 JUDGE TO MR. CADE

21 Okay.

22 MR. CADE TO JUDGE

23 -- in accordance with whatever date you set.

24 JUDGE TO MR. CADE

25 Do any, do the, any of the children have any health -- well, one children, one

1 child. Does the daughter have any medical issues?

2 MR. CADE TO JUDGE

3 She does not have health issues, but there are psychological issues.

4 JUDGE TO MR. CADE

5 Okay. How long is it going to take you to get the remaining documents?

6 MR. CADE TO JUDGE

7 I -- four to six months, max?

8 JUDGE TO MR. CADE

9 Okay. I'll give you six months, counsel. All documents are due July 13, 2010,
10 okay?

11 MR. CADE TO JUDGE

12 Okay.

13 JUDGE TO MR. CADE

14 And if you can't for some reason meet that deadline, please seek an extension as
15 per the practice manual.

16 MR. CADE TO JUDGE

17 I will.

18 JUDGE TO MR. CADE

19 Are you available December 21st at 10:30?

20 MR. CADE TO JUDGE

21 That is a week that our office is usually on vacation. Is there another --

22 JUDGE TO MR. CADE

23 Okay.

24 JUDGE TO COURT CLERK

25 Give me another date.

1 JUDGE TO MR. CADE

2 That whole week? What about December 27th at 9:00 a.m.?

3 MR. CADE TO JUDGE

4 I'll take the 21st over the 27th.

5 JUDGE TO MR. CADE

6 Do you want a, a later date --

7 MR. CADE TO JUDGE

8 Yeah, if --

9 JUDGE TO MR. CADE

10 -- because of the holidays?

11 MR. CADE TO JUDGE

12 -- if there's a, if you can give a date after New Year's, that's the best.

13 JUDGE TO MR. CADE

14 January 18th 9:00 a.m.?

15 MR. CADE TO JUDGE

16 That'd be fine.

17 JUDGE TO MR. CADE

18 Okay. So counsel, please make sure you follow up with Texas concerning the,

19 the prints.

20 MR. CADE TO JUDGE

21 Yeah, I will.

22 JUDGE TO MR. CADE

23 Sometimes there's -- January 18, 2011, okay?

24 MR. CADE TO JUDGE

25 And just so I understand, I can submit that with the --



1 JUDGE TO MR. CADE

2 Just at the, at the hearing --

3 MR. CADE TO JUDGE

4 -- rest of the documents?

5 JUDGE TO MR. CADE

6 -- just to make sure.

7 MR. CADE TO JUDGE

8 Okay.

9 JUDGE TO MR. CADE

10 That's all. So will you advise the respondent he must come back to court on
11 January 18, 2010 -- 2011 at 9:00 a.m.?

12 MR. CADE TO JUDGE

13 Yes, I will.

14 JUDGE TO MR. CADE

15 And will you advise him the consequences for failing to appear?

16 MR. CADE TO JUDGE

17 Of course.

18 JUDGE TO MR. CADE

19 Okay.

20 JUDGE TO MR. CADE AND MS. DONNOLO

21 Anything further from either side in this case?

22 MS. DONNOLO TO JUDGE

23 No, Your Honor.

24 JUDGE TO MS. DONNOLO

25 Okay.

1 JUDGE TO MR. CADE

2 Counsel, could you come and take the notice, please? Thank you.

3 HEARING ADJOURNED

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401 Broadway, Suite 1600
New York, N.Y. 10013
(212) 925-0101
FAX: (212) 219-9412

January 14, 2010

BY HAND

Immigration Judge Elizabeth Lamb
Executive Office Of Immigration Review
26 Federal Plaza
New York, NY 10278

RE: [REDACTED] (A# [REDACTED])

EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Non-permanent Residents

Dear Judge Lamb:

Our office represents [REDACTED] who is scheduled for a master calendar hearing before you on January 14, 2010. Enclosed please find EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Non-permanent Residents, with proof that the filing and biometrics fee of \$180 was paid to the Texas Service Center (copy cancelled check attached as **Exhibit A**).

Mr. [REDACTED] has resided continuously in the U.S. since April [REDACTED] 1997 and has never left the U.S. since that date. He has never been convicted of any crime and is of good moral character. His removal would cause exceptional and extremely unusual hardship to his U.S. citizen 13 year-old daughter, [REDACTED].

In support of this application please find enclosed the following documentation establishing (1) the qualifying relationship with [REDACTED]; and (2) Mr. [REDACTED] continuous physical presence in the United States for at least ten years prior to the issuance of the Notice to Appear on August [REDACTED], 2009.

Exh. B. Documentation of [REDACTED]'s qualifying relationships:

1. Birth certificate of [REDACTED] daughter, [REDACTED] [REDACTED] date of birth [REDACTED] and issued on [REDACTED]

2. Certificate of Marriage Registration, [REDACTED], licensed from the City of New York;

Exh. C. Additional documentation of [REDACTED]'s continuous physical presence in the U.S. for at least ten years prior to the issuance of the NTA on August [REDACTED], 2009:

1. 1997 to 1999:

- a. Transworld Airlines passenger ticket from LAX to JFK – date of flight April [REDACTED], 1997;
- b. ConEdison electrical bills from 1997 to 1999;
- c. Rent receipts from 1997 to 1998;
- d. Work Invoices from 1997 to 1998;
- e. [REDACTED] Corp receipt dated June 1, 1998;

2. 2000:

- a. Lease Agreement from May 1st, 2000 to April 31, 2002 for apartment located at [REDACTED] from [REDACTED]
- b. ConEdison Electrical bills from 2000;

3. 2001:

- a. IRS Taxpayer Identification Number letter from May 30, 2001;
- b. Rent receipts from 2001;
- c. Sprint phone bills from 2001;
- d. ConEdison Electric bills from 2001;
- e. Form 1040 Federal Income Tax Return for year 2001;

4. 2002:

- a. ConEdison Electrical bills from 2002;
- b. Rent receipts from 2002;
- c. Form 1040 Federal Income Tax Return for year 2002;

5. 2003:

- a. ConEdison Electrical bills from 2003;
- b. Sprint phone bills from 2003;
- c. Rent receipts from 2003;
- d. Form 1040 Federal Income Tax Return for year 2003;

6. 2004:

- a. Fuel Oil contract from Forest Oil Company issued on August [REDACTED], 2004;
- b. [REDACTED] Radiology Associates, PC statement, August [REDACTED], 2004;

- c. ConEdison electrical bills for 2004;
- d. Sprint phone bills for 2004;
- e. Form 1040 Federal Income Tax Return for year 2004;

7. 2005:

- a. Receipt for Donation to American Red Cross receipt in relief of Hurricane Katrina on September 9, 2005;
- b. Water and Sewage bills for 2005;
- c. ConEdison electrical bills for 2005;
- d. Sprint phone bills for 2005;
- e. Form 1040 Federal Income Tax Return for year 2005;

8. 2006:

- a. Sprint phone bills for 2006;
- b. ConEdison electrical bills for 2006;
- c. [REDACTED] Patient's Result Report dated April [REDACTED], 2006;
- d. [REDACTED] Personal Certificate of Deposit (CD) statement for [REDACTED] and guardian Mr. [REDACTED], dated December [REDACTED], 2006;
- e. Form 1040 Federal Income Tax Return for year 2006;

9. 2007:

- a. ConEdison electrical bills for 2007;
- b. Sprint phone bills for 2007;
- c. [REDACTED] Personal CD statement for December 31, 2007;
- d. Form 1040 Federal Income Tax Return for year 2007;

10. 2008:

- a. ConEdison Electrical bills for 2008;
- b. Sprint phone bills for 2008;
- c. Form 1040 Federal Income Tax Return for year 2008;

11. 2009:

- a. ConEdison electrical bills from 2009;
- b. Sprint Phone Bills from 2009.

Mr. [REDACTED] will supplement the record with photographs of the respondent with his family in the U.S. throughout the years if necessary. Mr. [REDACTED] will also provide evidence of the exceptional and extremely unusual hardship that would befall his daughter, [REDACTED], if he were removed from the country in accordance with any timelines for document submission that will be scheduled by the court in this case.

With a U.S. citizen child, the approval of Mr. [REDACTED]' application for cancellation of removal would clearly further Congressional goals of promoting family unity. *See, e.g., Matter of Cavazos*, 17 I.&N. Dec. 215 (BIA 1980); *Matter of Ibrahim*, 18 I.&N. Dec. 55 (BIA 1981); *INS v. Errico*, 385 U.S. 214 (1966) (congressional purpose to forestall deportation where it breaks up family of United States citizen).

Thank you for your consideration. If you have any questions or need further information, please do not hesitate to contact our office.

Respectfully submitted,



Jason A. Cade, Esq.
Law Offices of Claudia Slovinsky

JC/rs
Encls.

Cc: Office of the Chief Counsel
26 Federal Plaza
New York, NY 10278

Exhibit 2

Application for Cancellation of Removal and Adjustment
of Status Certain Nonpermanent Residents

PLEASE READ ADVICE AND INSTRUCTIONS
BEFORE FILLING IN FORM

Fee Stamp (Official Use Only)

PLEASE TYPE OR PRINT

PART 1 - INFORMATION ABOUT YOURSELF

1) My present true name is: (Last, First, Middle) [REDACTED]		2) Alien Registration Number: [REDACTED]		
3) My name given at birth was: (Last, First, Middle) [REDACTED]		4) Birth Place: (City and Country) [REDACTED] Mexico		
5) Date of Birth: (Month, Day, Year) [REDACTED]	6) Gender: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	7) Height: [REDACTED]	8) Hair Color: [REDACTED]	9) Eye Color: [REDACTED]
10) Current Nationality and Citizenship: Mexico	11) Social Security Number: [REDACTED]	12) Home Phone Number: (212)925-0101(attorney)	13) Work Phone Number: [REDACTED]	
14) I currently reside at: Apt. number and/or in care of [REDACTED] Number and Street [REDACTED] NY State [REDACTED] City or town [REDACTED] Zip Code [REDACTED]		15) I have been known by the additional name(s): n/a		

16) I have resided in the following locations in the United States: (List PRESENT ADDRESS FIRST and work back in time for at least 10 years).

Street and Number - Apt. or Room # - City or Town - State - Zip Code	Resided From: (Month, Day, Year)	Resided To: (Month, Day, Year)
[REDACTED]	[REDACTED]	PRESENT
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

PART 2 - INFORMATION ABOUT THIS APPLICATION

17) I, the undersigned, hereby request that my removal be cancelled under the provisions of section 240A(b) of the Immigration and Nationality Act (INA). I believe that I am eligible for cancellation of removal because: (Check all that apply.)

My removal would result in exceptional and extremely unusual hardship to my:

	UNITED STATES CITIZEN	LEGAL PERMANENT RESIDENT	TEMPORARY STATUS	NO STATUS
___ spouse, who is a	___	___	___	___
___ father, who is a	___	___	___	___
___ mother, who is a	___	___	___	___
<input checked="" type="checkbox"/> child/children, who is/or a	<input checked="" type="checkbox"/>	___	___	___

With the exception of absences described in question #23, I have resided in the United States since:
(Month, Day, Year) [REDACTED] 1997 [REDACTED]

I, or my child, have been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident spouse or parent.
With the exception of the absences described in question #23, I have been physically present in the United States since:
(Month, Day, Year) _____

PART 3 - INFORMATION ABOUT YOUR PRESENCE IN THE UNITED STATES

18) I first arrival in the United States under the name of: (Last, First, Middle)

19) I first arrival in the United States on (Month, Day, Year)

20) Place or port of first arrival: (Place or Port, City, and State)

EWI from Mexico

- 21) I: was inspected and admitted.
 I entered using my Lawful Permanent Resident card which is valid until _____ (Month, Day, Year)
 I entered using a _____ visa which is valid until _____ (Month, Day, Year) (specify Type of Visa)
 was not inspected and admitted.
 I entered without documents. Explain: _____
 I entered without inspection. Explain: **EWI border crossing**
 Other. Explain: _____

22) I applied on _____ (Month, Day, Year) for additional time to stay and it was granted on _____ (Month, Day, Year) and valid until _____ (Month, Day, Year), or denied on _____ (Month, Day, Year)

23) Since the date of my first arrival, I departed from and returned to the United States at the following places and on the following dates: (Please list all departures regardless of how briefly you were absent from the United States)

If you have never departed from the United States since your original date of arrival, please mark an X in the box:

	Port of Departure (Place or Port, City and State)	Departure Date (Month, Day, Year)	Purpose of Travel	Destination
1	NYC (JFK), NY	_____ 1997	My Father was sick in Mexico	_____ Mexico
	Port of Return (Place or Port, City and State)	Return Date (Month, Day, Year)	Manner of Return	Inspected & Admitted?
	EWI (Mexican Border)	_____ 1997	EWI	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2	Port of Departure (Place or Port, City and State)	Departure Date (Month, Day, Year)	Purpose of Travel	Destination
	Port of Return (Place or Port, City and State)	Return Date (Month, Day, Year)	Manner of Return	Inspected & Admitted?
				<input type="checkbox"/> Yes <input type="checkbox"/> No

24) Have you ever departed the United States: a) under an order of deportation, exclusion or removal? ----- Yes No
 b) pursuant to a grant of voluntary departure? ----- Yes No

PART 4 - INFORMATION ABOUT YOUR MARITAL STATUS AND SPOUSE (Continued on page 3)

25) I am not married: I am married: 26) If married, the name of my spouse is: (Last, First, Middle) _____ 27) My spouse's name before marriage was: _____

28) The marriage took place in: (City and Country) **NYC, USA** 29) Date of marriage: (Month, Day, Year) _____

30) My spouse currently resides at: _____ Apt. number and/or in care of _____ Number and Street _____ City or Town _____ State/Country _____ ZIP Code _____ 31) Place and date of birth of my spouse: (City & Country; Month, Day, Year) _____ 32) My spouse is a citizen of: (Country) **Mexico**

33) If your spouse is other than a native born United States citizen, answer the following:
 He/she arrived in the United States at: (Place or Port, City and State) **EWI (Mexican Border)**
 He/she arrived in the United States on: (Month, Day, Year) _____ **2004** (last arrival)
 His/her alien registration number is: A# **n/a**
 He/she was naturalized on: (Month, Day, Year) _____ at _____ (City and State)

34) My spouse - is - is not employed. If employed, please give salary and the name and address of the place(s) of employment.

Full Name and Address of Employer	Earnings Per Week (Approximate)
	\$
	\$
	\$

PART 4 - INFORMATION ABOUT YOUR MARITAL STATUS AND SPOUSE

(Continued)

35) I -have -have not been previously married: (If previously married, list the name of each prior spouse, the dates on which each marriage began and ended, the place where the marriage terminated, and describe how each marriage ended.)

Name of prior spouse: (Last, First, Middle)	Date marriage began: Date marriage ended:	Place marriage ended: (City and Country)	Description or manner of how marriage was terminated or ended:

36) My present spouse -has -has not been previously married: (If previously married, list the name of each prior spouse, the dates on which the marriage began and ended, the place where the marriage terminated, and describe how each marriage ended.)

Name of prior spouse: (Last, First, Middle)	Date marriage began: Date marriage ended:	Place marriage ended: (City and Country)	Description or manner of how marriage was terminated or ended:

37) Have you been ordered by any court, or are otherwise under any legal obligation, to provide child support and/or spousal maintenance as a result of a separation and/or divorce? Yes No

PART 5 - INFORMATION ABOUT YOUR EMPLOYMENT AND FINANCIAL STATUS

38) Since my arrival into the United States, I have been employed by the following named persons or firms: (Please begin with present employment and work back in time. Any periods of unemployment or school attendance should be specified.)

Full Name and Address of Employer	Earnings Per Week (Approximate)	Type of Work Performed	Employed From: (Month, Day, Year)	Employed To: (Month, Day, Year)
	\$			PRESENT
	\$			
	\$			

39) If self-employed, describe the nature of the business, the name of the business, its address, and net income derived therefrom:

I work as a painter and operate from my home located at [REDACTED] The net annual income that I have derived from painting for the past three years has been \$17,300 in 2008, \$19,322 in 2007, and \$14,776 in 2006.

40) My assets (and if married, my spouse's assets) in the United States and other countries, not including clothing and household necessities, are:

<u>Self</u>		<u>Jointly Owned with Spouse</u>	
Cash, Stocks, and Bonds.....	\$ 10,000	Cash, Stocks, and Bonds.....	\$ 8,000
Real Estate.....	\$	Real Estate.....	\$ 1,142,000
Auto (value minus amount owed).....	\$ 2,500	Auto (value minus amount owed).....	\$
Other (describe on line below).....	\$	Other (describe on line below).....	\$
TOTAL	\$ 12,500	TOTAL	\$ 1,150,000

41) I -have -have not received public or private relief or assistance (e.g. Welfare, Unemployment Benefits, Medicaid, TANF, AFDC, etc.). If you have, please give full details including the type of relief or assistance received, date for which relief or assistance was received, place, and total amount received during this time:

Temporary Emergency Medicaid was received in 1992 for Appendectomy in New York, NY

42) Please list each of the years in which you have filed an income tax return with the Internal Revenue Service:

2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009

PART 6 - INFORMATION ABOUT YOUR FAMILY (Continued on page 5)

45) I have 3 (Number of) children. Please list information for each child below, include assets and earnings information for children over the age of 16 who have separate incomes:

Name of Child: (Last, First, Middle) Child's Alien Registration Number:	Citizen of What Country: Birth Date: (Month, Day, Year)	Now Residing At: (City and Country) Birth Place: (City and Country)	Immigration Status of Child
[REDACTED] A#: _____	MEXICO [REDACTED]	Brooklyn, NY USA [REDACTED] MEXICO	
Estimated Total of Assets: \$ _____	Estimated Average Weekly Earnings: \$ _____		
[REDACTED] A#: _____	MEXICO [REDACTED]	Brooklyn, NY USA [REDACTED] MEXICO	
Estimated Total of Assets: \$ _____	Estimated Average Weekly Earnings: \$ _____		
[REDACTED] A#: _____	USA [REDACTED] 1996	Brooklyn, NY USA Brooklyn NY USA	U.S. Citizen
Estimated Total of Assets: \$ _____	Estimated Average Weekly Earnings: \$ _____		

46) If your application is denied, would your spouse and all of your children accompany you to your:

- Country of Birth - Yes No
- Country of Nationality - Yes No
- Country of Last Residence - Yes No

If you answered "No" to any of the responses, please explain: _____

My children attend school here and only know U.S. life. My spouse would stay in the country to overlook and care for them.

47) Members of my family, including my spouse and/or child(ren) - have - have not received public or private relief or assistance (e.g., Welfare, Unemployment Benefits, Medicaid, TANF, AFDC, etc.). If any member of your immediate family has received such relief or assistance, please give full details including identity of person(s) receiving relief or assistance, place, dates for which relief or assistance was received, place, and total amount received during this time: _____

My U.S. citizen daughter, [REDACTED], has been receiving assistance in the form of Medicaid for her routine healthcare needs in Brooklyn, NY from [REDACTED] 1996 to the present.

48) Please give the requested information about your parents, brothers, sisters, aunts, uncles, and grandparents, living or deceased. As to residence, show street address, city, and state, if in the United States; otherwise show only country:

Name: (Last, First, Middle) Alien Registration Number:	Citizen of What Country: Birth Date: (Month, Day, Year)	Relationship to Me: Birth Place: (City and Country)	Immigration Status of Listed Relative
[REDACTED] A#: n/a	Mexico [REDACTED]	Father [REDACTED] Mexico	
Complete Address of Current Residence, if Living: [REDACTED] Mexico <u>Deceased</u>			
[REDACTED] A#: n/a	Mexico [REDACTED]	Mother [REDACTED] Mexico	
Complete Address of Current Residence, if Living: [REDACTED] Mexico <u>Deceased</u>			

PART 6 - INFORMATION ABOUT YOUR FAMILY *(Continued)*

IF THIS APPLICATION IS BASED ON HARDSHIP TO A PARENT OR PARENTS, QUESTIONS 47-50 MUST BE ANSWERED.

47) If your parent is not a citizen of the United States, give the date and place of arrival in the United States including full details as to the date, manner, and terms of admission into the United States: _____

N/A

48) My father - is - is not employed. If employed, please give salary and the name and address of the place(s) of employment.

Full Name and Address of Employer	Earnings Per Week <i>(Approximate)</i>
	\$

49) My mother - is - is not employed. If employed, please give salary and the name and address of the place(s) of employment.

Full Name and Address of Employer	Earnings Per Week <i>(Approximate)</i>
	\$

50) My parent's assets in the United States and other countries not including clothing and household necessities are:

Assets of father consist of the following:

Cash, Stocks, and Bonds _____ \$ _____
 Real Estate _____ \$ _____
 Auto (dollar value minus amount owed) _____ \$ _____
 Other (describe on line below) _____ \$ _____
TOTAL \$ _____

Assets of mother consist of the following:

Cash, Stocks, and Bonds _____ \$ _____
 Real Estate _____ \$ _____
 Auto (dollar value minus amount owed) _____ \$ _____
 Other (describe on line below) _____ \$ _____
TOTAL \$ _____

PART 7 - MISCELLANEOUS INFORMATION *(Continued on page 6)*

51) I - have - have not entered the United States as a crewman after June 30, 1964.

52) I - have - have not been admitted as, or after arrival in the United States acquired the status of, an exchange alien.

53) I - have - have not submitted address reports as required by section 265 of the Immigration and Nationality Act.

54) I -have -have never (either in the United States or in any foreign country) been arrested, summoned into court as a defendant, convicted, fined, imprisoned, placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance (including, but not limited to, traffic violations or driving incidents involving alcohol). *(If answer is in the affirmative, please give a brief description of each offense including the name and location of the offense, date of conviction, any penalty imposed, any sentence imposed, and the time actually served).*

I have been fined for traffic violations in New York City. I have paid them all in full and none are outstanding.

55) Have you ever served in the Armed Forces of the United States? - Yes - No. If "Yes" please state branch *(Army, Navy, etc.)* and service number: _____

Place of entry on duty: *(City and State)* _____

Date of entry on duty: *(Month, Day, Year)* _____ Date of discharge: *(Month, Day, Year)* _____

Type of discharge: *(Honorable, Dishonorable, etc.)* _____

I served in active duty status from: *(Month, Day, Year)* _____ to *(Month, Day, Year)* _____

56) Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States?

Yes No

PART 7 - MISCELLANEOUS INFORMATION (Continued)

57) Have you ever deserted from the military or naval forces of the United States while the United States was at war? Yes No

58) If male, did you register under the Military Selective Service Act or any applicable previous Selective Service (Draft) Laws? Yes No
 If "Yes," please give date, Selective Service number, local draft board number, and your last draft classification: _____

59) Were you ever exempted from service because of conscientious objection, alienage, or any other reason? Yes No

60) Please list your present or past membership in or affiliation with every political organization, association, fund, foundation, party, club, society, or similar group in the United States or any other place since your 16th birthday. Include any foreign military service in this part. If none, write "None". Include the name of the organization, location, nature of the organization, and the dates of membership.

Name of Organization	Location of Organization	Nature of Organization	Member From: (Month, Day, Year)	Member To: (Month, Day, Year)
None				

61) Have you ever:

- Yes No been ordered deported, excluded, or removed?
- Yes No overstayed a grant of voluntary departure from an Immigration Judge or the Department of Homeland Security (DHS), formerly the Immigration and Naturalization Service (INS)?
- Yes No failed to appear for removal or deportation?

62) Have you ever been:

- Yes No a habitual drunkard?
- Yes No one whose income is derived principally from illegal gambling?
- Yes No one who has given false testimony for the purpose of obtaining immigration benefits?
- Yes No one who has engaged in prostitution or unlawful commercialized vice?
- Yes No involved in a serious criminal offense and asserted immunity from prosecution?
- Yes No a polygamist?
- Yes No one who brought in or attempted to bring in another to the United States illegally?
- Yes No a trafficker of a controlled substance, or a knowing assister, abettor, conspirator, or colluder with others in any such controlled substance offense (not including a single offense of simple possession of 30 grams or less of marijuana)?
- Yes No inadmissible or deportable on security-related grounds under sections 212(a)(3) or 237(a)(4) of the INA?
- Yes No one who has ordered, incited, assisted, or otherwise participated in the persecution of an individual on account of his or her race, religion, nationality, membership in a particular social group, or political opinion?
- Yes No a person previously granted relief under sections 212(c) or 244(a) of the INA or whose removal has previously been cancelled under section 240A of the INA?

If you answered "Yes" to any of the above questions, explain: _____

PART 9 - SIGNATURE

APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE AN IMMIGRATION JUDGE

I swear or affirm that I know the contents of this application that I am signing, including the attached documents and supplements, and that they are all true to the best of my knowledge, taking into account the correction(s) numbered _____ to _____, if any, that were made by me or at my request.

(Signature of Applicant or Parent or Guardian)

Subscribed and sworn to before me by the above-named applicant at _____

Immigration Judge

Date: (Month, Day, Year)

PART 10 - PROOF OF SERVICE

I hereby certify that a copy of the foregoing Form EOIR-42B was: - delivered in person, - mailed first class, postage prepaid

on 01/14/2010 to the Assistant Chief Counsel for the DHS (U.S. Immigration and Customs Enforcement - ICE)
(Month, Day, Year)

at 26 Federal Plaza, NY NY 10278
(Number and Street, City, State, Zip Code)



Signature of Applicant (or Attorney or Representative)

Addendum to EOIR-42B Page 4, Item 48

Name Alien No.	Citizen of what Country Date of Birth	Relationship Birth Place	Immigration Status Complete Address if living
3. [REDACTED]	Mexico [REDACTED]	Brother [REDACTED] Mexico	[REDACTED] Mexico
4. [REDACTED]	Mexico [REDACTED]	Brother [REDACTED] Mexico	[REDACTED] Mexico
5. [REDACTED]	Mexico [REDACTED]	Sister [REDACTED] Mexico	[REDACTED] Mexico
6. [REDACTED]	Mexico [REDACTED]	Sister [REDACTED] Mexico	[REDACTED] Brooklyn, NY [REDACTED]
7. [REDACTED]	Mexico [REDACTED]	Brother [REDACTED] Mexico	Tlaxcala, Mexico
8. [REDACTED]	Mexico [REDACTED]	Brother [REDACTED] Mexico	Tlaxcala, Mexico
9. [REDACTED]	Mexico [REDACTED]	Sister [REDACTED] Mexico	[REDACTED] Brooklyn, NY [REDACTED]
10. [REDACTED]	Mexico	Grandmother [REDACTED] Mexico	Deceased
11. [REDACTED]	Mexico	Grandmother [REDACTED] Mexico	Deceased
12. [REDACTED]	Mexico	Grandfather [REDACTED] Mexico	Deceased
13. [REDACTED]	Mexico	Grandfather [REDACTED] Mexico	Deceased

Chase Online

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Check Number: 2649

Post Date: 01/12/2010

Amount of Check: \$180.00

2649

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401 BROADWAY ROOM 1807
NEW YORK, NY 10013

JPMORGAN CHASE BANK, N.A.
NEW YORK, NEW YORK
1-2-210

PAY TO THE ORDER OF U.S. Department of Homeland Security

1-6-2010
\$180.00
DOLLARS

One Hundred and Eighty Dollars and $\frac{00}{100}$ cents.

MEMO EOR-428; [REDACTED] A [REDACTED] [REDACTED]

[Signature]

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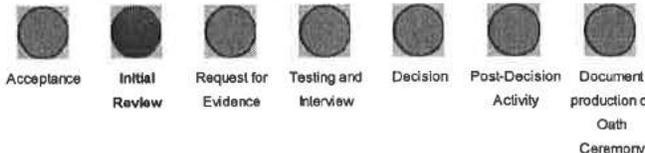
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Check Status



Your Case Status:

Initial Review

Initial Review

Your I485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS was accepted and is being processed at our TEXAS SERVICE CENTER location. On January 8, 2010, we mailed you a notice explaining this and describing how we will process your case. Please follow any instructions on this notice. You will be notified by mail when a decision is made, or if the office needs something from you. If you move while this case is pending, please use our Change of Address online tool to update your case with your new address or contact our customer service center at 1-800-375-5283.

During this step, USCIS initiates the background checks of the applicant/petitioner and identifies issues that may need to be addressed either during an interview or by asking the applicant/petitioner to submit additional information or documentation. USCIS reviews applicant's/petitioner's criminal history, determines if there are national security concerns that need to be addressed, and reviews the application/petition for fraud indicators.

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U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

In the Matter of

File: [REDACTED]

[REDACTED])
[REDACTED]) IN REMOVAL PROCEEDINGS
RESPONDENT)
) Transcript of Hearing

Before [REDACTED] A. LAMB, Immigration Judge

Date: January 18, 2011

Place: NEW YORK, NEW YORK

Transcribed by FREE STATE REPORTING, Inc.-2

Official Interpreter: MARILYN LANDIS

Language: SPANISH

Appearances:

For the Respondent: LEENA KHANDWALA, Claudia Slovinsky

For the DHS: EVALYN DOUCHY

1 [DAR]

2 JUDGE FOR THE RECORD

3 Transcriber, on the record. Today is the 18th day of January, 2011. Elizabeth
4 Lamb in New York, [REDACTED] [REDACTED] [REDACTED] present in court with his
5 attorney.

6 JUDGE TO MS. KHANDWALA

7 Please give your appearance for the record?

8 MS. KHANDWALA TO JUDGE

9 Leena Khandwala.

10 JUDGE TO MS. KHANDWALA

11 Thank you.

12 JUDGE TO MS. DOUCHY

13 For the Department?

14 MS. DOUCHY TO JUDGE

15 Evalyn Douchy.

16 JUDGE TO MS. DOUCHY

17 Okay.

18 JUDGE FOR THE RECORD

19 My interpreter for the 10:30 is here.

20 JUDGE TO INTERPRETER

21 What happened is the DAR equipment was broken and didn't come up until now,
22 so I had to, I'll do the 9:00 but I'm going, I cancelled the 10:30. Oh, okay. I'll hold onto it
23 then. Thank you very much. Okay.

24 JUDGE FOR THE RECORD

25 I was talking to the interpreter. My interpreter is here who interpret, court

1 interpreter to the Spanish to the English language.

2 JUDGE TO INTERPRETER

3 Would you state your name for the record?

4 INTERPRETER TO JUDGE

5 Marilyn Landis [phonetic sp.].

6 JUDGE TO INTERPRETER

7 Thank you.

8 JUDGE TO MR. [REDACTED]

9 To the respondent, to the respondent: Good morning, sir. What language do
10 you speak the best?

11 MR. [REDACTED] TO JUDGE

12 Good morning, Your Honor. Spanish.

13 JUDGE TO MR. [REDACTED]

14 Thank you. Please stand and raise your right hand? Do you swear that
15 everything you say will be the truth, the whole truth and nothing but the truth?

16 MR. [REDACTED] TO JUDGE

17 Yes, I swear.

18 JUDGE TO MR. [REDACTED]

19 Thank you. Please be seated and tell me your true and correct name?

20 MR. [REDACTED] TO JUDGE

21 [REDACTED] [REDACTED]

22 JUDGE TO MR. [REDACTED]

23 And your address where you live today in the United States?

24 MR. [REDACTED] TO JUDGE

25 [REDACTED]

1 JUDGE TO MR. [REDACTED]

2 Thank you. Please take the blue change of address form. Should you move,
3 make sure to send it to me within five days. As I told you earlier, my name is Judge
4 Lamb. This is Ms. Douchy. She's a lawyer for the Government. The woman speaking
5 to you is our interpreter. Now, as I told you earlier, our equipment was broken and it
6 just came back and it wasn't your fault, so don't let that make you nervous. None of the
7 delay was about you. Your lawyer did everything she was supposed to do. So I
8 presume our equipment will be okay and now we're going to proceed. What I'm going
9 to do first is talk to the lawyers about all of these papers in your case and then I shall
10 speak to you again. Thank you.

11 MR. [REDACTED] TO JUDGE

12 Okay.

13 JUDGE TO MR. [REDACTED]

14 Thank you.

15 JUDGE FOR THE RECORD

16 Now Exhibit No. 1, marked by Judge Brennan for me on the 10th of April, 2009,
17 was the Notice to Appear with everything denied and removal denied as well. So I have
18 to revisit the charging document.

19 JUDGE TO MS. KHANDWALA

20 So there are four, allegations of fact. Do you still deny them, each of them?

21 MS. KHANDWALA TO JUDGE

22 Well, we, the, we, we admit to 1, 3 -- 1 and 2. As to 3 --

23 JUDGE TO MS. KHANDWALA

24 So you admit 1 and 2? Okay.

25 MS. KHANDWALA TO JUDGE

1 The, he --

2 JUDGE TO MS. KHANDWALA

3 So you deny the unknown date of arrival. And how about 4?

4 MS. KHANDWALA TO JUDGE

5 And 4 is admitted.

6 JUDGE TO MS. KHANDWALA

7 4 you admit? And do you concede 212(a)(6)(A)?

8 MS. KHANDWALA TO JUDGE

9 We do, Your Honor.

10 JUDGE TO MS. KHANDWALA

11 Okay. And that was today's date.

12 JUDGE FOR THE RECORD

13 So that is already Exhibit No. 1 and 1-A is a 213 that was previously marked by
14 Judge Brennan. The respondent seeks to apply for cancellation of removal.

15 JUDGE TO MS. KHANDWALA

16 Is this the only application he makes?

17 MS. KHANDWALA TO JUDGE

18 Yes, Your Honor.

19 JUDGE TO MS. KHANDWALA

20 All right.

21 JUDGE FOR THE RECORD

22 We have the application. We have showed it to him.

23 JUDGE TO MR. [REDACTED]

24 Sir, I've showed you your application for cancellation of removal. Did you review
25 it with your lawyer?

1 MR. [REDACTED] TO JUDGE

2 Yes.

3 JUDGE TO MR. [REDACTED]

4 And your lawyer made some changes and she, did she review those with you as
5 well?

6 MR. [REDACTED] TO JUDGE

7 Yes, she reviewed it.

8 JUDGE TO MR. [REDACTED]

9 And there's a signature on the document. To whom does it belong?

10 MR. [REDACTED] TO JUDGE

11 Mine.

12 JUDGE TO MR. [REDACTED]

13 All right.

14 JUDGE FOR THE RECORD

15 I'm marking it as Exhibit No. 2.

16 JUDGE TO MS. DOUCHY

17 We have clearances, Ms. Douchy?

18 MS. DOUCHY TO JUDGE

19 Yes, we do, Your Honor.

20 JUDGE TO MS. DOUCHY

21 Okay.

22 JUDGE FOR THE RECORD

23 Turning to the respondent's submissions, in back of the application for
24 cancellation of removal, I have Tabs A, B and C. A is a copy of the check.

25 JUDGE TO MS. KHANDWALA

1 Do we have the receipt that this was fee'd in?

2 MS. KHANDWALA TO JUDGE

3 Yes, Your Honor.

4 JUDGE TO MS. KHANDWALA

5 Okay. I don't have it. As long as the Government has it, I'm fine with it.

6 JUDGE TO MS. DOUCHY

7 Do you have proof that it was fee'd in, Ms. Douchy?

8 MS. DOUCHY TO JUDGE

9 We have the printout, but I don't have the actual fee receipt, the I-797.

10 JUDGE TO MS. DOUCHY

11 Okay.

12 MS. KHANDWALA TO JUDGE

13 I have a --

14 JUDGE TO MS. KHANDWALA

15 If you just show it to counsel --

16 MS. KHANDWALA TO JUDGE

17 Okay.

18 JUDGE TO MS. KHANDWALA

19 -- and that, that's all.

20 MS. DOUCHY TO JUDGE

21 Okay. I saw that, Your Honor.

22 JUDGE TO MS. DOUCHY

23 Okay. So it's fee'd in?

24 MS. DOUCHY TO JUDGE

25 Yes.

1 JUDGE FOR THE RECORD

2 So that, the, the, the fee in, the proof of fee is part of Exhibit No. 2. Then we
3 have a certificate of live birth for a child born in the United States and a copy of a
4 marriage certificate.

5 JUDGE TO MS. DOUCHY

6 Does the Government have that as well?

7 MS. DOUCHY TO JUDGE

8 Yes, Your Honor.

9 JUDGE TO MS. DOUCHY

10 Have you seen the originals?

11 MS. DOUCHY TO JUDGE

12 No, I haven't, Your Honor.

13 JUDGE TO MS. KHANDWALA

14 Do you have the originals of the birth certificate, U.S. birth certificate and
15 marriage certificate?

16 MS. KHANDWALA TO JUDGE

17 We do, Your Honor.

18 JUDGE TO MS. KHANDWALA

19 All right. If you'd show that to Ms. Douchy, I'll mark it as Exhibit 3, presuming that
20 there is the original there. And then in back of Tab C, I don't have any index here,
21 unfortunately, for these documents. Let's see.

22 MS. KHANDWALA TO JUDGE

23 It's a --

24 JUDGE TO MS. KHANDWALA

25 Yes, there is, actually.



1 JUDGE TO MS. DOUCHY

2 So --

3 MS. KHANDWALA TO JUDGE

4 Yeah.

5 JUDGE TO MS. DOUCHY

6 -- if you look at the index, Ms. Douchy, under C we have documents showing
7 physical presence. They are United States documents, so of course we'll need
8 foundation. And it goes up to phone bills from 2009. I seek to mark all these as group
9 Exhibit 4. What is the position of the Department?

10 MS. DOUCHY TO JUDGE

11 I have no objection, Your Honor.

12 JUDGE TO MS. DOUCHY

13 Okay.

14 JUDGE FOR THE RECORD

15 Now, there's a note on this as well that says he's going to supplement with
16 photographs of family if necessary. Let's see what else he gave me here. Further from
17 the respondent on January 3rd of 2011, I have some background documents on
18 Mexico. It's number one in that submission. Seeks to mark that as Exhibit 4.

19 JUDGE TO MS. DOUCHY

20 What is the position of the Department?

21 MS. DOUCHY TO JUDGE

22 I have no objection, Your Honor.

23 JUDGE TO MS. DOUCHY

24 Exhibit 5, actually.

25 JUDGE FOR THE RECORD



1 The background is Exhibit 5. Then I have a copy of a license and registration for
2 Dr. [REDACTED] [phonetic sp.] and they wanted the telephone appearance of Ms. [REDACTED]
3 [phonetic sp.], the guidance counselor.

4 JUDGE TO MS. KHANDWALA

5 So is the guidance counselor available telephonically?

6 MS. KHANDWALA TO JUDGE

7 She is, Your Honor.

8 JUDGE TO MS. KHANDWALA

9 Okay. We'll leave that.

10 JUDGE FOR THE RECORD

11 I'm going to mark the guidance counselor ID 6.

12 JUDGE TO MS. KHANDWALA

13 And is Dr. [REDACTED] available for cross-examination?

14 MS. KHANDWALA TO JUDGE

15 Yes, she, [REDACTED] [REDACTED] [phonetic sp.]?

16 MS. DOUCHY TO MS. KHANDWALA

17 No. [REDACTED]

18 JUDGE TO MS. KHANDWALA

19 Dr. [REDACTED] [REDACTED] [phonetic sp.]?

20 MS. KHANDWALA TO JUDGE

21 Dr. [REDACTED] [REDACTED] I'm sorry, Your Honor, she is not available today.

22 JUDGE TO MS. KHANDWALA

23 Okay.

24 JUDGE FOR THE RECORD

25 That's a prejudice to the Government, which goes to weight, I believe, rather than

1 admissibility.

2 JUDGE TO MS. DOUCHY

3 What is the position of the Department on marking Dr. [REDACTED] Exhibit 7?

4 MS. DOUCHY TO JUDGE

5 Your Honor, I just would request speaking -- limited weight since we don't have
6 an opportunity to cross-examine the doctor.

7 JUDGE FOR THE RECORD

8 Noting those comments, Exhibit 7. From the respondent on December 20th of
9 last year, I received a submission and there's a affidavit of, I think this is the daughter.

10 JUDGE TO MS. KHANDWALA

11 Is that right?

12 MS. KHANDWALA TO JUDGE

13 That's correct, Your Honor.

14 JUDGE TO MS. KHANDWALA

15 She's 14 years old. And who is [REDACTED]

16 MS. KHANDWALA TO JUDGE

17 That's the respondent.

18 JUDGE TO MS. KHANDWALA

19 That's the respondent? Please show him the, his own affidavit.

20 JUDGE TO MR. [REDACTED]

21 Sir, this is also written in English. Have you reviewed this with your lawyer?

22 MR. [REDACTED] TO JUDGE

23 Yes.

24 JUDGE TO MR. [REDACTED]

25 There's a signature on the document. To whom does it belong?

1 MR. [REDACTED] TO JUDGE

2 It's mine. Are you able to swear to me everything written there is true and
3 correct?

4 MR. [REDACTED] TO JUDGE

5 Yes, Your Honor, I swear.

6 JUDGE FOR THE RECORD

7 Already in with Exhibit 3 -- 2, which is the application for removal. The affidavit of
8 the child I'm marking as ID 8 for now. I don't know if we're going to call the child or not.
9 We might. His is part of his application. And there's a summary of the social worker.

10 JUDGE TO MS. KHANDWALA

11 Is she available for cross-examination?

12 MS. KHANDWALA TO JUDGE

13 Yes, Your Honor. She's in the courtroom right now.

14 JUDGE TO MS. KHANDWALA

15 Okay. We'll ask her to step out of the courtroom.

16 JUDGE FOR THE RECORD

17 I'll mark it ID 9 until we talk to her.

18 JUDGE TO MS. KHANDWALA

19 Does, this is the same guidance counselor we're talking about? Thank you,
20 ma'am. Okay.

21 MS. KHANDWALA TO JUDGE

22 Ms. Azakio [phonetic sp.].

23 JUDGE TO MS. KHANDWALA

24 Yeah, that's the same guidance counselor --

25 MS. KHANDWALA TO JUDGE

1 Who's going to -- yeah.

2 JUDGE TO MS. KHANDWALA

3 -- that would telephonically?

4 JUDGE FOR THE RECORD

5 So all of her things should be together, which is ID 6. This is Dr. [REDACTED] again.

6 So Dr. [REDACTED] is Exhibit 7. The prejudice to the Government is that she's not available
7 for cross-examination. It goes to weight. Then there is information about her high
8 school, middle school, elementary school. There are certificates and school
9 documents, attendance awards. Seeks to mark all of these as group Exhibit -- are we
10 up to 8?

11 JUDGE TO MS. DOUCHY

12 What's the position of the Department?

13 MS. DOUCHY TO JUDGE

14 Your Honor, I, some of the documents are from the, the daughter's preschool
15 teachers and she's 14. And she attended preschool a long time ago. I ask they'd be
16 given limited weight and --

17 JUDGE TO MS. DOUCHY

18 Goes to weight.

19 MS. DOUCHY TO JUDGE

20 -- and the letter submitted by respondent's nephew and --

21 JUDGE TO MS. DOUCHY

22 Okay. We didn't get to the letters yet. We're just on the school --

23 MS. DOUCHY TO JUDGE

24 Oh, I'm sorry. I thought it was the whole submission. I'm just --

25 JUDGE TO MS. DOUCHY

1 Okay. Well, we can look at the whole submission if you want.

2 JUDGE TO MS. KHANDWALA

3 The authors of the letters are not available for cross-examination, is that correct?

4 MS. KHANDWALA TO JUDGE

5 No, Your Honor.

6 JUDGE TO MS. KHANDWALA

7 Okay. That goes to weight rather than admissibility. It is a prejudice to the
8 Government.

9 JUDGE FOR THE RECORD

10 All of the other documents, there are church documents, community involvement.
11 There's a police report from Mexico. That's a foreign document that has not been
12 authenticated. And the authors of some of the letters, some are in Mexico. The
13 nephew's in Mexico. These, I believe, all go to weight rather than admissibility.

14 JUDGE TO MS. DOUCHY

15 What is the position of the Department marking the whole submission, as you
16 suggested, as group 8?

17 MS. DOUCHY TO JUDGE

18 Your Honor, I would just ask that the documents where the author's not available
19 for cross-examination be given limited weight. And then I would note that under Tab 21,
20 the police report is from 1997, so it's outdated at this point.

21 MS. KHANDWALA TO JUDGE

22 That was just based on his last visit to, respondent's last visit to Mexico.

23 JUDGE TO MS. KHANDWALA

24 Okay. I'll consider it in the context of the whole group Exhibit 8. Any further
25 documents from you, counsel?



1 MS. KHANDWALA TO JUDGE

2 No, Your Honor.

3 JUDGE TO MS. DOUCHY

4 Is there anything from the Department?

5 MS. DOUCHY TO JUDGE

6 No, Your Honor.

7 JUDGE TO MS. KHANDWALA

8 The witness was in the room. She left. The remaining individuals are not

9 witnesses --

10 MS. KHANDWALA TO JUDGE

11 No, Your Honor.

12 JUDGE TO MS. KHANDWALA

13 -- is that right?

14 MS. KHANDWALA TO JUDGE

15 No.

16 JUDGE TO MS. KHANDWALA

17 Okay.

18 JUDGE TO MR. [REDACTED]

19 Sir, the lawyers are going to ask you some questions and I might as well. Never

20 answer a question you do not understand. If you don't understand a question, tell the

21 interpreter right away and she will tell me. My job is to make every question clear --

22 MR. [REDACTED] TO JUDGE

23 Okay.

24 JUDGE TO MR. [REDACTED]

25 -- for you. When you do answer, you must speak out loud because we record

1 everything. If you don't answer out loud or just nod your head, we can't hear you and
2 we can't pick it up on the recorder.

3 MR. [REDACTED] TO JUDGE

4 Correct.

5 JUDGE TO MS. KHANDWALA

6 If there's nothing further, counsel, your witness.

7 MS. KHANDWALA TO JUDGE

8 Your Honor, Ms. Douchy and I talked and we actually, she suggested that we
9 start with the, the social worker and the guidance counselor and [REDACTED] [phonetic sp.]
10 so --

11 JUDGE TO MS. KHANDWALA

12 So therefore, the question of physical presence is not, other than to say when did
13 you enter and have you ever left, we, based on the documents and everything, we're
14 okay. So if you would just ask him that basic question and then we'll proceed as --

15 MS. KHANDWALA TO JUDGE

16 Okay.

17 JUDGE TO MS. KHANDWALA

18 -- as per your suggestion.

19 MS. DOUCHY TO JUDGE

20 And then also, he has [indiscernible].

21 JUDGE TO MS. KHANDWALA

22 Just cover that.

23 MS. KHANDWALA TO JUDGE

24 Okay. Sure.

25 JUDGE TO MS. KHANDWALA

1 And when did you arrive? Did you ever go out? How long were you out? Why
2 did you go out? Have you left since then?

3 MS. KHANDWALA TO JUDGE

4 Okay.

5 JUDGE TO MS. KHANDWALA

6 Okay?

7 MS. KHANDWALA TO JUDGE

8 Okay.

9 JUDGE TO MS. KHANDWALA

10 Thank you. Counsel, your witness.

11 MS. KHANDWALA TO MR. [REDACTED]

12 Could you state your name for the record?

13 MR. [REDACTED] TO MS. KHANDWALA

14 [REDACTED] [REDACTED]

15 MS. KHANDWALA TO MR. [REDACTED]

16 And where were you born?

17 MR. [REDACTED] TO MS. KHANDWALA

18 I was born in Zacatelco, Tlaxcala, Mexico.

19 MS. KHANDWALA TO MR. [REDACTED]

20 And when did you arrive in the United States?

21 MR. [REDACTED] TO MS. KHANDWALA

22 May 14th of 1989.

23 MS. KHANDWALA TO MR. [REDACTED]

24 And have you ever left the United States since that time?

25 MR. [REDACTED] TO MS. KHANDWALA

1 Yes.

2 MS. KHANDWALA TO MR. [REDACTED]

3 When was that?

4 MR. [REDACTED] TO MS. KHANDWALA

5 March 8th of 1997.

6 MS. KHANDWALA TO MR. [REDACTED]

7 And how long were you outside the United States?

8 MR. [REDACTED] TO MS. KHANDWALA

9 Approximately a month and a week.

10 MS. KHANDWALA TO MR. [REDACTED]

11 And since that trip, have you ever left the United States?

12 MR. [REDACTED] TO MS. KHANDWALA

13 No.

14 JUDGE TO MR. [REDACTED]

15 What was the purpose of that trip?

16 MR. [REDACTED] TO JUDGE

17 My father was ill and I left for those days.

18 JUDGE TO MR. [REDACTED]

19 Thank you.

20 JUDGE TO MS. KHANDWALA

21 Okay. Yeah, that's okay. Yes, you may proceed. We don't have a big question
22 with physical presence. You may proceed.

23 MS. KHANDWALA TO JUDGE

24 So proceed on the, the --

25 JUDGE TO MS. KHANDWALA

1 Well, you had suggested to me a method of proceeding. You can proceed in
2 whichever way you want.

3 MS. KHANDWALA TO JUDGE

4 Okay.

5 JUDGE TO MS. KHANDWALA

6 But it was suggested, evidently you had an off record discussion, I was not part
7 of it, with the Assistant Chief Counsel, who said you were going to concentrate on the
8 child and the, and the hardship, so --

9 MS. KHANDWALA TO JUDGE

10 Okay.

11 JUDGE TO MS. KHANDWALA

12 -- proceed in that manner if you want.

13 MS. KHANDWALA TO MR. [REDACTED]

14 Mr. [REDACTED] are you married?

15 MS. DOUCHY TO MS. KHANDWALA

16 I know that [indiscernible] in the courtroom?

17 INTERPRETER TO MS. DOUCHY

18 No, she's gone.

19 MS. KHANDWALA TO MS. DOUCHY

20 She's left.

21 MS. DOUCHY TO MS. KHANDWALA

22 She left? Okay. Because --

23 MS. KHANDWALA TO MS. DOUCHY

24 Yeah. None of the witnesses are in the courtroom.

25 MS. DOUCHY TO MS. KHANDWALA

1 Did you tell her to wait in the other area?

2 MS. KHANDWALA TO MS. DOUCHY

3 Yeah, she's, I think, waiting out -- actually, I don't know if she's just waiting
4 outside or in the other --

5 JUDGE TO MS. KHANDWALA

6 Oh, could you have her wait in the, in the far waiting room?

7 MS. KHANDWALA TO JUDGE

8 Okay.

9 JUDGE TO MS. KHANDWALA

10 If you would?

11 MS. KHANDWALA TO JUDGE

12 All right.

13 JUDGE TO MS. KHANDWALA

14 Thank you. Okay. Thank you. Counsel, your witness.

15 MS. KHANDWALA TO MR. [REDACTED]

16 Mr. [REDACTED] are you married?

17 MR. [REDACTED] TO MS. KHANDWALA

18 Yes, I'm married.

19 MS. KHANDWALA TO MR. [REDACTED]

20 And do you have any children?

21 MR. [REDACTED] TO MS. KHANDWALA

22 Yes, I have three children.

23 MS. KHANDWALA TO MR. [REDACTED]

24 And how old are they?

25 MR. [REDACTED] TO MS. KHANDWALA

1 Twenty-four, twenty-three and fourteen years old.

2 MS. KHANDWALA TO MR. [REDACTED]

3 And are any of them United States citizens or green card holders?

4 MR. [REDACTED] TO MS. KHANDWALA

5 Yes. My daughter, who's 14 years old, [REDACTED] [REDACTED] [phonetic sp.].

6 MS. KHANDWALA TO MR. [REDACTED]

7 And where does [REDACTED] live?

8 MR. [REDACTED] TO MS. KHANDWALA

9 She lives with me at [REDACTED].

10 MS. KHANDWALA TO MR. [REDACTED]

11 And where was she born?

12 MR. [REDACTED] TO MS. KHANDWALA

13 She was born in Brooklyn, New York.

14 MS. KHANDWALA TO MR. [REDACTED]

15 And on what date?

16 MR. [REDACTED] TO MS. KHANDWALA

17 [REDACTED].

18 JUDGE TO MR. [REDACTED]

19 What is your wife's Immigration status?

20 MR. [REDACTED] TO JUDGE

21 She's not a resident.

22 JUDGE TO MR. [REDACTED]

23 Thank you. What is your date of your marriage?

24 MR. [REDACTED] TO JUDGE

25 [REDACTED] February of -- I don't remember the year.

1 JUDGE TO MS. KHANDWALA

2 Continue.

3 MR. [REDACTED] TO JUDGE

4 The, of the year [REDACTED].

5 JUDGE FOR THE RECORD

6 He's reading it from a document.

7 JUDGE TO MS. KHANDWALA

8 Please take all documents away from him. Can you -- continue.

9 MS. KHANDWALA TO MR. [REDACTED]

10 Can you describe your relationship with your daughter [REDACTED]

11 MR. [REDACTED] TO MS. KHANDWALA

12 Yes. The relation that I have with my daughter is very close because she's the
13 little one of the family. So we have a very close relationship, her and I.

14 MS. KHANDWALA TO MR. [REDACTED]

15 And is she aware of your Immigration case?

16 MR. [REDACTED] TO MS. KHANDWALA

17 Yes, she's aware.

18 MS. KHANDWALA TO MR. [REDACTED]

19 And do you, what does she say to you about it?

20 MR. [REDACTED] TO MS. KHANDWALA

21 Basically she mentions to me that she does not want to separate from her father
22 because for her, her father is the maximum person that she considers at this time.

23 MS. KHANDWALA TO MR. [REDACTED]

24 And have you -- how is [REDACTED] health?

25 MR. [REDACTED] TO MS. KHANDWALA

1 Right now she, her health is a little bit delicate because of all of this situation that
2 has been brought to the table. She's has fear. She's afraid to go out alone because
3 she feels that when she returns, she's not going to find me home. So basically, that's
4 what she's going through right now at this time.

5 MS. KHANDWALA TO MR. [REDACTED]

6 What changes, have you seen any changes in her behavior?

7 MR. [REDACTED] TO MS. KHANDWALA

8 Yes. Yes, I notice a not usual certain behaviors in her part. She's very sad.
9 She's quite worried because of the situation that her father is in. But as soon as I found
10 out about what she was going through because of this situation, I sought out
11 professional help for her.

12 MS. KHANDWALA TO MR. [REDACTED]

13 What kind of professional help did you seek for her?

14 MR. [REDACTED] TO MS. KHANDWALA

15 I sought out a psychological help.

16 MS. KHANDWALA TO MR. [REDACTED]

17 And is that, how has that helped her?

18 MR. [REDACTED] TO MS. KHANDWALA

19 It's helping her a bit. Not enough, because she still has fear of leaving the house
20 or going out to the street. She's worried about things of school because she's in a
21 school that's quite competitive and she fears not to be able to obtain or keep the grades
22 that she's always had.

23 MS. KHANDWALA TO MR. [REDACTED]

24 Since when has she been getting mental health treatment?

25 MR. [REDACTED] TO MS. KHANDWALA

1 It's been approximately three months ago.

2 MS. KHANDWALA TO MR. [REDACTED]

3 And how often did, does she see the person that she's seeing?

4 MR. [REDACTED] TO MS. KHANDWALA

5 She goes once a week for an hour.

6 MS. KHANDWALA TO MR. [REDACTED]

7 And what is the name of her, of the person that she's going to?

8 MR. [REDACTED] TO MS. KHANDWALA

9 The Dr. [REDACTED] [REDACTED]

10 MS. KHANDWALA TO MR. [REDACTED]

11 What school does [REDACTED] attend?

12 INTERPRETER TO JUDGE

13 Clarification the interpreter.

14 JUDGE TO INTERPRETER

15 Bard.

16 MR. [REDACTED] TO MS. KHANDWALA

17 Oh, she's going to Bard High School, Early College.

18 MS. KHANDWALA TO MR. [REDACTED]

19 And what kind of school is this?

20 MR. [REDACTED] TO MS. KHANDWALA

21 This is a school where they're prepared to do two years of high school and two
22 years of college.

23 MS. KHANDWALA TO MR. [REDACTED]

24 And how did [REDACTED] get admitted to this school?

25 MR. [REDACTED] TO MS. KHANDWALA

1 [REDACTED] was admitted to this school basically in the years of her middle school.
2 They gave her a book where she could choose the schools that she wanted to attend.
3 And she picked one of the schools and some of the schools and one of them was Bard.
4 She continued with the, a procedure and applied and she was admitted to Bard.
5 Logically, she did take an exam.

6 MS. KHANDWALA TO MR. [REDACTED]

7 How is she doing in school?

8 MR. [REDACTED] TO MS. KHANDWALA

9 She's doing not very well because of what I mentioned previously. She has right
10 now the great, heavy burden that I placed on her.

11 JUDGE TO MR. [REDACTED]

12 How did she do initially?

13 MR. [REDACTED] TO JUDGE

14 She was doing very well. She obtained very good grades in junior high school
15 and she had great illusions of going to Bard. She was very enthusiastic to go and to
16 succeed, until she found out the problem that her father was in.

17 JUDGE TO MR. [REDACTED]

18 Okay. Thank you.

19 MS. KHANDWALA TO MR. [REDACTED]

20 Is it fair to say that Bard is one of the most competitive schools in New York City?

21 MS. DOUCHY TO JUDGE

22 Objection. Leading.

23 JUDGE TO MS. DOUCHY

24 Sustained.

25 MS. KHANDWALA TO MR. [REDACTED]

1 Well, is -- what was the, how, how, how many schools did [REDACTED] apply for and
2 how did -- how --

3 JUDGE TO MS. KHANDWALA

4 One question at a time.

5 MS. KHANDWALA TO MR. [REDACTED]

6 How many schools --

7 JUDGE TO MR. [REDACTED]

8 Do you know why your daughter --

9 JUDGE TO MS. KHANDWALA

10 Excuse me.

11 JUDGE TO MR. [REDACTED]

12 -- do you know why your daughter picked Bard of all the schools she applied to?

13 MR. [REDACTED] TO JUDGE

14 In the application she made, she chose six schools. Bard was the first one and
15 that's the one she was accepted.

16 JUDGE TO MR. [REDACTED]

17 Thank you.

18 JUDGE TO MS. KHANDWALA

19 Continue.

20 MS. KHANDWALA TO MR. [REDACTED]

21 Has [REDACTED] been to Mexico?

22 MR. [REDACTED] TO MS. KHANDWALA

23 Yes. In one occasion.

24 MS. KHANDWALA TO MR. [REDACTED]

25 And when was that?

1 MR. [REDACTED] TO MS. KHANDWALA

2 That was in the year -- I don't recall the year.

3 JUDGE TO MR. [REDACTED]

4 How old was she?

5 MR. [REDACTED] TO JUDGE

6 She was eight years old.

7 MS. KHANDWALA TO MR. [REDACTED]

8 And where did she go to, when she went to, when she went to Mexico?

9 MR. [REDACTED] TO MS. KHANDWALA

10 She went to visit her grandparents in my wife's side and the grandparents on my
11 side.

12 JUDGE TO MR. [REDACTED]

13 How long was she away?

14 MR. [REDACTED] TO JUDGE

15 She was there approximately two months.

16 JUDGE TO MR. [REDACTED]

17 What season of the year?

18 MR. [REDACTED] TO JUDGE

19 Those were in the vacation. She left in July.

20 MS. KHANDWALA TO MR. [REDACTED]

21 And what was her experience of this trip?

22 MR. [REDACTED] TO MS. KHANDWALA

23 Well, she had good and bad experiences. One of the good experiences she had
24 is that she got to meet the mother's grandparents, the, the grandparents on the mother's
25 side and the grandparents on the father's side. The bad experience that she had was

1 when she arrived, she became ill. She had to go and visit the doctor. And something
2 that she had never lived through here, it was that she had to get some shots so that her
3 health would get better.

4 JUDGE TO MR. [REDACTED]

5 Did anyone travel with her from the United States to Mexico?

6 MR. [REDACTED] TO JUDGE

7 Yes.

8 JUDGE TO MR. [REDACTED]

9 Who?

10 MR. [REDACTED] TO JUDGE

11 My wife.

12 MS. KHANDWALA TO MR. [REDACTED]

13 Does she continue have a relationship with the family members that she met?

14 MR. [REDACTED] TO MS. KHANDWALA

15 Basically once in a while she speaks to her grandparents by phone.

16 MS. KHANDWALA TO MR. [REDACTED]

17 If you --

18 JUDGE TO MR. [REDACTED]

19 How did -- did she reenter the United States traveling with anyone?

20 MR. [REDACTED] TO JUDGE

21 Yes.

22 JUDGE TO MR. [REDACTED]

23 But your wife has no status. How -- was, was it your wife she reentered with?

24 MR. [REDACTED] TO JUDGE

25 No. She entered with some friends that were traveling from Mexico towards

1 here.

2 JUDGE TO MS. KHANDWALA

3 Continue.

4 MR. [REDACTED] TO JUDGE

5 And he, they were the ones who brought her.

6 JUDGE TO MS. KHANDWALA

7 Continue.

8 MS. KHANDWALA TO MR. [REDACTED]

9 If you had to return to Mexico, where would you go?

10 MR. [REDACTED] TO MS. KHANDWALA

11 Well the truth, I have not thought about that. But, but if I returned to Mexico, the
12 only place that I know is the place that I was born. That is in Tlaxcala, Mexico.

13 MS. KHANDWALA TO MR. [REDACTED]

14 And would you be willing to take [REDACTED] there?

15 MR. [REDACTED] TO MS. KHANDWALA

16 I don't know.

17 MS. KHANDWALA TO MR. [REDACTED]

18 Why, why are you not sure?

19 MR. [REDACTED] TO MS. KHANDWALA

20 I'm not sure because she does not know of any other way of life except the
21 American way of life. So I wouldn't know what I should do.

22 MS. KHANDWALA TO MR. [REDACTED]

23 What was your experience when you went for a visit in '97?

24 JUDGE TO MS. KHANDWALA

25 We're focusing here on the hardship if he was returned to Mexico today. The

1 hardship, of course, is not to him.

2 MS. KHANDWALA TO JUDGE

3 Right. Your Honor, the, the context is that his only, his only one was that he was
4 robbed and kidnapped and that had a strong impact on, you know, his fears for his
5 family's life if they're, if they go back to Mexico. And if anything, it, the, the country
6 conditions show that things have gotten worse.

7 JUDGE TO MR. [REDACTED]

8 Well, what, what do you think would happen to your daughter if she had to go
9 back to Mexico?

10 MR. [REDACTED] TO JUDGE

11 I think it was, would be devastating for her because we have not done that as yet
12 and she's already dying of anxiety. So the truth, I don't know what would happen with
13 her.

14 JUDGE TO MR. [REDACTED]

15 But where would she go to school?

16 MR. [REDACTED] TO JUDGE

17 I have no idea. Since I've been here quite a few years, I don't know what kind of
18 school. I just know that, I just know that it's not the same quality of school --

19 JUDGE TO MR. [REDACTED]

20 Did you go to school --

21 MR. [REDACTED] TO JUDGE

22 -- that ones we have to the ones that are here.

23 JUDGE TO MR. [REDACTED]

24 Did you go to school in Mexico?

25 MR. [REDACTED] TO JUDGE

1 Yes.

2 JUDGE TO MR. [REDACTED]

3 How many years did you go?

4 MR. [REDACTED] TO JUDGE

5 Nine years.

6 JUDGE TO MR. [REDACTED]

7 So why did you only go nine years?

8 MR. [REDACTED] TO JUDGE

9 Basically because of the lack of opportunities that are, that we have.

10 JUDGE TO MR. PEDRERO

11 Now, if you went back to Mexico, who would, and you left your daughter here,
12 who would take care of your daughter?

13 MR. [REDACTED] TO JUDGE

14 I don't know because I don't have any family members that have legal
15 Immigration status at this time.

16 JUDGE TO MR. [REDACTED]

17 So your parents live in Mexico, is that right?

18 MR. [REDACTED] TO JUDGE

19 My father lives in Mexico. My, my mother just died in October.

20 JUDGE TO MR. [REDACTED]

21 Sorry.

22 MR. [REDACTED] TO JUDGE

23 Thank you.

24 JUDGE TO MR. [REDACTED]

25 And do you have siblings?

1 MR. [REDACTED]

2 Yes. I have brothers and sisters.

3 JUDGE TO MR. [REDACTED]

4 How many?

5 MR. [REDACTED] TO JUDGE

6 As a family we are five brothers and three sisters.

7 JUDGE TO MR. [REDACTED]

8 And aside from yourself, are any of them living in the United States?

9 MR. [REDACTED] TO JUDGE

10 Yes, two of my sisters live in the United States.

11 JUDGE TO MR. [REDACTED]

12 And what is their Immigration status?

13 MR. [REDACTED] TO JUDGE

14 They have no Immigration status.

15 JUDGE TO MR. [REDACTED]

16 Thank you.

17 JUDGE TO MS. KHANDWALA

18 Continue.

19 MS. KHANDWALA TO MR. [REDACTED]

20 Does [REDACTED] speak Spanish?

21 MR. [REDACTED] TO MS. KHANDWALA

22 Yes.

23 MS. KHANDWALA TO MR. [REDACTED]

24 And how fluent is she?

25 MR. [REDACTED] TO MS. KHANDWALA

1 I consider it quite good.

2 MS. KHANDWALA TO MR. [REDACTED]

3 And does she write as well in Spanish?

4 MR. [REDACTED] TO MS. KHANDWALA

5 She speaks it better than she writes it.

6 MS. KHANDWALA TO MR. [REDACTED]

7 If, if [REDACTED] stayed here and you were, you went back to Mexico, how would
8 you support her?

9 MR. [REDACTED] TO MS. KHANDWALA

10 I don't think she'd be able to support herself because Mexico does not offer us
11 the opportunity to work, to be able to support a family member in the United States.

12 JUDGE TO MR. [REDACTED]

13 Who supports [REDACTED] today?

14 MR. [REDACTED] TO JUDGE

15 I do, her father.

16 JUDGE TO MR. [REDACTED]

17 Where do you work?

18 MR. [REDACTED] TO JUDGE

19 I work as a painter.

20 JUDGE TO MR. [REDACTED]

21 What is your salary?

22 MR. [REDACTED] TO JUDGE

23 I work for myself.

24 JUDGE TO MR. [REDACTED]

25 What is your income? How much money do you make?

1 MR. [REDACTED] TO JUDGE

2 I don't recall right now how much is it that you earn, but it's written in my taxes.

3 JUDGE TO MR. [REDACTED]

4 Well, you must have some idea, sir.

5 MR. [REDACTED] TO JUDGE

6 Yes. I work on my own and it varies, between 40 and, and \$60,000. I'm not
7 sure.

8 JUDGE TO MR. [REDACTED]

9 Okay.

10 JUDGE TO MS. KHANDWALA

11 Continue.

12 MS. KHANDWALA TO MR. [REDACTED]

13 Have you received any awards or recognitions in --

14 INTERPRETER TO MS. KHANDWALA

15 Clarification from interpreter?

16 MS. KHANDWALA TO MR. [REDACTED]

17 Have you received any awards or recognitions in the community?

18 MR. [REDACTED] TO MS. KHANDWALA

19 Yes. I received an award as the property owner of the year. Of, of course I'm a
20 member of the business improvement district in Brooklyn. And today, I'm accompanied
21 by one of the workers of the business improvement district persons.

22 MS. KHANDWALA TO MR. [REDACTED]

23 Do you pay taxes?

24 MR. [REDACTED] TO MS. KHANDWALA

25 Yes.

1 MS. KHANDWALA TO MR. [REDACTED]

2 And since when have you been paying?

3 MR. [REDACTED] TO MS. KHANDWALA

4 From the year 2001 to the present.

5 MS. KHANDWALA TO MR. [REDACTED]

6 And have you ever been arrested?

7 MR. [REDACTED] TO MS. KHANDWALA

8 No. Never.

9 MS. KHANDWALA TO MR. [REDACTED]

10 Have you ever committed a crime for which you were not arrested?

11 MR. [REDACTED] TO MS. KHANDWALA

12 I don't understand the question.

13 MS. KHANDWALA TO MR. [REDACTED]

14 Have you ever done something wrong for which you didn't get arrested by the
15 police?

16 MR. [REDACTED] TO MS. KHANDWALA

17 No. Never.

18 MS. KHANDWALA TO JUDGE

19 That's all, Your Honor.

20 JUDGE TO MR. [REDACTED]

21 Does your daughter receive any type of public assistance?

22 MR. [REDACTED] TO JUDGE

23 No. Not now.

24 JUDGE TO MR. [REDACTED]

25 Well, did she ever?

1 MR. [REDACTED] TO JUDGE

2 Yes. Yes. She received Medicaid for certain, some years, from the time she
3 was born.

4 JUDGE TO MR. [REDACTED]

5 When did it stop?

6 MR. [REDACTED] TO JUDGE

7 I'm not sure when it ended. Maybe a year or two years ago.

8 JUDGE TO MR. [REDACTED]

9 Why did it stop?

10 MR. [REDACTED] TO JUDGE

11 She didn't need it any longer.

12 JUDGE TO MR. [REDACTED]

13 Why not?

14 MR. [REDACTED] TO JUDGE

15 Because I, I think that I was then able to support the medical expenses that she
16 needed.

17 JUDGE TO MR. [REDACTED]

18 Do you have, does your daughter have health insurance?

19 MR. [REDACTED] TO JUDGE

20 No, she doesn't have.

21 JUDGE TO MR. [REDACTED]

22 Do you have health insurance?

23 MR. [REDACTED] TO JUDGE

24 No, I don't have.

25 JUDGE TO MR. [REDACTED]

1 Does your daughter have any health problems, other than what you described?

2 MR. [REDACTED] TO JUDGE

3 Yes. She has a minor medical problem because of her menstruation. It, it's not
4 continuous. It seems like it's a problem, then I don't recall the word that the doctor
5 used. Pardon, it's a hormonal problem.

6 JUDGE TO MR. [REDACTED]

7 Any other problems, medical?

8 MR. [REDACTED] TO JUDGE

9 No.

10 JUDGE TO MR. [REDACTED]

11 Thank you.

12 JUDGE TO MS. DOUCHY

13 Cross-examination?

14 MS. DOUCHY TO MR. [REDACTED]

15 Now, how did you return to the United States when you departed in 1997?

16 MS. DOUCHY TO JUDGE

17 Ms. Douchy, if you'd pull that microphone?

18 MS. DOUCHY TO JUDGE

19 Oh.

20 JUDGE TO MS. DOUCHY

21 Turns it towards you?

22 MS. DOUCHY TO JUDGE

23 Sorry, Your Honor. Yes.

24 MS. DOUCHY TO MR. [REDACTED]

25 How did you return to the United States when you departed in 1997?

1 MR. [REDACTED] TO MS. DOUCHY

2 I returned through the border.

3 MS. DOUCHY TO MR. [REDACTED]

4 And now, you testified you came to the United States in 1989. Have you always
5 supported your family since you entered in 1989?

6 MR. [REDACTED] TO MS. DOUCHY

7 Yes. I've always supported them.

8 MS. DOUCHY TO MR. [REDACTED]

9 And have you always worked?

10 MR. [REDACTED] TO MS. DOUCHY

11 I've worked all of my life.

12 MS. DOUCHY TO MR. [REDACTED]

13 And so why didn't you pay taxes from 1989 to 2001?

14 MR. [REDACTED] TO MS. DOUCHY

15 Basically, when one arrives in the United States, you don't have the knowledge
16 about the laws that exist here in the United States. But as soon at, at the -- a
17 community church, the church that we went to, some persons from the IRS visited our
18 community and told us that we could be eligible to be able to pay our taxes. That
19 happened in the year 2001. As, as soon as I found out that I was able to do that, then I
20 began to do that.

21 MS. DOUCHY TO MR. [REDACTED]

22 And did you ever inquire about filing income taxes before, income taxes before
23 2001?

24 MR. [REDACTED] TO MS. DOUCHY

25 Yes, I found, I found out. And they told me that I would not be able to do it

1 because I did not have a social security number.

2 MS. DOUCHY TO MR. [REDACTED]

3 Who told you this?

4 MR. [REDACTED] TO MS. DOUCHY

5 I consulted a tax preparer.

6 MS. DOUCHY TO MR. [REDACTED]

7 And when did you do this?

8 MR. [REDACTED] TO MS. DOUCHY

9 Like in the year '92 or '93.

10 MS. DOUCHY TO MR. [REDACTED]

11 And have you ever received public assistance in the United States?

12 MR. [REDACTED] TO MS. DOUCHY

13 No. Never.

14 MS. DOUCHY TO MR. [REDACTED]

15 And has your wife ever received public assistance in the United States?

16 MR. [REDACTED] TO MS. DOUCHY

17 No.

18 MS. DOUCHY TO MR. [REDACTED]

19 Who paid for her pregnancy and prenatal care?

20 MR. [REDACTED] TO MS. DOUCHY

21 Well, I don't know if they call that public assistance. When my, when my
22 daughter was born, my, when my daughter was born, she got some insurance. I don't
23 know how is it that you call it.

24 JUDGE TO MR. [REDACTED]

25 Other than for the birth of your child, Medicaid, did your wife, does your wife get

1 any benefits?

2 MR. [REDACTED] TO JUDGE

3 No. It was only temporary.

4 MS. DOUCHY TO MR. [REDACTED]

5 And what about your other two children? Have they ever received public
6 assistance?

7 MR. [REDACTED] TO MS. DOUCHY

8 No. Never.

9 MS. DOUCHY TO MR. [REDACTED]

10 And --

11 JUDGE TO MR. [REDACTED]

12 Where do your other two children live?

13 MR. [REDACTED] TO JUDGE

14 They still live with me.

15 MS. DOUCHY TO MR. [REDACTED]

16 And when did your daughter learn of your Immigration problems?

17 MR. [REDACTED] TO MS. DOUCHY

18 She found out, it's approximately a year.

19 MS. DOUCHY TO MR. [REDACTED]

20 And other than her current psychological treatment, has she ever received any
21 other treatment prior to her present treatment?

22 MR. [REDACTED] TO MS. DOUCHY

23 No, she has never been receiving any treatment.

24 MS. DOUCHY TO MR. [REDACTED]

25 Had she ever seen a, a psychologist prior to her present treatment?

1 MR. [REDACTED] TO MS. DOUCHY

2 Yes. Previously, before the treatment that she's receiving, she had an evaluation
3 by the Dr. [REDACTED] [REDACTED] and she's the one who referred us to Dr. [REDACTED] [REDACTED]

4 MS. DOUCHY TO MR. [REDACTED]

5 And when did your daughter see Dr. [REDACTED]

6 MR. [REDACTED] TO MS. DOUCHY

7 I'm not sure, but I think it was about a year, more or less.

8 JUDGE TO INTERPRETER

9 A year what?

10 INTERPRETER TO JUDGE

11 More or less.

12 MS. DOUCHY TO MR. [REDACTED]

13 The letter from Dr. [REDACTED] indicates that she saw her in October of 2009. Does
14 that sound correct?

15 MR. [REDACTED] TO MS. DOUCHY

16 Yes, more or less that's the correct date.

17 MS. DOUCHY TO MR. [REDACTED]

18 And is that when Dr. [REDACTED] recommended your daughter seek treatment?

19 MR. [REDACTED] TO MS. DOUCHY

20 Not immediately. Because at that time, she felt okay. But as time went by, but
21 you, with the time passing, you could observe the change. That's when I saw her sad
22 and worried and I looked for psychological treatment for her.

23 MS. DOUCHY TO MR. [REDACTED]

24 Well, did you speak to Dr. [REDACTED] after she saw your daughter in October of
25 2009?

1 MR. [REDACTED] TO MS. DOUCHY

2 Yes, I spoke to her.

3 MS. DOUCHY TO MR. [REDACTED]

4 And did she tell you about her meeting with your daughter?

5 MR. [REDACTED] TO MS. DOUCHY

6 Very little that she told me about what was happening.

7 MS. DOUCHY TO MR. [REDACTED]

8 Well, because, because her report indicates that your daughter, in October of
9 2009, was exhibiting considerable anxiety and depression as a results of the possibility
10 of your deportation.

11 MR. [REDACTED] TO MS. KHANDWALA

12 Yes. That's what she had commented to me, that she was feeling a lot of
13 depression.

14 MS. DOUCHY TO MR. [REDACTED]

15 So why didn't you seek treatment for her in October of 2009 when you learned
16 this?

17 MR. [REDACTED] TO MS. DOUCHY

18 We looked for it later on and we were looking to find someone who spoke English
19 and Spanish so that we would be able to communicate with her, with the, with them.

20 MS. DOUCHY TO MR. [REDACTED]

21 Well, why did you initially testify that your daughter didn't start having problems
22 until October of 2010?

23 MS. KHANDWALA TO JUDGE

24 Sorry, that's not the testimony. Objection.

25 MS. DOUCHY TO JUDGE

1 Okay. I'll rephrase.

2 MS. DOUCHY TO MR. [REDACTED]

3 Why did you initially testify that you got your daughter treatment as soon as she
4 started having problems and she's been seeking, receiving that treatment for three
5 months now?

6 MS. KHANDWALA TO JUDGE

7 Objection. That, that's not what he said. He said she's been having problems
8 since a year, but that, you know, I think his testimony is that the problems have been,
9 have been exacerbated in recent months to a point where they did need treatment.

10 MS. DOUCHY TO JUDGE

11 I mean, my notes indicate he said as soon as he, he learned of her problems, he
12 sought professional help.

13 JUDGE TO MR. [REDACTED]

14 What is the date when you first sought professional help for your daughter?

15 MR. [REDACTED] TO JUDGE

16 I don't recall the date.

17 MS. DOUCHY TO MR. [REDACTED]

18 How much does it, her treatment cost?

19 MR. [REDACTED] TO MS. DOUCHY

20 The treatment costs me \$100 per hour.

21 MS. DOUCHY TO MR. [REDACTED]

22 And so do you pay for this?

23 MR. [REDACTED] TO MS. DOUCHY

24 Yes, I pay for it.

25 MS. DOUCHY TO MR. [REDACTED]

1 And when did you start working on your own?

2 MR. [REDACTED] TO MS. DOUCHY

3 In the year 2000, in the year 2000.

4 MS. DOUCHY TO MR. [REDACTED]

5 And have you always earned somewhere between 40 to \$60,000 since you
6 started working on your own?

7 MR. [REDACTED] TO MS. DOUCHY

8 No. As I said to you, my work varies. When I began my own business, I believe
9 that I earned less.

10 MS. DOUCHY TO MR. PEDRERO

11 And have you always declared all of your income on your income tax returns?

12 MR. [REDACTED] TO MS. DOUCHY

13 Yes. Always.

14 MS. DOUCHY TO MR. [REDACTED]

15 And does your wife work?

16 MR. [REDACTED] TO MS. DOUCHY

17 No, she doesn't work.

18 MS. DOUCHY TO MR. [REDACTED]

19 Has she ever worked?

20 MR. [REDACTED] TO MS. DOUCHY

21 Partially. One day a week. Something like that.

22 MS. DOUCHY TO MR. [REDACTED]

23 And what type of work has she done?

24 MR. [REDACTED] TO MS. DOUCHY

25 Housekeeping.

1 MS. DOUCHY TO MR. [REDACTED]

2 And when did she do that?

3 MR. [REDACTED] TO MS. DOUCHY

4 She's always done that, working one or two days a week.

5 MS. DOUCHY TO MR. [REDACTED]

6 Did she ever do it more than one or two days a week?

7 MR. [REDACTED] TO MS. DOUCHY

8 No, because she had to take care of her family, the children.

9 MS. DOUCHY TO MR. [REDACTED]

10 And how did your daughter, what, what mode of transportation did your daughter
11 use to return to, to go to Mexico when she was eight?

12 MR. [REDACTED] TO MS. DOUCHY

13 By plane.

14 MS. DOUCHY TO MR. [REDACTED]

15 And did Immigration check your wife's documents when she went to Mexico?

16 MR. [REDACTED] TO MS. DOUCHY

17 No, she just presented her passport in order to be able to travel to Mexico.

18 MS. DOUCHY TO MR. [REDACTED]

19 And now you said you have a lot of family in Mexico, is that right?

20 MR. [REDACTED] TO MS. DOUCHY

21 I have four brothers and one sister.

22 MS. DOUCHY TO MR. [REDACTED]

23 And have you inquired about seeking employment in Mexico?

24 MR. [REDACTED] TO MS. DOUCHY

25 I've investigated. I've spoken to one of my brothers. What he's mentioned to me,

1 the situation is quite difficult in order to be able to find employment, especially when
2 they tell me that if the people are older than 40 years old, so it's not easy for a company
3 to offer you the opportunity of a job to work.

4 MS. DOUCHY TO MR. [REDACTED]

5 Are you siblings working? Your siblings in Mexico?

6 MR. [REDACTED] TO MS. DOUCHY

7 The eldest, his name is Juan [REDACTED] [phonetic sp.], he doesn't work any longer.
8 And, and the others are working, except my sister. She doesn't. She's a housewife.

9 MS. DOUCHY TO MR. [REDACTED]

10 And how old is your oldest sibling who doesn't work anymore?

11 MR. [REDACTED] TO MS. DOUCHY

12 He's approximately 63, 65 years old.

13 MS. DOUCHY TO MR. [REDACTED]

14 And so is he retired?

15 MR. [REDACTED] TO MS. DOUCHY

16 Yes. He's retired.

17 MS. DOUCHY TO MR. [REDACTED]

18 And what type of work do your other family members do?

19 MR. [REDACTED] TO MS. DOUCHY

20 One of my brothers works as a hairdresser. One works in a store. Another
21 works in a store. And the other one works in manufacturing clothes. And my sister, she
22 doesn't work.

23 MS. DOUCHY TO MR. [REDACTED]

24 And have you talked to your family members about potential jobs in Mexico?

25 MR. [REDACTED] TO MS. DOUCHY

1 Yes, I spoke to them. But basically, they work in order to support the expenses
2 of their family, not to be able to support me, to give me or, some work.

3 MS. DOUCHY TO MR. [REDACTED]

4 And do your family members own any property in Mexico?

5 MR. [REDACTED] TO MS. DOUCHY

6 Yes. They have their own house.

7 MS. DOUCHY TO MR. [REDACTED]

8 And do you own any property in the United States?

9 MR. [REDACTED] TO MS. DOUCHY

10 Yes.

11 MS. DOUCHY TO MR. [REDACTED]

12 What do you own?

13 MR. [REDACTED] TO MS. DOUCHY

14 I am the owner of two properties. One is located at [REDACTED], and where I
15 live, at [REDACTED].

16 MS. DOUCHY TO MR. [REDACTED]

17 And the property that is located on [REDACTED] Street, when did you purchase that?

18 MR. [REDACTED] TO MS. DOUCHY

19 In the year 2003.

20 MS. DOUCHY TO MR. [REDACTED]

21 And what was the purchase price of that property?

22 MR. [REDACTED] TO MS. DOUCHY

23 \$465,000.

24 MS. DOUCHY TO MR. [REDACTED]

25 And what was your down payment?

1 MR. [REDACTED] TO MS. DOUCHY

2 A hundred thousand.

3 MS. DOUCHY TO MR. [REDACTED]

4 And your property that you currently live in, when did you purchase that?

5 MR. [REDACTED] TO MS. DOUCHY

6 In October of 2006. October or September. I'm not sure.

7 MS. DOUCHY TO MR. [REDACTED]

8 And how much is that property?

9 INTERPRETER TO JUDGE

10 Clarification, the interpreter.

11 MR. [REDACTED] TO MS. DOUCHY

12 I purchased that for -- I purchased that property for 736, no, pardon me, 726,000.

13 MS. DOUCHY TO MR. [REDACTED]

14 And what was your down payment on that property?

15 MR. [REDACTED] TO MS. DOUCHY

16 In that property I paid in between 300 and 330. I'm not quite sure.

17 MS. DOUCHY TO MR. [REDACTED]

18 Thousand, three hundred -- approximately \$330,000? Is that your testimony?

19 MR. [REDACTED] TO MS. DOUCHY

20 Approximately.

21 MS. DOUCHY TO MR. [REDACTED]

22 So you've -- and what are your mortgage payments for the property that you
23 purchased in 2003?

24 MR. [REDACTED] TO MS. DOUCHY

25 The mortgage payment is 3,332.

1 MS. DOUCHY TO INTERPRETER

2 I'm sorry?

3 INTERPRETER TO MS. DOUCHY

4 \$3,332, the mortgage payment.

5 MS. DOUCHY TO MR. [REDACTED]

6 And your home that you purchased in 2006, what are your mortgage payments
7 on that?

8 MR. [REDACTED] TO MS. DOUCHY

9 \$3,510.

10 MS. DOUCHY TO MR. [REDACTED]

11 And so in total, your monthly mortgage payments are almost \$7,000, is that
12 correct?

13 MR. [REDACTED] TO MS. DOUCHY

14 \$6,800 and some dollars.

15 MS. DOUCHY TO MR. [REDACTED]

16 Okay. And have you ever been delinquent on your mortgage payments?

17 MR. [REDACTED] TO MS. DOUCHY

18 Never.

19 MS. DOUCHY TO MR. [REDACTED]

20 So could you explain how you were able to make these payments in 2006, I'm
21 sorry, in 2005 -- one second.

22 MS. DOUCHY TO JUDGE

23 I apologize, Your Honor. The pages aren't numbered, so it's really hard to find
24 everything in this submission.

25 MS. DOUCHY TO MR. [REDACTED]

1 Could you explain how you were able to make these payments in 2006 when you
2 only declared \$38,000 on your income tax returns?

3 MR. [REDACTED] TO MS. DOUCHY

4 Those payments were made -- I don't recall how is it that I managed all of that.

5 JUDGE TO MR. [REDACTED]

6 Well sir, if you declared a certain amount of income to the Government truthfully,
7 is that all you made, it's impossible that you were able to make this payments on that
8 income. So could you explain that to me?

9 MR. [REDACTED]

10 Well, what I did was to bring all of the, my documents for the taxes to the person
11 who was going to pay my taxes.

12 INTERPRETER TO JUDGE

13 Clarification, the interpreter, to the person who was going to prepare my taxes,
14 and she was the one who arranged to do and my taxes.

15 JUDGE TO MR. [REDACTED]

16 Well sir, that's not a very good answer because if you declared \$36,000 of
17 income and you had to pay over \$7,000 a month for 12 months, it just doesn't add up.
18 So the question is, how are you supporting a million dollars worth of property on
19 \$36,000 a year?

20 MR. [REDACTED] TO JUDGE

21 Well, basically I've been able to make all of these payments because the first
22 property had, that I purchased at 469, is commercial property. It's a three-family house
23 with two businesses. And that is the house that produces the income for me to be able
24 to make my payments.

25 JUDGE TO MR. [REDACTED]

1 Did you declare, do you declare that income? It doesn't seem that you do.

2 MR. [REDACTED] TO JUDGE

3 I think it is, it is declared in my taxes.

4 JUDGE TO MR. [REDACTED]

5 And how much income do you get from the house?

6 MR. [REDACTED] TO JUDGE

7 Approximately \$100,000 a year.

8 JUDGE TO MR. [REDACTED]

9 And where did you get the \$100,000 down payment?

10 MR. [REDACTED] TO JUDGE

11 I had been working quite a lot or heavily since I came in the year '89 to 2003.

12 That's how I was able to save that amount of money to be able to give the down
13 payment for that property.

14 JUDGE TO MR. [REDACTED]

15 And where did you get the \$300,000 for the down payment for the second
16 property?

17 MR. [REDACTED] TO JUDGE

18 On the first property I lived at 2003 for four years. And that property gave us
19 enough income in order to be able to save money, plus the work that I did as a painter.
20 So it give me the opportunity once again for me to be able to have the money for the
21 down payment and to buy that property.

22 JUDGE TO MR. [REDACTED]

23 So you got it from your savings?

24 MR. [REDACTED] TO JUDGE

25 From the, the earnings that the house provided, yes.

1 JUDGE TO MS. DOUCHY

2 Continue.

3 MS. DOUCHY TO MR. [REDACTED]

4 Now, you testified that your daughter stopped receiving Medicaid approximately
5 two years ago, is that right?

6 INTERPRETER TO MS. DOUCHY

7 Clarification, the interpreter?

8 MS. DOUCHY TO MR. [REDACTED]

9 You testified that your daughter stopped receiving Medicaid approximately two
10 years ago, is that right?

11 MR. [REDACTED] TO MS. DOUCHY

12 One or two years, yes.

13 MS. DOUCHY TO MR. [REDACTED]

14 So during the time period that you were able to purchase a million dollars in real
15 estate, over a million dollars in real estate, your daughter was still receiving Medicaid, is
16 that correct?

17 MR. [REDACTED] TO MS. DOUCHY

18 Yes. She was receiving Medicaid, but basically without my knowledge of it.
19 Because my wife was in charge of what had to be the medical care for my children.
20 And all of the time that I, it had been done, she had applied for it. They told us that she
21 was eligible for that type of help, until I found out we didn't need it any longer and we
22 discontinued it.

23 MS. DOUCHY TO MR. [REDACTED]

24 Well sir, how did you think your wife -- I'm sorry. How did you think, who did you
25 think was paying for your daughter's medical treatment?

1 MR. [REDACTED] TO MS. DOUCHY

2 Well, I don't know exactly, but up to that point, my daughter had good health and
3 there were not hospital expenses or medical expenses that had to be provided.

4 MS. DOUCHY TO MR. [REDACTED]

5 And how much income did you declare on your 2009 income tax returns?

6 MR. [REDACTED] TO MS. DOUCHY

7 Well, once again, I'm not sure. But all of that is in my income taxes.

8 MS. DOUCHY TO MR. [REDACTED]

9 So the, the photocopies of the taxes that you submitted to the Court, are those
10 an accurate reflection of the taxes you filed with the Internal Revenue Service?

11 MR. [REDACTED] TO MS. DOUCHY

12 I didn't understand the question.

13 MS. DOUCHY TO MR. [REDACTED]

14 The photocopies of the taxes that you submitted to the Immigration Judge, are
15 these photocopies of the only taxes you filed with the Internal Revenue Service?

16 MR. [REDACTED] TO MS. DOUCHY

17 Well, in, in checking the years that I had, I was not sure of the taxes that I was
18 doing with this person who was doing my taxes, so I went to a certified public
19 accountant to review once again my taxes. So he provided, he made or did an
20 amendment and if you would like, I have copies of the amendment that he made.

21 MS. DOUCHY TO MR. [REDACTED]

22 Well sir, please answer my question. Are the copies that you submitted to the
23 Court the, the copies of the taxes you actually filed with the Internal Revenue Service?
24 Yes or no.

25 MR. [REDACTED] TO MS. DOUCHY

1 Yes.

2 MS. DOUCHY TO MR. [REDACTED]

3 Okay. So the, the photocopy of the taxes from 2001 indicate that your income
4 was \$17,000. So that's what was declared on your 2001 taxes, is that right?

5 MR. [REDACTED] TO MS. DOUCHY

6 Yes.

7 MS. DOUCHY TO MR. [REDACTED]

8 And the, the copy of the tax returns for 2002, the year before you purchased your
9 first property, shows your income as \$23,900, is that correct?

10 MR. [REDACTED] TO MS. DOUCHY

11 Yes.

12 MS. DOUCHY TO MR. [REDACTED]

13 And your 2004 tax returns show your income as \$49,453. Is that correct?

14 MR. [REDACTED] TO MS. DOUCHY

15 Yes.

16 MS. DOUCHY TO MR. [REDACTED]

17 And your 2005 income tax returns show income of \$16,000, is that correct?

18 MR. [REDACTED] TO MS. DOUCHY

19 Yes. But I'm not sure if in 2004 or 2005 I had a refund. I don't recall the amount,
20 but if you let me look for the photocopies, that the truth, I did not request it, the refund,
21 because I did not want to -- I think it was this. The refund that, that I did not request
22 because, that I did not request be given because I did not come here to request monies,
23 but to provide monies.

24 MS. DOUCHY TO MR. [REDACTED]

25 So in, is it your testimony that in 2004 and 2005, you got refunds on your income

1 tax returns, is that right?

2 MR. [REDACTED] TO MS. DOUCHY

3 Only in one year.

4 MS. DOUCHY TO MR. [REDACTED]

5 And now you said you went to see a certified public accountant about filing
6 amended tax returns, is that correct?

7 MR. [REDACTED] TO MS. DOUCHY

8 That's correct.

9 MS. DOUCHY TO MR. [REDACTED]

10 And when did you see the certified public accountant?

11 MR. [REDACTED] TO MS. DOUCHY

12 This lasts the year 2010.

13 MS. DOUCHY TO MR. [REDACTED]

14 Okay. So that was after you had filed your application for cancellation of
15 removal, is that right?

16 MR. [REDACTED] TO MS. DOUCHY

17 Yes.

18 MS. DOUCHY TO MR. [REDACTED]

19 And did you ever file amended tax returns?

20 MR. [REDACTED] TO MS. DOUCHY

21 I didn't understand the question.

22 MS. DOUCHY TO MR. [REDACTED]

23 Did you ever file income tax returns amending your prior returns?

24 MR. [REDACTED] TO MS. DOUCHY

25 Yes. They were submitted or registered.

1 MS. DOUCHY TO MR. [REDACTED]

2 And when did you do that?

3 MR. [REDACTED] TO MS. DOUCHY

4 I registered them, I don't recall the date. I, I think it was in December of this year,
5 no, of last year.

6 MS. DOUCHY TO MR. [REDACTED]

7 So December of 2010?

8 MR. [REDACTED] TO MS. DOUCHY

9 Yes.

10 MS. DOUCHY TO MR. [REDACTED]

11 And for what years did you file these amended tax returns?

12 MR. [REDACTED] TO MS. DOUCHY

13 Three years ago.

14 MS. DOUCHY TO MR. [REDACTED]

15 So, oh, so for the past, for -- is it your testimony for 2006, 2007 -- oh, question.

16 Is your testimony you filed tax, amended returns for 2007, 2008 and 2009?

17 MR. [REDACTED] TO MS. DOUCHY

18 It's correct.

19 MS. DOUCHY TO MR. [REDACTED]

20 And, and why did you file these amended tax returns?

21 MR. [REDACTED] TO MS. DOUCHY

22 Because I found out that something was not correct. And the person who was
23 filling them out for me was not a certified public accountant. So I went to the
24 professional of, to be able to review those income taxes.

25 MS. DOUCHY TO MR. [REDACTED]

1 And so did you declare more income on your amended tax returns?

2 MR. [REDACTED] TO MS. DOUCHY

3 That in some years, it, it seems like there is that I have to pay more.

4 MS. DOUCHY TO MR. [REDACTED]

5 Okay. So you said in some years. So for the tax year 2007, did you have to
6 declare more income? Yes or no.

7 MR. [REDACTED] TO MS. DOUCHY

8 I'm not sure, but I believe so. I don't know what years were, was more income
9 declared.

10 MS. DOUCHY TO MR. [REDACTED]

11 Well sir, you just did this a month ago and it's your testimony that you don't
12 remember?

13 MR. [REDACTED] TO MS. DOUCHY

14 Well, basically for me it's quite complicated, figures and taxes. I'm, I'm not
15 versed too much in that field. But, but if you would like to see, I have the copies here.

16 MS. DOUCHY TO MR. [REDACTED]

17 And so just to be clear, is it your testimony that you declared more income on
18 these amended returns? Yes or no.

19 MR. [REDACTED] TO MS. DOUCHY

20 Yes.

21 MS. DOUCHY TO MR. [REDACTED]

22 And so why did you testify earlier that you always declared all of your income on
23 your taxes if you're filing amended returns?

24 MS. KHANDWALA TO JUDGE

25 Objection, Your Honor. I mean, declaring income has -- doesn't have any, I

1 mean, amended a tax return doesn't have anything with not declaring all of it.

2 MS. DOUCHY TO JUDGE

3 Well, he's saying he's declaring more income on the amended returns.

4 JUDGE TO MS. KHANDWALA

5 The question is, as you went along, did you always declare on your income, and
6 evidently he did not. So the question is why did you have to amend? Why didn't you
7 declare all the income as you went along? That's a legitimate question.

8 MS. SLOVINSKY TO JUDGE

9 That's not his testimony.

10 JUDGE TO MS. KHANDWALA

11 Overruled. I didn't say it was his testimony.

12 JUDGE TO MS. DOUCHY

13 Ask your question again.

14 MS. SLOVINSKY TO JUDGE

15 Should be clarification, Your Honor, because it's --

16 JUDGE TO MS. DOUCHY

17 Ask your question again.

18 MS. SLOVINSKY TO JUDGE

19 -- it's a complex tax issue.

20 JUDGE TO MR. [REDACTED]

21 Sir, it seems that as you, every year that you've paid taxes, you didn't declare all
22 of your income and you amended it to finally declare all your income, is that correct?

23 MR. [REDACTED] TO JUDGE

24 I wasn't sure of what had been done the previous years. That's why I went to a
25 professional, to make sure that things were in order or correct.

1 JUDGE TO MS. DOUCHY

2 Continue.

3 MS. DOUCHY TO MR. [REDACTED]

4 Well, did you learn that you didn't declare all of your income in prior years?

5 MR. [REDACTED] TO MS. DOUCHY

6 Yes, I found out.

7 MS. DOUCHY TO MR. [REDACTED]

8 And when did you learn this?

9 MR. [REDACTED] TO MS. DOUCHY

10 When I went to the, the tax professional.

11 MS. DOUCHY TO MR. [REDACTED]

12 And so --

13 JUDGE TO MR. [REDACTED]

14 In order --

15 JUDGE TO MS. DOUCHY

16 Excuse me.

17 JUDGE TO MR. [REDACTED]

18 -- in order to receive Medicaid for your daughter, did you have to fill out an

19 application?

20 MR. [REDACTED] TO JUDGE

21 When she was born, they offered her, us the application and it was filled out in

22 1996.

23 JUDGE TO MR. [REDACTED]

24 But you stopped it a few years ago. So between '96 and when you stopped it,

25 did you ever have to tell what your income was to get Medicaid for your daughter?

1 MR. [REDACTED] TO JUDGE

2 The truth, I really don't know how, how it was done. My wife was the person who
3 would have to provide the information and provided the information.

4 JUDGE TO MR. [REDACTED]

5 So my question is, when you had this million dollars worth of property, was your
6 daughter still getting Medicaid, if you know?

7 MR. [REDACTED] TO JUDGE

8 I think that she did, from what I spoke to my wife. She said there had no, there
9 was no problem in, for her to, for it to be given to her. When she went to apply, she
10 went there directly to the persons who would fill out this form, and they always
11 mentioned that she was a U.S. citizen of the United States and that there, we wouldn't
12 have no problem.

13 JUDGE TO MR. [REDACTED]

14 Well, U.S. citizens. The question is not whether your daughter was a U.S. citizen
15 and entitled to it.

16 MR. [REDACTED] TO JUDGE

17 Right.

18 JUDGE TO MR. [REDACTED]

19 That's not the question. But Medicaid is a form of welfare, of Government
20 assistance and the purpose of it is to give it to people who have no money or have a
21 very limited income. That's why I'm asking you these questions. So in other words, if,
22 if, while it's good to better yourself and be able to buy a million dollars worth of property
23 on the one hand, it doesn't seem equitable to take money or welfare for your daughter
24 on the other hand, if that's what happened. I don't know if that's what happened. That's
25 why I'm asking you these questions. But that's not even a question. That's, I'm just

1 telling you this.

2 JUDGE FOR THE RECORD

3 Let's go off the record for a moment. We'll go off the record for a moment -- is
4 we're not finished with the cross-examination, but the social worker was good enough to
5 give her time. She has to run her life.

6 JUDGE TO MR. [REDACTED]

7 So sir, if you could step down and if you would go over there? Thank you very
8 much.

9 JUDGE TO MS. [REDACTED]

10 Would you just state your name for the record?

11 MS. [REDACTED] TO JUDGE

12 [REDACTED]

13 JUDGE TO MS. [REDACTED]

14 Okay. And while you're standing, if you'd sit over there? Do you swear that
15 everything you say will be the truth, the whole truth and nothing but the truth?

16 MS. [REDACTED] TO JUDGE

17 Yes.

18 JUDGE TO MS. [REDACTED]

19 Thank you. Please be seated. Tell me your true and complete name?

20 MS. [REDACTED] TO JUDGE

21 [REDACTED]

22 JUDGE TO MS. [REDACTED]

23 And your occupation?

24 MS. [REDACTED] TO JUDGE

25 I'm a social worker and a -- licensed clinical social worker and psychotherapist.

1 JUDGE FOR THE RECORD

2 And we have the curriculum vitae in the record and the, and the report.

3 JUDGE TO MS. [REDACTED]

4 Have you read your report over that you submitted, the written report? Is
5 everything in it true and correct? Thank you. My name is Judge Lamb. This is Ms.
6 Douchy. She's a lawyer for the Government. I'm terribly sorry to have kept you waiting.
7 Our computer wasn't working --

8 MS. [REDACTED] TO JUDGE

9 That's okay. I --

10 JUDGE TO MS. [REDACTED]

11 -- this morning.

12 MS. [REDACTED] TO JUDGE

13 -- I heard about that.

14 JUDGE TO MS. [REDACTED]

15 So the lawyers are going to ask you some questions. If you don't understand a
16 question, tell me right away --

17 MS. [REDACTED] TO JUDGE

18 Okay.

19 JUDGE TO MS. [REDACTED]

20 -- talking about the phraseology. My job is to make it clear for you and when you
21 answer, please speak out loud.

22 MS. [REDACTED] TO JUDGE

23 Okay.

24 JUDGE TO MS. [REDACTED]

25 Thank you very much.

1 JUDGE TO MS. KHANDWALA

2 Counsel, your witness.

3 MS. KHANDWALA TO MS. [REDACTED]

4 Ms. [REDACTED] do you know [REDACTED] [REDACTED]

5 MS. [REDACTED] TO JUDGE

6 Yes, I do.

7 MS. KHANDWALA TO MS. [REDACTED]

8 And when did you first meet her?

9 MS. [REDACTED] TO MS. KHANDWALA

10 On October 27, 2010?

11 MS. KHANDWALA TO MS. [REDACTED]

12 And how did you come to meet her?

13 MS. [REDACTED] TO MS. KHANDWALA

14 Her parents brought her to see me because she was very anxious and having
15 panic --

16 MS. KHANDWALA TO MS. [REDACTED]

17 Have you been seeing her since then?

18 MS. [REDACTED] TO MS. KHANDWALA

19 I've been seeing her weekly since.

20 MS. KHANDWALA TO MS. [REDACTED]

21 For how long?

22 MS. [REDACTED] TO MS. KHANDWALA

23 How long are the sessions?

24 MS. KHANDWALA TO MS. [REDACTED]

25 For how long -- yeah?

1 MS. [REDACTED] TO MS. KHANDWALA

2 For a 45-minute sessions.

3 MS. KHANDWALA TO MS. [REDACTED]

4 And why did they, they bring her to see you? Why did they bring her?

5 MS. [REDACTED] TO MS. KHANDWALA

6 Because she was very anxious and having panic attacks.

7 MS. KHANDWALA TO MS. [REDACTED]

8 And did she talk to you about why she was having those panic attacks?

9 MS. [REDACTED] TO MS. KHANDWALA

10 Yes.

11 MS. KHANDWALA TO MS. [REDACTED]

12 Can you tell me more about those, that?

13 MS. [REDACTED] TO MS. KHANDWALA

14 She, [REDACTED] feels a tremendous responsibility for her parents, not only in terms
15 of this hearing, but I think in general. Because she's the only person in her family who
16 was born in this country, I think she feels tremendous pressure to be successful and,
17 and to be a good daughter to them. And that creates a lot of anxiety and stress.

18 MS. KHANDWALA TO MS. [REDACTED]

19 What, what symptoms does she exhibit?

20 MS. [REDACTED] TO MS. KHANDWALA

21 She's very anxious. She has panic attacks. There's an underlying depression
22 and she's overweight. And, and she doesn't have many activities outside of being with
23 her family.

24 MS. KHANDWALA TO MS. [REDACTED]

25 And what do you attribute those symptoms to? What is, what, what is causing

1 those symptoms?

2 MS. [REDACTED] TO MS. KHANDWALA

3 That she feels she needs to be close by her family and helpful to them and very
4 responsible.

5 MS. KHANDWALA TO MS. [REDACTED]

6 Now she, you said she came to you because she was having panic attacks?

7 MS. [REDACTED] TO MS. KHANDWALA

8 Um-hum.

9 MS. KHANDWALA TO MS. [REDACTED]

10 Has she talked to you about having panic attacks before, before she came to
11 meet with you?

12 MS. [REDACTED] TO MS. KHANDWALA

13 She had them since she began school this year, so that would be in September.

14 MS. KHANDWALA TO MS. [REDACTED]

15 And can you describe how her -- you know, what has she said to you about the
16 panic attacks?

17 MS. [REDACTED] TO MS. KHANDWALA

18 What she would say is that she would just get an uncontrollable wave of anxiety.
19 She would have difficulty breathing. Her heart would be pounding. Her mouth would be
20 dry, her stomach would hurt.

21 MS. KHANDWALA TO MS. [REDACTED]

22 And was she going to school during --

23 MS. [REDACTED] TO MS. KHANDWALA

24 She was going to school, but she had a hard time concentrating, particularly in
25 the morning and then it would subside after a while.

1 MS. KHANDWALA TO MS. [REDACTED]

2 And how was her ability to continue in school being impacted by these attacks?

3 MS. [REDACTED] TO MS. KHANDWALA

4 She's an excellent student and she tries very hard and I think she was able to
5 overcome it, but she wasn't really able to focus in the morning. She's, she's not been
6 able to do in well in school as she did in the past.

7 MS. KHANDWALA TO MS. [REDACTED]

8 And why, why has there been such an, an acceleration in her anxiety in the
9 recent months?

10 MS. [REDACTED] TO MS. KHANDWALA

11 Well, she's very worried about the hearing and she feels that the outcome of this
12 hearing is really on her shoulders.

13 MS. KHANDWALA TO MS. [REDACTED]

14 Can you say more about what she's told you regarding her father's deportation
15 case?

16 MS. [REDACTED] TO MS. KHANDWALA

17 She's worried and she's sad and she feels responsible for the outcome of it.

18 MS. KHANDWALA TO MS. [REDACTED]

19 And --

20 MS. [REDACTED] TO MS. KHANDWALA

21 Scared.

22 MS. KHANDWALA TO MS. [REDACTED]

23 -- and what is your diagnosis of [REDACTED] based on your sessions with her?

24 MS. [REDACTED] TO MS. KHANDWALA

25 She's having some difficulties in her normal functioning because of the anxiety,

1 depression, panic attacks, and some separation difficulties with her parents.

2 MS. KHANDWALA TO MS. [REDACTED]

3 Any child would be, you know, would be disturbed by a parent's deportation. Is
4 [REDACTED] different?

5 MS. DOUCHY TO JUDGE

6 Objection. Leading.

7 MS. KHANDWALA TO JUDGE

8 I'll rephrase.

9 JUDGE TO MS. DOUCHY

10 Sustained. Sustained.

11 MS. KHANDWALA TO MS. [REDACTED]

12 What do you think would happen to [REDACTED] if her father was deported?

13 MS. [REDACTED] TO MS. KHANDWALA

14 Well, right now, [REDACTED] has some underlying depression, but I feel it could
15 become much more severe and really paralyzing to her. Like she would feel a
16 tremendous amount of self-hatred and, and responsibility.

17 MS. KHANDWALA TO MS. [REDACTED]

18 And has she talked to you about, you know, has she talked to you about what
19 might happen to her practically if her father goes? Would she stay or would she go
20 back to the United States?

21 MS. [REDACTED] TO MS. KHANDWALA

22 She doesn't know and she, she feels frightened about that. Either outcome
23 would be very frightening and makes her very anxious.

24 MS. KHANDWALA TO MS. [REDACTED]

25 And does she say why each outcome makes her so nervous?

1 MS. [REDACTED] TO MS. KHANDWALA

2 She would be devastated if her life here was destructed and her family
3 destructed. But also, if she had to move to Mexico, that would, that would be very
4 difficult.

5 MS. KHANDWALA TO MS. [REDACTED]

6 Do you see [REDACTED] need for mental health services as continuing after this
7 case is over?

8 MS. [REDACTED] TO MS. KHANDWALA

9 Absolutely.

10 MS. KHANDWALA TO MS. [REDACTED]

11 And why?

12 MS. [REDACTED] TO MS. KHANDWALA

13 Because she's depressed and very anxious and I, I think the hearing is an
14 exaggeration of those symptoms, but she had them even before.

15 MS. KHANDWALA TO MS. [REDACTED]

16 And what is causing that anxiety?

17 MS. [REDACTED] TO MS. KHANDWALA

18 Feeling very responsible for her parents.

19 MS. KHANDWALA TO JUDGE

20 I have no more questions.

21 JUDGE TO MS. DOUCHY

22 Cross-examination?

23 MS. DOUCHY TO MS. [REDACTED]

24 Now, if, if [REDACTED] returned to Mexico with her family, what do you think would
25 happen?

1 MS. [REDACTED] TO MS. DOUCHY

2 What would happen?

3 MS. DOUCHY TO MS. [REDACTED]

4 If, if she stayed with her in, her family intact.

5 MS. [REDACTED] TO MS. DOUCHY

6 You mean, in terms of her mental health?

7 MS. DOUCHY TO MS. [REDACTED]

8 Yes. Assuming they could afford to support her and she could be educated
9 there?

10 MS. [REDACTED] TO MS. DOUCHY

11 Well I guess my biggest concern would be what kind of mental health services
12 she could get there.

13 MS. DOUCHY TO MS. [REDACTED]

14 Okay. And but what about, since her family was so intact, do you think that she
15 would, her mental health would be better because she wouldn't have this anxiety about
16 her father's deportation?

17 MS. [REDACTED] TO MS. DOUCHY

18 The anxiety is not just about the deportation. I think it's been exaggerated
19 because of that. It's about repaying her parents for coming to this country and giving
20 her so many opportunities that they didn't have.

21 MS. DOUCHY TO MS. [REDACTED]

22 And were you paid to prepare the report for her Immigration case?

23 MS. [REDACTED] TO MS. DOUCHY

24 I have not been paid yet, but I will be charging a fee.

25 MS. DOUCHY TO MS. [REDACTED]

1 What would, what fee are you charging for the report that you already filed?

2 MS. [REDACTED] TO MS. DOUCHY

3 I'm charging \$300 for the report and for appearing today.

4 MS. DOUCHY TO MS. [REDACTED]

5 So is that \$600 in total?

6 MS. [REDACTED] TO MS. DOUCHY

7 No, 300 total.

8 MS. DOUCHY TO MS. [REDACTED]

9 Three-hundred for the report and appearing?

10 MS. [REDACTED] TO MS. DOUCHY

11 Um-hum.

12 MS. DOUCHY TO MS. [REDACTED]

13 And is that the cost that you would normally charge for a report --

14 MS. [REDACTED] TO MS. DOUCHY

15 No, that's a reduced amount.

16 MS. DOUCHY TO MS. [REDACTED]

17 And why are you charging a reduced cost?

18 MS. [REDACTED] TO MS. DOUCHY

19 Because I felt the family couldn't afford a full amount.

20 MS. DOUCHY TO MS. [REDACTED]

21 And why did you feel that way?

22 MS. [REDACTED] TO MS. DOUCHY

23 In -- I felt it was a fair amount for that --

24 MS. DOUCHY TO MS. [REDACTED]

25 Because you, you thought --

1 MS. [REDACTED] TO MS. DOUCHY

2 I spoke with --

3 MS. DOUCHY TO MS. [REDACTED]

4 -- you, you said you thought that the family couldn't afford more?

5 MS. [REDACTED] TO MS. DOUCHY

6 Right.

7 MS. DOUCHY TO MS. [REDACTED]

8 Why, why did you feel that way?

9 MS. [REDACTED] TO MS. DOUCHY

10 In speaking to them about all the expenses they've had recently.

11 MS. DOUCHY TO MS. [REDACTED]

12 Did anything else lead you to that belief?

13 MS. [REDACTED] TO MS. DOUCHY

14 No.

15 MS. DOUCHY TO MS. [REDACTED]

16 And now isn't it typical for children to be upset about the prospect of a parent
17 being deported?

18 MS. [REDACTED] TO MS. DOUCHY

19 Absolutely.

20 MS. DOUCHY TO MS. [REDACTED]

21 And do you think most children in her situation, where the entire family is illegally
22 in this country, would have similar concerns to [REDACTED]

23 MS. [REDACTED] TO MS. DOUCHY

24 Her, her concern is not just about being deported? Is that what you're asking
25 me?

1 MS. DOUCHY TO MS. [REDACTED]

2 No. Well, well, my question is is whether it's, most children in her situation,
3 where the rest of the family's here illegally, would have similar concerns to her
4 concerns?

5 MS. [REDACTED] TO MS. DOUCHY

6 They may, but I believe that she is particularly emotionally fragile.

7 MS. DOUCHY TO MS. [REDACTED]

8 And how much, now you said you, you see her ever week. How much do you
9 charge for your sessions?

10 MS. [REDACTED] TO MS. DOUCHY

11 \$100.

12 MS. DOUCHY TO MS. [REDACTED]

13 And has that been paid?

14 MS. [REDACTED] TO MS. DOUCHY

15 Yes.

16 MS. DOUCHY TO MS. [REDACTED]

17 And do you know why you haven't been paid for the report which was already
18 submitted?

19 MS. [REDACTED] TO MS. DOUCHY

20 I, I told them I would be paid after the hearing. I would expect to be paid after the
21 hearing. I didn't ask them for payment before.

22 MS. DOUCHY TO JUDGE

23 I have no further questions, Your Honor.

24 JUDGE TO MS. DOUCHY

25 Okay.

1 JUDGE TO MS. [REDACTED]

2 Do you deal with immigrant children in your practice?

3 MS. [REDACTED] TO JUDGE

4 Um-hum.

5 JUDGE TO MS. [REDACTED]

6 So you do? So when you say that you feel [REDACTED] is particularly emotionally
7 fragile, what do you mean by that?

8 MS. [REDACTED] TO JUDGE

9 I --

10 JUDGE TO MS. [REDACTED]

11 Or what do you base that on?

12 MS. [REDACTED] TO JUDGE

13 -- I think since she's been very young that she's felt a tremendous responsibility
14 for her parents, that she's, has a very heightened sense of being the only one in her
15 family that was born here and feels a lot of pressure to be very successful and
16 essentially to repay her parents for --

17 JUDGE TO MS. [REDACTED]

18 Are you saying that's not typical of similarly situated immigrant children with
19 immigrant parents?

20 MS. [REDACTED] TO JUDGE

21 Not as much with her.

22 JUDGE TO MS. [REDACTED]

23 Not as much --

24 MS. [REDACTED] TO JUDGE

25 As, as with her.

1 JUDGE TO MS. [REDACTED]

2 So is it your testimony, if I understand you, that even if she, whether, regardless
3 of the outcome of this hearing, she will need psychological help?

4 MS. [REDACTED] TO JUDGE

5 Yes.

6 JUDGE TO MS. [REDACTED]

7 Whether or not her father wins the case or loses the case, she needs
8 psychological help?

9 MS. [REDACTED] TO JUDGE

10 Yes.

11 JUDGE TO MS. [REDACTED]

12 Right. And you, I think you said you don't know, you're concerned, but you don't
13 know if she could get it in Mexico, so your testimony would be you don't know if any
14 services would be --

15 MS. [REDACTED] TO JUDGE

16 Or what kind of treatment she could get.

17 JUDGE TO MS. [REDACTED]

18 But in Mexico?

19 MS. [REDACTED] TO JUDGE

20 I imagine there would be something available. I don't know --

21 JUDGE TO MS. [REDACTED]

22 But we just don't know that?

23 MS. [REDACTED] TO JUDGE

24 -- right.

25 JUDGE TO MS. [REDACTED]

1 Okay. Thank you.

2 JUDGE TO MS. KHANDWALA

3 Counsel?

4 MS. KHANDWALA TO MS. [REDACTED]

5 Has, has [REDACTED] talked to you about, you know, things in her life here that she

6 appreciates the most?

7 MS. DOUCHY TO JUDGE

8 Objection. It goes beyond the scope of cross-examination.

9 JUDGE TO MS. KHANDWALA

10 Beyond cross. Anything further for this witness? Sorry?

11 MS. KHANDWALA TO JUDGE

12 We're good, Your Honor.

13 JUDGE TO MS. KHANDWALA

14 Okay.

15 JUDGE TO MS. DOUCHY

16 Anything else?

17 MS. DOUCHY TO JUDGE

18 I have no further questions for this witness.

19 JUDGE TO MS. [REDACTED]

20 Thank you very much. I appreciate your time.

21 MS. [REDACTED] TO JUDGE

22 Okay. Yes.

23 JUDGE TO MS. [REDACTED]

24 I'm so sorry you got stuck with our --

25 MS. [REDACTED] TO JUDGE

1 I understand.

2 JUDGE TO MS. [REDACTED]

3 -- troubles this morning.

4 MS. [REDACTED] TO JUDGE

5 No problem.

6 JUDGE TO MS. [REDACTED]

7 Thank you very much.

8 MS. [REDACTED] TO JUDGE

9 Okay. Thank you.

10 JUDGE TO MS. [REDACTED]

11 Okay.

12 JUDGE FOR THE RECORD

13 And that completes the testimony. And we'll mark the, her report into the record

14 as an exhibit.

15 MS. DOUCHY TO JUDGE

16 Okay. I have no --

17 JUDGE TO MS. DOUCHY

18 Okay. Thank you.

19 MS. DOUCHY TO JUDGE

20 -- further objections to it, Your Honor.

21 JUDGE TO MS. DOUCHY

22 All right.

23 JUDGE TO MS. KHANDWALA

24 Now, we're back on -- is that your only witness?

25 MS. KHANDWALA TO JUDGE

1 No, Your Honor.

2 JUDGE TO MS. KHANDWALA

3 You have a telephonic?

4 MS. KHANDWALA TO JUDGE

5 We have her guidance counselor.

6 JUDGE TO MS. KHANDWALA

7 Who is here today?

8 MS. KHANDWALA TO JUDGE

9 Who is going to testify telephonically.

10 JUDGE TO MS. KHANDWALA

11 Yeah. Telephonically. Okay. Bring the respondent back so we may --

12 JUDGE TO MS. DOUCHY

13 How much do you have left on your cross?

14 MS. DOUCHY TO JUDGE

15 Not so much, Your Honor.

16 JUDGE TO MS. DOUCHY

17 All right. You want to --

18 MS. DOUCHY TO JUDGE

19 I don't think I have very much.

20 JUDGE TO MS. DOUCHY

21 -- just continue then?

22 JUDGE FOR THE RECORD

23 We were off the record before and I want to point out it wasn't we were

24 discussing this case. We had computer problems this morning and I was talking to

25 lawyers about scheduling their cases. So we were not, didn't have an off the record on

1 this. We interrupted the cross-examination to allow the witness, the social worker, to
2 testify because she has a schedule and she had to leave. So we now continue with the
3 cross-examination of the respondent.

4 JUDGE TO MS. DOUCHY

5 Ms. Douchy?

6 MS. DOUCHY TO MR. [REDACTED]

7 So sir, is it your testimony that while you knew your daughter was receiving
8 Medicaid until a year ago, you thought it was okay because she's a U.S. citizen?

9 MR. [REDACTED] TO MS. DOUCHY

10 Yes. Until that date, I did not know that it was incorrect. But we tried to fix that or
11 better that.

12 MS. DOUCHY TO INTERPRETER

13 I'm sorry?

14 INTERPRETER TO MS. DOUCHY

15 We tried to --

16 JUDGE TO MS. DOUCHY

17 To fix it or better it.

18 MS. DOUCHY TO MR. [REDACTED]

19 What do you mean you tried to fix it or better it?

20 MR. [REDACTED] TO MS. DOUCHY

21 To discontinue.

22 MS. DOUCHY TO MR. [REDACTED]

23 And the, the social worker who just testified, did you disclose all of your income
24 to her, including all your rental income?

25 MR. [REDACTED] TO MS. DOUCHY

1 No. Because she never asked us anything about income. We, she was referred
2 by a person who knows us, who knows, who is aware of all the things that we're going
3 through or all of our expenses and everything.

4 MS. DOUCHY TO MR. [REDACTED]

5 And did, do your older children, or did your older children attend college in the
6 United States?

7 MR. [REDACTED] TO MS. DOUCHY

8 Yes. My two children finished university.

9 MS. DOUCHY TO MR. [REDACTED]

10 And did they receive financial aid?

11 MR. [REDACTED] TO MS. DOUCHY

12 No. Never. I paid their university.

13 MS. DOUCHY TO MR. [REDACTED]

14 Do you have any proof of that?

15 MR. [REDACTED] TO MS. DOUCHY

16 Yes. I have. I can get and I have proof that I paid their, their university.

17 MS. DOUCHY TO MR. [REDACTED]

18 And now, isn't the cost of living in Mexico much cheaper than it is in the United
19 States?

20 MR. [REDACTED] TO MS. DOUCHY

21 No. I think we're about the same. And when I went to Mexico, I checked on that,
22 what the cost of living was. The only difference is that the income that you would get
23 there would be much less.

24 MS. DOUCHY TO MR. [REDACTED]

25 Well, when you said you, when you returned, when, when are you referring to?

1 MR. [REDACTED] TO MS. DOUCHY

2 When I went to, to visit my father who was ill in Mexico.

3 MS. DOUCHY TO MR. [REDACTED]

4 So that was what you referred, testified to earlier in 1997, which is 13, over 13
5 years ago? Is that right?

6 MR. [REDACTED] TO MS. DOUCHY

7 Yes.

8 MS. DOUCHY TO MR. [REDACTED]

9 And one of your relatives submitted a statement indicating that someone worked
10 as a maid for \$300 a month, is that correct?

11 MR. [REDACTED] TO MS. DOUCHY

12 It's correct.

13 MS. DOUCHY TO MR. [REDACTED]

14 And so, now, if you sold all your real estate in the United States that you have,
15 over a million dollars, isn't that right?

16 MR. [REDACTED] TO MS. DOUCHY

17 I'm not sure, but perhaps, yes.

18 MS. DOUCHY TO MR. [REDACTED]

19 And so couldn't you retire on that income in Mexico and live a nice life there?

20 MR. [REDACTED] TO MS. DOUCHY

21 I don't trying to retire right now. I believe I have a lot to, skill to offer this country.
22 Because I feel young and I believe that I could continue working and struggling and to
23 help, help my daughter forge ahead, my daughter [REDACTED]

24 MS. DOUCHY TO MR. [REDACTED]

25 Now, if you return to Mexico, couldn't you open a business there on a, with the

1 income you have from your real estate?

2 MR. [REDACTED] TO MS. DOUCHY

3 I would like to do that, but looking at it and speaking to my family, one of my, of
4 my nephews did that. He opened up a business and because of the insecurity and the
5 violence that were living through right now in my country, he was attacked or assaulted
6 and the kidnapped him for some days, some hours. And they took the product that he
7 worked with, his machines that he was working with. Thank God he's still young and
8 wants again to work hard and to pick himself up again. And that is my fear to return to
9 my country.

10 MS. DOUCHY TO MR. PEDRERO

11 Now, at the beginning of the hearing, you, your attorney went over the, your
12 application with you and made only three changes to that application. And so is it your
13 testimony that the information on the cancellation application is true and correct?

14 MR. [REDACTED] TO MS. DOUCHY

15 It's correct.

16 MS. DOUCHY TO MR. [REDACTED]

17 And that application indicates that your net annual income that you received for
18 painting was \$17,000 in 2008, 19,000 in 2007 and 14,000 in 2006, is that right?

19 MR. [REDACTED] TO MS. DOUCHY

20 It's correct, what was submitted. But also, it's correct that we made an
21 amendment to those years.

22 MS. DOUCHY TO MR. [REDACTED]

23 Now, the application which was filed in January of 2010 also indicates that your
24 daughter was still receiving Medicaid at the time it was filed. Was that correct?

25 MR. [REDACTED] TO MS. DOUCHY

1 As I said, I'm not sure. But a year ago, it got discontinued.

2 MS. DOUCHY TO MR. [REDACTED]

3 And so why didn't you change that on your application when you made the
4 amendments?

5 MR. [REDACTED] TO MS. DOUCHY

6 I didn't, I didn't see it. I didn't realize it.

7 MS. DOUCHY TO MR. [REDACTED]

8 And do you own any automobiles?

9 MR. [REDACTED] TO MS. DOUCHY

10 Yes.

11 MS. DOUCHY TO MR. [REDACTED]

12 How many cars do you own?

13 MR. [REDACTED] TO MS. DOUCHY

14 One.

15 MS. DOUCHY TO MR. [REDACTED]

16 And when did you purchase that?

17 MR. [REDACTED] TO MS. DOUCHY

18 In the year, in the year 2002, I believe. I'm not exactly sure.

19 MS. DOUCHY TO MR. [REDACTED]

20 And what type of car is it?

21 MR. [REDACTED] TO MS. DOUCHY

22 It's a minivan. Chevy Venture.

23 MS. DOUCHY TO MR. [REDACTED]

24 And what was the purchase price of the car?

25 MR. [REDACTED] TO MS. DOUCHY

1 \$7,500, \$7,250.

2 MS. DOUCHY TO MR. [REDACTED]

3 And did you purchase that outright?

4 MR. [REDACTED] TO MS. DOUCHY

5 Yes.

6 MS. DOUCHY TO MR. [REDACTED]

7 And so why isn't that automobile included on your application?

8 MS. KHANDWALA TO JUDGE

9 It is, Your Honor. On page 3.

10 MS. DOUCHY TO JUDGE

11 Oh, it's not showing his currently -- okay.

12 MS. DOUCHY TO MR. [REDACTED]

13 And --

14 JUDGE TO MS. DOUCHY

15 It is on the application.

16 MS. DOUCHY TO JUDGE

17 I, I see it. I see it. I see it. Okay.

18 MS. DOUCHY TO MR. [REDACTED]

19 And do you know why it says the value of it is \$2,500?

20 MR. [REDACTED] TO MS. DOUCHY

21 Yes, because it's from the year 1998.

22 JUDGE TO MS. DOUCHY

23 Well, it doesn't say purchase price, it says value, right?

24 MS. DOUCHY TO JUDGE

25 Right. Okay.

1 MS. DOUCHY TO MR. [REDACTED]

2 And now you testified today that you never received public assistance, is that
3 right?

4 MR. [REDACTED] TO MS. DOUCHY

5 Well, speaking of Medicaid, now that I am aware that it's a public assistance, in
6 the year 1992, I believe, I had a appendicitis operation and the same, they gave me a
7 temporary Medicaid. And that was, I arrived in '89 or '92. I, I was recently have arrived
8 in the United State, in this country.

9 MS. DOUCHY TO JUDGE

10 I don't think I have any more questions, Your Honor. Just let me --

11 MS. KHANDWALA TO MR. [REDACTED]

12 Sir, you -- said you have two --

13 JUDGE TO MS. KHANDWALA

14 Wait a minute.

15 JUDGE TO MS. DOUCHY

16 I'm sorry, did you finish?

17 MS. DOUCHY TO JUDGE

18 Yes, I, I --

19 MS. KHANDWALA TO JUDGE

20 Oh, oh. Yeah, yeah.

21 JUDGE TO MS. DOUCHY

22 Oh, I'm sorry. I didn't hear what you said. Oh, I'm sorry.

23 JUDGE TO MS. KHANDWALA

24 Redirect?

25 MS. KHANDWALA TO MR. [REDACTED]

1 Sir, and as you said, you have two properties?

2 MR. [REDACTED] TO MS. KHANDWALA

3 That's correct.

4 MS. KHANDWALA TO MR. [REDACTED]

5 And, and you testified that the first one was bought in 2003?

6 MR. [REDACTED] TO MS. KHANDWALA

7 That's correct.

8 MS. KHANDWALA TO MR. [REDACTED]

9 How much do you owe on that property?

10 MR. [REDACTED] TO MS. KHANDWALA

11 Up to the present?

12 JUDGE TO MR. [REDACTED]

13 Right now, how much do you owe on it?

14 MS. KHANDWALA TO MR. [REDACTED]

15 What's the outstanding mortgage, yeah?

16 MR. [REDACTED] TO MS. KHANDWALA

17 Approximately \$230, 35,000.

18 MS. KHANDWALA TO MR. [REDACTED]

19 And you said the purchase price was 465, 000?

20 MR. [REDACTED] TO MS. KHANDWALA

21 That's correct.

22 MS. KHANDWALA TO MR. [REDACTED]

23 And do you know what the value of the house would be today?

24 MR. [REDACTED] TO MS. KHANDWALA

25 I don't know it.

1 MS. KHANDWALA TO MR. [REDACTED]

2 Do you know approximately what happened to property values in that area?

3 MR. [REDACTED] TO MS. KHANDWALA

4 The only thing I know is that they have been reduced.

5 MS. KHANDWALA TO MR. [REDACTED]

6 And what is your monthly payment on this property?

7 MS. DOUCHY TO JUDGE

8 Objection. Asked and answered. I asked him that.

9 JUDGE TO MS. KHANDWALA

10 I think we've been through the financials for, of this.

11 MS. KHANDWALA TO JUDGE

12 Oh. I'm just trying to establish, Your Honor, that the expenses that are on the, on
13 the --

14 JUDGE TO MS. KHANDWALA

15 Know what his -- okay. All right.

16 MS. KHANDWALA TO MR. [REDACTED]

17 Do you pay taxes on that property?

18 MR. [REDACTED] TO MS. KHANDWALA

19 Yes. You pay taxes.

20 MS. KHANDWALA TO MR. [REDACTED]

21 And what are your quarterly taxes?

22 MR. [REDACTED] TO MS. KHANDWALA

23 Approximately \$10,000.

24 JUDGE TO MR. [REDACTED]

25 Quarterly?

1 MS. KHANDWALA TO MR. [REDACTED]

2 For --

3 MR. [REDACTED] TO JUDGE

4 That's 2,500, 2,600 quarterly.

5 JUDGE TO MR. [REDACTED]

6 So, so it's about \$10,000 a year?

7 MR. [REDACTED] TO JUDGE

8 Around.

9 JUDGE TO MR. [REDACTED]

10 Is that what you meant?

11 MR. [REDACTED] TO JUDGE

12 Yes. Approximately.

13 MS. KHANDWALA TO MR. [REDACTED]

14 And how much do you spend annually in maintenance?

15 MR. [REDACTED] TO MS. KHANDWALA

16 At present, we're spending approximately \$8,000. Pardon. Do you, does that
17 include also the taxes?

18 MS. KHANDWALA TO MR. [REDACTED]

19 Not the property taxes. Excluding property taxes?

20 JUDGE TO MS. KHANDWALA

21 What do you mean, counsel? To maintain the house?

22 MS. KHANDWALA TO JUDGE

23 Maintenance expenses, yeah.

24 JUDGE TO MR. [REDACTED]

25 So the expenses of keeping the house up for a year? What would you say that

1 is?

2 MR. [REDACTED] TO JUDGE

3 Yes. Approximately \$8,000.

4 JUDGE TO MR. [REDACTED]

5 Are you renting that house out?

6 MR. [REDACTED]

7 Yes. It's rented.

8 JUDGE TO MR. [REDACTED]

9 And what is your total rental income per year on that house?

10 MR. [REDACTED] TO JUDGE

11 Approximately 95, \$100,000.

12 JUDGE TO MR. [REDACTED]

13 So does the rental cover all the expenses?

14 MR. [REDACTED] TO JUDGE

15 Yes.

16 JUDGE TO MR. [REDACTED]

17 And you have leftover income as well?

18 MR. [REDACTED] TO JUDGE

19 Yes.

20 JUDGE TO MR. [REDACTED]

21 About how much leftover do you have?

22 MR. [REDACTED] TO JUDGE

23 I'm not sure. But what I do know is that it covers my expenses.

24 JUDGE TO MR. [REDACTED]

25 So you don't know how much extra income you have from it, approximately?

1 MR. [REDACTED] TO JUDGE

2 The, Your Honor, I don't, I don't know.

3 JUDGE TO MR. [REDACTED]

4 And the same for the other house? How -- do, the other house, is there any
5 rental income on it?

6 MR. [REDACTED] TO JUDGE

7 Yes. There is also an apartment that's rented.

8 JUDGE TO MR. [REDACTED]

9 How much do you get for that?

10 MR. [REDACTED] TO JUDGE

11 \$1,700 monthly.

12 JUDGE TO MR. [REDACTED]

13 How much tax is on that house?

14 MR. [REDACTED] TO JUDGE

15 Approximately 3,500 per year.

16 JUDGE TO MR. [REDACTED]

17 Okay. Did you get a mortgage for these houses?

18 MR. [REDACTED] TO JUDGE

19 Yes.

20 JUDGE TO MR. [REDACTED]

21 From a bank?

22 MR. [REDACTED] TO JUDGE

23 No.

24 JUDGE TO MR. [REDACTED]

25 Where'd you get them?

1 MR. [REDACTED] TO JUDGE

2 Well, since in my situation I don't have a social security, a bank never was able to
3 provide me a mortgage.

4 JUDGE TO MR. [REDACTED]

5 All right. So where'd you get your mortgage?

6 MR. [REDACTED] TO JUDGE

7 So what I did was to go to private lenders.

8 JUDGE TO MS. KHANDWALA

9 Continue.

10 MS. KHANDWALA TO MR. [REDACTED]

11 How much do you owe on the property, on the second property, the [REDACTED] Street
12 property? How much do you currently own at the outstanding mortgage?

13 MR. [REDACTED] TO MS. KHANDWALA

14 Approximately \$390,000.

15 MS. KHANDWALA TO MR. [REDACTED]

16 And what has, what, do you know anything that's happened to the value of the
17 house, that house currently?

18 MR. [REDACTED] TO MS. KHANDWALA

19 No. The only thing I know is that the prices have gone down or been reduced.

20 MS. KHANDWALA TO MR. [REDACTED]

21 So do you own, is, is the value of your property a million dollars?

22 MR. [REDACTED] TO MS. KHANDWALA

23 Perhaps.

24 MS. KHANDWALA TO MR. [REDACTED]

25 But you would need to pay off the mortgages first?

1 MR. [REDACTED] TO MS. KHANDWALA

2 Definitely, yes.

3 MS. KHANDWALA TO MR. [REDACTED]

4 So how much would you net even if you were to sell all your, well, properties?

5 MS. DOUCHY TO JUDGE

6 Objection. Calls for speculation.

7 JUDGE TO MS. KHANDWALA

8 Yeah. When he says he doesn't know the market value.

9 MS. KHANDWALA TO JUDGE

10 You know, based on even his value at one million, I mean, I just want to establish
11 that, given his mortgages. He doesn't, he can't --

12 JUDGE TO MS. KHANDWALA

13 I know what you're trying to establish, yes.

14 MS. KHANDWALA TO JUDGE

15 Okay.

16 MS. KHANDWALA TO MR. [REDACTED]

17 What was the condition of the second property when you bought it?

18 MS. DOUCHY TO JUDGE

19 Objection. Relevance.

20 JUDGE TO MS. KHANDWALA

21 What, what is the relevance here, counsel?

22 MS. KHANDWALA TO JUDGE

23 Relevance is that he spent a lot of money --

24 JUDGE TO MS. KHANDWALA

25 Yeah, but that's not the point.

1 MS. KHANDWALA TO JUDGE

2 He --

3 JUDGE TO MS. KHANDWALA

4 The point here is were you getting welfare while you had all this money. That's
5 the, that's my, my concern here. I mean, if this is a hardworking immigrant who's --
6 that's fine. But you can't have Medicaid and, and have this money. So I'd be interested
7 and if there's a Medicaid application that listed an income, I'd like to see that. If there're
8 income taxes where he said he made \$17,000 and he had a million dollar property,
9 that's not correct either. If he only amended it because he had an Immigration case, is
10 that what happened? I don't know.

11 MS. KHANDWALA TO JUDGE

12 Okay.

13 JUDGE TO MS. KHANDWALA

14 But so my, those, those are my concerns, because you can't have it both ways.
15 You can't work the system. Because we have a country that's bleeding right now and
16 we, it's wrong if certain things happen. I don't know if certain things happened here, but
17 that is the nature of the question that I've allowed.

18 MS. KHANDWALA TO MR. [REDACTED]

19 Who -- why did you, why were your last two years' taxes amended?

20 MR. [REDACTED] TO MS. KHANDWALA

21 Because, I did that because I was looking at all the documents that were
22 presented and they were, and I, I looked at the documents and I wasn't sure of what the
23 tax preparer was doing.

24 JUDGE TO MR. [REDACTED]

25 Well, what put this in your mind?

1 MR. [REDACTED] TO JUDGE

2 What, well, what put that in my mind was that I went and I looked at the
3 documents, but I, it wasn't really understanding what I was looking at. When I found out
4 that something was wrong, and it's something that I'm not familiarized with, numbers,
5 taxes, then I went to the tax --

6 JUDGE TO MR. [REDACTED]

7 So the, my question --

8 MR. [REDACTED] TO JUDGE

9 -- professional.

10 JUDGE TO MR. [REDACTED]

11 -- would be all these years passed and you didn't look back on them and
12 evidently, and these questions didn't come into your head. What all the sudden made
13 you look backwards at these taxes?

14 MR. [REDACTED] TO JUDGE

15 It came to my mind I always wanted to live with things in order here in this
16 country and trying to live in the best order possible, the way you live here in the United
17 States. That brought to my mind to review the numbers that I had and to consult them
18 with a professional and that's what I went to do.

19 JUDGE TO MR. [REDACTED]

20 Thank you.

21 JUDGE TO MS. KHANDWALA

22 Continue.

23 MS. KHANDWALA TO MR. [REDACTED]

24 Who did you, who amended these returns for you?

25 MR. [REDACTED] TO MS. KHANDWALA

1 A, a public accountant, accountant. The company's called [REDACTED]

2 MS. KHANDWALA TO MR. [REDACTED]

3 And how did you find him?

4 MR. [REDACTED] TO MS. KHANDWALA

5 As a recommendation from some persons that I know.

6 MS. KHANDWALA TO MR. [REDACTED]

7 Who were you using before that?

8 MR. [REDACTED] TO MS. KHANDWALA

9 I was using someone by the name of Pakita Del Trey [phonetic sp.]. I also didn't
10 know if she was a public accountant.

11 MS. DOUCHY TO INTERPRETER

12 I'm sorry?

13 JUDGE TO MS. DOUCHY

14 He didn't know if she was a public --

15 MS. DOUCHY TO JUDGE

16 Okay.

17 MR. [REDACTED] TO MS. KHANDWALA

18 Because as I repeated to you previously, I wasn't familiarized with numbers or
19 taxes or anything like that. The same thing, some people that I know referred me to her
20 and that's why I had been doing them with her.

21 MS. KHANDWALA TO MR. [REDACTED]

22 Did you, did you provide the same information -- the same information that you
23 provided to your prior accountant, did you provide anything different to the person who
24 amended your taxes?

25 MR. [REDACTED] TO MS. KHANDWALA

1 No, it wasn't the same information. Because Pakita Del Trey never asked me for
2 information. Only the first year, and then later on she automatically did them herself.

3 MS. KHANDWALA TO MR. [REDACTED]

4 And what did, what information did you provide to Mr. [REDACTED]

5 MR. [REDACTED] TO MS. KHANDWALA

6 Mr. [REDACTED] we gave all the information, receipts, proof of what has been done,
7 what has been repaired, the taxes of the property, and every expense that has, had
8 been made until the present.

9 JUDGE TO MS. KHANDWALA

10 Do we have these amendments?

11 MS. KHANDWALA TO JUDGE

12 No.

13 JUDGE TO MS. KHANDWALA

14 Why is that?

15 MS. KHANDWALA TO JUDGE

16 We have [indiscernible], Your Honor.

17 JUDGE TO MS. KHANDWALA

18 Yeah, but, I understand that you do. But why weren't they submitted?

19 MS. KHANDWALA TO JUDGE

20 We just obtained them recently because this was done --

21 JUDGE TO MS. KHANDWALA

22 When were they filed?

23 MS. KHANDWALA TO JUDGE

24 End of, end of December.

25 MS. KHANDWALA TO MR. [REDACTED]

1 When was --

2 MR. [REDACTED] TO MS. KHANDWALA

3 This December.

4 JUDGE TO MR. [REDACTED]

5 So they were just filed, the, the taxes weren't amended until December of 2010,
6 is that correct? Am I correct?

7 MR. [REDACTED] TO JUDGE

8 That's correct.

9 MS. KHANDWALA TO MR. [REDACTED]

10 When did you go to see Mr. [REDACTED]

11 MR. [REDACTED] TO MS. KHANDWALA

12 I went to see Mr. [REDACTED] I don't recall exactly the date. September or
13 October, around that time.

14 MS. KHANDWALA TO MR. [REDACTED]

15 And why did the process take this long?

16 MR. [REDACTED] TO MS. KHANDWALA

17 I, it took a long time because basically, I did not have everything in order. I had
18 to go and look for all of the receipts and proof that I had.

19 JUDGE TO MR. [REDACTED]

20 Did you end up having to make payment to the IRS?

21 MR. [REDACTED] TO JUDGE

22 Not as yet. Because they were submitted and we are waiting to find out what is
23 owed.

24 JUDGE TO MR. [REDACTED]

25 Okay. And what did you, when you submitted these documents, did you submit

1 information that you had more income than you originally said you did?

2 MR. [REDACTED] TO JUDGE

3 Once again, we, he checked all my documents --

4 JUDGE TO MR. [REDACTED]

5 Sir, this is an easy answer. Did you have to list more income than you did before
6 or you submitted the same thing?

7 MR. [REDACTED] TO JUDGE

8 I don't, it was not a lot, the difference, but I think it was more.

9 JUDGE TO MR. [REDACTED]

10 Sir, if you had to amend, that would say -- if, if everything was the same, you
11 wouldn't have an amendment, isn't that right?

12 MR. [REDACTED] TO JUDGE

13 That's correct.

14 JUDGE TO MS. KHANDWALA

15 Continue.

16 MS. KHANDWALA TO JUDGE

17 Your Honor, we have the amended returns for the three years and there's
18 actually an, an, a three. One, two years the income went down because --

19 MS. SLOVINSKY TO JUDGE

20 This is a rough calculation.

21 MS. KHANDWALA TO JUDGE

22 -- of the expenses, yeah.

23 MS. SLOVINSKY TO JUDGE

24 It's -- calculation. It's not about lying or misstating gross income.

25 JUDGE TO MS. KHANDWALA AND MS. SLOVINSKY

1 No. The purpose of the, my line of question is about was income misstated.
2 That's exactly the reason for this line of questioning.

3 MS. KHANDWALA TO JUDGE

4 And based on all the information they provided, the, the income actually went
5 down. And, and this, I mean, I can ask him more questions, but this is a very exhausted
6 process, as he said, which they provided all their receipts, everything.

7 JUDGE TO MS. KHANDWALA

8 Well, unfortunately I don't have that to look at.

9 MS. KHANDWALA TO JUDGE

10 Okay. Your Honor, I can actually, at this point, I'd like to submit the amended
11 returns for 2007, '08 and '09. Can I do that?

12 JUDGE TO MS. KHANDWALA

13 You can submit them. I'm not going to have time to look at them right now or to
14 absorb them, but you can submit them. It's not within the Court rules.

15 JUDGE FOR THE RECORD

16 On the record. We're waiting for documents. Okay. They're not hole-punched
17 and they're not in the right form.

18 MS. SLOVINSKY TO JUDGE

19 Yeah.

20 JUDGE FOR THE RECORD

21 I'm putting received in court, today's date, 01/18/11.

22 JUDGE TO MS. SLOVINSKY

23 If you have a hole-punch there, would you please do that?

24 MS. SLOVINSKY TO JUDGE

25 Yeah.

1 MS. SLOVINSKY TO JUDGE

2 Thank you.

3 JUDGE TO MS. KHANDWALA

4 Continue. Thank you. Continue.

5 MS. KHANDWALA TO MR. [REDACTED]

6 Sir, between September, 2010 and December when the returns were amended,
7 how often did you meet with or talk with Mr. [REDACTED]

8 INTERPRETER TO MS. KHANDWALA

9 Clarification, the interpreter? How often --

10 MS. KHANDWALA TO MR. [REDACTED]

11 -- did you meet with or talk to Mr. [REDACTED]

12 MS. DOUCHY TO JUDGE

13 Objection. Relevance?

14 JUDGE TO MS. DOUCHY

15 I'll let it, but I --

16 MR. [REDACTED] TO MS. KHANDWALA

17 Several times.

18 JUDGE TO MR. [REDACTED]

19 Okay.

20 MS. KHANDWALA TO MR. [REDACTED]

21 And did he ask you a lot of questions and you had to provide information?

22 MR. [REDACTED] TO MS. KHANDWALA

23 Yes.

24 MS. KHANDWALA TO MR. [REDACTED]

25 And had you been asked to provide that information or asked those questions in

1 the past?

2 MR. [REDACTED] TO MS. KHANDWALA

3 No. Never.

4 JUDGE TO MR. [REDACTED]

5 Your adult children work?

6 MR. [REDACTED] TO JUDGE

7 Unfortunately, my, Your Honor, my children have graduated, but in the same
8 situation that their father is and they are in also. They don't have a social security
9 number in order to be able to work at the profession that they graduated at, of --

10 JUDGE TO MR. [REDACTED]

11 So is the answer they don't work?

12 MR. [REDACTED] TO JUDGE

13 No. My son is --

14 JUDGE TO MR. [REDACTED]

15 All right. So the, your children don't, except for your daughter born here, don't
16 have green cards, is that what you're saying? Is that true?

17 MR. [REDACTED] TO JUDGE

18 They don't have.

19 JUDGE TO MR. [REDACTED]

20 They don't? Is there a reason you don't list your wife?

21 MR. [REDACTED] TO JUDGE

22 I think she's listed.

23 JUDGE TO MR. [REDACTED]

24 As a dependent?

25 MR. [REDACTED] TO JUDGE

1 It think she, I think she's always been listed. I don't know if there's any error
2 committed.

3 MS. KHANDWALA TO JUDGE

4 Or down here --

5 JUDGE TO MR. [REDACTED]

6 Well, I don't see her listed as a dependent.

7 JUDGE TO MS. KHANDWALA

8 Continue.

9 MS. SLOVINSKY TO JUDGE

10 Because you're married, filing jointly, right?

11 JUDGE TO MS. SLOVINSKY

12 That's not what I asked. He list how many dependents. He lists the children. He
13 doesn't list the wife. I was just curious as to why.

14 JUDGE TO MS. KHANDWALA

15 Continue.

16 MS. KHANDWALA TO MR. [REDACTED]

17 Mr. [REDACTED] you testified that, that [REDACTED] received Medicaid. Is that, is it, do
18 you know if it's, if, if you're using that term for the assistance she's getting or is it
19 Medicaid? Do you know the specific program that she's --

20 JUDGE TO MS. KHANDWALA

21 I'm sorry. I don't understand that question --

22 MS. KHANDWALA TO JUDGE

23 I'm --

24 JUDGE TO MS. KHANDWALA

25 -- because he's testified that she's not receiving Medicaid.

1 MS. KHANDWALA TO JUDGE

2 Well, I'm sorry, Your Honor. Just to clarify that she, when she was receiving
3 Medicaid, I want to clarify what kind of program she was in, whether it was Medicaid or
4 some other program.

5 JUDGE TO MR. [REDACTED]

6 So you said your daughter once received Medicaid? When you said Medicaid,
7 exactly what did you mean? Was that the name of the program? Was that the kind of
8 money?

9 MR. [REDACTED] TO JUDGE

10 I, I, it seems like that was the name of the program.

11 JUDGE TO MR. [REDACTED]

12 Okay.

13 MS. KHANDWALA TO JUDGE

14 Your Honor, if we can provide that information, but it, she was, he, she was
15 enrolled in the, the New York State Family Health Program.

16 JUDGE TO MS. KHANDWALA

17 I don't know.

18 MS. SLOVINSKY TO JUDGE

19 We'll provide that.

20 MS. KHANDWALA TO JUDGE

21 We'll provide that.

22 MS. KHANDWALA TO MR. [REDACTED]

23 Do you support, do you support any family members in Mexico?

24 MS. DOUCHY TO JUDGE

25 Objection. This goes beyond the cross, scope of cross?

1 MS. KHANDWALA TO JUDGE

2 No. It is within the cross, Your Honor.

3 JUDGE TO MS. KHANDWALA

4 How so?

5 MS. KHANDWALA TO JUDGE

6 She was, she was asking about what, she, he was asked about what his family
7 members in Mexico do and whether they're able to help him set up and --

8 JUDGE TO MS. KHANDWALA

9 All right.

10 JUDGE TO MS. DOUCHY

11 Overruled.

12 MS. KHANDWALA TO JUDGE

13 Okay.

14 MS. KHANDWALA TO MR. [REDACTED]

15 You testified that you received a refund --

16 MS. KHANDWALA TO JUDGE

17 Oh, that, I'm sorry, I'm sorry, Your Honor.

18 JUDGE TO MS. KHANDWALA

19 You're allowed to ask the question.

20 MS. KHANDWALA TO JUDGE

21 Okay.

22 MS. KHANDWALA TO MR. [REDACTED]

23 So do you support any family members in Mexico?

24 MR. [REDACTED] TO MS. KHANDWALA

25 Yes. I still help my father and my siblings.

1 MS. KHANDWALA TO MR. [REDACTED]

2 And how -- send to Mexico?

3 MR. [REDACTED] TO MS. KHANDWALA

4 Approximately \$3,000 per year.

5 MS. KHANDWALA TO MR. [REDACTED]

6 Do you support your wife's family?

7 MR. [REDACTED] TO MS. KHANDWALA

8 Sometimes when they're ill, we help for the doctor and the, the, the care.

9 MS. KHANDWALA TO MR. [REDACTED]

10 And when was the last time you sent money to them?

11 MR. [REDACTED] TO MS. KHANDWALA

12 Now, in December, before Christmas.

13 MS. KHANDWALA TO MR. [REDACTED]

14 Of 2010?

15 MR. [REDACTED] TO MS. KHANDWALA

16 Yes.

17 MS. KHANDWALA TO MR. [REDACTED]

18 And how much did you send?

19 MR. [REDACTED] TO MS. KHANDWALA

20 To my home, to my siblings I sent \$1,000. And to my wife's parents, I don't know

21 how much we spend, but she was the one who send them, send it to them.

22 MS. KHANDWALA TO MR. [REDACTED]

23 So they go the money from the money you sent to your siblings?

24 MR. [REDACTED] TO MS. KHANDWALA

25 No. That's separate.

1 MS. KHANDWALA TO MR. [REDACTED]

2 Okay. You testified that in 2007, you got a refund that you didn't claim?

3 MR. [REDACTED] TO MS. KHANDWALA

4 I'm not sure if it's 2007 or 2004 or '05.

5 JUDGE TO MS. KHANDWALA

6 He testified he didn't know the year.

7 MS. DOUCHY TO JUDGE

8 Yeah. It think he said he, he thought it was 2004.

9 MS. KHANDWALA TO JUDGE

10 Your Honor, I'm going to show him this document that he provided to refresh his

11 --

12 JUDGE TO MS. KHANDWALA

13 Okay. What, what do you want to know about the refund?

14 MS. KHANDWALA TO JUDGE

15 This is, it's just to clarify --

16 JUDGE TO MS. KHANDWALA

17 If he got a refund --

18 MS. KHANDWALA TO JUDGE

19 -- that it wasn't a refund, but it was an earned income tax credit for his dependent
20 children.

21 JUDGE TO MS. KHANDWALA

22 Okay. We don't have to go into that. We don't have to go into that.

23 MS. KHANDWALA TO JUDGE

24 Okay. And that's all, Your Honor.

25 MS. DOUCHY TO JUDGE

1 It's just a few follow-up? I apologize, Your Honor.

2 MS. DOUCHY TO MR. [REDACTED]

3 Now sir, did, what did you have to show the private lender to get the loans for
4 your property?

5 MR. [REDACTED] TO MS. DOUCHY

6 I had to show them identification that I had from my country and what they
7 requested that a 30 percent down payment be given for the value of the, to the value of
8 the property.

9 JUDGE TO MR. [REDACTED]

10 He ask you how much money you made? Did they ask how much money you
11 made? They ask you how much money you made?

12 MR. [REDACTED] TO JUDGE

13 No.

14 JUDGE TO MR. [REDACTED]

15 They didn't ask you for proof of income?

16 MR. [REDACTED] TO JUDGE

17 No.

18 JUDGE TO MR. [REDACTED]

19 So they loaned you money based on what?

20 MR. [REDACTED] TO JUDGE

21 Based on the value of the property. And one of the lenders was the owner of the
22 property. And the other three were people who were known to the real estate, the one
23 where that, that I was working with.

24 JUDGE TO MR. [REDACTED]

25 So they were willing to lend you all this money and didn't even ask you did you

1 have a job and how you could pay the money back?

2 MR. [REDACTED] TO JUDGE

3 Definitely. The real estate, the one that I work with, knew that I was working.

4 JUDGE TO MR. [REDACTED]

5 But I'm asking you --

6 MR. [REDACTED] TO JUDGE

7 And the real estate --

8 JUDGE TO MR. [REDACTED]

9 -- did they ask you where you're working and how much money were you
10 making?

11 MR. [REDACTED] TO JUDGE

12 No.

13 JUDGE FOR THE RECORD

14 The answer's no.

15 MS. DOUCHY TO MR. [REDACTED]

16 Now, I just have a question. So you said you had to pay a 30 percent deposit for
17 the value of the property. Is that in addition to the down payment that you said you,
18 paid for the property?

19 MR. [REDACTED] TO MS. DOUCHY

20 Yes.

21 MS. DOUCHY TO MR. [REDACTED]

22 Okay. So then for the property that the purchase price was over \$400,000, you
23 paid them approximately \$150,000 in addition to the down payment, is that right?

24 MR. [REDACTED] TO MS. DOUCHY

25 No, 100,000 was the initial down payment. Besides that were the expense for

1 the closing.

2 MS. DOUCHY TO MR. [REDACTED]

3 Okay. Well, you testified that you paid, the down payment for that was \$100,000
4 and now your testimony is that in addition to that, you paid the lender 30 percent of the
5 purchase price, is that right?

6 MR. [REDACTED] TO MS. DOUCHY

7 No, I don't think, I, I don't think I understood the question very well. What they
8 requested was 30 percent down payment according to the value of the property. And I
9 managed to gather \$100,000 and that was my down payment.

10 MS. DOUCHY TO MR. [REDACTED]

11 So the down payment that you referred to earlier, that's what you paid the
12 lender?

13 MR. [REDACTED] TO MS. DOUCHY

14 No. Not the lender.

15 JUDGE TO MR. [REDACTED]

16 Other than \$100,000 for that house, what did you pay as a down payment?
17 \$100,000 or more?

18 MR. [REDACTED] TO JUDGE

19 \$100,000 plus the closing cost.

20 MS. DOUCHY TO MR. [REDACTED]

21 And how much were the closing costs?

22 MR. [REDACTED] TO MS. DOUCHY

23 Approximately 20,000. I'm not quite sure how much it was.

24 MS. DOUCHY TO MR. [REDACTED]

25 And your home that was over \$600,000, how much did you pay in addition to

1 your down payment of \$330,000?

2 INTERPRETER TO MS. DOUCHY

3 Clarification, the interpreter. Besides the initial --

4 MS. DOUCHY TO JUDGE

5 Wait. You know, actually, I wanted to rephrase the question actually. His
6 testimony was the purchase price was \$726,000, not 600. So if I could just --

7 JUDGE TO MS. DOUCHY

8 So what is your question?

9 MS. DOUCHY TO MR. [REDACTED]

10 For the property that's you purchased for \$726,000, other than the \$330,000
11 down payment, how much money did you pay the lender?

12 MR. [REDACTED] TO MS. DOUCHY

13 For that property, there were two lenders. And those, the lenders, they, the
14 lenders charged me 4 percent of the value of the mortgage -- property. No pardon me,
15 of the value of the mortgage.

16 MS. DOUCHY TO MR. [REDACTED]

17 And how much money was that?

18 MR. [REDACTED] TO MS. DOUCHY

19 Approximately \$16,000.

20 MS. DOUCHY TO MR. [REDACTED]

21 \$16,000? Is that to each lender or in total?

22 MR. [REDACTED] TO MS. DOUCHY

23 To both.

24 MS. DOUCHY TO MR. [REDACTED]

25 And -- questions.

1 MS. DOUCHY TO JUDGE

2 Sorry, Your Honor. I just want to see if I have more questions.

3 MS. DOUCHY TO MR. [REDACTED]

4 Now, when you signed your cancellation application in 2010, did you review it
5 before you signed it?

6 MR. [REDACTED] TO MS. DOUCHY

7 Yes. I reviewed it.

8 MS. DOUCHY TO MR. [REDACTED]

9 And so you were aware that that application showed your income for 2008 being
10 17,000 and 2007 being 19,000 and 2006 being 14,000, is that right?

11 INTERPRETER TO MS. DOUCHY

12 Clarification, the interpreter?

13 MS. DOUCHY TO INTERPRETER

14 I'll, I'll make it easier.

15 INTERPRETER TO MS. DOUCHY

16 2008, 17,000? 2007 being --

17 MS. DOUCHY TO INTERPRETER

18 2007, 19,000 and 2006, 14,000.

19 INTERPRETER TO MS. DOUCHY

20 And the first was 17?

21 MS. DOUCHY TO INTERPRETER

22 Yes.

23 MR. [REDACTED] TO MS. DOUCHY

24 Yes.

25 MS. DOUCHY TO MR. [REDACTED]

[REDACTED]

1 So and isn't it fair to say that you knew your income was substantially more than
2 that, since your rental income alone is \$120,000 a year?

3 MR. ██████████ TO MS. DOUCHY

4 Once again, I'm not familiarized with, with the numbers or a tax expert.

5 MS. SLOVINSKY TO JUDGE

6 Your Honor, this is, this is not --

7 MR. ██████████ TO MS. DOUCHY

8 I, I believe that that was what was done.

9 MS. SLOVINSKY TO JUDGE

10 -- that's not a characterization of the questions that are on the application and of
11 his answers. The answers on here are as a painter, I made a net annual income and it
12 doesn't include --

13 MS. DOUCHY TO JUDGE

14 But the question --

15 MS. SLOVINSKY TO JUDGE

16 -- it does not include, so you can't cross-examine him on --

17 MS. DOUCHY TO JUDGE

18 Well --

19 MS. SLOVINSKY TO JUDGE

20 -- other kinds of income when that, as that being not a, a fair statement, plus that
21 they were amended.

22 MS. DOUCHY TO MS. SLOVINSKY

23 Well, the, actually the question is if self-employed, describe the nature of the
24 business, the name of the business, its address and incomes arrived therefrom. So the
25 fact that he had commercial real estate and all this rental income, wouldn't you consider

1 that part of his income?

2 MS. SLOVINSKY TO MS. DOUCHY

3 Yeah, that was --

4 MS. DOUCHY TO MS. SLOVINSKY

5 Then how come that's not disclosed anywhere on the application then?

6 MS. KHANDWALA TO JUDGE

7 That, but the, that may, that might be an oversight, but the, he, in the, in the
8 statement, all he says is that he works as a painter and that's his income from painting.

9 MS. DOUCHY TO MS. KHANDWALA

10 Well, he has other income.

11 MS. SLOVINSKY TO JUDGE

12 As a painter --

13 JUDGE TO MS. KHANDWALA

14 Well, see, see, that's the point --

15 MS. KHANDWALA TO JUDGE

16 And we've supplied, we've --

17 JUDGE TO MS. KHANDWALA

18 -- with any person wishing to stay in this country, any person who lives in this
19 country. If I make my money as a Judge, this is the income. If I also own five homes
20 and rent them out to movie stars and have an additional income of 8 billion dollars
21 and I don't put that because I don't earn it being a Judge, that's a mistake --

22 MS. KHANDWALA TO JUDGE

23 That --

24 JUDGE TO MS. KHANDWALA

25 -- on my part because when someone says what is your income, the, the

1 question means what is your income? We don't care what you do for a living. Be a
2 plumber, be a movie star, be whatever you want, but tell me your income.

3 MS. KHANDWALA TO JUDGE

4 I, no, I, that's an, that's definitely a mistake on the application.

5 JUDGE TO MS. KHANDWALA

6 So, so this, this is the, the nature of these questions.

7 MS. KHANDWALA TO JUDGE

8 But the, the --

9 JUDGE TO MS. KHANDWALA

10 The income from the rent was not included.

11 MS. KHANDWALA TO JUDGE

12 The income from the rent was not included.

13 JUDGE TO MS. KHANDWALA

14 Well, there you have it.

15 MS. KHANDWALA TO JUDGE

16 But it is reflected in the tax return.

17 MS. DOUCHY TO MR. [REDACTED]

18 Now, so why didn't, when you, when you made, when you filled out the
19 application and you were aware of the income on your taxes, why didn't you file
20 amended returns then, in January of 2010?

21 MR. [REDACTED] TO MS. DOUCHY

22 In January of 2010, I had not as yet made any amendment.

23 JUDGE TO MS. KHANDWALA

24 Okay. This is what we have here, in answer all these questions. He didn't
25 declare, he didn't put all his income down. That's what it comes to. Why he didn't, he

1 made a mistake, but that's where we are. He didn't report all the income and on the
2 question of the cancellation, he didn't either. He put, in 2010, he put he, he put what his
3 income was from his painting job.

4 MS. KHANDWALA TO JUDGE

5 Admit --

6 JUDGE TO MS. KHANDWALA

7 That's what it is.

8 MS. KHANDWALA TO JUDGE

9 No, admit that the, the income from the commercial properties wasn't reflected on
10 the application, but it is --

11 JUDGE TO MS. KHANDWALA

12 It's in the --

13 MS. KHANDWALA TO JUDGE

14 -- reflected --

15 JUDGE TO MS. KHANDWALA

16 -- amended income taxes.

17 MS. KHANDWALA TO JUDGE

18 No, it's actually --

19 MS. SLOVINSKY TO JUDGE

20 No.

21 MS. KHANDWALA TO JUDGE

22 -- reflected even in the tax returns at --

23 JUDGE TO MS. KHANDWALA

24 Okay. Fine. So this is where we are.

25 MS. KHANDWALA TO JUDGE

1 It is reflected in all the taxes.

2 MS. DOUCHY TO MS. KHANDWALA

3 Where?

4 MS. KHANDWALA TO JUDGE

5 It's just --

6 MS. DOUCHY TO MS. KHANDWALA

7 I, I mean, I'm not a tax expert, but I didn't see --

8 MS. KHANDWALA TO MS. DOUCHY

9 Well, if --

10 MS. SLOVINSKY TO MS. DOUCHY

11 Well, that's the problem.

12 MS. DOUCHY TO MS. KHANDWALA

13 -- anywhere where there was \$120,000 rental income on it.

14 MS. KHANDWALA TO MS. DOUCHY

15 If you look at the 2007 taxes that were originally filed, it has item no. 17, rental

16 real estate, \$21,000.

17 MS. SLOVINSKY TO MS. DOUCHY

18 Line 17.

19 MS. KHANDWALA TO MS. DOUCHY

20 That's, that's the --

21 MS. DOUCHY TO MS. KHANDWALA

22 Right. But it's his rental real estate income is \$120,000, so --

23 MS. SLOVINSKY TO MS. DOUCHY

24 No, no, because --

25 MS. KHANDWALA TO MS. DOUCHY

1 No, but that's, that's --

2 JUDGE TO MS. KHANDWALA AND MS. SLOVINSKY

3 Wait a minute. Now --

4 MS. SLOVINSKY TO MS. DOUCHY

5 There's a calculation made.

6 JUDGE TO MS. KHANDWALA AND MS. SLOVINSKY

7 -- whoa, whoa, whoa, wait a minute.

8 MS. SLOVINSKY TO JUDGE

9 There's a --

10 JUDGE TO MS. SLOVINSKY

11 Now wait a minute. Now we have two people speaking to the respondent.

12 MS. SLOVINSKY TO JUDGE

13 Sorry.

14 JUDGE TO MS. SLOVINSKY

15 Ms. Slovinsky, you weren't here --

16 MS. SLOVINSKY TO JUDGE

17 I'll stop.

18 JUDGE TO MS. SLOVINSKY

19 -- originally.

20 JUDGE FOR THE RECORD

21 But it's Ms. Slovinsky who is co-counsel or, or from the case. That's the only

22 reason I'm saying this, because now we have two voices on the record.

23 JUDGE TO MS. SLOVINSKY

24 So please identify yourself --

25 MS. SLOVINSKY TO JUDGE

1 Sure.

2 JUDGE TO MS. SLOVINSKY

3 -- on the record.

4 MS. SLOVINSKY TO JUDGE

5 I'm sorry. Claudia Slovinsky. And I'll let Ms. Khandwala --

6 JUDGE TO MS. SLOVINSKY

7 All right.

8 MS. SLOVINSKY TO JUDGE

9 -- continue.

10 JUDGE FOR THE RECORD

11 So that's who was speaking, anyway.

12 JUDGE TO MS. KHANDWALA

13 So question is, if the rental was 120,000, why does it say 20, none of us here
14 being tax experts.

15 MS. KHANDWALA TO JUDGE

16 The, the income is after all the expenses. It's -- the Schedule E is not included,
17 but that's the, what's reflected is the net income from the rental business, not the exact
18 income that, not the total rent that he received.

19 MS. DOUCHY TO MS. KHANDWALA

20 I don't see where it says net income. It says rental real estate. I mean, I don't
21 know. I'm, I'm not --

22 MS. SLOVINSKY TO MS. DOUCHY

23 Schedule E.

24 MS. DOUCHY TO MS. KHANDWALA

25 -- a tax expert, but I don't see where it says that it's the net.

1 MS. KHANDWALA TO MS. DOUCHY

2 That's, that's what's in the Schedule, Schedule E reflects.

3 MS. DOUCHY TO MS. KHANDWALA

4 So why didn't you submit the Schedule E?

5 MS. SLOVINSKY TO JUDGE

6 We can do that.

7 MS. KHANDWALA TO MS. DOUCHY

8 Typically, I mean, we submitted these tax returns as proof of presence. We can,
9 we're absolutely willing to provide all the, any additional information.

10 JUDGE TO MS. KHANDWALA

11 Okay.

12 MS. DOUCHY TO JUDGE

13 I mean, Your Honor, I would just ask the Court to take an adverse inference,
14 which I think you are, because the respondent is, bought property valued at a million
15 dollars. He saved a lot of money. I don't see how he saved all this money on the
16 income he's declaring. If, even if he's disclosing all his rental income, which on the
17 taxes I see, I don't see that there, but assuming arguendo he is, obviously he's not
18 disclosing all his income as a painter if he's able to afford down payments of a million, a
19 half a million dollars, just in the down payments alone.

20 MR. [REDACTED] TO JUDGE

21 No.

22 JUDGE TO MS. DOUCHY

23 He explained that. We have the explanation. I saved my money.

24 MS. DOUCHY TO JUDGE

25 But, but, but how could he save that much money based on the income he's

1 declaring on his tax returns?

2 MS. SLOVINSKY TO JUDGE

3 He did. He saved one to the other.

4 MS. DOUCHY TO JUDGE

5 It's virtually impossible.

6 MS. SLOVINSKY TO JUDGE

7 No.

8 MS. DOUCHY TO JUDGE

9 Especially if he's supposedly sending money to Mexico and supporting his family
10 there.

11 MS. KHANDWALA TO JUDGE

12 Your Honor, he had about, he had \$100,000 in down payment for his first
13 property. Since then, he's generated income from that, which was used to support the
14 second property. And I can ask him some questions about his --

15 MS. SLOVINSKY TO JUDGE

16 Three years later.

17 MS. DOUCHY TO MS. KHANDWALA

18 But he's, he's, the, the first property, he's saying that the rent was \$1,700 a
19 month. So that's about \$20,000 a year. So even assuming that's the savings, he
20 purchased that in 2003. So 2003, 2004, 2005 -- so that's \$90,000. Where'd he get
21 \$330,000 if he's declaring on his income taxes \$19,000 in his income?

22 JUDGE TO MS. DOUCHY

23 So I don't know the answer to that question. I only have the paperwork in front of
24 me. Okay?

25 JUDGE TO MS. KHANDWALA

1 So is there, is there more paperwork that I don't have?

2 MS. KHANDWALA TO JUDGE

3 We've, we've provided the amended returns. Can we maybe have --

4 MS. SLOVINSKY TO JUDGE

5 Yes.

6 MS. KHANDWALA TO JUDGE

7 -- can we have the opportunity to provide an explanation for this?

8 JUDGE TO MS. KHANDWALA

9 How you going to explain it? Because I've been through this with him. The
10 numbers, I said it right to him. The number isn't adding up. He's not a tax expert either.
11 But what I have are numbers in front of me. Is there a Schedule E that I don't have?

12 MS. SLOVINSKY TO JUDGE

13 Yes. That's right. We're going to provide that.

14 JUDGE TO MS. KHANDWALA

15 It doesn't add up. If you have \$17,000 in income and a million dollars or the first
16 property was 4 something, it's not showing where the money came from. If you're
17 declaring \$17,000, it's very hard to save \$100,000 on a 17 or a 19,000 when you have a
18 family and, to support. And there's other. There's phones, there's electricity, there's
19 other, other expenses in life. So all I'm saying is the evidence that I have is not
20 explaining to me where the money came from. This becomes important, not because
21 I'm invasive into someone's personal life, it becomes important to see if the money is
22 accounted for the way anyone who lives here is required to do by law. That's my
23 interest in this.

24 MS. KHANDWALA TO JUDGE

25 I -- yeah. Your Honor, we have the schedules. We can provide them.

1 JUDGE TO MS. KHANDWALA

2 Well then let's have the, well then after we have the schedules, I'll look at it.

3 Because right now, it, it's just, we have what we have. Okay?

4 MS. DOUCHY TO JUDGE

5 I, I have no further questions, Your Honor.

6 JUDGE TO MS. DOUCHY

7 All right.

8 JUDGE TO MS. KHANDWALA

9 So the money is not straightened out. So you're going to give me more
10 paperwork, if it exists. Does it exist?

11 MS. KHANDWALA TO JUDGE

12 Yes, Your Honor.

13 JUDGE TO MS. KHANDWALA

14 And then we'll have to do this again. We also have testimony of a --

15 MS. KHANDWALA TO JUDGE

16 Guidance --

17 JUDGE TO MS. KHANDWALA

18 -- social worker?

19 MS. KHANDWALA TO JUDGE

20 -- guidance counselor.

21 JUDGE TO MS. KHANDWALA

22 Oh, the guidance counselor? Now, we have to take a break now. Are we going
23 to do the guidance counselor when we come back or are we going to put this off until
24 we do everything?

25 MS. KHANDWALA TO JUDGE

1 I'd need to call her and just make sure she's still available because this, I had
2 expected that we would be done by about now. So I would just need to call her and
3 make sure she's available in the afternoon.

4 JUDGE TO MS. DOUCHY

5 What do you want to do with this?

6 MS. DOUCHY TO JUDGE

7 I'll defer to the Court. Whatever you want to do, Your Honor, is fine with me.

8 JUDGE TO MS. KHANDWALA AND MS. DOUCHY

9 I might just defer it and, and do that all at once then. Because we're running,
10 because none of your fault, because of mechanical difficulties with the computer this
11 morning, we ran much later than I --

12 MS. SLOVINSKY TO JUDGE

13 Yeah.

14 JUDGE TO MS. KHANDWALA AND MS. DOUCHY

15 -- any of us thought we would.

16 MS. KHANDWALA TO JUDGE

17 Okay.

18 JUDGE TO MS. KHANDWALA AND MS. DOUCHY

19 So I think we'll, we'll put it off and when we come back, we'll take the telephonic
20 testimony of the guidance counselor.

21 JUDGE TO MS. KHANDWALA

22 And toward that end, if the guidance counselor's in school, is, like, a morning
23 best or is it, what is the story there, or it doesn't matter?

24 MS. KHANDWALA TO JUDGE

25 I don't think it matters.

1 JUDGE TO MS. KHANDWALA

2 Okay.

3 MS. KHANDWALA TO JUDGE

4 We just need to, I just need to work out the date.

5 JUDGE TO MS. KHANDWALA

6 Clear the date?

7 MS. KHANDWALA TO JUDGE

8 Yeah.

9 JUDGE TO MS. KHANDWALA

10 And then any further tax papers I want ahead of the hearing date, the continued
11 date. So we'll have to find a date for that now.

12 JUDGE TO MR. [REDACTED]

13 Sir, we're going to continue your hearing for two reasons. One, we have to take
14 the testimony of the guidance counselor, which we're not going to do today. And two, I
15 am not able to understand the financial papers submitted so far. Your lawyers are
16 going to ask you to work with them on whatever else they might need to explain the
17 financial situation here. What I'm, you're going to see me do now is try to find a date
18 when we can come back and do this.

19 JUDGE TO MS. DOUCHY

20 Ms. Douchy, your days, your no days are when?

21 MS. DOUCHY TO JUDGE

22 Wednesdays and Fridays are my bad days, Your Honor.

23 JUDGE TO MS. DOUCHY

24 Your bad days?

25 MS. DOUCHY TO JUDGE

1 Yes.

2 JUDGE TO MS. DOUCHY

3 So and I can't do Thursday. That's why it's either a Monday or a Tuesday.

4 MS. DOUCHY TO JUDGE

5 Monday or Tuesday? Okay.

6 MS. KHANDWALA TO JUDGE

7 And Your Honor, also just to be -- [REDACTED] also going to testify. So we have
8 two more --

9 JUDGE TO MS. KHANDWALA

10 I'll see if [REDACTED] going to testify, okay? If she's to testify, when is her school
11 break? I don't like taking children out of school.

12 MS. KHANDWALA TO JUDGE

13 School just restarted, so --

14 JUDGE TO MS. KHANDWALA

15 It restarted. Then they'll go out again for Easter or, or some, or --

16 MS. KHANDWALA TO JUDGE

17 I'm not -- yeah.

18 JUDGE TO MS. KHANDWALA

19 -- or Passover or whatever that other holiday.

20 JUDGE TO MR. [REDACTED]

21 When is your daughter's semester break, if she has one?

22 MR. [REDACTED] TO JUDGE

23 Now I think until Easter.

24 JUDGE TO MR. [REDACTED]

25 All right. Well, Easter is the -- Holy Thursday's the 21st. I know this because of

1 my -- 21st, 22nd, Holy Thursday, Good Friday, 23rd, 24th is Easter. So does she get off
2 the week after Easter or the week before Easter or, or not at all? I don't know.

3 MR. [REDACTED] TO JUDGE

4 I'm not sure. I don't know exactly what date they'll give --

5 MS. SLOVINSKY TO JUDGE

6 Well, we can find that out.

7 MR. [REDACTED] TO JUDGE

8 -- it's a new school.

9 MS. DOUCHY TO JUDGE

10 Is that, you said, you said March? The date that you're referring to for the --

11 JUDGE TO MS. DOUCHY

12 April.

13 MS. DOUCHY TO JUDGE

14 -- Holy Thursday -- oh, that's in April? Oh, okay.

15 JUDGE TO MS. DOUCHY

16 Yeah.

17 MS. DOUCHY TO JUDGE

18 Oh, okay. Because I, I was just looking at my son's calendar, but that --

19 JUDGE TO MS. DOUCHY

20 Right.

21 MS. DOUCHY TO JUDGE

22 -- he's off for his spring break in March, so it's not --

23 MS. SLOVINSKY TO MS. DOUCHY

24 Is that public school in --

25 MS. DOUCHY TO MS. SLOVINSKY

1 No.

2 MS. SLOVINSKY TO MS. DOUCHY

3 -- New York?

4 MS. DOUCHY TO MS. SLOVINSKY

5 No. So --

6 MS. SLOVINSKY TO MS. DOUCHY

7 See, that's the problem. That's not -- but you know what? We're going to --

8 MS. DOUCHY TO MS. KHANDWALA

9 I can call the --

10 MS. SLOVINSKY TO MS. DOUCHY

11 -- call the guidance counselor right now and find out.

12 MS. DOUCHY TO JUDGE

13 I can look it up, actually, online.

14 JUDGE FOR THE RECORD

15 We'll go off the record. We're looking for dates here.

16 [OFF THE RECORD]

17 [ON THE RECORD]

18 JUDGE FOR THE RECORD

19 We're back on the record. We're trying to get a date for the hearing. I tried to go
20 around the child's schedule. We've set it.

21 JUDGE TO MR. [REDACTED]

22 Sir, you must return to court on July 18, 2011 at 2:00. Make sure you come back
23 on that day or I'll have to order you removed in your absence. Should that happen, you
24 would lose for ten years any remedies you might have had. Names of some of these
25 remedies, voluntary departure, cancellation of removal and adjustment of status.

1 However, if you are going to submit tax documents or any other paperwork, you must
2 give them to your lawyer because your lawyer must give them to me by May 30th or the
3 next business day thereafter.

4 JUDGE TO MS. KHANDWALA

5 Should there be a delay, let me know, because I'll be looking for them. So and
6 then that will give them time to filter their way both to my file and to the Government's
7 file. So also, if you would talk to the guidance counselor and see if she's available on
8 that day as well. Okay? So that is --

9 JUDGE TO MS. DOUCHY

10 And how are the clearances on July 18th?

11 MS. DOUCHY TO JUDGE

12 They'll be current, Your Honor.

13 JUDGE TO MS. DOUCHY

14 Okay.

15 MS. DOUCHY TO JUDGE

16 Oh, wait. Actually, let me double check that.

17 MS. KHANDWALA TO MS. DOUCHY

18 February 4th is when they were done --

19 MS. DOUCHY TO MS. KHANDWALA

20 Of?

21 MS. KHANDWALA TO MS. DOUCHY

22 -- of 2010.

23 MS. DOUCHY TO JUDGE

24 Yeah, actually, he'll need a buck slip.

25 JUDGE TO MS. DOUCHY

U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

In the Matter of

File: [REDACTED]

[REDACTED])
[REDACTED]) IN REMOVAL PROCEEDINGS
RESPONDENT)
Transcript of Hearing

Before ELIZABETH A. LAMB, Immigration Judge

Date: December 21, 2011

Place: NEW YORK, NEW YORK

Transcribed by FREE STATE REPORTING, Inc.-2

Official Interpreter: SONIA REESE MEYER

Language: SPANISH

Appearances:

For the Respondent: LEENA KHANDWALA, Claudia Slovinsky

For the DHS: EVALYN DOUCHY

1 JUDGE FOR THE RECORD

2 Transcriber, we're on the record. Today is the 21st day of December in the year
3 2011. Elizabeth Lamb sitting in New York for a continued removal proceeding, [REDACTED]
4 [REDACTED], [REDACTED] [REDACTED] He is present with his attorneys.

5 JUDGE TO MS. KHANDWALA AND MS. SLOVINSKY

6 Please give your appearance for the record?

7 MS. SLOVINSKY TO JUDGE

8 It's Leena Khandwala and Claudia Slovinsky.

9 JUDGE TO MS. SLOVINSKY

10 Thank you.

11 JUDGE TO MS. DOUCHY

12 And for the Department?

13 MS. DOUCHY TO JUDGE

14 Evalyn Douchy.

15 JUDGE TO MS. DOUCHY

16 Thank you.

17 JUDGE FOR THE RECORD

18 And my interpreter's present and will interpret from the Spanish to the English
19 language.

20 JUDGE TO INTERPRETER

21 You have been previously sworn. Would you just state your name for the
22 record?

23 INTERPRETER TO JUDGE

24 Sonia Reese Meyer [phonetic sp.].

25 JUDGE TO INTERPRETER

1 Thank you.

2 JUDGE TO MR. [REDACTED]

3 To the respondent: Good afternoon, sir. What language do you speak the best?

4 MR. [REDACTED] TO JUDGE

5 Spanish.

6 JUDGE TO MR. [REDACTED]

7 Please stand and raise your right hand? Do you swear that everything you say
8 will be the truth, the whole truth, nothing but the truth?

9 MR. [REDACTED] TO JUDGE

10 Yes. I swear.

11 JUDGE TO MR. [REDACTED]

12 Thank you. Please be seated and tell me your true and correct name?

13 MR. [REDACTED] TO JUDGE

14 [REDACTED] --

15 JUDGE TO MR. [REDACTED]

16 Thank you.

17 MR. [REDACTED] TO JUDGE

18 -- [REDACTED]

19 JUDGE TO MR. [REDACTED]

20 And your address where you live today in the United States?

21 MR. [REDACTED] TO JUDGE

22 [REDACTED].

23 JUDGE TO MR. [REDACTED]

24 Thank you. Please take the change of address form and if you move, you have
25 to send that to me within five days of your move. My name is Judge Lamb. The woman

1 sitting over here is a lawyer for the Government. Are the women sitting here your
2 lawyers?

3 MR. [REDACTED]

4 Yes, they are my lawyers.

5 JUDGE TO MR. [REDACTED]

6 All right. What we're going to do today is speak to your witness and I think that's
7 the gentleman in the room.

8 JUDGE TO MS. KHANDWALA

9 Is that correct?

10 MS. KHANDWALA TO JUDGE

11 Yes.

12 JUDGE TO MS. KHANDWALA

13 Okay.

14 JUDGE TO MR. [REDACTED]

15 So you may step down and, and sit back there. And I'm going to talk to your
16 witness, okay?

17 MR. [REDACTED] TO JUDGE

18 Thank you very much.

19 JUDGE TO MR. [REDACTED]

20 Thank you.

21 JUDGE TO MR. [REDACTED]

22 Sir, if you'd approach? What language is your best language?

23 MR. [REDACTED] TO JUDGE

24 English.

25 JUDGE TO MR. [REDACTED]

1 Thank you. If you'd come over here and sit there? While you're standing, please
2 raise your right hand? Do you swear everything you say will be the truth, the whole
3 truth, nothing but the truth?

4 MR. [REDACTED] TO JUDGE

5 Yes. I do.

6 JUDGE TO MR. [REDACTED]

7 Thank you. Please be seated over here and tell me your true and correct name?

8 MR. [REDACTED] TO JUDGE

9 My name is Dr. [REDACTED] [phonetic sp.].

10 JUDGE TO MR. [REDACTED]

11 And what is your Immigration status in the United States?

12 MR. [REDACTED] TO JUDGE

13 I'm a U.S. citizen.

14 JUDGE TO MR. [REDACTED]

15 And what is your profession?

16 MR. [REDACTED] TO JUDGE

17 I am both a certified public accountant and a professor.

18 JUDGE TO MR. [REDACTED]

19 And do you know the gentleman sitting in the room back there?

20 MR. [REDACTED] TO JUDGE

21 Yes, I do.

22 JUDGE TO MR. [REDACTED]

23 And how do you know him?

24 MR. [REDACTED] TO JUDGE

25 He engaged me as, as his accountant.

1 JUDGE TO MR. [REDACTED]
2 You're his accountant for how many years?
3 MR. [REDACTED] TO JUDGE
4 I, I'm, since mid, mid-2010.
5 JUDGE TO MR. [REDACTED]
6 Mid-2010? Okay.
7 JUDGE TO MS. KHANDWALA
8 And do we have a curriculum vitae for the witness?
9 MS. KHANDWALA TO JUDGE
10 Your Honor, we have a profile from --
11 JUDGE TO MS. DOUCHY
12 And you've seen this, Ms. Douchy?
13 MS. KHANDWALA TO JUDGE
14 -- his company website?
15 MS. DOUCHY TO JUDGE
16 Just the profile, yes.
17 JUDGE TO MS. DOUCHY
18 Profile? All right.
19 JUDGE TO MR. [REDACTED]
20 My name is Judge Lamb. The woman seated here is a lawyer for a Government.
21 Your lawyers are going to ask you questions and I might as well. Never answer a
22 question you don't understand. If you don't understand what they're getting at, just tell
23 me because my job is to make everything clear for everyone. When you do answer,
24 please speak out loud. This is a recorder and if you just nod your head or don't speak
25 out loud, we can't hear you, nor can we pick it up on the recorder.

1 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

2 So the microphones are in front of everyone? Okay. Thank you.

3 JUDGE TO MS. KHANDWALA

4 Counsel, your witness.

5 MS. KHANDWALA TO MR. [REDACTED]

6 Dr. [REDACTED] you said you're a professor. Where do you teach?

7 MR. [REDACTED] TO MS. KHANDWALA

8 [REDACTED].

9 MS. KHANDWALA TO MR. [REDACTED]

10 And what do you teach, what do you teach?

11 MR. [REDACTED] TO MS. KHANDWALA

12 I teach accounting and taxation.

13 MS. KHANDWALA TO MR. [REDACTED]

14 What's your educational background?

15 MR. [REDACTED] TO MS. KHANDWALA

16 I have a Bachelor's degree in accounting, a Master's degree in taxation and a
17 Doctorate in education.

18 MS. KHANDWALA TO MR. [REDACTED]

19 And do you have your own business?

20 MR. [REDACTED] TO MS. KHANDWALA

21 Yes, I do.

22 MS. KHANDWALA TO MR. [REDACTED]

23 How long has your business been in existence?

24 MR. [REDACTED] TO MS. KHANDWALA

25 Since 1974.

1 MS. KHANDWALA TO MR. [REDACTED]

2 And what services do you provide?

3 MR. [REDACTED] TO MS. KHANDWALA

4 I provide full range of accounting, tax and auditing services.

5 MS. KHANDWALA TO MR. [REDACTED]

6 And what, what type of clients do you work with?

7 MR. [REDACTED] TO MS. KHANDWALA

8 We work with small, medium sized corporations, high net worth individuals and
9 we have taken companies public, small companies.

10 MS. KHANDWALA TO MR. [REDACTED]

11 Okay. Do you, do you also work with self-employed people, like Mr. [REDACTED]

12 MS. DOUCHY TO JUDGE

13 Objection. Leading.

14 JUDGE TO MS. DOUCHY

15 Sustained.

16 JUDGE TO MR. [REDACTED]

17 Then how did you come to be this gentleman's accountant in --

18 MR. [REDACTED] TO JUDGE

19 Our firm audits the, the business improvement district that his, his daughter is
20 aware of and, and we became aware, known to him through that organization and he
21 sought, he sought us out.

22 JUDGE TO MS. KHANDWALA

23 Continue.

24 MS. KHANDWALA TO MR. [REDACTED]

25 Does your client base has, have any self-employed clients? Any self --

1 MS. DOUCHY TO JUDGE

2 Objection. Leading.

3 MS. KHANDWALA TO MR. [REDACTED]

4 -- employed individuals?

5 MR. [REDACTED] TO MS. KHANDWALA

6 Yes.

7 JUDGE TO MS. DOUCHY

8 Sustained.

9 JUDGE TO MS. KHANDWALA

10 Don't lead him, okay?

11 MS. KHANDWALA TO MR. [REDACTED]

12 Can you tell me more about your client base?

13 MR. [REDACTED] TO MS. KHANDWALA

14 My client base consists of high net worth individuals, individuals who have small
15 businesses who are either self-proprietors, partners or owners of corporations.

16 JUDGE TO MR. [REDACTED]

17 Do you have a financial figure that's, if I come to you and I'm making \$25,000 a
18 year, do you represent me or do you look first at what the money, the bottom line is?

19 How do you pick your high net worth individuals or business owners?

20 MR. [REDACTED] TO JUDGE

21 Okay. As a CPA, we have a screening process with respect to clients. We have
22 not take any clients that have any dubious backgrounds or, or any, any kind of
23 suspicious financial structure. So it, it's a screening process that we go through.

24 JUDGE TO MR. [REDACTED]

25 But does the screening go beyond a certain income, it's too small for you to

1 handle? When you say screening --

2 MR. [REDACTED] TO JUDGE

3 Well --

4 JUDGE TO MR. [REDACTED]

5 -- you don't want to handle a hoodlum or something, that's what you're saying to
6 me --

7 MR. [REDACTED] TO JUDGE

8 That's true.

9 JUDGE TO MR. [REDACTED]

10 -- or something dubious? But I mean, I'm, I'm asking you, do you, if I come to
11 you, I make \$30,000 a year, do you handle me or do you refer me out to somebody else
12 or how does that work?

13 MR. [REDACTED] TO JUDGE

14 We will handle you, yes.

15 JUDGE TO MR. [REDACTED]

16 So there's no financial that's too low?

17 MR. [REDACTED] TO JUDGE

18 We do not have a threshold that will cut somebody off --

19 JUDGE TO MR. [REDACTED]

20 A financial threshold?

21 MR. [REDACTED] TO JUDGE

22 -- at. No, we do not.

23 JUDGE TO MR. [REDACTED]

24 Okay. Thank you.

25 MS. KHANDWALA TO MR. [REDACTED]

1 Within the range of tax services, can you describe to me what kinds of issues you
2 deal with clients?

3 MR. [REDACTED] TO MS. KHANDWALA

4 We deal with all kinds of issues. So as, as auditors, we, we, we deal with any
5 aspect of, of irregularity or internal control or financial issue with respect to generally
6 accepted accounting principles. As far as taxes are concerned, we, we would obviously
7 prepare tax returns. We do, we would do tax planning, estate work. We would, we
8 would do offers and compromise, represent the taxpayer with the, before the IRS.
9 Other things. Why am I blank? But that's about it.

10 MS. KHANDWALA TO MR. [REDACTED]

11 You said you were retained in mid-2010 by Mr. [REDACTED]

12 MR. [REDACTED] TO MS. KHANDWALA

13 Yes.

14 MS. KHANDWALA TO MR. [REDACTED]

15 What did he retain you for?

16 MR. [REDACTED] TO MS. KHANDWALA

17 He retained me to, to look at his open tax returns to see if there were any errors
18 or misstatements, misrepresentations in it, in them. And the, the data along with it.

19 MS. KHANDWALA TO MR. [REDACTED]

20 And what do you mean by open tax return?

21 MR. [REDACTED] TO MS. KHANDWALA

22 Tax returns that were open for assessment under the statute of limitations.

23 MS. KHANDWALA TO MR. [REDACTED]

24 And what is that statute of limitations.

25 MR. [REDACTED] TO MS. KHANDWALA

1 It's three years from the date of filing a tax return, the due date of filing a tax
2 return or when it was filed, whichever's later.

3 MS. KHANDWALA TO MR. [REDACTED]

4 So which years were open at the time Mr. [REDACTED] contacted you?

5 MR. [REDACTED] TO MS. KHANDWALA

6 At the time, 2007 and beyond.

7 MS. KHANDWALA TO MR. [REDACTED]

8 And what documents did you review in connection with this?

9 MR. [REDACTED] TO MS. KHANDWALA

10 We reviewed receipts and bank statements, mainly bank statements,
11 disbursements, checks, the tax returns that were actually filed. And then, of course, we
12 interviewed the client about various matters.

13 JUDGE TO MR. [REDACTED]

14 What years are you talking about that you did?

15 MR. [REDACTED] TO JUDGE

16 2007 through 2009 was the review. And then subsequently we filed 2010 that we
17 prepared.

18 JUDGE TO MR. [REDACTED]

19 Thank you.

20 JUDGE TO MS. KHANDWALA

21 Continue.

22 MS. KHANDWALA TO MR. [REDACTED]

23 Can you briefly explain the process and method of amending the 2007 to 2009
24 taxes?

25 JUDGE TO MR. [REDACTED]

1 Well, did you find you had to amend anything?

2 MR. [REDACTED] TO JUDGE

3 Yeah. We, we amended all the returns.

4 JUDGE TO MR. [REDACTED]

5 And why did you feel you had to amend all the returns?

6 MR. [REDACTED] TO JUDGE

7 Well, basically it was at the insistence of the client.

8 JUDGE TO MR. [REDACTED]

9 Well, a client can insist on amending them, but if they don't have to be amended,
10 why would you amend them?

11 MR. [REDACTED] TO JUDGE

12 On one of the cases, there was a refund due and he may not have wanted to do
13 that. But the, the client wanted to, if there was any kind of irregularity, any kind of
14 questionable item, he wanted it corrected regardless.

15 JUDGE TO MR. [REDACTED]

16 Did he discuss with you why he would think there was anything wrong?

17 MR. [REDACTED] TO JUDGE

18 Well, he used a tax preparer who wasn't a CPA and the reason why he sought us
19 out was for our reputation of being thorough in this particular area and he felt
20 comfortable with our, our review and he would abide by anything that we would, we
21 would tell him, tell him to do with respect to these, these tax returns.

22 JUDGE TO MR. [REDACTED]

23 Is it your testimony that you only had to amend one tax return so he could get a
24 refund?

25 MR. [REDACTED] TO JUDGE

1 No, ma'am. We amended them all.

2 JUDGE TO MR. [REDACTED]

3 Why did you have to --

4 MR. [REDACTED] TO JUDGE

5 If there was a difference --

6 JUDGE TO MR. [REDACTED]

7 -- amend them all?

8 MR. [REDACTED] TO JUDGE

9 Well, where there was a questionable matter, we assumed it was income, okay,
10 and --

11 JUDGE TO MR. [REDACTED]

12 I'm, I'm, sir, saying why, when you looked over the tax returns, you amended
13 them all. Why?

14 MR. [REDACTED] TO JUDGE

15 We amended --

16 JUDGE TO MR. [REDACTED]

17 There something wrong with them?

18 MR. [REDACTED] TO JUDGE

19 -- them all because we, when we, when we reset the, the income and expenses.

20 We had -- pardon me. God Bless you.

21 JUDGE TO MR. [REDACTED]

22 Thank you.

23 MR. [REDACTED] TO JUDGE

24 We had reclassifications and redeterminations of, of totals based upon the
25 source data that we had available to us.

1 JUDGE TO MR. [REDACTED]

2 So what were the totals wrong? How were they wrong? Did he pay too much?
3 Did he not pay enough? Well, how was it wrong?

4 MR. [REDACTED] TO JUDGE

5 In, in some cases, he did not pay enough and in other cases, he was due a
6 refund.

7 JUDGE TO MR. [REDACTED]

8 How many cases was he due a refund?

9 MR. [REDACTED] TO JUDGE

10 I believe he was due a refund in one, one year. Okay.

11 JUDGE TO MR. [REDACTED]

12 And all the other years?

13 MR. [REDACTED] TO JUDGE

14 He, he owed a little bit of money.

15 JUDGE TO MR. [REDACTED]

16 What's a little bit?

17 MR. [REDACTED] TO JUDGE

18 I believe the total for the, for the year, for the years 2007 through 2010 was
19 netted out to about 7,700 bucks. I, I, I can't remember the total number. I think this
20 morning I checked it. I thought it was \$7,700. That was over a period of, of from '07,
21 '08, '09, '07, '08 and '09. That's four years. That's --

22 JUDGE TO MR. [REDACTED]

23 Even with interest he owed \$7,700?

24 MR. [REDACTED] TO JUDGE

25 With interest, that, that would've been a little bit more. Maybe around ten.

1 JUDGE TO MR. [REDACTED]

2 So on income he reported from roughly 2007 to 2010, including the interest the
3 IRS charges for not paying correctly at the time, he owed approximately \$10,000?

4 MR. [REDACTED] TO JUDGE

5 That's correct.

6 JUDGE TO MR. [REDACTED]

7 And in one instance he was owed a refund. How much was the refund?

8 MR. [REDACTED] TO JUDGE

9 I believe it was approximately \$2,000. There, we had to amend the state returns
10 as well, so sometimes the state returns would generate, would generate the refund.
11 Now, I don't recall the numbers at this point.

12 JUDGE TO MR. [REDACTED]

13 What is the penalty for paying late?

14 MR. [REDACTED] TO JUDGE

15 The penalty for paying late is a half a percent per month, up to 25 percent. And,
16 of course, interest on top of that.

17 JUDGE TO MR. [REDACTED]

18 And so for those years, that incurs from, from 7,000 all the way back to 7,000 to
19 10, it still only came to, not to say only, but came to \$10,000 with penalty and interest?

20 MR. [REDACTED] TO JUDGE

21 Like I said, these --

22 JUDGE TO MR. [REDACTED]

23 That seems long to me.

24 MR. [REDACTED] TO JUDGE

25 -- a number I'm getting in the back of my head, Your Honor. I, I, I, I would have

1 to go back and refer, refer to my notes on the penalty and interest side of that. When I
2 checked it this morning, the number was \$7,700. And I didn't really focus in on the
3 penalty and interest. I'm giving what it would approximately be would be about 50
4 percent of the, of the taxes due. That's generally the rule of thumb, where I'm getting it
5 from. And the, the interest rates over the last few years have been very low. So
6 penalty can only be 25 percent of the tax and the interest rates are down to 3, 4
7 percent.

8 MS. KHANDWALA TO JUDGE

9 Your Honor, just to clarify. There, there were no interest or penalties on 2010
10 because it was paid on time. He got a refund in 2009 for both federal and state and the
11 2007 and 2008 taxes have been fully paid up and we've included evidence of that
12 payment in our packet.

13 JUDGE TO MS. KHANDWALA

14 There, I don't think there's a dispute that it was paid.

15 MS. KHANDWALA TO JUDGE

16 Okay.

17 JUDGE TO MS. KHANDWALA

18 Thank you. Continue.

19 MS. KHANDWALA TO MR. [REDACTED]

20 So can you briefly explain the process and method of amending the 2007 to 2009
21 returns?

22 MR. [REDACTED] TO MS. KHANDWALA

23 Well, we took whatever source data that was provided the accountants that
24 prepared the tax returns and the tax returns themselves. Then we asked the client for
25 every bank statement that he, he had, either personally or business. And then we, we

1 actually took the bank statements and summarized them month to month so that on an
2 annual basis, we had all of his bank transactions, money in and money out. And we set
3 out to account for where the money came from, okay? So that's a, a normal method
4 that we would, we would approach. And then, in terms of expenses, there were tons of
5 receipts that we had to sort through and summarize and we had to make sure that the
6 checks that were written against the receipts were not duplicated and we, we did that.
7 We also, we also had to check charge accounts to see what, what expenses were paid
8 out of charge accounts and you had to make sure that the paybacks, the pay downs of
9 the charge accounts were not, were not taken as an expense as well. So in other
10 words, people take their payment to, say, Visa or MasterCard and call it an expense,
11 but it's really the charge out from Visa or MasterCard which is the expense and the
12 payback is not, is just an offset of a liability. So this is, this is, these are some of the
13 techniques, some of the things that we, we had, we had done. Where there was an
14 issue of something that didn't, didn't look right or whatever, we, we were able to get an
15 explanation from the client.

16 JUDGE TO MR. [REDACTED]

17 So there was real, did you look at his real estate transactions? Because there's
18 --

19 MR. [REDACTED] TO JUDGE

20 Um-hum.

21 JUDGE TO MR. [REDACTED]

22 -- real estate here in 2000 and -- was it '06 that you looked at? Because there's
23 one in 2003, but I don't know if you went back that far.

24 MR. [REDACTED] TO JUDGE

25 Yes. We looked at them all.

1 JUDGE TO MR. [REDACTED]

2 Looked at them all? And you, you told me that you look at where the money
3 comes from?

4 MR. [REDACTED] TO JUDGE

5 Yes.

6 JUDGE TO MR. [REDACTED]

7 So were you able to ascertain where the money came for the down payments in
8 those years?

9 MR. [REDACTED] TO JUDGE

10 Well, we, we did do that. Okay? And over that period of time, we were, we were
11 able to, to show if there was, there was a, a, a depositing of cash in the, in the bank to
12 actually make the down payments or there was borrowings or whatever. We were able
13 to, in, in total, come up with a dollar amount that would, would, which would show the,
14 the client's source of funds, okay, from, you know, to, to buy the real estate. And of
15 course, maintaining the real estate after that is all part of it too, so he bought one
16 building and then a couple years later, a few years later, he bought another one.

17 JUDGE TO MR. [REDACTED]

18 Where did the money come for the down payment?

19 MR. [REDACTED] TO JUDGE

20 It was monies he deposited in cash in the bank.

21 JUDGE TO MR. [REDACTED]

22 From savings or a, a money account or in cash?

23 MR. [REDACTED] TO JUDGE

24 Yeah.

25 JUDGE TO MR. [REDACTED]

1 So wherever the money comes from, that's not your business. Just, it's business

2 --

3 MR. [REDACTED] TO JUDGE

4 It --

5 JUDGE TO MR. [REDACTED]

6 -- that it came from a account. It's not your business where did you get the
7 money to put in there? Or is it?

8 MR. [REDACTED] TO JUDGE

9 We didn't, we don't, we're not asking that question. But the thing is, we're, we're
10 talking about was it, we were concerned about whether or not it was income during that
11 period of time. So it would, if he deposited, say, \$50,000 in a bank account, you know,
12 was it, was it earnings? Was it from, from his, from his painting business? And we
13 were able to ascertain that no, it wasn't. It was from previous, yeah, previous earnings
14 that he had, he had accumulated money and, and deposited.

15 JUDGE TO MR. [REDACTED]

16 So the money, are you saying that the money from the down payments did not
17 come from his painting business, they came from another source? Is that what you're
18 saying?

19 MR. [REDACTED] TO JUDGE

20 Well, they, he, he, he accumulated money in cash.

21 JUDGE TO MR. [REDACTED]

22 But not from the painting business?

23 MR. [REDACTED] TO JUDGE

24 Well, from the painting business, but this is an accumulation over a period of
25 years.

1 JUDGE TO MR. [REDACTED]

2 I'm sorry, what did you say that you termed it wasn't from the painting business?

3 MR. [REDACTED] TO JUDGE

4 Well, it was from the painting business, but in the year in which he deposited it in
5 the bank, that wasn't from the year's income. So for example, let's just say you
6 deposited, he was generally on the average of depositing \$150,000 from his business in
7 a given, given year, okay? If he deposited, like, \$200,000, well, and then you went back
8 to the closing statement and saw that he put in \$50,000 in order to, in order to, order to
9 make the, the, the down payment, that money is coming, pardon my expression out of
10 the vernacular, out of the mattress. So he would have had that in, in, in his, in his
11 possession and deposited it in the bank. This, this happens often, okay, with
12 individuals. They would take money out of their, out of safe deposit boxes or wherever
13 they, where they have it and just start funneling it into the bank. So this is money he
14 would've earned previous years, but he's sitting on it.

15 JUDGE TO MR. [REDACTED]

16 Thank you.

17 JUDGE TO MS. KHANDWALA

18 Continue.

19 MS. KHANDWALA TO MR. [REDACTED]

20 So you testified that if between 2007 and 2009 he actually got a refund in 2009,
21 is that correct?

22 MR. [REDACTED] TO MS. KHANDWALA

23 I believe so, yes.

24 MS. KHANDWALA TO MR. [REDACTED]

25 And what do you infer from him getting a refund in one of those years, in that

1 year?

2 MR. [REDACTED] TO MS. KHANDWALA

3 Well, that his return may not have been prepared correctly and that when you
4 actually get, get into all of the information and the source data, that you can come up
5 with a different number, you know, different numbers.

6 MS. KHANDWALA TO MR. [REDACTED]

7 In addition to the 2007 to 2010 taxes, did you do any further work for Mr. [REDACTED]

8 MR. [REDACTED] TO MS. KHANDWALA

9 Yes. He asked us to also do the same review for years 2001 through 2006,
10 which were closed years.

11 MS. KHANDWALA TO MR. [REDACTED]

12 And what does that mean?

13 MR. [REDACTED] TO MS. KHANDWALA

14 That means that the statute of limitations had, had run on, on those years and
15 the, the Government could not assess any, any taxes or penalties on those returns,
16 generally speaking.

17 MS. KHANDWALA TO MR. [REDACTED]

18 Well, and what documents did you review in connection with the 2001 to 2006
19 returns?

20 MR. [REDACTED] TO MS. KHANDWALA

21 We did the same things. Any, any receipts that he had, any photocopies that he
22 had, any bank statements, year, year by year, credit card statements, everything. We
23 just laid it out there. We put it into, put into the computer file and sorted, sorted it
24 through.

25 MS. KHANDWALA TO MR. [REDACTED]

1 Okay. And what was the result of that review?

2 MR. [REDACTED] TO MS. KHANDWALA

3 Well, from 2001 to 2006, the, and now these, these I do remember, okay? I
4 believe it was \$27,000 of, of balances due on the federal and there was a \$2,000 refund
5 in one of those years, which nets out to \$25,000, which comes out to about \$4,000 or
6 \$5,000 a year.

7 MS. KHANDWALA TO MR. [REDACTED]

8 And what do you infer from the, the size of the difference and the refund?

9 MR. [REDACTED] TO MS. KHANDWALA

10 Well --

11 JUDGE TO MS. KHANDWALA

12 What do, what do you mean by that?

13 MS. KHANDWALA TO MR. [REDACTED]

14 Is the, what do you infer from the fact that he got a refund in a year, in one of the
15 years?

16 MR. [REDACTED] TO MS. KHANDWALA

17 Well, when you look at the, the source of information, you may be reclassifying
18 information. You may be reclassifying deductions. So he has two main, main sources
19 of, of income, the painting business, and of course he had the, the real estate, the rental
20 real estate. So there may have been expenses that belonged in rental real estate or
21 belonged in, in, in the painting business and vice versa, and you had to reclassify them.
22 So we, we did that, and as a result, you may have taken something out of the rental
23 Schedule E versus putting it into Schedule C. Schedule C is the painting business.
24 Schedule E is the rental income and expense. So by virtue of the fact that you are
25 moving things around, there's a different impact on the, on, on the tax return because

1 it's, when, when you have a Schedule C income, it's subject to self-employment tax,
2 which is approximately a 14 percent, 15 percent tax before there is an income tax. So,
3 so if, if you are moving something out of Schedule C into Schedule E or moving
4 something from E into the C, if you reduce the social, social security tax, you may wind
5 up getting a refund. Okay?

6 MS. KHANDWALA TO MR. [REDACTED]

7 And were these, is, was that typical of what you were finding in the previous
8 returns?

9 MR. [REDACTED] TO MS. KHANDWALA

10 Yes. It, it's basically taking the tax returns that were done in the, by the previous
11 accountant and sort of setting them aside, and using them for reference only, and just
12 reconstruction from square one. And this is what we came up with.

13 MS. KHANDWALA TO MR. [REDACTED]

14 Have those 2001 to 2006 amended taxes been filed?

15 MR. [REDACTED] TO MS. KHANDWALA

16 Yes, they have.

17 MS. KHANDWALA TO MR. [REDACTED]

18 And have the additional amounts owed been paid?

19 MR. [REDACTED] TO MS. KHANDWALA

20 Part of the payments were made. Okay? We suggested to the client, because
21 of, of a financial issues, to make a, a payment and request an installment agreement for
22 the rest of the money, for the rest of the amounts due.

23 MS. KHANDWALA TO MR. [REDACTED]

24 In your opinion, did Mr. [REDACTED] reasonably rely on his previous tax preparer?

25 MS. DOUCHY TO JUDGE

1 Objection, Your Honor. Calls for speculation.

2 JUDGE TO MS. DOUCHY

3 Sustained.

4 MS. KHANDWALA TO JUDGE

5 That's all, Your Honor.

6 JUDGE TO MS. KHANDWALA

7 Thank you.

8 JUDGE TO MS. DOUCHY

9 Do you wish to do a cross --

10 MS. DOUCHY TO JUDGE

11 Yeah. I, I have --

12 JUDGE TO MS. DOUCHY

13 -- at this point? Thank you.

14 MS. DOUCHY TO JUDGE

15 -- I have some questions. Thank you.

16 JUDGE TO MS. DOUCHY

17 Cross-examination?

18 MS. DOUCHY TO MR. [REDACTED]

19 Now, you said you're familiar with Mr. [REDACTED] rental, real estate. What real
20 estate does he own?

21 MR. [REDACTED] TO MS. DOUCHY

22 He owns a residence and he owns a, another residential property, multi, multi-
23 unit building.

24 MS. DOUCHY TO MR. [REDACTED]

25 So he owns two pieces of property, is that your testimony?

1 MR. [REDACTED] TO MS. DOUCHY

2 One, his residence, which I believe he rents part of it, okay, and another solely, a
3 residential property, which multiple dwelling which, which he rents.

4 MS. DOUCHY TO MR. [REDACTED]

5 And do you know when these properties were purchased?

6 MR. [REDACTED] TO MS. DOUCHY

7 I believe the residence was purchased in 2003 and the multi-unit building was
8 purchased in 2006.

9 MS. DOUCHY TO MR. [REDACTED]

10 And do you know how much down payment he paid for the residence?

11 MR. [REDACTED] TO MS. DOUCHY

12 From my memory? I believe -- the residence, about, was \$25,000 plus closing
13 fees, okay? So that could've generated on up to say, to, say, \$50,000, \$60,000.

14 MS. DOUCHY TO MR. [REDACTED]

15 And, and what are you basing this knowledge on?

16 MR. [REDACTED] TO MS. DOUCHY

17 Closing statement.

18 MS. DOUCHY TO MR. [REDACTED]

19 And how much did he, what was his down payment for his second property?

20 MR. [REDACTED] TO MS. DOUCHY

21 I believe that was, oh -- I believe that was \$125,000.

22 MS. DOUCHY TO MR. [REDACTED]

23 And, and what year was that?

24 MR. [REDACTED] TO MS. DOUCHY

25 That was spread over two years. I believe 2005 and 2006. I, I think it was

1 closed in 2006. I think he made a down payment 2005 or -- and then, then went to
2 closing. So it was, it was two -- the cross, I remember it crossing years.

3 MS. DOUCHY TO MR. [REDACTED]

4 Now, would you be surprised to learn at the last hearing he testified that his down
5 payment for the second property was \$330,000?

6 MR. [REDACTED] TO MS. DOUCHY

7 No. I, I, the, the amount that he may have deposited, you know, to cover some
8 of that could've been that close. I think we, we come, we come to a, a much larger
9 number. But as far as the down payment, you know, on the, on the, on the closing
10 statement, I believe was \$125,000.

11 MS. DOUCHY TO MR. [REDACTED]

12 Do you know why he would then testify that it was \$330,000 at the last hearing?

13 MR. [REDACTED] TO MS. DOUCHY

14 Well, he's, he's looking at what it cost to acquire the building. So as the down
15 payment is one thing and then he may have come up with, had to come up with more
16 money for attorneys fees to, to get a mortgage, to do all sorts of things. Points, the title
17 and whatever.

18 MS. DOUCHY TO MR. [REDACTED]

19 And you testified earlier when you were asked where he got the money for this
20 real estate, you think, you said sometimes people just get it and you used the
21 expression from under the mattress, is that correct?

22 MR. [REDACTED] TO MS. DOUCHY

23 Well, by that, by that I meant that's money that he's previously earned that he
24 has put into the bank to actually cut checks. So he, it, it's not uncommon for people
25 who, who are sort of cut out from the financial intermediaries, to hold, to hold large

1 sums of money in safe deposit boxes or in their, their homes. So and of course, you
2 know, rents at times, sometimes are paid in cash and so he's used to keeping amounts
3 of cash on hand. He would be funneling that into, into the bank in order to cover the,
4 cover the debt, cover the down payments.

5 MS. DOUCHY TO MR. [REDACTED]

6 So how would he be able to save -- question withdrawn. How much money did
7 he declare on his amended income tax returns for 2004?

8 MR. [REDACTED] TO MS. DOUCHY

9 I don't have that information with me at the moment. Okay? But they were, the
10 amended return is, I believe, part of the record.

11 MS. DOUCHY TO MR. [REDACTED]

12 Well, could you approximate?

13 MR. [REDACTED] TO MS. DOUCHY

14 In 2004, correct?

15 MS. DOUCHY TO MR. [REDACTED]

16 I'm sorry? 2004, that's my question.

17 MR. [REDACTED] TO MS. DOUCHY

18 If I see the, if I see the amended return, I could, I could --

19 MS. DOUCHY TO MR. [REDACTED]

20 I can give them to --

21 MR. [REDACTED] TO MS. DOUCHY

22 -- show you that. Okay. Okay. Okay. Let's -- okay. The, the difference in
23 taxable income was \$46,000.

24 MS. DOUCHY TO MR. [REDACTED]

25 And what was the total income declared on that return?

1 MR. [REDACTED] TO MS. DOUCHY

2 There was a loss.

3 MS. DOUCHY TO MR. [REDACTED]

4 There was a loss?

5 MR. [REDACTED] TO MS. DOUCHY

6 Um-hum.

7 MS. DOUCHY TO MR. [REDACTED]

8 So and what about in, and what was the loss for 2004?

9 MR. [REDACTED] TO MS. DOUCHY

10 Well the negative taxable income was \$36,240.

11 MS. DOUCHY TO MR. [REDACTED]

12 I'm sorry, could you repeat that number again?

13 MR. [REDACTED] TO MS. DOUCHY

14 \$36,240.

15 MS. DOUCHY TO MR. [REDACTED]

16 And what about in 2003? What was the amount declared on the amended
17 return.

18 MR. [REDACTED] TO MS. DOUCHY

19 Does this go in order?

20 MS. DOUCHY TO MR. [REDACTED]

21 So just go back.

22 MR. [REDACTED] TO MS. DOUCHY

23 Go -- yeah. This way?

24 MS. DOUCHY TO MR. [REDACTED]

25 Next page.

1 MR. [REDACTED] TO MS. DOUCHY

2 Oh, 2003? Okay. In 2003, the change in taxable income was \$7,940.

3 MS. DOUCHY TO MR. [REDACTED]

4 And what was the total amount declared?

5 MR. [REDACTED] TO MS. DOUCHY

6 There was a negative number of \$15,798.

7 MS. DOUCHY TO MR. [REDACTED]

8 I'm sorry, could you repeat that again?

9 MR. [REDACTED] TO MS. DOUCHY

10 \$15,798 negative.

11 MS. DOUCHY TO MR. [REDACTED]

12 Okay. And what about 2002? What was the amount on those amended returns?

13 MR. [REDACTED] TO MS. DOUCHY

14 All right. In the taxable income, okay, was a negative 639 and the net change
15 was \$31,734.

16 MS. DOUCHY TO MR. [REDACTED]

17 I'm sorry? What was the net charge?

18 MR. [REDACTED] TO MS. DOUCHY

19 \$31,374.

20 MS. DOUCHY TO MR. [REDACTED]

21 And what about in 2001?

22 MR. [REDACTED] TO MS. DOUCHY

23 Okay. This is Schedule E. Okay. In 2001, the taxable income originally reported
24 was \$6,749. And we added the \$12,008.

25 MS. DOUCHY TO MR. [REDACTED]

1 And now, when you say negative income, what do you mean?

2 MR. [REDACTED] TO MS. DOUCHY

3 I mean that when you take a income minus adjustments, because you adjust the
4 gross income, minus itemized or the standard deduction, minus the exemptions, you
5 can get a negative number.

6 MS. DOUCHY TO MR. [REDACTED]

7 So is that meaning that you're not showing any profit? I'm, I'm sorry, I'm ignorant
8 about this.

9 MR. [REDACTED] TO MS. DOUCHY

10 In the calculation, the calculation of tax, there's two statutory, statutory
11 deductions in there of exemptions, which would be himself, his wife and his children.
12 And the standard deduction, which is based upon, based upon income and filing status,
13 those are two negative numbers. So you could have positive income and which could
14 turn into negative taxable income, which would bring your, bring your tax, your income
15 tax to zero. However, you would still pay a tax because your business generated,
16 generated a profit and you would have self-employment tax.

17 MS. DOUCHY TO MR. [REDACTED]

18 And now, when I asked you in those figures that I was referring to earlier, the
19 2004, 2003, 2002, 2001, are those his individual income tax returns that you're referring
20 to?

21 MR. [REDACTED] TO MS. DOUCHY

22 Yes.

23 MS. DOUCHY TO MR. [REDACTED]

24 Okay. And what about his business tax returns?

25 MR. [REDACTED] TO MS. DOUCHY

1 They are part of his personal tax return. He's a sole proprietor.

2 MS. DOUCHY TO MR. [REDACTED]

3 It's all, okay, it's all combined?

4 MR. [REDACTED] TO MS. DOUCHY

5 Yes. Yes.

6 MS. DOUCHY TO MR. [REDACTED]

7 Okay. So I, I guess I'm confused, and I'm obviously not an accountant, but I
8 don't understand how someone could have negative income and yet save \$330,000.
9 How is that possible?

10 MR. [REDACTED] TO MS. DOUCHY

11 Well, that is negative taxable income. Okay? If you, if you want to go through
12 the actual business income, we could generate or show how he's, the amount of income
13 that was reported on Schedule C.

14 MS. DOUCHY TO MR. [REDACTED]

15 But I, I still, I am not clear how someone could, with all the deductions and
16 everything, have negative taxable income and yet save \$330,000. I don't see how that's
17 conceivable.

18 MR. [REDACTED] TO MS. DOUCHY

19 Oh, it's very possible.

20 MS. DOUCHY TO MR. [REDACTED]

21 How?

22 MR. [REDACTED] TO MS. DOUCHY

23 Because the --

24 MS. DOUCHY TO MR. [REDACTED]

25 If, if --

1 MR. [REDACTED] TO MS. DOUCHY

2 -- the deductions are statutory. They're not, they're not, not actual cash
3 deductions. So your standard deduction, you don't have to actually spend that money
4 to get that deduction, nor do you have to spend the money for, to get a deduction for
5 your exemptions. So he has three children. That generates, like, a \$15,000 deduction
6 in and of itself. And --

7 MS. DOUCHY TO MR. [REDACTED]

8 Well, no, I, I get, actually, I'm sorry to interrupt, but I, I do understand that. But I, I
9 guess what I'm saying is is that of you're not declaring \$330,000, how are you saving
10 that much?

11 MR. [REDACTED] TO MS. DOUCHY

12 You're, it's your income. If you want to go through total income, that's another
13 number. Okay? So maybe we should do that and then you would, you'd see what we,
14 you'd see what we mean. So his total income --

15 MS. DOUCHY TO MR. [REDACTED]

16 Yeah, then --

17 MR. [REDACTED] TO MS. DOUCHY

18 -- is a different numbers, okay?

19 MS. DOUCHY TO MR. [REDACTED]

20 So, so what was, what were, what was his total income for 2001?

21 MR. [REDACTED] TO MS. DOUCHY

22 So his total income for 2001 was \$43,963.

23 MS. DOUCHY TO MR. [REDACTED]

24 Okay. So that, so that --

25 MR. [REDACTED] TO MS. DOUCHY

1 That was as adjusted by us.

2 MS. DOUCHY TO MR. [REDACTED]

3 Okay. So total income was \$43,000, right?

4 MR. [REDACTED] TO MS. DOUCHY

5 Yes.

6 MS. DOUCHY TO MR. [REDACTED]

7 Okay. And what about for --

8 MR. [REDACTED] TO MS. DOUCHY

9 And, and, and his taxable income generates down to \$18,757. That is adjusted
10 by us, okay? So that's our numbers.

11 MS. DOUCHY TO MR. [REDACTED]

12 Okay. And what about for 2002? What was his total income?

13 MR. [REDACTED] TO MS. DOUCHY

14 Okay. Okay. In 2002, \$57,272.

15 MS. DOUCHY TO MR. [REDACTED]

16 And for 2003, what was his total income?

17 MR. [REDACTED] TO MS. DOUCHY

18 Okay.

19 JUDGE TO MR. [REDACTED]

20 I'm sorry, what was the total for 2002?

21 MR. [REDACTED] TO JUDGE

22 \$57,270.

23 MR. [REDACTED] TO MS. DOUCHY

24 For 2003, it's \$35,000 -- I'm sorry. Yeah, \$35,666.

25 MS. DOUCHY TO MR. [REDACTED]

1 And what about 2004?

2 MR. [REDACTED] TO MS. DOUCHY

3 \$42,684. And there he also had a profit from his real estate business of \$15,222,
4 which, if, includes a depreciation deduction, which is a non-cash deduction.

5 MS. DOUCHY TO MR. [REDACTED]

6 Now, does the, the total income for the other years include profits from his real
7 estate income?

8 MR. [REDACTED] TO MS. DOUCHY

9 No. The, for 2003, there was a very small loss, okay? But that was, that was
10 due to depreciation and he just bought the building. He had very little rents and the
11 depreciation deduction sent him into a loss.

12 MS. DOUCHY TO MR. [REDACTED]

13 So the total income is, is the gross amount, is that right?

14 MR. [REDACTED] TO MS. DOUCHY

15 The income, the numbers I gave you was the income from his business.

16 MS. DOUCHY TO MR. [REDACTED]

17 Okay. And, and that, since he's a self-proprietor. And, and then how much
18 income from his -- so in the total income, you don't count his real estate income from the
19 --

20 MR. [REDACTED] TO MS. DOUCHY

21 Not until --

22 MS. DOUCHY TO MR. [REDACTED]

23 -- from the rentals?

24 MR. [REDACTED] TO MS. DOUCHY

25 -- not until 2004.

1 MS. DOUCHY TO MR. [REDACTED]

2 Okay. And then what was the --

3 MR. [REDACTED] TO MS. DOUCHY

4 Okay.

5 MS. DOUCHY TO MR. [REDACTED]

6 What --

7 MR. [REDACTED] TO MS. DOUCHY

8 To give you an, to give you an idea here, his income from his business was
9 \$42,684. His income, his income from the, from the rental, net income from the rental
10 was \$15,222. However, his gross rents received were \$58,650. So what, what
11 happens here is that he's got a deduction in here of nearly \$16,000 of depreciation,
12 which is, which is a non-cash deduction. So he is, so if he could actually try to cash it
13 out, okay, you're looking at a cash flow of \$30,000 from the, from the rental real estate,
14 from the real estate part of it in 2003, which is -- 2003, right? That's, that's where he, he
15 got that money.

16 MS. DOUCHY TO MR. [REDACTED]

17 So that's \$30,000 from 2003?

18 MR. [REDACTED] TO MS. DOUCHY

19 Yeah. Plus --

20 MS. DOUCHY TO MR. [REDACTED]

21 Okay.

22 MR. [REDACTED] TO MS. DOUCHY

23 -- plus \$42,000 in his schedule -- now, just one other thing, while we're on that
24 subject --

25 MS. DOUCHY TO MR. [REDACTED]

1 And this is based on the amended returns, right?

2 MR. [REDACTED] TO MS. DOUCHY

3 Yes. Yeah. Okay. Yeah. That's right.

4 MS. DOUCHY TO MR. [REDACTED]

5 So, okay, and then so that was \$30,000 for 2003. So, so it's, 2004, right. So
6 again, I'm, I'm still not understanding how he was able to save \$330,000 if he, the total
7 income he has is much less than that.

8 MR. [REDACTED] TO MS. DOUCHY

9 We didn't get up to 2006.

10 MS. DOUCHY TO MR. [REDACTED]

11 Well, no, but I'm, I'm referring to, to he's saving in 2003, 2004. What, what about
12 2005? You're right. I didn't --

13 MR. [REDACTED] TO MS. DOUCHY

14 Well, in -- so he bought the building in, at the end of 2003. He didn't, he, he
15 certainly had enough, enough cash to, to fund a down payment.

16 MS. DOUCHY TO MR. [REDACTED]

17 Well, how, how did, I don't understand how he saved \$100,000 if his --

18 MR. [REDACTED] TO MS. DOUCHY

19 Okay. So --

20 MS. DOUCHY TO MR. [REDACTED]

21 -- income and he was supporting a family of five and running a business --

22 MR. [REDACTED] TO MS. DOUCHY

23 -- [indiscernible].

24 MS. DOUCHY TO MR. [REDACTED]

25 -- how he was able to do that.

1 MR. [REDACTED] TO MS. DOUCHY

2 Okay. And I'm going through to 2005?

3 MS. DOUCHY TO MR. [REDACTED]

4 Okay. No. Okay. So 2003 is when he, he purchased --

5 MR. [REDACTED] TO MS. DOUCHY

6 Okay.

7 MS. DOUCHY TO MR. [REDACTED]

8 -- his first property and his down payment was \$100,000. So in --

9 MR. [REDACTED] TO MS. DOUCHY

10 No, no, no. No, no. I, in, in the first, the first building, the down payment was not
11 \$100,000. It was --

12 MS. DOUCHY TO MR. [REDACTED]

13 That's what he testified to last time.

14 MR. [REDACTED] TO MS. DOUCHY

15 Okay. It's, it was \$25,000 on the, on the schedule, on the, the closing statement,
16 plus, we saw about to 50 to 75, well, 50, \$50,000 over that, okay, where he would've
17 paid money into, to purchase --

18 MS. DOUCHY TO MR. [REDACTED]

19 But --

20 MR. [REDACTED] TO MS. DOUCHY

21 -- to satisfy the purchase of the building.

22 MS. DOUCHY TO MR. [REDACTED]

23 -- but is it possible that what you saw, the closing statement, wasn't accurate if he
24 did --

25 MR. [REDACTED] TO MS. DOUCHY

1 No.

2 MS. DOUCHY TO MR. [REDACTED]

3 -- last time he, his down payment was \$100,000?

4 MR. [REDACTED] TO MS. DOUCHY

5 No. He is, he is looking at what is, is eventually coming out of his pocket, either
6 by check or by, or by cash.

7 MS. DOUCHY TO MR. [REDACTED]

8 Right, so --

9 MR. [REDACTED] TO MS. DOUCHY

10 Now, it's, it's a, it's a blanket number in his mind. Okay? So --

11 MS. DOUCHY TO MR. [REDACTED]

12 Right. Okay. So it's actually --

13 MR. [REDACTED] TO MS. DOUCHY

14 -- what we're doing is, is trying to account for the excess cash.

15 MS. DOUCHY TO MR. [REDACTED]

16 Right, so --

17 MR. [REDACTED] TO MS. DOUCHY

18 So he put money in the bank for his, from his business and he put all, he put
19 more money in from where, from previously earned income over, over a period of time.

20 MS. DOUCHY TO MR. [REDACTED]

21 Again, I know I keep reiterating this, but how is it possible that if, if, if what you're
22 saying is correct, that in his mind it was \$100,000 that he had to lay out for this, how is it
23 possible that he was able to save that when his total income was less than that?

24 MR. [REDACTED] TO MS. DOUCHY

25 He's, he's earned income prior to 2001, I believe.

1 MS. DOUCHY TO MR. [REDACTED]

2 Well --

3 MR. [REDACTED] TO MS. DOUCHY

4 I mean, he's coming into a, a --

5 MS. DOUCHY TO MR. [REDACTED]

6 -- well, his daughter was receiving Medicaid from '96 until 2010.

7 MS. KHANDWALA TO JUDGE

8 Your Honor --

9 MS. DOUCHY TO MR. [REDACTED]

10 And well, no it's --

11 JUDGE TO MS. KHANDWALA

12 Wait, wait a minute.

13 JUDGE TO MS. DOUCHY

14 What's the question?

15 MS. KHANDWALA TO JUDGE

16 He wouldn't know about the Medicaid.

17 JUDGE TO MS. DOUCHY

18 I don't know what the question is.

19 MS. DOUCHY TO JUDGE

20 Okay. If his, if his daughter was receiving Medicaid from '96 to 2009, and his, the

21 Medicaid application was first made in 1996, how was he able to save that much

22 money?

23 MR. [REDACTED] TO MS. DOUCHY

24 I had no --

25 MS. KHANDWALA TO JUDGE

1 Objection, Your Honor.

2 JUDGE TO MS. KHANDWALA

3 What is your objection?

4 MS. KHANDWALA TO JUDGE

5 That's beyond the, the time periods that Dr. [REDACTED] has looked at and Dr.

6 [REDACTED] is not, you know, has no information about the Medicaid issue.

7 MS. DOUCHY TO JUDGE

8 Okay. I'll move on.

9 MS. DOUCHY TO MR. [REDACTED]

10 So based on what you, so just to be clear, you're speculating that -- are, are you
11 agreeing with me that based on the, the money declared in 2001, 2002 and -- 2001 and
12 2002, it doesn't seem possible that he was able to save \$100,000, since his total
13 income was, was less than that?

14 MR. [REDACTED] TO MS. DOUCHY

15 I, I believe you're making the assumption that the years in which he, the, the
16 years in which he's made his, made his down payment or put money into the bank were,
17 was that he was getting his, getting the, the cash from those years. He, he obviously
18 had, had cash from previous years.

19 MS. DOUCHY TO MR. [REDACTED]

20 Well, you're assuming that then, right?

21 MR. [REDACTED] TO MS. DOUCHY

22 I have to assume it.

23 MS. DOUCHY TO MR. [REDACTED]

24 You're assuming that, you're --

25 MR. [REDACTED] TO MS. DOUCHY

1 I, I have to --

2 MS. DOUCHY TO MR. [REDACTED]

3 -- because, because otherwise it'd be impossible, right? You're assuming that he
4 had cash from prior years, right?

5 MR. [REDACTED] TO MS. DOUCHY

6 Oh, within, within, within reason, okay? We're not looking at a large sum of
7 money here, okay? So but it's, it's not uncommon to, that we, we would see
8 approximately \$25,000 to \$50,000 being, being put into, into, into the bank and asking
9 him, well, what was that deposit for? It was just to put money to, to actually pay, put
10 money in the bank in order to pay for the building.

11 MS. DOUCHY TO MR. [REDACTED]

12 And, okay, and then what about 2005? How much was his total income for that
13 year?

14 MR. [REDACTED] TO MS. DOUCHY

15 Okay. 2005? Okay. Okay. 2005 his business income was \$54,042 and his
16 rental income was \$24,233, which again --

17 MS. DOUCHY TO MR. [REDACTED]

18 So what was his total income? That was my question, sir.

19 MR. [REDACTED] TO MS. DOUCHY

20 Well, his total income there is \$78,625, which included \$350 of interest.

21 MS. DOUCHY TO MR. [REDACTED]

22 Okay. So then he purchased property in 2003? Then in, then presumably he
23 saved in 2004 and 2005 to purchase property in 2006. How was he able to save
24 \$330,000 then, if his total income was significantly less than that?

25 MR. [REDACTED] TO MS. DOUCHY

1 I don't know where you're getting \$330,000 from --

2 MS. DOUCHY TO MR. [REDACTED]

3 That's what he testified to last time, sir.

4 MR. [REDACTED] TO MS. DOUCHY

5 \$330,000 --

6 MS. DOUCHY TO MR. [REDACTED]

7 Was his down payment.

8 MR. [REDACTED] TO MS. DOUCHY

9 -- between --

10 MS. DOUCHY TO MR. [REDACTED]

11 He said that his, he purchased a second property --

12 MR. [REDACTED] TO MS. DOUCHY

13 No.

14 MS. DOUCHY TO MR. [REDACTED]

15 -- in October of 2006, a property purchase price was \$726,000 and a down
16 payment was \$330,000?

17 MR. [REDACTED] TO MS. DOUCHY

18 No. No. There's a, I think he's, he's got to be mistaken for that. I, I, I think that,
19 the way we, the way we saw it was approximately \$30,000 in the year 2005 and another
20 hundred something, you know, to, in, in 2006. No, these were, these would've been
21 deposits that you're, that would've made, that he put in to actually make the, make the
22 down payment. Now, his down payment could've included the cash money that he put
23 in, plus also the money that he's accumulated in his bank accounts over the, over the,
24 over the years. So if we're looking at, we're looking at 2003 to, to -- okay. 2003 to
25 2006, okay? You also have to realize that he has gotten gross rents. Gross rents, well

1 --

2 MS. DOUCHY TO MR. [REDACTED]

3 Isn't that part of his total income though?

4 MR. [REDACTED] TO MS. DOUCHY

5 Yeah, it is. Okay, but like I said, his gross rents include, his, his net rental
6 income includes a depreciation deduction, okay, which is a non-cash charge. Then,
7 then we're looking at income coming from, from the rents in, in 2004, which is \$58,650.
8 And then in 2005, rents, rents --

9 MS. DOUCHY TO MR. [REDACTED]

10 I'm sorry, what was it? 2004?

11 MR. [REDACTED] TO MS. DOUCHY

12 2004.

13 MS. DOUCHY TO MR. [REDACTED]

14 Yes.

15 MR. [REDACTED] TO MS. DOUCHY

16 2005, his gross rents, gross rents, gross rents were \$69,182. So there's a
17 significant amount of cash flow here, all right, that, you know, that, that's available to be
18 able to, to be used. Now, problem, problem that many people have with that using the
19 tax return as an indicator of how much money somebody earns, it's because he's on the
20 cash receipts and disbursements method, which, which isn't, which is prone to showing
21 spikes of income and spikes of, of deductions because of you could only get the
22 deduction when the money is received and or when it, and you're going to include
23 income only when it is, when, when it is received. And so income -- deductions when
24 they're paid, actually paid. So it, it may cross accounting periods. So you may get
25 income reported in a, a subsequent year that was due or that was reported in a current

1 year which was, which was actually, should've been income from a previous year. For
2 example, he may have taking, taking deposits, okay, you know, for, for painting jobs and
3 actually using that cash to, to, to put money in the bank to pay for his, pay for his, his
4 down payments. This income would be unearned income, okay? So it's, it's, it's not
5 illegal to do that, but it's, it's something that people would do if their contract is -- time.

6 MS. DOUCHY TO MR. [REDACTED]

7 Right. But he -- do you think, based on what the receipts you saw and the total
8 income that was declared on the tax returns, that it was even possible for him to save
9 \$330,000?

10 MR. [REDACTED] TO MS. DOUCHY

11 It, it's, it's possible, okay, because we did an analysis over the ten-year period of,
12 of income that was, that was generated or, and we, from what the additional income that
13 we, that we, we showed here, we, he could've saved \$290,000.

14 MS. DOUCHY TO MR. [REDACTED]

15 I, I, I guess I'm, I'm really confused how that's even possible if he, if he's, if the
16 amount that the, the total income is significantly less than that. I don't see how it's
17 possible --

18 MR. [REDACTED] TO MS. DOUCHY

19 Well, I, again, you're --

20 MS. DOUCHY TO MR. [REDACTED]

21 -- for him to, to save that much money. He has expenses. He's supporting a
22 family of five in New York. Is it, is it conceivable to support a family of five in New York
23 and then save that much money on the amount of total income he has, realistically?

24 MR. [REDACTED] TO MS. DOUCHY

25 Realistically, I would, I would have to say yes. I mean, knowing how that, you

1 know, how, how much money came through, came through the, the establishment, on,
2 on average, it was \$150,000 a year in gross revenue. And the gross revenue, gross
3 rents generated \$50,000, \$60,000 over those, those periods. Now, like I said, the, the
4 bottom line is, is somehow distorted because of when you have to report the income on
5 the, on a tax return. It doesn't necessarily mean that, you know, he doesn't have the
6 money to pay for things. He just may be paying things out of place. So he may, he may
7 be shuffling money to pay, using contractor deposits to pay for, for, for tuition or
8 something or whatever he's, or whatever, whatever else he's got to do.

9 MS. DOUCHY TO MR. [REDACTED]

10 But why did you seem surprised earlier when I said he had down payment of
11 \$330,000 if --

12 MR. [REDACTED] TO MS. DOUCHY

13 Because that's not what we saw. And we, we --

14 MS. DOUCHY TO MR. [REDACTED]

15 Is it possible you didn't see the correct receipts then?

16 MR. [REDACTED] TO MS. DOUCHY

17 No, no. We're looking at the closing statements, ma'am, okay? And we're
18 looking at monies that were, were down payments. So and we traced that back into the,
19 the, the period of time when he would've made those checks, cut those checks and saw
20 the deposits going in. So over that period of time, we showed the deposits going in as
21 cash and, and we attribute them to, to, to, not as income, but as monies that were put in
22 for the purposes of buying the, buying the property. Now, if you looked at, then you
23 went back and compared that to the, to the additional income that he would've had to
24 report, based upon what we saw, okay, he, he generated approximately, over a period
25 of ten years, \$290,000.

1 MS. DOUCHY TO MR. [REDACTED]

2 So you think he --

3 MR. [REDACTED] TO MS. DOUCHY

4 And that, that, and that includes 2001 to 2010, okay, or 2009, rather. But, but it's
5 not taking into consideration how much he had before 2001.

6 MS. DOUCHY TO MR. [REDACTED]

7 Right. Okay. But so just taking into consideration what, I just want to see if I'm
8 following you. Just taking into consideration what you saw from the time period from
9 2001 to 2010, is it your testimony that he, when you say he generated \$290,000, what
10 do you mean by that?

11 MR. [REDACTED] TO MS. DOUCHY

12 What I'm saying is, is that based upon all the income over a period of ten years,
13 that he, he could've definitely generated the amount of income, amount of income, the
14 amount of cash needed to purchase these buildings.

15 MS. DOUCHY TO MR. [REDACTED]

16 Well, you said generated \$290,000.

17 MR. [REDACTED] TO MS. DOUCHY

18 Over ten years.

19 MS. DOUCHY TO MR. [REDACTED]

20 Right. Over ten years?

21 MR. [REDACTED] TO MS. DOUCHY

22 Right.

23 MS. DOUCHY TO MR. [REDACTED]

24 So, but he testified that he spent -- he, his down payments are \$430,000 over
25 this ten-year period. How was he able to get that much money?

1 MR. [REDACTED] TO MS. DOUCHY

2 I don't, I don't, that doesn't support what, what the closing statements say.

3 MS. DOUCHY TO MR. [REDACTED]

4 And is it possible, with all due respect, do you usually, you, you, you use, your
5 testified that most of your clients are bigger businesses with higher net worths, is that
6 right?

7 MR. [REDACTED] TO MS. DOUCHY

8 Not necessarily so.

9 MS. DOUCHY TO MR. [REDACTED]

10 Well, I, I believe that was your testimony earlier, sir, when you were talking --

11 MR. [REDACTED] TO MS. DOUCHY

12 We handle clients of high net worth, yes.

13 MS. DOUCHY TO MR. [REDACTED]

14 Yes. So and so you're not, this is not, is it fair to say Mr. [REDACTED] is not your
15 typical client?

16 MR. [REDACTED] TO MS. DOUCHY

17 No, that's not the case. He, we have many sole proprietors who operate
18 construction-type business. We have several painters. We have garage door installers.
19 We have all sorts of people that, that operate like this.

20 MS. DOUCHY TO MR. [REDACTED]

21 So would you consider these people people with high net worths then?

22 MR. [REDACTED] TO MS. DOUCHY

23 No. That's not the -- we, we deal with people who have high net worths. We're
24 not saying that most of our clients have high net worth, are high net worth clients.

25 MS. DOUCHY TO MR. [REDACTED]

1 How much are you being paid to testify today?

2 MR. [REDACTED] TO MS. DOUCHY

3 Well, I, it's in my hourly rate.

4 MS. DOUCHY TO MR. [REDACTED]

5 Which is what?

6 MR. [REDACTED] TO MS. DOUCHY

7 It'd be about \$250 an hour.

8 MS. DOUCHY TO MR. [REDACTED]

9 Okay. And, and how much income, how much -- question withdrawn. How much
10 did Mr. [REDACTED] pay you since mid-2010 for all the amended filings and analysis you did?

11 MR. [REDACTED] TO MS. DOUCHY

12 I believe he paid us \$3,000 for the amended filings and, for the amended filings
13 for 2007 through 2010, and he paid us another \$3,000 to do 2001 to 2006, as a deposit.

14 That's --

15 MS. DOUCHY TO MR. [REDACTED]

16 So the deposit was --

17 MR. [REDACTED] TO MS. DOUCHY

18 Yeah. That, that was the retainer.

19 MS. DOUCHY TO MR. [REDACTED]

20 Okay.

21 MR. [REDACTED] TO MS. DOUCHY

22 So we, we --

23 MS. DOUCHY TO MR. [REDACTED]

24 So --

25 MR. [REDACTED] TO MS. DOUCHY

1 -- we haven't --

2 MS. DOUCHY TO MR. [REDACTED]

3 -- what's --

4 MR. [REDACTED] TO MS. DOUCHY

5 -- we haven't billed him for the rest.

6 MS. DOUCHY TO MR. [REDACTED]

7 And what's going to be the total bill?

8 MR. [REDACTED] TO MS. DOUCHY

9 I would probably say that the, the total would be around \$6,000 for the, for the
10 return emendations, you know, plus the time spent here --

11 MS. DOUCHY TO MR. [REDACTED]

12 So --

13 MR. [REDACTED] TO MS. DOUCHY

14 -- in conferences.

15 MS. DOUCHY TO MR. [REDACTED]

16 -- so I, I though you testified that the deposit for, he paid you -- deposit of \$3,000
17 for the time for the amended returns for 2007 to 2010?

18 MR. [REDACTED] TO MS. DOUCHY

19 2007 to 2010, he paid us approximately \$3,000 to do those returns.

20 MS. DOUCHY TO MR. [REDACTED]

21 And you already received that?

22 MR. [REDACTED] TO MS. DOUCHY

23 And received that, right.

24 MS. DOUCHY TO MR. [REDACTED]

25 Okay. And he also paid you --

1 MR. [REDACTED] TO MS. DOUCHY

2 He paid us --

3 MS. DOUCHY TO MR. [REDACTED]

4 -- \$3,000 --

5 MR. [REDACTED] TO MS. DOUCHY

6 -- he paid us another \$3,000 towards the emendation of 2001 to 2006, which we
7 haven't completed yet. We would expect that six returns would go for \$1,000 a piece.
8 We haven't checked the hours, but that's an estimate. Plus any time we spent in
9 conference and, of course, testifying here today.

10 MS. DOUCHY TO MR. [REDACTED]

11 So did he pay for you to come here today? In other words your travel here?

12 MR. [REDACTED] TO MS. DOUCHY

13 That would be part of the, part of the fee.

14 MS. DOUCHY TO MR. [REDACTED]

15 Okay. And so just to be clear, so far he's paid you \$6,000, is that right?

16 MR. [REDACTED] TO MS. DOUCHY

17 Yes.

18 MS. DOUCHY TO MR. [REDACTED]

19 And what do you estimate will be the total then, when everything is complete?

20 MR. [REDACTED] TO MS. DOUCHY

21 Probably 11 when you, when you're through with it.

22 MS. DOUCHY TO MR. [REDACTED]

23 And how many accountants have you had working on this, his taxes?

24 MR. [REDACTED] TO MS. DOUCHY

25 One.

1 MS. DOUCHY TO MR. [REDACTED]
2 And who is that?
3 MR. [REDACTED] TO MS. DOUCHY
4 Orlando Calderon [phonetic sp.].
5 MS. DOUCHY TO MR. [REDACTED]
6 So you're not the one who's been doing this then?
7 MR. [REDACTED] TO MS. DOUCHY
8 I'm the partner on the job. He is assisting me, yes.
9 MS. DOUCHY TO MR. [REDACTED]
10 So who actually reviewed all this paperwork.
11 MR. [REDACTED] TO MS. DOUCHY
12 I did. Well, we mean, actually generated the paperwork, the analysis was the
13 staff under my supervision.
14 MS. DOUCHY TO MR. [REDACTED]
15 Okay. So you didn't do this analysis then?
16 MR. [REDACTED] TO MS. DOUCHY
17 Well, I, yeah, I, the staff does the analysis and I review it, so to the extent that
18 combined effort means that I prepared it, yes, I prepared it. So however you want to
19 look at that, I think that's --
20 MS. DOUCHY TO MR. [REDACTED]
21 But you, but you --
22 MR. [REDACTED] TO MS. DOUCHY
23 -- the normal way --
24 MS. DOUCHY TO MR. [REDACTED]
25 -- in other words, you reviewed what, what they ultimately came up with and you

1 reviewed it to make sure it was correct, is that right?

2 MR. [REDACTED] TO MS. DOUCHY

3 I reviewed what I directed my staff to do.

4 MS. DOUCHY TO MR. [REDACTED]

5 Right. So you didn't actually look at the closing statements then?

6 MR. [REDACTED] TO MS. DOUCHY

7 Yes, I did.

8 MS. DOUCHY TO MR. [REDACTED]

9 You did look at the closing statements? Okay.

10 MR. [REDACTED] TO MS. DOUCHY

11 I have to review it.

12 MS. DOUCHY TO MR. [REDACTED]

13 Okay.

14 MR. [REDACTED] TO MS. DOUCHY

15 I, I spend a lot of time with the, the closing statements.

16 MS. DOUCHY TO MR. [REDACTED]

17 And do you get billed at a higher hourly rate than the people that work under
18 you?

19 MR. [REDACTED] TO MS. DOUCHY

20 Yes, I do.

21 MS. DOUCHY TO MR. [REDACTED]

22 Now, isn't it possible that the closing statements don't reflect everything that was
23 paid at -- question withdrawn. The respondent testified at the hearing that I think he
24 couldn't get a social security number so he did this through some sort of broker. Are
25 you aware of that?

1 MR. [REDACTED] TO MS. DOUCHY

2 Did what through some sort of --

3 MS. DOUCHY TO MR. [REDACTED]

4 The, the purchase, the real estate purchases?

5 MR. [REDACTED] TO MS. DOUCHY

6 Well, are you speaking of a real estate broker or a mortgage broker?

7 MS. DOUCHY TO MR. [REDACTED]

8 No, no, no, I'm not saying that, sir. I'm saying that the, according to the
9 respondent's testimony, he had, I don't think he took out a conventional mortgage. This
10 is my --

11 MR. [REDACTED] TO MS. DOUCHY

12 Yes, a private mortgage, yes.

13 MS. DOUCHY TO MR. [REDACTED]

14 Right. And so, and since these things are -- are private mortgages regulated, like
15 --

16 MR. [REDACTED] TO MS. DOUCHY

17 They have to be, they have to be recorded.

18 MS. DOUCHY TO MR. [REDACTED]

19 Right. They're recorded. But are they under the same scrutiny as something
20 from a, a public bank?

21 MR. [REDACTED] TO MS. DOUCHY

22 Scrutiny and under the laws of the state, I'm not an attorney. I don't think I could,
23 you know, be qualified to, to really answer that.

24 MS. DOUCHY TO MR. [REDACTED]

25 And now the, the -- what percentage of your, your clients purchase things

1 through private brokers and mortgages?

2 MR. [REDACTED] TO MS. DOUCHY

3 Very few. You've got to put a percentage on it, let's say, one percent.

4 MS. DOUCHY TO MR. [REDACTED]

5 Okay. So then you're not that familiar with closing statements from private
6 mortgages and private brokers then?

7 MR. [REDACTED] TO MS. DOUCHY

8 Closing statement comes from the attorney. It's a HUD --

9 MS. DOUCHY TO MR. [REDACTED]

10 But --

11 MR. [REDACTED] TO MS. DOUCHY

12 -- HUD statement.

13 MS. DOUCHY TO MR. [REDACTED]

14 But you just testified that few of your clients get private mortgages and, and
15 brokers, is that right?

16 MR. [REDACTED] TO MS. DOUCHY

17 The mortgage broker and the person who's supplying the mortgage do not do the
18 closing statement. The attorney does the closing statement, usually on a HUD form.

19 MS. DOUCHY TO MR. [REDACTED]

20 Right. But that's not what you're used to reviewing then?

21 MR. [REDACTED] TO MS. DOUCHY

22 I'm used to reviewing --

23 MS. DOUCHY TO MR. [REDACTED]

24 Prepared by private mortgages and --

25 MR. [REDACTED] TO MS. DOUCHY

1 No, no, no, no.

2 MS. DOUCHY TO MR. [REDACTED]

3 -- private.

4 JUDGE TO MR. [REDACTED]

5 Are the forms the same --

6 MR. [REDACTED] TO JUDGE

7 Yes, they are.

8 JUDGE TO MR. [REDACTED]

9 -- whether or not they come from --

10 MR. [REDACTED] TO JUDGE

11 Yes, they --

12 MS. DOUCHY TO MR. [REDACTED]

13 Right.

14 JUDGE TO MR. [REDACTED]

15 -- private mortgages or --

16 MR. [REDACTED] TO JUDGE

17 It, it --

18 JUDGE TO MR. [REDACTED]

19 -- public? The form is the same? Is that right?

20 MR. [REDACTED] TO JUDGE

21 The, the amount, amounts of money coming from a private mortgage is only one

22 number on the closing statement.

23 JUDGE TO MR. [REDACTED]

24 I mean, the statement the, has to be the same whether --

25 MR. [REDACTED] TO JUDGE

1 Yes.

2 JUDGE TO MR. [REDACTED]

3 Wherever it's from --

4 MR. [REDACTED] TO JUDGE

5 Yes.

6 JUDGE TO MR. [REDACTED]

7 -- whenever you got your money from? Private, in your own bank --

8 MR. [REDACTED] TO JUDGE

9 That's correct. That's correct.

10 JUDGE TO MR. [REDACTED]

11 -- your aunt gave it to you? It's the same form?

12 MR. [REDACTED] TO JUDGE

13 If it was, if it was money coming in from Joe Schmoe, X, Y and you're coming in
14 and, and he's putting up \$200,000, that's just one check coming in from, you know, for a
15 mortgage.

16 JUDGE TO MR. [REDACTED]

17 So the form you're reviewing is the same --

18 MR. [REDACTED] TO JUDGE

19 I'm reviewing a, an attorney-prepared form and it, it, it always has a, a high
20 degree of reliability.

21 JUDGE TO MR. [REDACTED]

22 Are there different forms?

23 MR. [REDACTED] TO JUDGE

24 In general --

25 JUDGE TO MR. [REDACTED]

1 Can you use any form you want? Different lawyers use different forms or no?

2 MR. [REDACTED] TO JUDGE

3 Well, there's a HUD form, a HUD statement --

4 JUDGE TO MR. [REDACTED]

5 And is that --

6 MR. [REDACTED] TO JUDGE

7 -- Housing Urban Development.

8 JUDGE TO MR. [REDACTED]

9 Right, right.

10 MR. [REDACTED] TO JUDGE

11 And it, it basically shows the closing and it shows, it shows the purchase price,
12 the settlement charges and, and then of course there's addendums to it. And that's
13 usually, usually what we see. The attorney, the attorney may or may not use that form,
14 but the, the, he could actually do is own closing statement and actually do a HUD
15 statement as a, as a parallel to it. We, we basically looking at the attorney's, the
16 attorney's statement.

17 MS. DOUCHY TO MR. [REDACTED]

18 So, so there isn't a uniform form, then, because the attorney could use their own
19 form?

20 MR. [REDACTED] TO MS. DOUCHY

21 There, there is a uniform form.

22 MS. DOUCHY TO MR. [REDACTED]

23 Other than the HUD form, there are other forms? Aren't there a lot of forms at
24 mortgages and closings?

25 MR. [REDACTED] TO MS. DOUCHY

1 There are a lot of forms at mortgages --

2 MS. DOUCHY TO MR. [REDACTED]

3 Right.

4 MR. [REDACTED] TO MS. DOUCHY

5 -- and closing. But if you're --

6 MS. DOUCHY TO MR. [REDACTED]

7 Right.

8 MR. [REDACTED] TO MS. DOUCHY

9 -- talking about an accounting of the closing, it is done by the attorney and, and
10 they're, it's money in, money out, okay, and it's a complete accounting of how the, the
11 property was purchased and it's prepared by the attorney and it is supported by a HUD
12 statement. If the HUD statement, the HUD statement is, if the attorney wants to use his
13 format, he has to have the same equivalent numbers that would be in the HUD
14 statement.

15 JUDGE TO MR. [REDACTED]

16 The same information?

17 MR. [REDACTED] TO JUDGE

18 The same information, yes.

19 MS. DOUCHY TO MR. [REDACTED]

20 And now when -- do you recall, you said he came to you in mid-2010 to prepare
21 amended returns. Do you recall when in mid-2010 he came to your firm?

22 MR. [REDACTED] TO MS. DOUCHY

23 It's got to be June or July.

24 MS. DOUCHY TO MR. [REDACTED]

25 And did he tell you that he wanted to do this because he was before an, he was

1 in Immigration proceedings, removal proceedings?

2 MR. [REDACTED] TO MS. DOUCHY

3 Not initially. He, he, he was, he said that he was concerned that he may not
4 have reported all the income that he should've reported and that he, that he did not
5 know at the time and so he sought out, he sought out a CPA. In other words, he had
6 his stuff prepared by somebody who was a, basically a tax preparer and he was unsure
7 as to whether or not it was correct. Now, obviously if there was something in the
8 background that's saying, well, I need this information to be squeaky clean for, you, you
9 know, for whatever purpose he needed it, okay, that's the reason why he hired us. So
10 initially it wasn't our, it, it didn't matter to us where he was taking the information. He
11 said he wanted a tax return that was beyond reproach and we gave it to him.

12 MS. DOUCHY TO MR. [REDACTED]

13 And you said initially. When did you subsequently learn about his Immigration
14 issues?

15 MR. [REDACTED] TO MS. DOUCHY

16 Well, that would be after we, we've, we amended the first set of tax returns and
17 we got a call from his, his attorney saying that there was a proceeding here and that
18 they wanted us to, to prepare tax returns for 2001 to 2006, okay, and under the, on the
19 same basis. But she didn't really tell us, you know, what the extent of this, this, this
20 proceeding was all about. In my mind, and I, we've, we've had this many times before
21 where somebody's applying for citizenship and wanted to make sure his, his tax returns
22 were, were filed properly. And so we would, we would've, we've done that review on
23 occasion many times.

24 MS. DOUCHY TO MR. [REDACTED]

25 And isn't it hard to account for money in cash businesses? You, you --

1 MR. [REDACTED] TO MS. DOUCHY

2 Yes. Yes. Yes.

3 MS. DOUCHY TO MR. [REDACTED]

4 Okay. And so basically, how many receipts did he even have?

5 MR. [REDACTED] TO MS. DOUCHY

6 He had a lot of receipts. So to --

7 MS. DOUCHY TO MR. [REDACTED]

8 What kind of receipts?

9 MR. [REDACTED] TO MS. DOUCHY

10 -- get the -- Home Depot receipts, paint store receipts, whatever he had, you
11 know, he, he kept track of.

12 MS. DOUCHY TO MR. [REDACTED]

13 But what about receipts from people he worked for? Money --

14 MR. [REDACTED] TO MS. DOUCHY

15 In certain --

16 MS. DOUCHY TO MR. [REDACTED]

17 -- handed over?

18 MR. [REDACTED] TO MS. DOUCHY

19 -- in certain circumstances, he actually kept the checks that people gave him. He
20 actually made photocopies of the checks.

21 MS. DOUCHY TO MR. [REDACTED]

22 You said in certain circumstances?

23 MR. [REDACTED] TO MS. DOUCHY

24 It wasn't, I don't think I have it for all of the years, but for some of the years I have
25 a, a compilation of checks that he received from customers that he did, did work for. So

1 we actually have the, the, the amount of money that was paid by check, okay, to these
2 individuals. And of course that was deposited in the bank.

3 MS. DOUCHY TO MR. [REDACTED]

4 But you have no way of knowing that that's all the money that was paid. Other
5 than him telling you and giving you photocopies, you have no way of knowing that that's
6 all the money that he received?

7 MR. [REDACTED] TO MS. DOUCHY

8 No. There's, there's no, no way I could be sure that that's all the money he
9 received, no.

10 MS. DOUCHY TO MR. [REDACTED]

11 And, and is it in general, as a, a certified public accountant, your job to help your
12 clients pay the least amount of taxes?

13 MR. [REDACTED] TO MS. DOUCHY

14 Yes, that's what we do.

15 MS. DOUCHY TO MR. [REDACTED]

16 Now, you said that you, one of the, the, one of your employment functions is to
17 represent taxpayers before the IRS. In, in what context would you do that?

18 MR. [REDACTED] TO MS. DOUCHY

19 In audit situations, offer in compromise. Any kind of controversy that might exist.

20 MS. DOUCHY TO MR. [REDACTED]

21 And what percentage of your personal work is auditing?

22 MR. [REDACTED] TO MS. DOUCHY

23 There's two times of auditing here. If you're talking about representing clients
24 who are being audited by the IRS, that's one aspect of auditing. The other aspect of
25 auditing is just straight auditing of businesses and if we're looking at that part of it, it's

1 approximately, we -- the latter part of it is approximately 45 percent of our business is in

2 --

3 MS. DOUCHY TO MR. [REDACTED]

4 Auditing businesses?

5 MR. [REDACTED] TO MS. DOUCHY

6 -- auditing businesses, yeah.

7 MS. DOUCHY TO MR. [REDACTED]

8 Okay. And the other type of auditing, when representing people who are --

9 MR. [REDACTED] TO MS. DOUCHY

10 Representing, representing clients in, during, responding to tax audits.

11 MS. DOUCHY TO MR. [REDACTED]

12 Right. So what percentage --

13 MR. [REDACTED] TO MS. DOUCHY

14 That would be a defense, you know, in a --

15 MS. DOUCHY TO MR. [REDACTED]

16 Right. I understand.

17 MR. [REDACTED] TO MS. DOUCHY

18 -- defense situation, yeah.

19 MS. DOUCHY TO MR. [REDACTED]

20 Yeah. So what, what percent of your business is that?

21 MR. [REDACTED] TO MS. DOUCHY

22 It varies. You could say about four or five percent. We try not to get people
23 audited.

24 JUDGE TO MR. [REDACTED]

25 That would be very bad for your business.

1 MR. [REDACTED] TO JUDGE

2 That's correct.

3 MS. DOUCHY TO MR. [REDACTED]

4 Yeah. And, and how did you know how much rental income the respondent got,
5 if it, if it's your testimony that a lot of it was just cash?

6 MR. [REDACTED] TO MS. DOUCHY

7 Well, we have leases and we have just, just a straight calculation. So in multiple
8 dwellings, they actually, I believe he actually has to report the amount of income that
9 he's getting.

10 MS. DOUCHY TO MR. [REDACTED]

11 I'm sorry?

12 MR. [REDACTED] TO MS. DOUCHY

13 He actually has to report to the state or the city how much actual income he's
14 getting. So we see the deposits going through, so as long as there's a lease and we
15 see, you know, a certain amount of checks, it's just, just extrapolating it out. The only
16 issue here is a possible vacancies and changes in, changes in rent. So we believe that
17 we've got the right numbers. If, if you didn't, you know, on the other hand, if you didn't
18 know what the numbers were and you know what a market rent was and what he's
19 getting now and just back, backtrack it and say, well, if it's fully rented, just multiply the
20 number he's getting by 12, by the number of apartments that he's getting, and, and
21 that's the number, that's the number you use.

22 MS. DOUCHY TO JUDGE

23 I just want to see if I have any more questions.

24 MS. DOUCHY TO MR. [REDACTED]

25 And do any of his properties also have commercial businesses?

1 MR. [REDACTED] TO MS. DOUCHY

2 There's a store, okay. There's a storefront, okay, so in the, the property, the first
3 property bought has a store in, then residential property.

4 MS. DOUCHY TO MR. [REDACTED]

5 I'm sorry, the second property has a store?

6 MR. [REDACTED] TO MS. DOUCHY

7 The -- the first property that he purchased has a store. And then the second
8 property, I believe, is straight rental. And it's a --

9 MS. DOUCHY TO MR. [REDACTED]

10 Are you sure of that?

11 MR. [REDACTED] TO MS. DOUCHY

12 Well, the way we have it listed here is that the storefront, there's a storefront and
13 then it's a multi-use building, right? So that's the way we, that's the way we have it
14 listed, okay? And then, and then it's rental, straight rental property for the second, the
15 second building, [REDACTED], okay. So in 2006 it was very little, but it just says
16 rental property. So the only building with a commercial rent to it would've been [REDACTED]. If
17 [REDACTED] has rental property to it, we didn't, we didn't, we didn't list it that way.

18 MS. DOUCHY TO MR. [REDACTED]

19 Because he testified last time that he, there were two commercial business in the
20 property he owns?

21 MR. [REDACTED] TO MS. DOUCHY

22 That's possible.

23 MS. DOUCHY TO MR. [REDACTED]

24 But wouldn't you know that if you reviewed everything very carefully?

25 MR. [REDACTED] TO MS. DOUCHY

1 Yeah. I'm just going by the tax return. So when we, the first tax, the first
2 building, it's the storefront with, and, and that's basically with, with residential stuff in it.
3 And the second one is residential property. If that's all commercial, it's all commercial. I
4 don't -- but it's, the way we have it listed is residential property.

5 MS. DOUCHY TO JUDGE

6 And I have no further questions, Your Honor.

7 JUDGE TO MS. KHANDWALA

8 Redirect?

9 MS. KHANDWALA TO JUDGE

10 Yes.

11 MS. KHANDWALA TO MR. [REDACTED]

12 Dr. [REDACTED] can you take us year by year for and give us the amounts for the
13 gross income and the gross rents received, please?

14 MR. [REDACTED] TO MS. KHANDWALA

15 So --

16 JUDGE TO MS. KHANDWALA

17 For, for when?

18 MR. [REDACTED] TO MS. KHANDWALA

19 -- so from what --

20 MS. KHANDWALA TO MR. [REDACTED]

21 2001 and then 2003 onwards, there is rent also.

22 MR. [REDACTED] TO MS. KHANDWALA

23 Um-hum. Okay. So, okay. Okay. This is, this'll be total income, all right, for
24 2001. This is, there's a deduction here for one half the self-employment tax. That's not,
25 that's part of the tax. So the total is -- first, 2001 is \$43,963.

1 MS. KHANDWALA TO MR. [REDACTED]

2 That's the, the gross money coming in?

3 MR. [REDACTED] TO MS. KHANDWALA

4 That's, that's the net, net money. Now you want, you want the gross in Schedule
5 C?

6 MS. KHANDWALA TO MR. [REDACTED]

7 The gross, please?

8 MR. [REDACTED] TO MS. KHANDWALA

9 \$140,375.

10 MS. KHANDWALA TO MR. [REDACTED]

11 A hundred and forty-seven?

12 MR. [REDACTED] TO MS. KHANDWALA

13 \$140,375, and no rental income.

14 MS. KHANDWALA TO MR. [REDACTED]

15 Okay.

16 MR. [REDACTED] TO MS. KHANDWALA

17 All right. And then for 2002, all right, \$134,716. That's the gross receipts. And
18 no rental, no rental income. All right. And then for 2003, okay, 2003, \$114,515 for
19 Schedule C income, gross receipts. And \$7,150 for gross rents.

20 MS. DOUCHY TO MR. [REDACTED]

21 I'm sorry? What's the --

22 MR. [REDACTED] TO MS. DOUCHY

23 \$7,150 for gross rentals.

24 JUDGE TO MS. DOUCHY

25 Gross rentals.

1 MR. [REDACTED] TO MS. KHANDWALA

2 And then, well, so for 2004, 2004, were looking at \$131,612 for, for gross
3 receipts from his business and \$58,650 for gross rents.

4 MS. KHANDWALA TO MR. [REDACTED]

5 I'm sorry, 51 --

6 MR. [REDACTED] TO MS. KHANDWALA

7 \$58,600 --

8 JUDGE TO MS. KHANDWALA

9 \$58,650.

10 MR. [REDACTED] TO MS. KHANDWALA

11 -- that's 2004, okay? So 2005, we're looking at \$163,022 for gross receipts. And
12 total rents of \$69,182. And in 2006, 2006, sorry -- \$148,138 for gross receipts and rents
13 of \$78,727. That's up to 2006. So that's where you're at. Okay? So that's, that's,
14 that's total cash flow in.

15 MS. KHANDWALA TO MR. [REDACTED]

16 And given these figures, in your opinion, is it possible for him to have made the
17 down payments that he has testified to making?

18 MR. [REDACTED] TO MS. KHANDWALA

19 That's a lot of money.

20 MS. DOUCHY TO JUDGE

21 Objection. Speculation.

22 MR. [REDACTED] TO MS. KHANDWALA

23 But oh, well, they, they, like I said, we did, we did a, a tasks and analysis here of
24 the additional income that we were reporting and we, we agree that he has enough, he
25 made enough money to make, to make the down payments.

1 MS. KHANDWALA TO MR. [REDACTED]

2 You said that in calculating the cost of, the, the cost of running his business, did
3 you rely solely on receipts?

4 MR. [REDACTED] TO MS. KHANDWALA

5 No. Okay. We relied on, where he, where he – provided receipts, we cross-
6 referenced those receipts to checks that were written out so that they wouldn't be
7 duplicated. Where there was situations where the amount of expense was, was
8 inappropriate, okay, in other words, it could not be, we had to apply the Cohan Rule.

9 MS. KHANDWALA TO MR. [REDACTED]

10 Can you explain what that is?

11 MR. [REDACTED] TO MS. KHANDWALA

12 Well, it would be a reason estimate as to what the expense should have been or
13 would have been, you know, in, in the circumstance. So the only time we did that, I, I
14 believe, was three times when we, when we looked at the total amounts of, of income
15 and we had the total expenses that we can document, but we had no labor cost, okay,
16 and, or very little in the way of labor cost, or no documentation in terms of labor cost.
17 So which means that they had to pay money, okay, for people to do the work. He could
18 not do it, he could not have done it by himself. So we, we basically, where we did have
19 a model of a, of what he actually did pay, okay, and I believe we had that model in
20 2001, okay, we, we basically locked into a conservative percentage to, to make a cost
21 of sales, or cost of goods sold or cost of sales number and we used the, we used the
22 cost of labor to, to get there.

23 MS. KHANDWALA TO MR. [REDACTED]

24 Do, are CPAs bound by a code of ethic?

25 MR. [REDACTED] TO MS. KHANDWALA

1 Yes.

2 MS. KHANDWALA TO MR. [REDACTED]

3 And what does that require you, does that require --

4 MS. DOUCHY TO JUDGE

5 Objection. This goes beyond the scope of cross-examination.

6 MS. KHANDWALA TO JUDGE

7 Your Honor, there was some testimony about his, a CPA's goal being to pay the
8 lowest taxes and I'm just trying to --

9 JUDGE TO MS. KHANDWALA

10 Right. I'll allow it.

11 JUDGE TO MS. DOUCHY

12 Overruled.

13 MS. KHANDWALA TO MR. [REDACTED]

14 And --

15 MR. [REDACTED] TO MS. KHANDWALA

16 There, there's a code of, there's a, a code of ethics for a CPAs in general and
17 there is also a statement of responsibilities and tax practice, which essentially is a
18 separate code of ethics for tax return preparation. And Circular 230 is also a, a guiding
19 treatise, you might say, okay, of, of what, what the statement of responsibilities in tax
20 practices and they almost parallel one another, okay?

21 MS. KHANDWALA TO MR. [REDACTED]

22 And under those rules, are you required to file the lowest taxes or do the lowest
23 taxes that are allowable under the law?

24 MS. DOUCHY TO JUDGE

25 Objection. Leading.

1 JUDGE TO MS. DOUCHY

2 Overruled.

3 JUDGE TO MS. KHANDWALA

4 I'll allow it.

5 MR. [REDACTED] TO MS. KHANDWALA

6 No. What, what we're -- you are to prepare a tax return under the, under the
7 Internal Revenue Code and you, there, you are essentially, when you're preparing a tax
8 return, a taxpayer's advocate. Also, at the same time, you have a dichotomous role as,
9 essentially, like, a friend of the Internal Revenue Service. So as the part of the
10 responsibility is, is that if the person is entitled to the deduction, he's supposed to get it,
11 okay? He, you're not supposed to leave it out because you think he paid too little in tax.
12 So on, on the other, on the other hand, if there was a situation where he, he
13 understated something, okay, you have the responsibility of going back and, and having
14 him prove it, okay, so you're going to ask for support wherever you possibly can. Well,
15 that's the reason for asking for everything he possibly had. So he had to take a
16 complete document dump and give it to us. And, and he, of course, he had to answer
17 questions with respect to things that just didn't look right. One of the things that didn't
18 look right was, you know, sometimes the, the labor cost.

19 MS. KHANDWALA TO MR. [REDACTED]

20 And if, and this is not related to the respondent, but generally, if you suspected a
21 client was underreporting income, what would your obligations be in that situation?

22 MR. [REDACTED] TO MS. KHANDWALA

23 Well, we would tell him that he has to report the income or we would disengage
24 from the, from the assignment.

25 MS. KHANDWALA TO MR. [REDACTED]

1 In your opinion, the amended taxes, taxes are, are they just accurate or could
2 they be high or low?

3 MS. DOUCHY TO JUDGE

4 Objection, Your Honor. It's, it's in the, it's in the witness's interest to say that
5 they're accurate because he prepared them and so --

6 JUDGE TO MS. KHANDWALA

7 Well, I would presume that he thinks they're accurate. That's his business. I
8 don't think -- also saying that, no, I think they're inaccurate, I always go inaccurate. I
9 mean, really?

10 MS. KHANDWALA TO JUDGE

11 Well, he's recreated some taxes going back quite far behind and --

12 JUDGE TO MS. KHANDWALA

13 But he, his submissions, I presume that they're accurate. That's his business.
14 Overruled. Continue.

15 MS. KHANDWALA TO MR. [REDACTED]

16 In situations where one has to prepare returns going back far, you know, going
17 far back, where documentation may not be complete, is your obligation to -- how, how
18 do you account for some missing information?

19 MR. [REDACTED] TO MS. KHANDWALA

20 Well, again, the, the Cohan Rule, it has to be realistic. And so the taxpayer has
21 a, a lifestyle and he has a, he, he, you know, if he's there, he spent all of this money,
22 okay, and he's not showing any income, it's got to come from someplace. So that's the
23 reason for doing the tasks and analysis that we did do saying, well, okay, you bought
24 these buildings, you, you have, you know, you, you have, I mean, that's good business.
25 I mean, he's generating a considerable amount of, of gross, gross revenue. And, you

1 know, he's go the, he, he has to, he has to report that income. It, it's, it, it's something
2 that the IRS would do. Like, if the IRS goes in and, and looks at people who are,
3 perhaps, evading income and looking at their lifestyle, I mean, if you got, you know,
4 three or four Mercedes Benz's in the, in the garage and under your name, you know,
5 there, they'll want to know how you got the money. Okay? So they, you know, it's, it's
6 difficult at times, okay? But it goes hand in hand with the, the, your, the character of
7 the, of the client that you're dealing with. So this is part and parcel, are you willing to
8 take on a client, and if, if, you know, someone comes in and, you know, he comes in
9 with this Mercedes Benz and he's Mr. Wonderful and I, you know, I have an apartment
10 in Manhattan, I have this and that, and I, I made \$20,000 a year, we would show him
11 the door.

12 MS. KHANDWALA TO MR. [REDACTED]

13 And as to the treatment of investment property, is there a difference as to
14 whether it's commercial or residential?

15 MR. [REDACTED] TO MS. KHANDWALA

16 Not really. I, there may be a difference in depreciation deductions for certain
17 things, but it's, a rent's a rent.

18 MS. KHANDWALA TO JUDGE

19 That's all, Your Honor.

20 JUDGE TO MS. KHANDWALA

21 Okay.

22 JUDGE TO MS. DOUCHY

23 Ms. Douchy?

24 MS. DOUCHY TO JUDGE

25 Let me see. I mean --

1 MS. DOUCHY TO MR. [REDACTED]

2 So is it fair to say that it's hard to go back and check income from such a long
3 time ago, like 2001, for instance?

4 MR. [REDACTED] TO MS. DOUCHY

5 It depends on the information that's available. It's the facts and circumstances in
6 every case.

7 MS. DOUCHY TO MR. [REDACTED]

8 And now you concluded that he, the respondent, Mr. [REDACTED] had enough money
9 to make the down payments. When you say the down payments, are you referring to
10 the down payments on the closing statements or the down payments that he testified to
11 at the last hearing, which amounted to about almost half a million dollars, almost --

12 MR. [REDACTED] TO MS. DOUCHY

13 Whatever we could discern as money that had to come from his pocket, that's
14 where we're coming from. Not, not --

15 MS. DOUCHY TO MR. [REDACTED]

16 So you're basing it --

17 MR. [REDACTED] TO MS. DOUCHY

18 -- what he said, okay?

19 MS. DOUCHY TO MR. [REDACTED]

20 Right. So you're basing it from the closing statements then?

21 MR. [REDACTED] TO MS. DOUCHY

22 That's right.

23 MS. DOUCHY TO MR. [REDACTED]

24 Right?

25 MR. [REDACTED] TO MS. DOUCHY

1 That's right.

2 MS. DOUCHY TO MR. [REDACTED]

3 Okay. And the --

4 MR. [REDACTED] TO MS. DOUCHY

5 Now, the thing is --

6 MS. DOUCHY TO MR. [REDACTED]

7 -- and the closing statements, how much money was that?

8 MR. [REDACTED] TO MS. DOUCHY

9 I, I don't remember at this point. It just, I know it was approximately \$50,000,
10 \$60,000 in 2003 and it was -- I'm, I'm just going to say 150, because I just don't
11 remember the number at this point. Maybe more, 190. I could be. Because I know it
12 was 30,000 one year a hundred and something the next year and I just don't remember.

13 MS. DOUCHY TO MR. [REDACTED]

14 But how could someone, I, I, I'm still not understanding how someone could
15 make a down payment for more than what their gross income was? If they're --

16 MR. [REDACTED] TO MS. DOUCHY

17 There --

18 MS. DOUCHY TO MR. [REDACTED]

19 -- supporting a family. Okay, wait. Question withdrawn. You, you know what it
20 costs to support a family of five in, in New York? Presumably you live here and you're
21 an accountant here and you prepare taxes for people that live here, right?

22 MR. [REDACTED] TO MS. DOUCHY

23 Yes. But in the same --

24 MS. DOUCHY TO MR. [REDACTED]

25 And it's, it's expensive --

1 MR. [REDACTED] TO MS. DOUCHY

2 -- in the same, in the same vein --

3 MS. DOUCHY TO MR. [REDACTED]

4 -- it's expensive, right?

5 MR. [REDACTED] TO MS. DOUCHY

6 -- in the same vein, the tax system is structured in such a way that GE could pay
7 no tax and make a billions of dollars, okay?

8 MS. DOUCHY TO MR. [REDACTED]

9 Right.

10 MR. [REDACTED] TO MS. DOUCHY

11 So you, you have to understand the tax code and how it's --

12 MS. DOUCHY TO MR. [REDACTED]

13 No, I'm not even --

14 MR. [REDACTED] TO MS. DOUCHY

15 -- and how it fits.

16 MS. DOUCHY TO MR. [REDACTED]

17 -- asking about the taxes. I'm just asking about he's, this is cash. How are you
18 getting this cash if you're not, if you don't have it?

19 MR. [REDACTED] TO MS. DOUCHY

20 That's quite a bit of --

21 MS. DOUCHY TO MR. [REDACTED]

22 And you're paying --

23 MR. [REDACTED] TO MS. DOUCHY

24 -- that's quite a bit of cash --

25 MS. DOUCHY TO MR. [REDACTED]

1 Right.

2 MR. [REDACTED] TO MS. DOUCHY

3 -- that we looked about, that we talked about here, okay?

4 MS. DOUCHY TO MR. [REDACTED]

5 But --

6 MR. [REDACTED] TO MS. DOUCHY

7 Over a five-year period, it was approximately almost 200 --

8 MS. DOUCHY TO MR. [REDACTED]

9 So from 2001 --

10 MR. [REDACTED] TO MS. DOUCHY

11 -- it's, it's, it's a million dollars.

12 MS. DOUCHY TO MR. [REDACTED]

13 -- to, no, but from, from 2003 to 2006, it's not a million dollars.

14 MR. [REDACTED] TO MS. DOUCHY

15 Yes, it is.

16 MS. DOUCHY TO MR. [REDACTED]

17 What you testified to -- okay, 2003 is the year he purchased, so presumably --

18 MR. [REDACTED] TO MS. DOUCHY

19 But you, but, I'm sorry, but you are assuming that the year in which he makes

20 these payments is the year in which he accumulated that money --

21 MS. DOUCHY TO MR. [REDACTED]

22 Well --

23 MR. [REDACTED] TO MS. DOUCHY

24 -- and it's not the case.

25 MS. DOUCHY TO MR. [REDACTED]

1 -- well, but, but you're assuming that it's not the case. But he's --

2 MR. [REDACTED] TO MS. DOUCHY

3 That can't be the case.

4 MS. DOUCHY TO MR. [REDACTED]

5 -- because, okay, right, it can't be the case, right?

6 MR. [REDACTED] TO MS. DOUCHY

7 That's right. That's correct.

8 MS. DOUCHY TO MR. [REDACTED]

9 Right. Because, so you don't know where he got the, the, the money for the
10 down payment from 2003 because you didn't start auditing his taxes until 2001, right?

11 MR. [REDACTED] TO MS. DOUCHY

12 Yes.

13 MS. DOUCHY TO MR. [REDACTED]

14 Okay. And then the money from -- so just from -- so presumably he probably
15 used all his savings for the property in 2003?

16 MR. [REDACTED] TO MS. DOUCHY

17 Not presumably. Doesn't mean all his savings.

18 MS. DOUCHY TO MR. [REDACTED]

19 Okay. Based on what he declared in his income, how could he have not used all
20 his savings?

21 MR. [REDACTED] TO MS. DOUCHY

22 Like I said, I don't know how much he had, okay, from, you know, in 2001 --

23 MS. DOUCHY TO MR. [REDACTED]

24 Right. Okay, but, okay --

25 MR. [REDACTED] TO MS. DOUCHY

1 He could be, he could be sitting there with 50,000 bucks.

2 MS. DOUCHY TO MR. [REDACTED]

3 All right.

4 MR. [REDACTED] TO MS. DOUCHY

5 Also, you know, there's also family and relatives --

6 MS. DOUCHY TO MR. [REDACTED]

7 You mean someone helping, help --

8 MR. [REDACTED] TO MS. DOUCHY

9 -- or relative. I, I don't, I don't know. And that's very possible. So in his mind --

10 MS. DOUCHY TO MR. [REDACTED]

11 Based on, based on --

12 MR. [REDACTED] TO MS. DOUCHY

13 -- he may have borrowed money from a, a relative and said he used it, you know,

14 as the part of the, part of the money that he was using and he didn't go, it didn't go in

15 the bank. So yeah, he used it and, you know, but he still owes --

16 MS. DOUCHY TO MR. [REDACTED]

17 How much money --

18 MR. [REDACTED] TO MS. DOUCHY

19 -- to his family.

20 MS. DOUCHY TO MR. [REDACTED]

21 -- did he have in the bank in 2006 when he purchased the property?

22 MR. [REDACTED] TO MS. DOUCHY

23 I, I don't have numbers for that right now. I mean, I can --

24 MS. DOUCHY TO MR. [REDACTED]

25 Well, would it, could you look it up?

1 MR. [REDACTED] TO MS. DOUCHY
2 -- we, we -- no, I, I can't. Okay, because --
3 MS. DOUCHY TO MR. [REDACTED]
4 It's not in, it's not in his taxes?
5 MR. [REDACTED] TO MS. DOUCHY
6 -- the, the biggest -- it's not in, not in here, not in the taxes --
7 MS. DOUCHY TO MR. [REDACTED]
8 You don't have your file with you --
9 MR. [REDACTED] TO MS. DOUCHY
10 No, I don't.
11 MS. DOUCHY TO MR. [REDACTED]
12 -- bring it? Well, could you approximate how much money he had in the bank?
13 MR. [REDACTED] TO MS. DOUCHY
14 Well, well, it's a --
15 MS. DOUCHY TO MR. [REDACTED]
16 How much money did he have in the bank now?
17 MR. [REDACTED] TO MS. DOUCHY
18 -- it's a, we, we took his checking account, all right, and, and we're showing one
19 side of the checking account, so --
20 MS. DOUCHY TO MR. [REDACTED]
21 All right. What about the savings account?
22 MR. [REDACTED] TO MS. DOUCHY
23 -- again --
24 MS. DOUCHY TO MR. [REDACTED]
25 You didn't look at his savings account?

1 MR. [REDACTED] TO MS. DOUCHY

2 Yes, yes, we did.

3 MS. DOUCHY TO MR. [REDACTED]

4 Yeah? Okay.

5 MR. [REDACTED] TO MS. DOUCHY

6 So, so we looked at, and we, what we did was we actually took all the accounts
7 and we actually eliminated where there was a, an interbank, an interbank transfer. So
8 we were looking to see that we weren't duplicating, duplicating deposits. So we did that.
9 And so how much money he actually had in terms of in the, in the bank accounts, I
10 could not give you a number, okay?

11 MS. DOUCHY TO MR. [REDACTED]

12 How many accounts did he have?

13 MR. [REDACTED] TO MS. DOUCHY

14 On average, I think it was four accounts.

15 MS. DOUCHY TO MR. [REDACTED]

16 Four accounts?

17 MR. [REDACTED] TO MS. DOUCHY

18 So he had --

19 MS. DOUCHY TO MR. [REDACTED]

20 Could you approximate?

21 MR. [REDACTED] TO MS. DOUCHY

22 No, I can't.

23 MS. DOUCHY TO MR. [REDACTED]

24 What about at the present time, how much money he has in the bank?

25 MR. [REDACTED] TO MS. DOUCHY

1 I have no way of knowing.

2 MS. DOUCHY TO MR. [REDACTED]

3 Well, didn't you file his 2010 taxes?

4 MR. [REDACTED] TO MS. DOUCHY

5 But you don't know how much money the guy has --

6 MS. DOUCHY TO MR. [REDACTED]

7 But you said you were looking at the bank statements. That's part of what you
8 were looking at?

9 MR. [REDACTED] TO MS. DOUCHY

10 Looking at the bank statements I --

11 MS. DOUCHY TO MR. [REDACTED]

12 Don't you have to --

13 MR. [REDACTED] TO MS. DOUCHY

14 -- it means, if, if we're looking at the bank statements to see in, money in and
15 money out, okay?

16 MS. DOUCHY TO MR. [REDACTED]

17 Right. But don't, when you get taxes, when every year when you get a statement
18 from the bank with the money you have in the bank and, and I forgot, there's a W
19 something or other that you get from the bank and you have to --

20 MR. [REDACTED] TO MS. DOUCHY

21 It's a 1099 and it only shows the amount of interest that you received from the
22 bank, nothing else.

23 MS. DOUCHY TO MR. [REDACTED]

24 Okay. So but wouldn't you be able to approximate, based on the interest, how
25 much money someone had? I mean, you're a sophisticated --

1 MR. [REDACTED] TO MS. DOUCHY

2 It, it approximates --

3 MS. DOUCHY TO MR. [REDACTED]

4 -- accountant.

5 MR. [REDACTED] TO MS. DOUCHY

6 -- yeah, you can --

7 MS. DOUCHY TO MR. [REDACTED]

8 Yeah.

9 MR. [REDACTED] TO MS. DOUCHY

10 -- you can work your way backwards.

11 MS. DOUCHY TO MR. [REDACTED]

12 Right.

13 MR. [REDACTED] TO MS. DOUCHY

14 But you know, we didn't do that.

15 MS. DOUCHY TO MR. [REDACTED]

16 Okay.

17 MR. [REDACTED] TO MS. DOUCHY

18 Before -- you know, he has, if you look at one year, he had -- \$350 in interest. If
19 you, if you, you want to mathematically say, well, how much in, in gross income does
20 that really represent --

21 MS. DOUCHY TO MR. [REDACTED]

22 But, but wasn't that really your --

23 MR. [REDACTED] TO MS. DOUCHY

24 -- you know, then you --

25 MS. DOUCHY TO MR. [REDACTED]

1 -- obligation?

2 MR. [REDACTED] TO MS. DOUCHY

3 -- divide it through by the interest rate.

4 MS. DOUCHY TO MR. [REDACTED]

5 But wasn't this your obligation? If you were going through back years and you're,
6 you're limited in terms of his receipts and what he has, wasn't it your obligation to see
7 what was in the bank?

8 MR. [REDACTED] TO MS. DOUCHY

9 Yes, we did. We took his --

10 MS. DOUCHY TO MR. [REDACTED]

11 Right.

12 MR. [REDACTED] TO MS. DOUCHY

13 -- we, we took his bank statements --

14 MS. DOUCHY TO MR. [REDACTED]

15 So you had his bank statements then?

16 MR. [REDACTED] TO MS. DOUCHY

17 Yes, we did. And --

18 MS. DOUCHY TO MR. [REDACTED]

19 Right.

20 MR. [REDACTED] TO MS. DOUCHY

21 -- but you're asking me a question of how much does, did he have in the bank at
22 a certain point in time. I can't give you that answer.

23 MS. DOUCHY TO MR. [REDACTED]

24 And, and you don't know how much he has now?

25 MR. [REDACTED] TO MS. DOUCHY

1 No.

2 MS. DOUCHY TO MR. [REDACTED]

3 No?

4 MR. [REDACTED] TO MS. DOUCHY

5 No.

6 MS. DOUCHY TO MR. [REDACTED]

7 And what, what's the --

8 MR. [REDACTED] TO MS. DOUCHY

9 There's no way I could answer that. Sorry.

10 MS. DOUCHY TO MR. [REDACTED]

11 -- what, the, the Cohan Rule? What, how do you spell that?

12 MR. [REDACTED] TO MS. DOUCHY

13 George M. Cohan, the playwright.

14 MS. DOUCHY TO MR. [REDACTED]

15 Oh, okay.

16 MR. [REDACTED] TO MS. DOUCHY

17 And they give you the history of that, as a George M. Cohan did a lot of business
18 by a handshake. And he had expenses that were in, were in cash. And there was a
19 famous case that the IRS actually lost, and they said, well, you know, you had to
20 provide documentation for his meals and entertainment and whatever, whatever else he
21 paid out and his only record was something that he wrote in his diary. Okay? So the,
22 the, the court concluded that the taxpayer could provide a reasonable estimate when
23 then, when, based upon the business that he's in, if, if, if all the facts and circumstances
24 around it show that he's actually in the business. So he's in the business of producing
25 plays and if he doesn't take people out, okay, or, or doesn't provide tickets or something

1 like that, it doesn't, it, it doesn't mean he didn't actually make that, make that expense.
2 So the Cohan Rules is, is still in, is still in effect. And essentially, it's one of the rules
3 that says that you can deduct a, a, a receipt or an expense of \$25.00 or less if you write
4 it down in your diary. So I'm sure you, you've had, you've seen that. But that's the,
5 what the IRS is sort of, you know, rearing up and saying this is, this is the limitation. But
6 it's not the limitation. It's, it's a reasonable number, whatever it is.

7 MS. DOUCHY TO JUDGE

8 I have no further questions, Your Honor.

9 JUDGE TO MS. KHANDWALA

10 Counsel?

11 MS. KHANDWALA TO JUDGE

12 Just to note, Your Honor, that I added up the figures that Dr. [REDACTED] just
13 testified to and between 2001 to 2006, the gross receipts are over a million dollars,
14 1,042,000.

15 MS. DOUCHY TO JUDGE

16 I --

17 MS. KHANDWALA TO JUDGE

18 And between 2003 and 2006, they amount to 761 --

19 MS. DOUCHY TO JUDGE

20 But that's not accounting for business expenses, labor --

21 JUDGE TO MS. DOUCHY

22 Right, that's gross.

23 MS. DOUCHY TO JUDGE

24 -- his family, supporting a family --

25 MS. KHANDWALA TO JUDGE

1 That's right.

2 MS. DOUCHY TO JUDGE

3 -- of five and, and all the other costs that, that attend to.

4 JUDGE TO MS. DOUCHY

5 We understand that. We understand.

6 MS. DOUCHY TO JUDGE

7 I mean, that's not that much money in New York, unfortunately, as I'm sure you
8 know.

9 JUDGE TO MS. DOUCHY

10 Okay.

11 JUDGE TO MS. KHANDWALA

12 Any further questions for the witness?

13 MS. KHANDWALA TO JUDGE

14 No, Your Honor.

15 JUDGE TO MS. KHANDWALA

16 Okay.

17 JUDGE TO MR. [REDACTED]

18 Thank you very much. We appreciate your time. Thank you.

19 MS. KHANDWALA TO MS. SLOVINSKY

20 Sorry, you had a phone number --

21 JUDGE TO MR. [REDACTED]

22 It's all right.

23 JUDGE TO MS. KHANDWALA

24 All right. Now, who else did you have?

25 MS. KHANDWALA TO JUDGE

1 We had [REDACTED] [REDACTED] the attorney.
2 UNIDENTIFIED SPEAKER TO JUDGE
3 No, [indiscernible].
4 MS. KHANDWALA TO UNIDENTIFIED SPEAKER
5 Sorry.
6 MS. DOUCHY TO JUDGE
7 Oh, I'm like, [REDACTED] his --
8 JUDGE TO MS. KHANDWALA
9 I'm going to say, they're related?
10 MS. DOUCHY TO JUDGE
11 -- last name?
12 MS. KHANDWALA TO JUDGE
13 [REDACTED] That's right.
14 MS. DOUCHY TO MS. KHANDWALA
15 Yeah.
16 MS. KHANDWALA TO JUDGE
17 [REDACTED] [REDACTED]
18 MR. [REDACTED] TO JUDGE
19 Do you want me to tell him to come in?
20 MS. SLOVINSKY TO MR. [REDACTED]
21 No, we're going to call this -- I don't know, she's --
22 MS. KHANDWALA TO MS. SLOVINSKY
23 Well --
24 MS. SLOVINSKY TO MS. KHANDWALA
25 What?

1 MS. KHANDWALA TO MS. SLOVINSKY

2 No, no, I just want to find out if she's going to remain available. She said that --

3 MS. SLOVINSKY TO MS. KHANDWALA

4 No, she has to go to class at 4:00. That's what she just told me.

5 MS. KHANDWALA TO MS. SLOVINSKY

6 Okay.

7 JUDGE TO MS. KHANDWALA

8 What are we talking about?

9 MS. KHANDWALA TO JUDGE

10 We have the guidance counselor who's going to testify by phone. And that's

11 [REDACTED] [REDACTED] guidance counselor.

12 JUDGE TO MS. KHANDWALA

13 What is the guidance --

14 MS. DOUCHY TO JUDGE

15 Well I didn't, I didn't, I mean, I never was, was aware of phone testimony of a
16 guidance counselor.

17 MS. KHANDWALA TO JUDGE

18 We had submitted a motion for telephonic testimony of the guidance --

19 MS. DOUCHY TO JUDGE

20 Well, I, I object to that. I mean I don't know who's on the other end of the line. It
21 could be --

22 JUDGE TO MS. KHANDWALA

23 What is the purpose --

24 MS. DOUCHY TO JUDGE

25 -- his, her friend.

1 JUDGE TO MS. KHANDWALA

2 -- of the guidance counselor?

3 MS. KHANDWALA TO JUDGE

4 The guidance counselor is someone that [REDACTED] been seeing on a weekly
5 basis, who knows about her situation and can, and has discussed the hardship with
6 [REDACTED] and the problems that she's faced in school as a result of this case. She's
7 another person, just like Dr. [REDACTED] like [REDACTED] [REDACTED] who's been supporting [REDACTED]
8 and making her, you know, enabling her to continue at school.

9 MS. DOUCHY TO MS. KHANDWALA

10 You don't have a statement from her, right?

11 MS. KHANDWALA TO MS. DOUCHY

12 We have a letter that was submitted as part of our --

13 MS. DOUCHY TO MS. KHANDWALA

14 A recent submission?

15 MS. KHANDWALA TO MS. DOUCHY

16 -- January submission --

17 MS. DOUCHY TO MS. KHANDWALA

18 Oh, the prior submission?

19 MS. KHANDWALA TO MS. DOUCHY

20 -- with the -- yeah.

21 MS. DOUCHY TO MS. KHANDWALA

22 So you don't have anything current?

23 MS. KHANDWALA TO MS. DOUCHY

24 No. And we have her CV as well.

25 JUDGE TO MS. KHANDWALA

1 It's ID 8 is the affidavit of [REDACTED] [REDACTED]
2 MS. KHANDWALA TO JUDGE
3 I, that --
4 JUDGE TO MS. KHANDWALA
5 Is that what you're talking about?
6 MS. KHANDWALA TO JUDGE
7 -- that, that's her affidavit, Your Honor. Ms. [REDACTED] [phonetic sp.] is --
8 JUDGE TO MS. KHANDWALA
9 [REDACTED]
10 MS. KHANDWALA TO JUDGE
11 -- it is, it's, I think it was Exhibit 7, but it's Tab 4 of our submission.
12 MS. DOUCHY TO MS. KHANDWALA
13 Tab 4 is the -- appeals --
14 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY
15 Oh, we're all on different things. I'm on Tab 4 --
16 MS. KHANDWALA TO JUDGE
17 This on, this --
18 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY
19 -- [REDACTED] [REDACTED] so I'm --
20 MS. KHANDWALA TO JUDGE
21 -- this the, the submission dated December 17, 2010 on the cover letter and Tab
22 4.
23 JUDGE TO MS. KHANDWALA
24 Tab 4 is from Bard?
25 MS. KHANDWALA TO JUDGE

1 Yes. Exactly.

2 JUDGE TO MS. KHANDWALA

3 Yeah. Okay. It's not an affidavit?

4 MS. KHANDWALA TO JUDGE

5 It's not an affidavit. It's her letter.

6 JUDGE TO MS. KHANDWALA

7 It's a statement, it's a letter. Yeah.

8 MS. KHANDWALA TO JUDGE

9 And her CV.

10 JUDGE TO MS. KHANDWALA

11 Right.

12 MS. DOUCHY TO JUDGE

13 They don't have economic resources, she says.

14 MS. KHANDWALA TO JUDGE

15 And we'll be calling at the land --

16 MS. KHANDWALA TO MS. DOUCHY

17 I'm sorry?

18 JUDGE TO MS. DOUCHY

19 Sorry?

20 MS. DOUCHY TO JUDGE

21 They, she said they don't have economic resources to send her to private school.

22 MS. KHANDWALA TO MS. DOUCHY

23 This is in the private school.

24 MS. DOUCHY TO MS. KHANDWALA

25 No, I know. I'm just saying that's what she said. She, you know, I remember

1 everyone's theme was that they were poor.

2 MS. DOUCHY TO JUDGE

3 The, the theme seemed to be the last time that they, I, I remember the person, I
4 think the, the treating physician last time was, wasn't, wasn't charging them because --

5 MS. KHANDWALA TO MS. DOUCHY

6 No, that's not true. She has been paid.

7 MS. DOUCHY TO MS. KHANDWALA

8 No, no, not -- I think that she -- say it, but that was the testimony the last time.

9 MS. DOUCHY TO JUDGE

10 Yeah, she, she testified she was charging a reduced cost because she thought
11 that the family could not afford more.

12 JUDGE TO MS. DOUCHY

13 That's the witness that we had the last time?

14 MS. DOUCHY TO JUDGE

15 The last time, yes. That's what she --

16 JUDGE TO MS. DOUCHY

17 Is that [REDACTED] someone?

18 MS. DOUCHY TO JUDGE

19 Yes. [REDACTED] [REDACTED] I think was her name.

20 JUDGE TO MS. DOUCHY

21 [REDACTED] [REDACTED] Right.

22 MS. DOUCHY TO JUDGE

23 She testified that she was charging the reduced cost --

24 JUDGE TO MS. DOUCHY

25 Right.

1 MS. DOUCHY TO JUDGE

2 -- because she thought they could not afford more.

3 JUDGE TO MS. KHANDWALA

4 Did I have a motion for a telephonic?

5 MS. KHANDWALA TO JUDGE

6 For Ms. [REDACTED] Yes, Your Honor. That was --

7 JUDGE TO MS. KHANDWALA

8 Where is that?

9 MS. KHANDWALA TO JUDGE

10 -- it was submitted with --

11 JUDGE TO MS. KHANDWALA

12 On December 8th?

13 MS. KHANDWALA TO JUDGE

14 Yes. Exactly. Oh, no. I'm sorry, it was, the cover letter is dated January 3,
15 2001, or 2011. There was country conditions information from Mexico, a copy of license
16 and registration, certificate for Dr. [REDACTED] and then the third item was the motion.

17 JUDGE TO MS. KHANDWALA

18 Okay. So did I grant that motion?

19 MS. KHANDWALA TO JUDGE

20 I don't think Your Honor ruled on it at the last hearing.

21 JUDGE TO MS. KHANDWALA

22 All right. Because when you submit a motion for a telephonic, you have to
23 submit it to the Government as well and then I wait for them to see if there's any
24 objection before I rule. I just, I'm just not recalling, I've read so many of these
25 documents and now I, I don't remember this, this motion. I'm sorry.

1 MS. KHANDWALA TO JUDGE

2 It, all right. No, Your Honor, it was submitted to the Government as well.

3 JUDGE TO MS. KHANDWALA

4 I'm sure. I just don't --

5 MS. KHANDWALA TO JUDGE

6 Yeah.

7 JUDGE TO MS. KHANDWALA

8 -- I'm not remembering this motion because I usually have it on, the way I put my
9 motions on the top of the file, that's all. It's just not on the top of my file.

10 MS. DOUCHY TO JUDGE

11 I, I do see a, a cover sheet. I don't see an actual motion, but I do see --

12 JUDGE TO MS. DOUCHY

13 Maybe that's how I missed it, yeah.

14 MS. DOUCHY TO JUDGE

15 -- I have a copy, a cover sheet. It, I don't think, I don't think I, I don't think I
16 actually had a motion, but I do see a cover sheet saying motion for a --

17 MS. KHANDWALA TO JUDGE

18 You know, it might be --

19 MS. DOUCHY TO JUDGE

20 -- telephonic appearance.

21 MS. KHANDWALA TO JUDGE

22 -- it's the, it's at the end of all the country conditions documentation, so it may just
23 be lost in the papers.

24 MS. DOUCHY TO MS. KHANDWALA

25 Oh.

1 MS. KHANDWALA TO JUDGE

2 Because, like, Tab 35, which is the last --

3 MS. DOUCHY TO MS. KHANDWALA

4 Usually people put the --

5 JUDGE TO MS. KHANDWALA

6 Yeah, the motion, that's how, because I usually rule on these things.

7 MS. DOUCHY TO MS. KHANDWALA

8 -- background after --

9 MS. DOUCHY TO JUDGE

10 Yeah.

11 MS. KHANDWALA TO JUDGE

12 Yeah, I --

13 JUDGE TO MS. KHANDWALA

14 I'm a little surprised --

15 MS. KHANDWALA TO JUDGE

16 Yeah, I, I think that's --

17 MS. DOUCHY TO JUDGE

18 Yeah, I didn't see the motion --

19 JUDGE TO MS. KHANDWALA

20 -- that I did not rule on this.

21 MS. KHANDWALA TO JUDGE

22 -- it just got stuck in there, mistake.

23 JUDGE TO MS. DOUCHY

24 But this, you have concern about identity, we're going to be calling the school.

25 MS. KHANDWALA TO JUDGE

1 The school number, yeah. I'm calling her office.

2 JUDGE TO MS. KHANDWALA

3 No, I'd just like to rule on my motions is what I'm saying. Tab 35 --

4 MS. KHANDWALA TO JUDGE

5 Behind Tab 35 --

6 MS. DOUCHY TO JUDGE

7 Oh, it's at the back? Okay.

8 MS. KHANDWALA TO JUDGE

9 -- right.

10 JUDGE TO MS. KHANDWALA

11 Tab --

12 MS. DOUCHY TO MS. KHANDWALA

13 Usually people put that at the front because --

14 JUDGE TO MS. KHANDWALA

15 -- 5 --

16 MS. DOUCHY TO MS. KHANDWALA

17 -- it's motion, if it's a motion --

18 MS. KHANDWALA TO MS. DOUCHY

19 Right.

20 MS. DOUCHY TO MS. KHANDWALA

21 -- the background, they don't put stuff after the background conditions, usually.

22 JUDGE TO MS. KHANDWALA

23 Because then I have these taxes in 35.

24 MS. KHANDWALA TO JUDGE

25 Oh, no. 35 should be --

1 JUDGE TO MS. KHANDWALA

2 And I have background and a license and that's the university.

3 MS. KHANDWALA TO JUDGE

4 After the license.

5 JUDGE TO MS. KHANDWALA

6 Motion to permit telephonic appearance, yup. Yup. That I didn't rule on because
7 that I did not see.

8 MS. KHANDWALA TO JUDGE

9 It is --

10 MS. DOUCHY TO JUDGE

11 Yeah, I didn't see it either. I just saw the reference to it, but I didn't actually see
12 it.

13 MS. SLOVINSKY TO JUDGE

14 It's on the cover letter as well, Your Honor.

15 MS. KHANDWALA TO JUDGE

16 We referenced it.

17 MS. SLOVINSKY TO JUDGE

18 It's --

19 JUDGE TO MS. KHANDWALA

20 Well, this says she's available between 10:00 a.m. and noon.

21 MS. KHANDWALA TO JUDGE

22 That was for the January.

23 JUDGE TO MS. KHANDWALA

24 Right.

25 MS. DOUCHY TO MS. KHANDWALA



1 But you didn't make a motion for this hearing.

2 JUDGE TO MS. DOUCHY

3 So -- so, first of all, is that what's in contention?

4 MS. DOUCHY TO JUDGE

5 A little bit. I mean, it seems like the normal psychological hardship that anyone
6 would experience if their parent were deported. I don't think it's --

7 JUDGE TO MS. DOUCHY

8 Which isn't enough. Everybody knows that --

9 MS. DOUCHY TO JUDGE

10 -- exceptional or extremely unusual.

11 JUDGE TO MS. DOUCHY

12 -- by law. Everybody knows that just deportation separation's not enough,
13 Congress.

14 MS. DOUCHY TO JUDGE

15 I don't think she's on medicine or anything like that. I mean, of, of course it's very
16 upsetting if your parents --

17 JUDGE TO MS. DOUCHY

18 Yes, absolutely.

19 MS. DOUCHY TO JUDGE

20 -- are deported. I think anyone --

21 JUDGE TO MS. DOUCHY

22 Absolutely.

23 MS. DOUCHY TO JUDGE

24 -- and, and it's unfortunate that the case law is the way it is. But that, you know,
25 it is the way it is, unfortunately, and that was, you know, the way it was --



1 JUDGE TO MS. DOUCHY

2 Right.

3 MS. DOUCHY TO JUDGE

4 -- written. And, and I don't, I don't think that they did establish the requisite
5 hardship, to be honest with you, you know, based on this record. I mean, it's, it's
6 unfortunate. And yes, she's upset about it, but that's normal. I think any child is upset
7 when their parent, the prospect of a parent --

8 JUDGE TO MS. DOUCHY

9 I would imagine.

10 MS. DOUCHY TO JUDGE

11 -- being deported.

12 JUDGE TO MS. DOUCHY

13 All right. So do, are you going to talk to this person?

14 MS. DOUCHY TO JUDGE

15 I mean, I, I would object to a telephonic because I really don't know who's on the
16 end, other end of the line.

17 MS. KHANDWALA TO JUDGE

18 We're calling the office phone number for Bard.

19 MS. DOUCHY TO JUDGE

20 I don't know what that is, you know.

21 MS. KHANDWALA TO MS. DOUCHY

22 I mean, if you have internet access, we can look up the -- I mean, I can show you
23 we, that we're calling the, the Bard line. And it's her extension.

24 JUDGE TO MS. KHANDWALA

25 All right. I'll allow --



1 MS. DOUCHY TO JUDGE

2 I mean, the letter says she's, she's, she has, she's in good academic standing
3 still.

4 JUDGE TO MS. KHANDWALA

5 She says things I don't think are in contention, actually. She's -- all right. What,
6 what is the number?

7 MS. KHANDWALA TO JUDGE

8 It's --

9 MS. SLOVINSKY TO JUDGE

10 [REDACTED] --

11 MS. KHANDWALA TO JUDGE

12 -- [REDACTED] --

13 MS. SLOVINSKY TO MS. KHANDWALA

14 If you have it, the landline?

15 MS. KHANDWALA TO JUDGE

16 -- [REDACTED], extension [REDACTED] --

17 JUDGE TO MS. KHANDWALA

18 I have to wait until I --

19 OPERATOR TO JUDGE

20 Thank you for calling Bard High School Early College. If you know the extension
21 of the person you would like to reach, you may dial it now.

22 MS. KHANDWALA TO JUDGE

23 [REDACTED]

24 OPERATOR TO JUDGE

25 Our directory has changed.

1 JUDGE TO MS. KHANDWALA

2 [REDACTED]?

3 MS. KHANDWALA TO JUDGE

4 [REDACTED].

5 OPERATOR TO JUDGE

6 Please wait while I transfer your call.

7 JUDGE TO MS. KHANDWALA

8 And who am I asking for?

9 MS. KHANDWALA TO JUDGE

10 [REDACTED] [REDACTED] [phonetic sp.].

11 MS. [REDACTED] TO JUDGE

12 Good afternoon. Guidance.

13 JUDGE TO MS. [REDACTED]

14 Good afternoon. May I speak to [REDACTED] [REDACTED]

15 MS. [REDACTED] TO JUDGE

16 Speaking.

17 JUDGE TO MS. [REDACTED]

18 This is Judge Lamb from Immigration Court. I have you on the speaker phone.

19 MS. [REDACTED] TO JUDGE

20 Okay.

21 JUDGE TO MS. [REDACTED]

22 And you, you were aware that I was going to call you?

23 MS. [REDACTED] TO JUDGE

24 Yes.

25 JUDGE TO MS. [REDACTED]

[REDACTED]

1 Okay. And do you swear everything you say will be the truth, the whole truth and
2 nothing but the truth?

3 MS. [REDACTED] TO JUDGE

4 Yes.

5 JUDGE TO MS. [REDACTED]

6 I'm recording everything you say. The lawyers are here. They're going to ask
7 you questions --

8 MS. [REDACTED] TO JUDGE

9 Okay.

10 JUDGE TO MS. [REDACTED]

11 If you can't hear them, let me know, because they're --

12 MS. [REDACTED] TO JUDGE

13 Okay.

14 JUDGE TO MS. [REDACTED]

15 -- sitting in various places, okay?

16 MS. [REDACTED] TO JUDGE

17 Okay.

18 JUDGE TO MS. [REDACTED]

19 Would you just tell me your full and complete name?

20 MS. [REDACTED] TO JUDGE

21 Yes. [REDACTED]

22 JUDGE TO MS. [REDACTED]

23 And your place of employment?

24 MS. [REDACTED] TO JUDGE

25 Bard High School Early College.

1 JUDGE TO MS. [REDACTED]

2 And your Immigration status in the United States?

3 MS. [REDACTED] TO JUDGE

4 I'm a U.S. citizen, born in the U.S.

5 JUDGE TO MS. [REDACTED]

6 Okay. And don't know the respondents?

7 MS. [REDACTED] TO JUDGE

8 Yes.

9 JUDGE TO MS. [REDACTED]

10 The respondent? And how do you know him?

11 MS. [REDACTED] TO JUDGE

12 I know the family. I know [REDACTED] [REDACTED] here at Bard High School Early
13 College.

14 JUDGE TO MS. [REDACTED]

15 And what is her age?

16 MS. [REDACTED] TO JUDGE

17 She's --

18 JUDGE TO MS. [REDACTED]

19 I'm sorry, 15?

20 MS. [REDACTED] TO JUDGE

21 I have a [indiscernible]. Date of birth is [REDACTED].

22 JUDGE TO MS. [REDACTED]

23 And how long have you known the girl?

24 MS. [REDACTED] TO JUDGE

25 Since September of 2010. Since the beginning of the ninth grade year. She's

1 now a tenth grader.

2 JUDGE TO MS. [REDACTED]

3 Okay. So a year?

4 MS. [REDACTED] TO JUDGE

5 A year.

6 JUDGE TO MS. [REDACTED]

7 A year, plus. All right. The lawyers are going to ask you questions. Now again,

8 if you can't hear them, let me know. If you don't understand --

9 MS. [REDACTED] TO JUDGE

10 Okay.

11 JUDGE TO MS. [REDACTED]

12 -- the question, let me know. Okay?

13 MS. [REDACTED] TO JUDGE

14 Okay.

15 JUDGE TO MS. KHANDWALA

16 Counsel?

17 MS. KHANDWALA TO JUDGE

18 Your Honor, is it possible for you to turn up the speaker volume?

19 JUDGE TO MS. KHANDWALA

20 I'll try. Let's see. That's annoying. But that's as good as it gets.

21 MS. KHANDWALA TO JUDGE

22 Okay. Thank you.

23 JUDGE TO MS. KHANDWALA

24 Go ahead.

25 MS. KHANDWALA TO MS. [REDACTED]

1 Hello, Ms. [REDACTED] how are you?

2 MS. [REDACTED] TO MS. KHANDWALA

3 Hi. Fine, thank you.

4 MS. KHANDWALA TO MS. [REDACTED]

5 Can you tell me what your position is at Bard High School?

6 MS. [REDACTED] TO MS. KHANDWALA

7 I'm sorry? I couldn't hear you very well. Could you repeat that?

8 MS. KHANDWALA TO MS. [REDACTED]

9 Can you tell me what your position is at Bard High --

10 MS. [REDACTED] TO MS. KHANDWALA

11 Oh. I'm a guidance counselor and quality advisor at Bard High School.

12 MS. KHANDWALA TO MS. [REDACTED]

13 And what are your qualifications for this position?

14 MS. [REDACTED] TO MS. KHANDWALA

15 Okay. I have a EDM in counseling psychology. I'm a licensed guidance
16 counselor for the New York State Department of Education.

17 MS. KHANDWALA TO MS. [REDACTED]

18 Can you tell me, can you tell me about Bard, what type of school is it?

19 MS. [REDACTED] TO MS. KHANDWALA

20 Yes. It's highly selective. It's considered a screening type school and we have
21 an early college program where in four years students graduate with a New York City
22 high school diploma, as well as an Associate's degree from Bard College within the
23 four-year period. We have approximately every year about 3,000 Bard participants
24 applying and taking the assessment test, for only 150 students.

25 MS. KHANDWALA TO MS. [REDACTED]

1 And, and students who get admitted can stay at the high, at the high school and
2 complete their Associate's in four years, you said?

3 MS. [REDACTED] TO MS. KHANDWALA

4 Correct. In four years, right. Our students graduate with a New York City high
5 school diploma, as well as the Associate's degree, with is 60 credits from Bard College.

6 MS. KHANDWALA TO MS. [REDACTED]

7 And where do Bard graduates typically go after their Associate's degree?

8 MS. [REDACTED] TO MS. KHANDWALA

9 Pretty much, the Bard Colleges, Ivy League, there's a small percentage that
10 actually take a gap year sometimes and, you know, they, they either go to work or if
11 they complete [indiscernible], they all go to, to college.

12 MS. KHANDWALA TO MS. [REDACTED]

13 Okay. What are your duties as a guidance counselor and college advisor?

14 MS. [REDACTED] TO MS. KHANDWALA

15 Okay. Primarily, in this school, I do quite a bit of counseling, students that come
16 into my office with social concerns, academic concerns. That also can include going
17 over their transcripts, figuring out where they'd like to attend college. Families also
18 come to the office with their concerns, issues, whether it's personal or emotional. In
19 terms of calls, I, I've seen, actually see a class at the high school, advisory class, that
20 [REDACTED] is in my high school advisory class as well and also a college advisory that
21 meets ever Friday. I also help with the [indiscernible] meeting, parent meetings
22 regarding college, working with teachers, parents, the parent coordinator, the principal,
23 pretty much, you know, whatever needs to, anything relating to students and helping
24 students.

25 MS. KHANDWALA TO MS. [REDACTED]

1 And you said you've known [REDACTED] since September, 2010?

2 MS. [REDACTED] TO MS. KHANDWALA

3 Since the ninth grade, yeah.

4 MS. KHANDWALA TO MS. [REDACTED]

5 And in what capacity do you know her?

6 MS. [REDACTED] TO MS. KHANDWALA

7 I am her guidance counselor and also her high school advisor.

8 MS. KHANDWALA TO MS. [REDACTED]

9 And how often do you see her?

10 MS. [REDACTED] TO MS. KHANDWALA

11 Well, when she first came to be BHSEC, and that's short for Bard High School
12 Early College, she came in because she was feeling, she told me, very sad and, and
13 looking to be very depressed. And in speaking with her and getting to know her, you
14 know, she, she told me that the reason she was feeling this way was because her father
15 may get deported and how this was really causing a problem in terms of focusing and
16 concentrating on school work. So then we started meeting on a weekly basis.

17 MS. KHANDWALA TO MS. [REDACTED]

18 And when you, can you tell me more about those early sessions?

19 MS. [REDACTED] TO MS. KHANDWALA

20 Yeah. Mostly, I mean, she was mostly very upset and at one point it got really
21 bad because she felt like she didn't want to come to school anymore, but was forcing
22 herself because she, she knew that this was something that she had to do. And so we
23 would work up strategies. So one of the things she thought of, actually, which actually
24 worked pretty well, was that her mom would accompany her to school every morning
25 and then we kind of made a deal, you know, kind of like looking inside the building, if

1 you can make it into my office, we'll work it out for the rest of the day. You know, and
2 sometimes she would come in in the mornings before first period to my office and we
3 would talk, so she would kind of, you know, get psyched into going to the, you know,
4 classes the rest of the day. Sometimes she would come in during the day just because
5 she was feeling sad and depressed again. So this went on for quite a bit last year. I
6 also met with the family several times and we agreed that she also needed additional
7 support outside of school, and that's when she also started therapy outside of school.

8 MS. KHANDWALA TO MS. [REDACTED]

9 When she would come to you, what would she discuss with you?

10 MS. [REDACTED] TO MS. KHANDWALA

11 Well, her fear was, you know, what would happen if her father was deported, how
12 that would destroy the family unit. She was concerned that if he was, you know,
13 deported, that it would be her fault because, you know, she hadn't done what she was
14 supposed to do or needed to do to keep him here. She felt really burdened because
15 she's someone that was born in the U.S. and was a U.S. citizen and kind of felt
16 responsible for him and the family. So these are the things that, you know, she felt.
17 Mostly she also talked about how the teenagers didn't have to worry about things like
18 this, and she still feels this way, how, you know, she doesn't have a normal teenaged
19 life. Like, you know, all her friends don't have this issue, you know? So that's been a
20 big part of what's going on with her even, even now, you know. Even though she's
21 compensated for that quite a bit by blocking it out, she still always, you know, says, you
22 know, this is going to destroy my family. It's a dark cloud and it's always looming, you
23 know, and it's been really difficult for her.

24 MS. KHANDWALA TO MS. [REDACTED]

25 Okay. So how did you advise her to navigate these fears?

1 MS. [REDACTED] TO MS. KHANDWALA

2 I didn't, I didn't get that last --

3 MS. KHANDWALA TO MS. [REDACTED]

4 How did you advise her to navigate these fears?

5 MS. [REDACTED] TO MS. KHANDWALA

6 How do I advise her --

7 MS. KHANDWALA TO MS. [REDACTED]

8 How did, how did you help her --

9 MS. [REDACTED] TO MS. KHANDWALA

10 -- to navigate this fears?

11 MS. KHANDWALA TO MS. [REDACTED]

12 Yeah. How did you help her navigate these fears?

13 MS. [REDACTED] TO MS. KHANDWALA

14 How did I help her? Okay. Basically, while meeting with [REDACTED] I said, yeah, the
15 door's open. So any time you start feeling this way or feel like you can't go to class,
16 please come to my office. I also spoke with her and her parents and we agreed that her
17 teachers should know, that administration should know so we can better support her,
18 and, and I did that. So from time to time sometimes she would get extensions and,
19 yeah, just so that the teachers would know that, you know, if she was having a hard
20 time focusing that it's not that she didn't want to do the paper, didn't want to write the
21 paper, there could be a time -- and so but because she was really, you know, feeling
22 like she couldn't concentrate because of what was going on. You know, I talked -- so
23 those are the things that we kind of did to, to help her here.

24 MS. KHANDWALA TO MS. [REDACTED]

25 Given how competitive Bard is, students must, there must be many students who

1 have a hard time transitioning, right?

2 MS. [REDACTED] TO MS. KHANDWALA

3 Yeah, the first year the main -- you have a, you know, have some of friends had
4 been, but it's mostly, you know, in middle school they would've [indiscernible] and they
5 didn't have to work as hard and here the work's rigorous, it's accelerated, or sometimes
6 they don't know how to sit still, they're not sure how to study. But with, with [REDACTED] it
7 was more than that. It was, you know, she always loved school and, and she liked her
8 teachers and she liked her classes. You know, it wasn't an issue that she was having a
9 hard time adjusting to teachers or the schedule or things like that. It was always about,
10 you know, her dad being deported and what that would do to her and her family.

11 MS. KHANDWALA TO MS. [REDACTED]

12 Okay. How is [REDACTED] how is [REDACTED] doing now?

13 MS. [REDACTED] TO MS. KHANDWALA

14 She's doing really well academically. In fact, I have in front of me her first report
15 card and this is called, it's considered a, it's called a narrative because it's not, these
16 aren't the grades that actually end up on the transcripts. But she got only As, A
17 minuses and one B. So everything were really A, A minuses and one B. So she did
18 really well.

19 MS. KHANDWALA TO MS. [REDACTED]

20 And why, you know, what is helping her do so well?

21 MS. DOUCHY TO JUDGE

22 Objection. Calls for speculation.

23 MS. [REDACTED] TO MS. KHANDWALA

24 Well, I actually, I asked her about it. I said, you know --

25 JUDGE TO MS. DOUCHY

1 Sustained.

2 MS. [REDACTED] TO MS. KHANDWALA

3 -- doing really good work considering, you know, everything that you have on
4 your plate right now, and she said, you know, Ms. [REDACTED] I pretty much blocked, what
5 I'm, what I'm trying to do is just block everything out in terms of what's going on with my
6 father so that I can do well in school.

7 JUDGE TO MS. [REDACTED]

8 Okay. Thank you. Thank you.

9 MS. [REDACTED] TO MS. KHANDWALA

10 But I still worry. I don't know how much longer I can, you know, do this for --

11 JUDGE TO MS. [REDACTED]

12 Thank you.

13 MS. [REDACTED] TO MS. KHANDWALA

14 -- blocking out because I --

15 JUDGE TO MS. [REDACTED]

16 Thank you. Thank you. Thank you. That's okay.

17 MS. [REDACTED] TO JUDGE

18 Okay.

19 JUDGE TO MS. KHANDWALA

20 I sustained the objection. That's why --

21 MS. KHANDWALA TO JUDGE

22 Yeah.

23 JUDGE TO MS. KHANDWALA

24 Okay. Go ahead.

25 MS. KHANDWALA TO MS. [REDACTED]

1 How would you describe [REDACTED] as a person and a student?

2 MS. [REDACTED] TO MS. KHANDWALA

3 She is personable, always has, you know, a pleasant disposition about her in
4 terms of, you know, in my advisory and as a student. With me one-on-one, she's open,
5 you know. She discusses the personal issues, concerns, freely in my office. She has
6 friends here at school. I'm not sure what else you'd like to know or if that answered your
7 question.

8 JUDGE TO MS. [REDACTED]

9 Yes. Thank you.

10 JUDGE TO MS. KHANDWALA

11 Continue.

12 MS. KHANDWALA TO MS. [REDACTED]

13 What does she describe to you as the most important things in her life?

14 MS. DOUCHY TO JUDGE

15 Objection. Relevance.

16 MS. [REDACTED] TO MS. KHANDWALA

17 What is, what is the most important -- I'm sorry?

18 MS. KHANDWALA TO MS. [REDACTED]

19 What does she describe to you as the most important things in her life?

20 MS. KHANDWALA TO JUDGE

21 We're trying to establish [REDACTED] as a person.

22 MS. DOUCHY TO JUDGE

23 Okay.

24 JUDGE TO MS. [REDACTED]

25 Wait a moment. Excuse me just a moment.

1 MS. DOUCHY TO JUDGE

2 Objection. Relevance.

3 JUDGE TO MS. DOUCHY

4 What is your objection, counsel?

5 JUDGE TO MS. KHANDWALA

6 What is the relevance, counsel?

7 MS. KHANDWALA TO JUDGE

8 It is relevant because it's, it, goes to the things that concern her most, and that's
9 directly related to the hardship.

10 JUDGE TO MS. KHANDWALA

11 I'll allow it. Go ahead.

12 JUDGE TO MS. DOUCHY

13 Overruled.

14 JUDGE TO MS. KHANDWALA

15 Ask again. I don't know if she --

16 MS. KHANDWALA TO MS. [REDACTED]

17 So Ms. [REDACTED] can you, can you, what does she describe to you as the most
18 important things in her life?

19 MS. [REDACTED] TO MS. KHANDWALA

20 Important things in her life?

21 JUDGE TO MS. [REDACTED]

22 Does she describe any, does, did she ever tell you what the most important thing
23 in her life is?

24 MS. [REDACTED] TO JUDGE

25 In her life? Her family. First and foremost her family. And then school.

1 MS. KHANDWALA TO MS. [REDACTED]

2 Have you met with [REDACTED] parents?

3 MS. [REDACTED] TO MS. KHANDWALA

4 Yes. They've come here -- regarding the case, in terms of, like, you know,
5 supporting [REDACTED] and what they can do to help her get through this. And also,
6 they're, they're always here for parent/teacher conferences. And what is your
7 impression of their involvement in her life?

8 MS. DOUCHY TO JUDGE

9 Objection. Calls for speculation.

10 MS. [REDACTED] TO MS. KHANDWALA

11 Very involved.

12 JUDGE TO MS. DOUCHY

13 Sustained.

14 MS. [REDACTED] TO MS. KHANDWALA

15 It's a very close and tight family.

16 JUDGE TO MS. KHANDWALA

17 Okay. She said that now several times. She's closer to family. The family's
18 most important. We have that on the record. So please don't ask any speculative
19 questions. She said that that's what is.

20 MS. KHANDWALA TO MS. [REDACTED]

21 In your professional opinion, what would happen to [REDACTED] if her father was
22 deported?

23 MS. DOUCHY TO JUDGE

24 Objection. Calls for speculation.

25 MS. [REDACTED] TO MS. KHANDWALA

1 I think she would be emotionally --

2 MS. KHANDWALA TO JUDGE

3 It's her professional opinion.

4 MS. [REDACTED] TO MS. KHANDWALA

5 -- destroyed. I mean, just the thought, any time she mentions it, just thinking
6 about it brings her to tears every time. She's inconsolable when she talks about that. I,
7 I worry about her being able to, you know, complete her education here at Bard
8 because at the end of the tenth grade, if students don't have a 2.0 or better, they will not
9 enter the college program and once they're in the college program, they have to
10 maintain a 2.0 or better. So my, my concern is that this would, you know, drive her to a
11 point where she won't be able to complete her education here and that would be a
12 shame because it's an opportunity for her to get, you know, to earn an Associate's
13 degree, you know, at the end of four years. So that worries me.

14 MS. KHANDWALA TO MS. [REDACTED]

15 And in, in your opinion, what would happen to her mental state if her father was
16 deported?

17 MS. DOUCHY TO JUDGE

18 Objection. Calls for speculation.

19 MS. KHANDWALA TO JUDGE

20 She's in a position --

21 JUDGE TO MS. KHANDWALA

22 This isn't -- well, no, whoa, whoa, whoa, whoa, wait. This individual before me is
23 a licensed social worker and she is a counselor. She is not a doctor. She is not a
24 mental health professional.

25 MS. KHANDWALA TO JUDGE

1 But as --

2 JUDGE TO MS. KHANDWALA

3 She has already said that she thought that what would happen if, if her father
4 was deported.

5 MS. KHANDWALA TO JUDGE

6 Your Honor, she is a licensed social worker. These are the --

7 JUDGE TO MS. KHANDWALA

8 She's not --

9 MS. KHANDWALA TO JUDGE

10 -- issues she deals with all the time.

11 MS. DOUCHY TO JUDGE

12 Well, that's not --

13 JUDGE TO MS. KHANDWALA

14 She's not a mental health professional. Reword your question.

15 JUDGE TO MS. DOUCHY

16 Sustained.

17 MS. KHANDWALA TO JUDGE

18 That's all, Your Honor.

19 JUDGE TO MS. KHANDWALA

20 Thank you.

21 JUDGE TO MS. [REDACTED]

22 The attorney for the Government, whose name is Assistant Chief Counsel
23 Douchy, she will now question you. Thank you.

24 MS. [REDACTED] TO JUDGE

25 Okay.

1 JUDGE TO MS. [REDACTED]

2 Thank you.

3 MS. DOUCHY TO MS. [REDACTED]

4 Now, you said that [REDACTED] doing very well in school now, is that correct?

5 MS. [REDACTED] TO MS. DOUCHY

6 That's correct, yes.

7 MS. DOUCHY TO MS. [REDACTED]

8 And how about last year? How did she do?

9 MS. [REDACTED] TO MS. DOUCHY

10 She's got her GPA for the year. It's an 87.79.

11 MS. DOUCHY TO MS. [REDACTED]

12 So she did well last year too?

13 MS. [REDACTED] TO MS. DOUCHY

14 She did well.

15 MS. DOUCHY TO MS. [REDACTED]

16 And --

17 MS. [REDACTED] TO MS. DOUCHY

18 And there's a C, there's a C here and she did better, you know, this last marking
19 period actually.

20 MS. DOUCHY TO MS. [REDACTED]

21 And do you know if [REDACTED] takes any medicine?

22 MS. [REDACTED] TO MS. DOUCHY

23 I'm not aware of her taking any medication at this time, no.

24 MS. DOUCHY TO MS. [REDACTED]

25 And are you still meeting with [REDACTED] on a regular basis?

1 MS. [REDACTED] TO MS. DOUCHY

2 I meet with her once a week in advisory, not so much for counseling. I meet with
3 her when she's in crisis. She was in crisis last week, as this date was approaching, and
4 she came to my office. But because she is seeing a therapist outside school, not so
5 much in terms of counseling with, a psychotherapist-type relationship.

6 MS. DOUCHY TO MS. [REDACTED]

7 Okay. So and when did --

8 MS. [REDACTED] TO MS. DOUCHY

9 But we're not schedule, you know, not scheduled with the meetings anymore, but
10 I do hear everything in advisory. And then she comes in when she's in crisis.

11 MS. DOUCHY TO MS. [REDACTED]

12 And when, when, when did the scheduled meetings stop?

13 MS. [REDACTED] TO MS. DOUCHY

14 They stopped this year because once therapy was in place and then it was in the
15 beginning of the year and that was still going on, and we already, you know, knew that I
16 was going to be seeing her every week in advisory, we decided, you know, that she
17 could come in when she needed to.

18 MS. DOUCHY TO MS. [REDACTED]

19 When, when you say this year, do you mean 2011 or you mean the academic
20 school year?

21 MS. [REDACTED] TO MS. DOUCHY

22 September, since September.

23 MS. DOUCHY TO MS. [REDACTED]

24 Okay. So and when did she start therapy?

25 MS. [REDACTED] TO MS. DOUCHY

1 Started last semester, you know, this spring, I believe.

2 MS. DOUCHY TO MS. [REDACTED]

3 And, and have you ever consulted with her therapist?

4 MS. [REDACTED] TO MS. DOUCHY

5 I, we did some phone tag. I've never actually spoke with her. It was mostly
6 through, like, the, the family -- I was -- questions, but it was never really needed. She
7 was happy with her therapist and, you know, [REDACTED] would, and I would -- with that
8 and she was, you know, she was good to go, so it wasn't necessary.

9 MS. DOUCHY TO JUDGE

10 I have no further questions, Your Honor.

11 JUDGE TO MS. DOUCHY

12 Thank you.

13 JUDGE TO MS. KHANDWALA

14 Counsel?

15 MS. KHANDWALA TO MS. [REDACTED]

16 Ms. [REDACTED] you said that you meet with her in regular sessions over advisory?

17 MS. [REDACTED] TO MS. KHANDWALA

18 Yes. Every week, every Wednesday, her high school advisory. I have 11
19 students in my advisory class.

20 MS. KHANDWALA TO MS. [REDACTED]

21 And in addition, she comes to you when she's in crisis?

22 MS. [REDACTED] TO MS. KHANDWALA

23 Yeah. [Indiscernible] will come early and then we touch base and talk about
24 what's going on and then, you know, the other students come in and talk about, you
25 know, advisory topics.

1 MS. KHANDWALA TO MS. [REDACTED]

2 And on average, how often do those --

3 MS. [REDACTED] TO MS. KHANDWALA

4 On average? I didn't get the last part.

5 MS. KHANDWALA TO MS. [REDACTED]

6 I'm sorry?

7 JUDGE TO MS. KHANDWALA

8 Couldn't hear you.

9 MS. [REDACTED] TO MS. KHANDWALA

10 I didn't get the last part. You said on average?

11 MS. KHANDWALA TO MS. [REDACTED]

12 On average, how often does she come to you for crisis?

13 MS. [REDACTED] TO MS. KHANDWALA

14 Pretty much every week. She usually comes in early, you know, and, and we
15 talk for a bit before advisory begins. The advisory's held in my office because I only
16 have 11 students.

17 MS. KHANDWALA TO MS. [REDACTED]

18 And you testified that she's been coping by blocking out --

19 MS. [REDACTED] TO MS. KHANDWALA

20 Yeah, I said that. And those are the words that she used and I can, I can see
21 that, you know, because to get an A at Bard is extremely difficult. So she has now told
22 me that, you know, the way she's been coping is basically just blocking it out. She's not
23 thinking about it. And then last week, she did come in in crisis, in, you know, in tears,
24 saying that, you know, this date, court date's approaching and she was really nervous
25 and she was feeling anxious and she wanted me to remind her -- about her court date.

1 Said she might need, you know, a good support, that she didn't know if she was going
2 to be able to focus on anything due this week, you know, so we decided to alert the
3 teachers.

4 MS. KHANDWALA TO MS. [REDACTED]

5 And could she continue to use these coping techniques if her father was
6 deported?

7 MS. DOUCHY TO JUDGE

8 Objection. This goes beyond the scope of cross-examination and it calls for
9 speculation.

10 JUDGE TO MS. DOUCHY

11 Sustained.

12 MS. [REDACTED] TO MS. KHANDWALA

13 What I fear the most about --

14 JUDGE TO MS. [REDACTED]

15 No, that's, that's okay. It's okay.

16 JUDGE TO MS. KHANDWALA

17 Cancel that.

18 MS. KHANDWALA TO JUDGE

19 That's all, Your Honor.

20 JUDGE TO MS. [REDACTED]

21 Ms. [REDACTED] have you access to her attendance record in school?

22 MS. [REDACTED] TO JUDGE

23 Sure, I can get her attendance -- it's -- that she's rarely out.

24 JUDGE TO MS. [REDACTED]

25 She's rarely out? That's all I wanted to know.

1 MS. [REDACTED] TO JUDGE

2 Okay.

3 JUDGE TO MS. [REDACTED]

4 Okay. Well, thank you very much for your time. I appreciate it.

5 MS. [REDACTED] TO JUDGE

6 Thank you very much.

7 JUDGE TO MS. [REDACTED]

8 Thank you.

9 MS. [REDACTED] TO JUDGE

10 Have a good afternoon.

11 JUDGE TO MS. [REDACTED]

12 Good. Happy holiday.

13 MS. [REDACTED] TO JUDGE

14 Bye-bye.

15 JUDGE TO MS. [REDACTED]

16 Bye-bye.

17 MS. [REDACTED] TO JUDGE

18 Bye-bye.

19 JUDGE FOR THE RECORD

20 Okay. That concludes the testimony of the social worker.

21 JUDGE TO MS. KHANDWALA

22 The witness remaining, I believe, is the lawyer, is that right?

23 MS. KHANDWALA TO JUDGE

24 Is the lawyer and, and then also [REDACTED] herself.

25 MS. DOUCHY TO JUDGE

1 I, I don't want to cross-examine a child, Your Honor.

2 JUDGE TO MS. KHANDWALA

3 I've been over this --

4 MS. DOUCHY TO JUDGE

5 Yeah.

6 JUDGE TO MS. KHANDWALA

7 -- many times now. I, I don't see the necessity of making [REDACTED] testify. She's
8 traumatized enough. I don't like to put children on. [REDACTED] does not want her father
9 deported. She will be very upset if her father is deported. I don't want to put her on the
10 witness stand, okay? Now, what's the lawyer going to tell me?

11 MS. KHANDWALA TO JUDGE

12 The lawyer is going to tell you about, you know, his assessment of these returns,
13 why they're accurate, why they're done right, why the process by which they've --

14 JUDGE TO MS. KHANDWALA

15 Now, how does the lawyer --

16 MS. DOUCHY TO MS. KHANDWALA

17 Know about the Medicaid?

18 JUDGE TO MS. KHANDWALA

19 -- I'm a lawyer, you're a lawyer. How does the --

20 MS. DOUCHY TO MS. KHANDWALA

21 Are you talking about the Medicaid or the tax returns?

22 MS. KHANDWALA TO MS. DOUCHY

23 The taxes.

24 MS. DOUCHY TO MS. KHANDWALA

25 This, this is a tax attorney then that we're --

1 MS. KHANDWALA TO MS. DOUCHY

2 This is a tax attorney.

3 MS. DOUCHY TO MS. KHANDWALA

4 I thought this was the lawyer that helped them pay back their money --

5 MS. KHANDWALA TO MS. DOUCHY

6 No.

7 MS. DOUCHY TO MS. KHANDWALA

8 -- to Medicaid.

9 MS. KHANDWALA TO MS. DOUCHY

10 This is the --

11 MS. DOUCHY TO MS. KHANDWALA

12 Then the, I don't know if there was --

13 MS. KHANDWALA TO MS. DOUCHY

14 -- this is the tax attorney.

15 JUDGE TO MS. KHANDWALA

16 We've already had the person who did the taxes.

17 MS. KHANDWALA TO JUDGE

18 Right. And they've, and then they've, they retained Mr. [REDACTED] because he,
19 you know, by coming forward, basically, on closed years, they were obviously exposing
20 themselves to the IRS and the, and Mr. [REDACTED] was retained to advise them about the
21 process by which they should do that and whether, you know, the, the, sort of the --

22 JUDGE TO MS. KHANDWALA

23 So did they talk to the lawyer before they talked to the accountant, or how did
24 that work, or do you know?

25 MS. KHANDWALA TO JUDGE

1 They had started the process of amendments, but they were filed after attorney
2 was retained.

3 JUDGE TO MS. KHANDWALA

4 Who'd they retain first?

5 MS. KHANDWALA TO JUDGE

6 They retained the accountant first.

7 JUDGE TO MS. KHANDWALA

8 Accountant first? And then the lawyer? Interesting.

9 MS. DOUCHY TO MS. KHANDWALA

10 Oh, so the accountant advised him to retain a lawyer because they thought they
11 might get trouble from the IRS, is that it?

12 MS. KHANDWALA TO MS. DOUCHY

13 He, no, actually it was, it wasn't the accountant who advised them, but they want,
14 you know, they need, they felt that they should retain an attorney because they were
15 coming forward, I mean, the, the, they were coming forward to the IRS and making an
16 offer and typically, in those situations, it's good to have an attorney navigate that
17 process.

18 JUDGE TO MS. KHANDWALA

19 They were making an offer?

20 MS. KHANDWALA TO JUDGE

21 Right. By --

22 JUDGE TO MS. KHANDWALA

23 Okay.

24 MS. DOUCHY TO JUDGE

25 I, I mean, I don't, I don't see the real probative value of that.



1 JUDGE TO MS. KHANDWALA

2 I don't think there's anything wrong with the accountant or the lawyer, that I'm not
3 certainly accusing the accountant of saying well, did you do something illegal here. I'm
4 -- whatever lawyer they got, I, I'm not, his conduct or her conduct is not in question
5 either.

6 MS. KHANDWALA TO JUDGE

7 Mr. [REDACTED] also able to opine about, you know, what, like, why he advised
8 them to do what they did, which is that, you know, he looked at all the classic indicia --

9 JUDGE TO MS. KHANDWALA

10 Well, of course, because if you owe back taxes, you should pay them.

11 MS. KHANDWALA TO JUDGE

12 Well, but that's all --

13 JUDGE TO MS. KHANDWALA

14 It's really kind of that straightforward, is it not?

15 MS. KHANDWALA TO JUDGE

16 -- in the tax, in the tax context it's a bit different because, you know, he looked at
17 --

18 JUDGE TO MS. KHANDWALA

19 Oh, from what I hear, if you don't pay your taxes, it's universally known you got a
20 problem if you're caught.

21 MS. KHANDWALA TO JUDGE

22 Right. And --

23 JUDGE TO MS. KHANDWALA

24 I have to file mine very faithfully every year or I'll lose this job like that. And most
25 people will say the same. If IRS catches you not paying your taxes, for whatever

1 reason, you'll be penalized and you have to pay them.

2 MS. KHANDWALA TO JUDGE

3 Mr. [REDACTED] has, you know, has looked at all the, the various reasons that the,
4 that the IRS could look at to say, oh, well we're, well, did you have any fraudulent intent,
5 and he didn't see any of --

6 JUDGE TO MS. KHANDWALA

7 Right.

8 MS. KHANDWALA TO JUDGE

9 -- those indicators in these returns, which is why he felt comfortable advising
10 them to go forward.

11 JUDGE TO MS. KHANDWALA

12 And they did.

13 MS. KHANDWALA TO JUDGE

14 And they did. And that's, but, but --

15 JUDGE TO MS. KHANDWALA

16 Well --

17 MS. KHANDWALA TO JUDGE

18 -- that's Mr. [REDACTED] testimony will help explain why, again, that there were
19 errors and not know any, and no, no, no intents to commit a fraud --

20 MS. DOUCHY TO JUDGE

21 Your Honor, how anyone really could determine that.

22 MS. KHANDWALA TO JUDGE

23 -- on the IRS.

24 MS. DOUCHY TO JUDGE

25 You know, I mean, anyone could go in --

1 JUDGE TO MS. KHANDWALA

2 No one can put --

3 MS. DOUCHY TO JUDGE

4 -- someone's mind --

5 JUDGE TO MS. KHANDWALA

6 -- in someone else's mind. Intent is a matter of mind. Fraud in the legal sense,
7 there has to be intent. But my personal intent cannot be testified to by my husband, my
8 lawyer, my children, my grandparents. Intent is personal.

9 MS. KHANDWALA TO JUDGE

10 All right. But when you file taxes, Your Honor, there's a, there's some classic --

11 JUDGE TO MS. KHANDWALA

12 Or when you don't file taxes.

13 MS. KHANDWALA TO JUDGE

14 Which he, is not the case in this --

15 JUDGE TO MS. KHANDWALA

16 Right.

17 MS. KHANDWALA TO JUDGE

18 Right. He's already come forward. He's --

19 JUDGE TO MS. KHANDWALA

20 So his, his argument is I didn't know I did it wrong?

21 MS. KHANDWALA TO JUDGE

22 That's right. That's Mr. [REDACTED]

23 JUDGE TO MS. KHANDWALA

24 We know that.

25 MS. KHANDWALA TO JUDGE

1 Right.

2 JUDGE TO MS. KHANDWALA

3 But we know that that's the argument.

4 MS. DOUCHY TO JUDGE

5 Right. So I don't really see the probative value of attorney. I'm just interested in
6 seeing, I'm curious to know how much he was paid for this --

7 JUDGE TO MS. DOUCHY

8 All right.

9 JUDGE TO MS. KHANDWALA

10 Bring him on.

11 MS. DOUCHY TO JUDGE

12 -- whole analysis.

13 JUDGE TO MS. KHANDWALA

14 Bring him in.

15 MS. DOUCHY TO JUDGE

16 Actually, Your Honor, could we just take a five-minute break before --

17 JUDGE TO MS. DOUCHY

18 Yes.

19 JUDGE TO MR. [REDACTED]

20 Sir, we're going --

21 JUDGE TO INTERPRETER

22 Tell him we're taking a five-minute break so he knows what's going on.

23 JUDGE TO MR. [REDACTED]

24 And then we'll talk to your lawyer, okay?

25 MS. KHANDWALA TO JUDGE

1 MR. [REDACTED] TO JUDGE

2 I am a American citizen.

3 JUDGE TO MR. [REDACTED]

4 My name is Judge Lamb. The woman seated here is a lawyer for the
5 Government. Thank you for coming to court. And the lawyers are going to ask you
6 some questions. Never answer a question you don't understand and when you answer,
7 please speak out loud. The mike is okay because we're recording everything. All right?
8 Thank you.

9 JUDGE TO MS. KHANDWALA

10 Counsel, your witness.

11 MS. KHANDWALA TO JUDGE

12 Thank you.

13 MS. KHANDWALA TO MR. [REDACTED]

14 Mr. [REDACTED] what areas of law do you practice in?

15 MR. [REDACTED] TO MS. KHANDWALA

16 I practice primarily in taxes, trusts and estates and trial law, civil trial law mostly.

17 MS. KHANDWALA TO MR. [REDACTED]

18 And how long have you been in this practice?

19 MR. [REDACTED] TO MS. KHANDWALA

20 I have been admitted in New York and New Jersey since 1985 and have
21 practiced continually thereafter.

22 MS. KHANDWALA TO MR. [REDACTED]

23 Okay. What is, what is your educational background?

24 MR. [REDACTED] TO MS. KHANDWALA

25 I have a Bachelor's of Business Administration in accounting and taxation from

1 Case University that was awarded in May of 1973. I have a Juris Doctor degree from
2 Fordham Law School that was awarded in May of 1984. And I accumulated 30 credits
3 towards a Master's degree in taxation at Case University, but didn't complete it because
4 I got admitted into law school.

5 MS. KHANDWALA TO MR. [REDACTED]

6 Do you have your own law practice?

7 MR. [REDACTED] TO MS. KHANDWALA

8 I do. I practiced as a solo practitioner since 1991 and prior thereto was a partner
9 in two two-man law firms, one from 1985 to '89 and the other from '89 to '91.

10 MS. KHANDWALA TO MR. [REDACTED]

11 Can you tell me more about your tax practice?

12 JUDGE TO MS. KHANDWALA

13 I don't think that's necessary. Let's go to the questions affecting this case. I
14 believe the man is, is a practitioner. I have read his background.

15 MS. KHANDWALA TO JUDGE

16 Okay.

17 MS. KHANDWALA TO MR. [REDACTED]

18 What is your relationship with Mr. [REDACTED]

19 MR. [REDACTED] TO MS. KHANDWALA

20 I was retained by Mr. [REDACTED] on or about November 15th of this year to render
21 counsel, professional counsel to him, at the suggestion of Dr. [REDACTED] who was acting
22 as his accountant. Do you want me to explain the specific areas I was, I was asked to
23 opine on?

24 MS. KHANDWALA TO MR. [REDACTED]

25 What, what were you retained to do?

1 MR. [REDACTED] TO MS. KHANDWALA

2 I, I was retained for several purposes. I was, I was informed first that Dr.
3 [REDACTED] had been preparing a series of, had already prepared a series of amended
4 tax returns for him that were actually filed and had drafted others for still earlier tax
5 years. I was asked to do several things. One was to opine on the efficacy of the
6 methodology employed by Dr. [REDACTED] in determining Mr. [REDACTED] income in all of the
7 years in question. Secondly, to advise him as to what he was required to do under
8 federal and New York State tax law with respect to any years in which he determined
9 they may have been an underpayment using the methodology accepted. And lastly, if
10 and to the extent any additional taxes were due, whether they could be compelled to be
11 paid or not to assist him in determining how best to go about filing and, and remitting
12 those taxes.

13 MS. KHANDWALA TO MR. [REDACTED]

14 What documents did you review in connection with your representation?

15 MR. [REDACTED] TO MS. KHANDWALA

16 I reviewed a number of documents that were being supplied by Dr. [REDACTED]
17 which included copies of U.S. and New York State income tax returns that had been
18 filed for the calendar years 2001 through 2010, a set of amended returns that were, had
19 already been filed for calendar years 2007 through 2009, and a series of proposed
20 amended returns for calendar years 2001 through 2006. In addition, I reviewed a
21 compilation of bank records, bank statements, cancelled checks and other documents
22 pertaining to the receipts and disbursements for Mr. [REDACTED] in, in all of the years
23 covered, 2001 through 2010. I reviewed two closing statements that were issued to him
24 in connection with the acquisition of two separate parcels of real property. I reviewed a
25 spreadsheet that I believe Dr. [REDACTED] had prepared comparatively showing gross

1 income, net income, cost of goods sold and, and tax calculations for, I think originally it
2 was 2007 to 2010, and I asked him to expand that to include '01 to, to '06 and he did
3 that. I believe I saw at least one handwritten summary or, or ledger that Mr. [REDACTED] had
4 prepared on his own, and I'm sure there was some other backup documents that, but
5 that's primarily the documents, source, what I would call source documents, that I
6 reviewed.

7 MS. KHANDWALA TO MR. [REDACTED]

8 Okay. Did you meet in person with Mr. [REDACTED]

9 MR. [REDACTED] TO MS. KHANDWALA

10 I did several times, the first time being probably a week prior to, to November
11 15th, when I was introduced to him at Dr. [REDACTED] office, and I was made familiar
12 with, with the basis on which I might be retained. I believe I had at least four other
13 meetings that I attended, all, all at Dr. [REDACTED] offices, reviewing various documents
14 and work product while I was formulating a, an opinion for him as to go about the, the
15 filing of what ultimately came to be amended returns for '01 through '06.

16 MS. KHANDWALA TO MR. [REDACTED]

17 What was your assessment of the previously filed returns that you reviewed from
18 2001 to 2009?

19 MR. [REDACTED] TO MS. KHANDWALA

20 The return --

21 MS. DOUCHY TO JUDGE

22 Objection. Relevance?

23 JUDGE TO MS. KHANDWALA

24 What's the relevance?

25 MS. KHANDWALA TO JUDGE

1 It is, it's absolutely relevant because he's been involved in advising him about the
2 amendments, so his assessment of why well, why they needed the amendment is
3 important.

4 MS. DOUCHY TO JUDGE

5 We already had an accountant testify in detail about this. I think it's duplicative at
6 this point.

7 JUDGE TO MS. DOUCHY

8 This is the lawyer. This is a different story.

9 JUDGE TO MR. [REDACTED]

10 Did you give legal advice about whether or not to file taxes?

11 MR. [REDACTED] TO JUDGE

12 I, whether or not to file amended returns?

13 JUDGE TO MR. [REDACTED]

14 Amended taxes.

15 MR. [REDACTED] TO JUDGE

16 Yes, I did, Your Honor.

17 JUDGE TO MR. [REDACTED]

18 Okay. And why did you do that?

19 MR. [REDACTED] TO JUDGE

20 I, I did --

21 JUDGE TO MR. [REDACTED]

22 Or what did you say? What was your advice?

23 MR. [REDACTED] TO JUDGE

24 My advice was that for the calendar years 2001 through 2005, in my opinion, no
25 amended returns needed to be filed as a matter of federal tax law, and I will explain my

1 basis for that in a minute. In 2006, I recommended that in all instances an amended
2 return should be filed based on the additional income that was determined by the
3 methodology employed by Dr. [REDACTED] Now, I'll start with the early years first, in, in
4 terms of why it was not necessary as a matter of tax law to file them. The original
5 returns that I examined that were filed for all of these years included a Schedule C,
6 which indicated that Mr. [REDACTED] [sic] was generating income from self-employment. It also
7 contained the Schedule SE, which indicates that he was paying some amount of self-
8 employment tax on those earnings above and beyond basic income tax. And since
9 calendar year 2003, those returns also contained a Schedule E, on which gross rents
10 and expenses for rental real property are reported. So that facially, the returns for each
11 of these years reported the precise source and nature of income that Mr. [REDACTED] had in
12 each of those years. When I was proposed to be retained by him, Dr. [REDACTED] advised
13 me that he had employed a method known as the bank deposit method to reconstruct
14 Mr. [REDACTED] income in each of these years. That is a long-accepted methodology
15 employed by the IRS in connection with determining taxpayers' income when they feel
16 the need to reconstruct it through means other than records produced by the taxpayer
17 himself or herself. It's also been used to reconstruct income for defendants in, in such
18 proceedings as criminal and civil reco. actions where the amount of income derived
19 from an enterprise needs to be determined. So it's highly reliable. It is, in my opinion, a
20 little bit Draconian in the sense that it tends to overstate income in each year and where
21 you're unable to fully account for all of the deposits into an account. It makes the
22 presumption up front that everything deposited into your bank accounts is gross income
23 for federal income tax purposes, when in point of fact, there are a number of plausible
24 explanations for a deposit that may render something other than income, not the least of
25 which would be gifts, deposits of previously taxed income, transfers from one bank to

1 another, tax refunds. There, there's a number of different ways you can make a deposit
2 into an account it would not constitute a -- but the, when the IRS employs the
3 methodology, and based on my examination of the way Dr. [REDACTED] applied it to Mr.
4 [REDACTED] all doubts were resolved against him in the sense that if he couldn't prove that it
5 was a transfer, an inter-account transfer or a deposit of previously taxed income, then it
6 was treated as income. And in employing that methodology over the roughly nine-year
7 period in time, deficiencies were determined. When I say deficiencies, these
8 deficiencies ranged from a low of slightly over \$2,000 to slightly over \$5,000 in each of
9 these years. As a matter of federal tax policy, if a return has been filed, the clock starts
10 to run on both the IRS's time within which to assess additional tax and to collect tax.
11 The only reason the clock would not run is if A) the taxpayer voluntarily suspended the
12 assessment period, or B) filed a fraudulent return. Fraud here is a term of art within,
13 within the tax practice and is a question of fact. I note that in all of the years that I
14 looked at, there was no evidence that Mr. [REDACTED] tax returns had ever been audited and
15 therefore were accepted as filed by the IRS.

16 JUDGE TO MR. [REDACTED]

17 Well, the question, not to interrupt you --

18 MR. [REDACTED] TO JUDGE

19 Yeah.

20 JUDGE TO MR. [REDACTED]

21 -- but I guess to interrupt you, is not did he file them. We know he filed them.
22 But it seems the wrong amount was put on the documents, because we had a situation
23 where his daughter was getting Medicaid, and there is certain -- I don't know the
24 number -- your income has to be a certain amount of dollars in order to apply for
25 Medicaid. So at the time he applied for Medicaid, was the amount he was reporting on

1 his taxes correct? And I don't know that, so it's not a question did he file. Some people
2 don't file. He filed. That wasn't of concern to me here. It was was the amount that he
3 was filing reflecting all of his income from any source accurate in 2001, '02, '03, '04, '05,
4 '06.

5 MR. [REDACTED] TO JUDGE

6 To me --

7 JUDGE TO MR. [REDACTED]

8 That was our question.

9 MR. [REDACTED] TO JUDGE

10 -- they were pretty accurate. And, and when I say that, Your Honor, it's been
11 established empirically that if you took the same taxpayer and brought him to five
12 different accountants and five different lawyers, you'd end up with ten different net
13 bottom lines on it, on the proposed tax return because every practitioner has varying
14 degrees of familiarity with what is deductible, what's includable and all of the returns I
15 looked at, the original ones and, and the ones that were amended and prepared by Dr.
16 [REDACTED] were prepared by some tax preparer. The discrepancy --

17 JUDGE TO MR. [REDACTED]

18 Well, being, being prepared properly is one thing. Putting down all you income is
19 another.

20 MR. [REDACTED] TO JUDGE

21 That's true, Your Honor. However, there are, as I said, because of the
22 methodology that Dr. [REDACTED] used, I don't have complete confidence that the gross
23 number he ultimately determined is, is the actual number in each year. To me it could
24 be something lower than that. The records just no longer exist to, to bring it down, so
25 he has erred on the side of over-inclusion. But when you look at what was filed versus

1 what, what is, what was filed on amendment, the gap in each year is not, not that
2 radical. Well, the, the taxes, you know, because of the everything that's being added in
3 in each year, I think, with, with only one exception, I believe, in 2003 he actually had a
4 net operating but in other years positive income, and therefore, every dollar of additional
5 income that was determined gave him not only additional income tax, but roughly an
6 additional 15.7 percent in self-employment tax too. So the tax number, like, \$2,000,
7 roughly half of that is self-employment tax which, having been advised of, of Mr. [REDACTED]
8 Immigration status, he doesn't even get the benefit of, and unless he ever became a
9 citizen, and even then, I don't know that contributions made to social security during the
10 time that he was a, a resident alien would count to his benefit. So he's actually paying
11 tax on, on monies that he'll, he'll never see back. To just finish the, the line I was on,
12 though, Your Honor, in terms of accuracy, I don't see a, a gap that is so dramatic that it
13 suggests to me that there was a pattern of consistent underreporting. This, this could've
14 happened for a number of reasons other than intentionally not including it on his --

15 JUDGE TO MR. [REDACTED]

16 Like what?

17 MR. [REDACTED] TO JUDGE

18 -- tax return. Well, as I said, he had, well, when I looked at his records, he had
19 some number of bank accounts ranging from two to three. I don't think he had deposit
20 tickets for all of those accounts for all of the years in question. If -- you may see money
21 going out of a bank on one day and into another bank several days later. If you had the
22 deposit ticket and can see what went out, because he didn't have all the cancelled
23 checks either, so I, I can't say with, with ultimate certitude, and, and trust me, Your
24 Honor, I did not sit down and go through ever month of every year, but in looking at
25 what was there and what you could infer or, or, or realistically reconstruct from what

1 was there, had there been sufficient deposit tickets and cancelled checks to tie out
2 completely, we may have found additional instances where either drew a check or bank
3 check from one account and deposited it into another. Why would he do that? In
4 several instances, I noted that he had accounts that were between him and his wife. In
5 others, there are different banks. Some were savings accounts, others were checking
6 accounts. So there, I believe, were legitimate banking reasons for making these
7 transfers. And I would note also he indicated in, in my discussion with him that the rents
8 that he received were largely received in cash. They're reported with great accuracy on,
9 on his Schedule Es and the rents are deposited into his bank accounts. So that is not
10 the methodology of somebody who is hiding income. In the 40 years that I've been
11 doing practice, and I've had familiarity with a number of cash businesses, including gas
12 stations, restaurants and similar activities, which generate a large amount of cash, and
13 I, I just don't see that kind of pattern here.

14 JUDGE TO MR. [REDACTED]

15 Thank you.

16 JUDGE TO MS. KHANDWALA

17 Continue.

18 MS. KHANDWALA TO MR. [REDACTED]

19 So based on your review of all the documents and the amended taxes, what did
20 you advise Mr. [REDACTED] to do and why?

21 MR. [REDACTED] TO MS. KHANDWALA

22 Well, I first advised him that they were reasons other than tax law as to why he
23 may want to file these returns, even though, as it, in my opinion, they didn't necessarily
24 have to be filed. The only return that I thought had to be filed, in addition to the ones
25 that had been filed before I was retained, was 2006, and the reason for that is there is

1 something known as the six-year statute in tax practice, where the, if there is a, either
2 an over-deduction or an understatement of, of income of more than 25 percent, and the
3 three-year statute that the IRS normally has in order to assess additional taxes is
4 expanded to a six-year statute. At the time that I was consulted, the 2006 return would
5 still be within the six-year statute, which means that the IRS could've compelled him to
6 file that in any event. All the other years, in, in my opinion, he didn't have to file.
7 However, he, as I was made to understand, was engaged in this endeavor in order to
8 make sure that he had paid all of the taxes that he should have on the income and
9 benefits that he received while he was a resident here in the United States, and for the
10 sake of completeness, he could volunteer to pay those taxes. There's a secondary
11 legal issue here. In filing the amended returns that he did, he has basically stuck his
12 chin out to the IRS and exposed himself to their assessment as to whether or not these
13 returns were filed properly or fraudulently in the first instance. By him taking the first
14 step that the contraindications that he did file fraudulently, however, you get no
15 guarantees. Once he puts the, the returns in the mail, he, he's out there and subject to
16 them disagreeing of what his motivation was. And since that's on the line and that
17 would affect years that technically would be closed under the three or six-year statute,
18 that's a secondary reason as to why, even though they may not ultimately legally be
19 able to assess and collect these taxes, for him to offer them in any event. And we
20 ultimately decided that he would do that.

21 MS. KHANDWALA TO JUDGE

22 I have no further questions, Your Honor.

23 JUDGE TO MS. KHANDWALA

24 Thank you.

25 JUDGE TO MS. DOUCHY

1 Ms. Douchy?

2 MS. DOUCHY TO MR. [REDACTED]

3 How much are you being paid to testify today?

4 MR. [REDACTED] TO MS. DOUCHY

5 I was retained at an hourly rate of \$350 an hour, which is my usual and
6 customary billing rate for all legal matters that I'm engaged on.

7 MS. DOUCHY TO MR. [REDACTED]

8 And so you've been here since 1:00 and it's 4:00, 5:00, so -- you're better at math
9 than me, but that sounds like you're about \$1,400 --

10 MR. [REDACTED] TO MS. DOUCHY

11 It's a lot more --

12 MS. DOUCHY TO MR. [REDACTED]

13 -- right?

14 MR. [REDACTED] TO MS. DOUCHY

15 -- money than I thought I was going to get --

16 MS. DOUCHY TO MR. [REDACTED]

17 Right.

18 MR. [REDACTED] TO MS. DOUCHY

19 -- because I've been in a holding pattern for a while. But --

20 MS. DOUCHY TO MR. [REDACTED]

21 So you're probably going to be paid --

22 MR. [REDACTED] TO MS. DOUCHY

23 -- clients are typically charged for waiting time by counsel in, in all kinds of
24 matters.

25 MS. DOUCHY TO MR. [REDACTED]

1 So you're going to be paid approximately \$1,400, is that right? If my math is
2 right?

3 MR. [REDACTED] TO MS. DOUCHY

4 If your math is right, yes.

5 MS. DOUCHY TO MR. [REDACTED]

6 Okay. And, and what about in, in the pretrial work you did for this case, all the
7 analysis that you did? How much were you paid?

8 MR. [REDACTED] TO MS. DOUCHY

9 I was given an advanced retainer of \$3,500 and I have not rendered my first
10 invoice yet because I normally bill on a 3-day cycle, but I actually was sick over the last
11 two weeks and I ran a little bit behind in my billing.

12 MS. DOUCHY TO MR. [REDACTED]

13 So --

14 MR. [REDACTED] TO MS. DOUCHY

15 I could estimate for you that I probably have somewhere in between ten and
16 fifteen hours of work that I did on this matter, both between review of records, research
17 and, and attendance at meetings.

18 MS. DOUCHY TO MR. [REDACTED]

19 Okay. So your, so you've already received \$3,500, is that correct, and you're
20 receiving --

21 MR. [REDACTED] TO MS. DOUCHY

22 Correct.

23 MS. DOUCHY TO MR. [REDACTED]

24 -- \$1,400 for today? And then, I, I'm not clear. Do you mean that you're going to
25 be paid for another ten to fifteen hours in addition to --

1 MR. [REDACTED] TO MS. DOUCHY

2 No, no.

3 MS. DOUCHY TO MR. [REDACTED]

4 Okay.

5 MR. [REDACTED] TO MS. DOUCHY

6 From the time I was retained up until now --

7 MS. DOUCHY TO MR. [REDACTED]

8 Okay. So --

9 MR. [REDACTED] TO MS. DOUCHY

10 -- off the top of my head, I've got ten to fifteen hours in, which would --

11 MS. DOUCHY TO MR. [REDACTED]

12 So that's, like, a \$5,000 so far, right?

13 MR. [REDACTED] TO MS. DOUCHY

14 I would say somewhere around there is probably a reasonable estimate, yes.

15 MS. DOUCHY TO MR. [REDACTED]

16 And did Mr. [REDACTED] tell you that he was, during this time period from 2001 to
17 2010, he was, his daughter was receiving Medicaid?

18 MS. KHANDWALA TO JUDGE

19 Objection, Your Honor. Relevance?

20 MS. DOUCHY TO JUDGE

21 It's very relevant because if it's being --

22 JUDGE TO MS. KHANDWALA

23 Overruled.

24 JUDGE TO MR. [REDACTED]

25 You can proceed.

1 MR. [REDACTED] TO MS. DOUCHY

2 No, he did not.

3 MS. DOUCHY TO MR. [REDACTED]

4 And do you believe, based on the amount of money you're aware of that he
5 earned during this time period, that he was entitled, his daughter was entitled to receive
6 Medicaid?

7 MR. [REDACTED] TO MS. DOUCHY

8 I, I don't --

9 MS. KHANDWALA TO JUDGE

10 Objection, Your Honor. This is not Mr. [REDACTED] area of expertise. How would
11 even know what the --

12 JUDGE TO MS. KHANDWALA

13 I don't know. He's going to tell me, though.

14 MR. [REDACTED] TO JUDGE

15 I, I don't purport to know what the Medicaid rules are. That's outside the scope of
16 my practice and it's certainly outside the scope of, of what my engagement was, which
17 was to opine on whether and how to file any amended returns and to evaluate the
18 efficacy of the methodology employed to determine if any amended returns were
19 necessary at all.

20 MS. DOUCHY TO MR. [REDACTED]

21 Now, was the rationale behind hiring you because of a concern that he might
22 have problems with the IRS for tax evasion? Was that --

23 MR. [REDACTED] TO MS. DOUCHY

24 I don't think that was the primary motivation. As I indicated, you know, taxes are
25 kind of a, a mixed item. We, we share the, the tax practice between accountants and

1 attorneys. The mechanics of preparing a return usually are, are handled by, by
2 accountants. When you get down to important questions regarding deductibility, the
3 tax, proposed tax treatment of an -- yet completed transaction or, as in Mr. [REDACTED] case,
4 whether or not, and, and to what extent taxes could be assessed, that is pretty much
5 more of a legal issue, and I believe Dr. [REDACTED] felt beyond the area of his expertise
6 and suggested that Mr. [REDACTED] engage legal counsel to, to answer those questions for
7 him.

8 MS. DOUCHY TO MR. [REDACTED]

9 Well, since you are a tax expert, if he had significantly underreported his income,
10 is it fair to say that he could be prosecuted for tax evasion?

11 MR. [REDACTED] TO MS. DOUCHY

12 It is fair to say that. However, prosecuting for tax evasion and successfully
13 prosecuting for tax evasion are two different things.

14 MS. DOUCHY TO MR. [REDACTED]

15 Well, that wasn't my question. My question was could he conceivably, if, could
16 someone conceivably be prosecuted for tax evasion if they underreported income and --

17 MR. [REDACTED] TO MS. DOUCHY

18 [Indiscernible].

19 MS. DOUCHY TO MR. [REDACTED]

20 -- that's a yes or no question?

21 MR. [REDACTED] TO MS. DOUCHY

22 The answer's yes.

23 MS. DOUCHY TO MR. [REDACTED]

24 Yes? Okay. And now, how do you know what rent he received if he received his
25 rental income in cash? It, it's based on what he's reporting to you, isn't that right?

1 MR. [REDACTED] TO MS. DOUCHY

2 That is correct.

3 MS. DOUCHY TO MR. [REDACTED]

4 So all your analysis and conclusions are based on information reported to you by

5 Mr. [REDACTED]

6 MR. [REDACTED] TO MS. DOUCHY

7 As compiled by Dr. [REDACTED] and done in conjunction with the bank records that

8 Mr. [REDACTED] turned over to him, yes.

9 MS. DOUCHY TO MR. [REDACTED]

10 Okay. And now you said you were aware of transactions in his bank accounts.

11 Do you know how many bank accounts he has?

12 MR. [REDACTED] TO MS. DOUCHY

13 At the present, I believe it's four. It could be five. And when I say that, I believe,

14 because he has, to my recollection, accounts at at least three different banks and in at

15 least two of them he has a checking and a savings account.

16 MS. DOUCHY TO MR. [REDACTED]

17 And so you reviewed his bank statements?

18 MR. [REDACTED] TO MS. DOUCHY

19 Not in great detail. I reviewed to see that they were bank statements, because

20 these were what were used by Dr. [REDACTED] to compile his income and determine his

21 gross income. So I looked at the statements to see what detail was there, not month by

22 month, but year by year and, and kind of in bulk.

23 MS. DOUCHY TO MR. [REDACTED]

24 Well, if, if the basis of these amended returns was information in the bank

25 accounts and you were checking to see the efficacy of this, wouldn't it be your obligation

1 to review these bank statements in great detail?

2 MR. [REDACTED] TO MS. DOUCHY

3 No, I, I think I have the right to rely on the completeness of Dr. [REDACTED] in, in
4 compiling these things. I, there's no need for us to duplicate effort to do the same thing.
5 If Dr. [REDACTED] represents to me that in examining these, these records and extracting
6 all of the deposits he came up with a number, I have no reason to doubt him.

7 MS. DOUCHY TO MR. [REDACTED]

8 And is he, is Dr. [REDACTED] receiving a percentage of whatever you're paid from
9 Mr. [REDACTED] for a referral fee?

10 MR. [REDACTED] TO MS. DOUCHY

11 No.

12 MS. DOUCHY TO MR. [REDACTED]

13 Is he receiving anything for a referral fee?

14 MR. [REDACTED] TO MS. DOUCHY

15 From me? No.

16 MS. DOUCHY TO MR. [REDACTED]

17 And so how much money was in his savings accounts? Could -- approximately?
18 Mr. [REDACTED] savings accounts, that is?

19 MR. [REDACTED] TO MS. DOUCHY

20 During what period of time?

21 MS. DOUCHY TO MR. [REDACTED]

22 During -- well, do you remember every period of time? Maybe what's your
23 recollections?

24 MR. [REDACTED] TO MS. DOUCHY

25 I, I don't have a specific recollection of each period of time. However, because

1 there were two acquisitions of real property, I did look at the years in which both
2 properties were acquired to see what kind of funds were in there and it, it became
3 apparent that significantly more funds were deposited in those two years than in the
4 other years. And sufficient funds were deposited to enable Mr. [REDACTED] to make the
5 down payments that were called for in the closing statements on each of those
6 properties.

7 MS. DOUCHY TO MR. [REDACTED]

8 And do you know how much the -- well, do you know when he purchased the
9 properties?

10 MR. [REDACTED] TO MS. DOUCHY

11 My recollection is one was purchased in 2003 and the other in 2005.

12 MS. DOUCHY TO MR. [REDACTED]

13 And do you know what, what was the down payment for those properties?

14 MR. [REDACTED] TO MS. DOUCHY

15 I don't have a specific dollar recollection. I remember one, if I recall correctly,
16 was somewhere around \$140,000 and the other one was perhaps 200 and change.

17 MS. DOUCHY TO MR. [REDACTED]

18 And, and based on -- did you review his declared income and gross -- did you
19 review his gross income on the, the initial taxes?

20 MR. [REDACTED] TO MS. DOUCHY

21 I did.

22 MS. DOUCHY TO MR. [REDACTED]

23 And do you recall what it was?

24 MR. [REDACTED] TO MS. DOUCHY

25 I, I don't recall the amount specifically in any specific year. But I do recall having

1 looked at it and at some point looking at it again on a spreadsheet to see the, the
2 difference between that and what ultimately was put down on the amended return.

3 MS. DOUCHY TO MR. [REDACTED]

4 And now, according to Dr. [REDACTED] for the tax year in 2001, his gross income
5 was \$140,000. In 2002, it was \$134,000. In 2003, \$114,000. In 2004, \$131,000. In
6 2005, \$163,000. And in 2006, \$148,000. I'm just approximating.

7 MR. [REDACTED] TO MS. DOUCHY

8 Okay.

9 MS. DOUCHY TO MR. [REDACTED]

10 And now, based on that, how much do you think it's conceivable for him to have
11 saved during this time period when he had labor costs and, and was supporting a family
12 of five?

13 MS. KHANDWALA TO JUDGE

14 Objection, Your Honor. The income numbers don't include the rent receipts.

15 MS. DOUCHY TO JUDGE

16 About gross, I'm talking the gross, the gross, I thought the gross income includes
17 everything?

18 MS. SLOVINSKY TO MS. DOUCHY

19 No.

20 MS. DOUCHY TO MS. SLOVINSKY

21 It doesn't include the rental income separate --

22 JUDGE TO MR. [REDACTED]

23 She separated it out. You've looked at these numbers and we're just asking,
24 what the question remains is based on the income he had, would he have been able to
25 come up with this down payment for the house?

1 MR. [REDACTED] TO JUDGE

2 Oh, absolutely. He had enough in the way of gross, he, if I understand correctly,
3 he was a house painter. And apparently he had sufficient clientele to be able to
4 generate over 100K a year in, in doing this, which is, you know, about what you would
5 expect a self-employed person in the good, boom years in real estate, in '01 through the
6 late 2000s to, to be able to generate. I would, I didn't go into an extensive examination
7 with him, but I did recall discussing, you know, some of his arrangements were done
8 where he charged by the room or by the total project and he sometimes had
9 arrangements where he was paid to do that and his clientele would pick up the cost of
10 materials. This, this is pretty standard from other building industry workmen that, that
11 I've encountered in, in, in my career. And yes, he could've accumulated a, a significant
12 amount. People who live modestly or frugally can accumulate 100 grand in pretty short
13 order without that kind of a gross.

14 MS. DOUCHY TO MR. [REDACTED]

15 And that's including paying for kids tuition, school, supporting a family, all
16 household expenses, all living expenses for a family of five in New York?

17 MR. [REDACTED] TO MS. DOUCHY

18 Well I, I don't, I never discussed where his children went to school. If they went
19 to public schools, then there, there is no tuition.

20 MS. DOUCHY TO MR. [REDACTED]

21 College tuition.

22 MR. [REDACTED] TO MS. DOUCHY

23 College -- I, I, I didn't have a, a discussion like that with him.

24 MS. DOUCHY TO MR. [REDACTED]

25 Um-hum.

1 MR. [REDACTED] TO MS. DOUCHY

2 But again, you know, well, not all tuitions are created equally. Some are fairly
3 low and -- I put five kids through college. I don't even have a brick named after me, but
4 I know it can be very expensive, but I also have kids who went through almost cost free
5 because they were excellent scholars and got academic scholarships.

6 MS. DOUCHY TO JUDGE

7 I have no further questions, Your Honor.

8 JUDGE TO MS. DOUCHY

9 Thank you.

10 JUDGE TO MS. KHANDWALA

11 Redirect?

12 MS. KHANDWALA TO MR. [REDACTED]

13 From your review of the bank statement, can you tell us about -- did you see any
14 pattern of depositing into them, cash into the bank?

15 MR. [REDACTED] TO MS. KHANDWALA

16 It seemed to me that there were two years where there were very
17 disproportionately large deposits into his bank account, and those years are the years in
18 which the rental real property was acquired. But that would be consistent with, with how
19 this works. I, I, frankly, having done a number of real estate closing in my legal career,
20 don't still fully understand how he was able to, to close on on real estate. But he did.

21 JUDGE TO MR. [REDACTED]

22 What do you mean by that?

23 MR. [REDACTED] TO JUDGE

24 There's a, a local FIRPTA which requires people to, to report transactions from
25 resident aliens acquiring real estate that I don't see any evidence of, and the onus is on

1 the seller, not on the buyer, to do the reporting. So how that happened, I don't know,
2 but it did. However, he does have a, a valid federal tax ID number. He has reported
3 his, his income. He deposited, it's in banks. So he's not hiding his income or, or
4 sources of income. I just find it interesting that he was able to acquire real estate.

5 MS. KHANDWALA TO MR. [REDACTED]

6 When someone deposits cash into the bank in the pattern that Mr. [REDACTED] is
7 that, does that, what do you infer from that? Does that --

8 MR. [REDACTED] TO MS. KHANDWALA

9 I don't think you infer anything other than that the person has access to cash.
10 Ever business that does business in the United States that accepts cash, and I think
11 most of them do, has to do something with it and the, the normal thing to do, unless you
12 want it accumulating in your basement, is to deposit it into a, a financial institution.

13 MS. KHANDWALA TO MR. [REDACTED]

14 But is it normal practice for someone who wants to hide income to deposit it into
15 the bank?

16 MR. [REDACTED] TO MS. KHANDWALA

17 No.

18 MS. DOUCHY TO JUDGE

19 Objection.

20 MR. [REDACTED] TO MS. KHANDWALA

21 In fact, it's quite the contrary. When, when you're --

22 JUDGE TO MS. DOUCHY

23 What's the objection?

24 MS. DOUCHY TO JUDGE

25 Calls for speculation.

1 MS. KHANDWALA TO JUDGE

2 He's in a position to be able to.

3 JUDGE TO MS. KHANDWALA

4 I don't know that. Overruled. Move on.

5 MS. KHANDWALA TO JUDGE

6 No further questions, Your Honor.

7 MS. DOUCHY TO JUDGE

8 I, I just have on question as a follow-up to what he --

9 MS. DOUCHY TO MR. [REDACTED]

10 Now, you said that you're surprised that he was able to close on two properties.

11 Is it possible that the misrepresented his Immigration status and that's how he was able

12 to --

13 MR. [REDACTED] TO MS. DOUCHY

14 No, it's not.

15 MS. DOUCHY TO MR. [REDACTED]

16 -- do that?

17 MS. KHANDWALA TO JUDGE

18 I --

19 MS. DOUCHY TO MR. [REDACTED]

20 Well, you said that --

21 MS. KHANDWALA TO JUDGE

22 -- objection, Your Honor.

23 JUDGE TO MS. KHANDWALA

24 What is your objection?

25 MS. KHANDWALA TO JUDGE

1 That calls for speculation and there's no basis.

2 JUDGE TO MS. DOUCHY

3 It is. He's not a Immigration lawyer.

4 MS. DOUCHY TO JUDGE

5 Well, I, I guess I'm, I'm --

6 MS. DOUCHY TO MR. [REDACTED]

7 What were you -- could you just elaborate a little more on what, why you're
8 surprised?

9 JUDGE TO MS. KHANDWALA

10 He did bring it up, so --

11 MS. DOUCHY TO JUDGE

12 What?

13 JUDGE TO MS. DOUCHY

14 What, he did bring it up, so I'm going to allow him to, to further explain that.

15 MR. [REDACTED] TO MS. DOUCHY

16 His federal tax ID number would be a flag to a practitioner on the other side who
17 had the onus of reporting this as to what his status was, because he doesn't have a
18 social security number. And everybody in practice who is -- would know that. And it's
19 not Mr. [REDACTED] onus to do anything other than to disclose his information, which he did.
20 The deed's in his name. And the real estate transfer tax returns show that the transfer
21 taxes were paid and that also has his tax ID number on it. But I can't account for what
22 the seller's attorney did in any instance.

23 MS. DOUCHY TO MR. [REDACTED]

24 Where were they supposed to report this?

25 MR. [REDACTED] TO MS. DOUCHY

1 Well, New York City takes transfer taxes on, on the transfer. New York State
2 takes transfer taxes. When the closing takes place within New York City, as is the case
3 with these two parcels of real property, and they're both in Brooklyn, those returns
4 would've been filed with the Kings County register's office. If there was any FIRPTA
5 reporting required by the seller's attorney, they should've filed that with the Internal
6 Revenue Service.

7 MS. DOUCHY TO JUDGE

8 I have no further questions.

9 JUDGE TO MS. KHANDWALA

10 Counsel?

11 MS. KHANDWALA TO MR. [REDACTED]

12 So, in purchasing these two properties, did, did Mr. [REDACTED] do anything that he
13 could not legally do?

14 MR. [REDACTED] TO MS. KHANDWALA

15 No.

16 MS. DOUCHY TO JUDGE

17 Objection.

18 MR. [REDACTED] TO MS. KHANDWALA

19 I --

20 JUDGE TO MS. DOUCHY

21 What is your objection?

22 MS. DOUCHY TO JUDGE

23 Calls for speculation. I mean, he --

24 JUDGE TO MS. KHANDWALA

25 In, in what sense?

1 MS. DOUCHY TO JUDGE

2 -- he wasn't at the closing.

3 JUDGE TO MS. KHANDWALA

4 You know, in what sense? This is the, the lawyer now who didn't do the closing,
5 but who was reviewing the tax returns. So your question was in purchasing the
6 properties, did he do anything legally that he shouldn't have done and what would basis
7 for answering that be? He reviewed it for tax purposes.

8 MS. KHANDWALA TO JUDGE

9 Under, under what Mr. [REDACTED] was just talking about. Under FIRPTA, did he
10 have any obligations that he failed to abide by?

11 MS. DOUCHY TO JUDGE

12 How -- objection. How, how would he know? How would he know what he did or
13 didn't --

14 MS. KHANDWALA TO JUDGE

15 Would he even have --

16 JUDGE TO MS. KHANDWALA

17 He wasn't reviewing the closing.

18 MS. KHANDWALA TO JUDGE

19 Right.

20 JUDGE TO MS. KHANDWALA

21 He, he wasn't reviewing the closing. He was reviewing the tax forms.

22 MS. KHANDWALA TO JUDGE

23 Okay. So I'll rephrase the question.

24 MS. KHANDWALA TO MR. [REDACTED]

25 Does a buyer have any obligation under --

1 MR. [REDACTED] TO MS. KHANDWALA

2 Only to indicate their tax status and, and their tax ID number.

3 MS. KHANDWALA TO MR. [REDACTED]

4 Thank you.

5 MS. KHANDWALA TO JUDGE

6 Thank you. I'm --

7 JUDGE TO MS. DOUCHY

8 Anything further, Ms. Douchy?

9 MS. DOUCHY TO JUDGE

10 No, Your Honor.

11 JUDGE TO MR. [REDACTED]

12 Thank you, sir. You may step down.

13 MR. [REDACTED] TO JUDGE

14 You're quite welcome, Your Honor.

15 JUDGE TO MR. [REDACTED]

16 Thank you very much. Have a good holiday.

17 MR. [REDACTED] TO JUDGE

18 You too.

19 MS. KHANDWALA TO MR. [REDACTED]

20 Thank you.

21 JUDGE TO MR. [REDACTED]

22 Thank you.

23 JUDGE TO MS. KHANDWALA

24 Okay. So I don't think there are anymore witnesses, is that right?

25 MS. KHANDWALA TO JUDGE

1 Your Honor, we'll, we'll call, we, we still have Mr. [REDACTED] to testify.
2 JUDGE TO MS. KHANDWALA
3 Who?
4 MS. KHANDWALA TO JUDGE
5 Mr. [REDACTED] the respondent.
6 JUDGE TO MS. KHANDWALA
7 Well, the respondent.
8 MS. KHANDWALA TO JUDGE
9 Right. And --
10 MS. DOUCHY TO JUDGE
11 Oh, he already testified.
12 JUDGE TO MS. DOUCHY
13 Yeah, he did already testify.
14 MS. DOUCHY TO JUDGE
15 And he's already been here for all this testimony, so I don't know how --
16 JUDGE TO MS. DOUCHY
17 Yes.
18 MS. KHANDWALA TO JUDGE
19 He has a right --
20 MS. DOUCHY TO JUDGE
21 -- he's been here when all these people --
22 MS. DOUCHY TO MS. KHANDWALA
23 I mean, if you wanted to question him --
24 MS. KHANDWALA TO JUDGE
25 Also, we do --

1 MS. DOUCHY TO MS. KHANDWALA

2 -- about some of this, then he should've been sequestered.

3 MS. SLOVINSKY TO MS. DOUCHY

4 He's the respondent.

5 MS. KHANDWALA TO MS. DOUCHY

6 He has a right to be present in his --

7 MS. DOUCHY TO MS. KHANDWALA AND MS. SLOVINSKY

8 I, no, I know.

9 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

10 Okay. Okay.

11 MS. DOUCHY TO JUDGE

12 But I, I don't think it really could be given --

13 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

14 -- he has the right to be present.

15 MS. DOUCHY TO JUDGE

16 -- weight.

17 JUDGE TO MS. KHANDWALA

18 But if you want him to hear all the testimony, it could go to weight as to -- so what
19 would you want to question him on?

20 MS. KHANDWALA TO JUDGE

21 I, I want to question him about the, the process by which he selected his prior tax
22 preparer and what he gave to him, her.

23 MS. DOUCHY TO JUDGE

24 We already went through this the last time.

25 MS. KHANDWALA TO JUDGE

1 I don't --

2 JUDGE TO MS. KHANDWALA

3 He went, well, you've said --

4 MS. DOUCHY TO MS. KHANDWALA

5 Yeah, you did question him about it.

6 JUDGE TO MS. KHANDWALA

7 -- that he went to a, a, I don't know, not a notario, but a vacation person or

8 something and then he left there and went to this one and --

9 MS. KHANDWALA TO JUDGE

10 Yes, Your Honor. I mean, he's, he's taken a lot of -- and then he's, he can also

11 testify about the Medicaid issue.

12 JUDGE TO MS. KHANDWALA

13 We already know that. Didn't we already --

14 MS. DOUCHY TO MS. KHANDWALA

15 He was tested about --

16 JUDGE TO MS. KHANDWALA

17 -- testify on the Medicaid?

18 MS. DOUCHY TO JUDGE

19 Yeah, he did already testify about that.

20 MS. KHANDWALA TO JUDGE

21 He's taken some additional steps this whole year that are, that --

22 JUDGE TO MS. KHANDWALA

23 No, that, curing it is not, we know he's curing it. That, that's not the issue. I

24 believe he's curing it. He's curing it. That's not the issue.

25 MS. KHANDWALA TO JUDGE

1 Well, we, it's not going to be very long, but we do --

2 JUDGE TO MS. KHANDWALA

3 It's not about length.

4 MS. DOUCHY TO JUDGE

5 I object. It was already --

6 JUDGE TO MS. KHANDWALA

7 It's about relevance.

8 MS. DOUCHY TO JUDGE

9 Yeah.

10 JUDGE TO MS. KHANDWALA

11 It's about relevance because we already took the testimony about the Medicaid, I

12 believe.

13 MS. DOUCHY TO MS. KHANDWALA

14 He already, yeah, he did.

15 MS. KHANDWALA TO JUDGE

16 At that point, Your Honor?

17 MS. DOUCHY TO MS. KHANDWALA

18 Yes, he did. He, there was redirect. I have a lot of notes on it. You, you

19 questioned him about --

20 JUDGE TO MS. KHANDWALA

21 No, I have the, I have the --

22 MS. DOUCHY TO MS. KHANDWALA

23 -- everything that was going on, about the taxes, about the Medicaid. He already

24 testified. All his testimony was complete.

25 MS. KHANDWALA TO JUDGE

1 But Your Honor, if this, to the extent that we -- he's tried to rehabilitate his
2 mistakes, the testimony regarding that, it's important for the record.

3 JUDGE TO MS. KHANDWALA

4 No, he rehabilitated. We know that. We know what he did. We know he's
5 paying back. We know all that.

6 MS. KHANDWALA TO JUDGE

7 Only through his attorney and his --

8 JUDGE TO MS. KHANDWALA

9 No, we, we took, we took -- I don't have to hear that and we're not going to have
10 another direct examination, okay? It is certainly on the record. It's part of the record.
11 It's part of the testimony that he's taking, took and is taking steps to rehabilitate. So we
12 don't have to go through all that again. Anything we haven't been through?

13 MS. KHANDWALA TO JUDGE

14 Well, Your Honor, then I'm, just for the record, I'm going to, I'm going to make an
15 objection to him not being able to testify about the steps that he's taken and why he's
16 taking them. The, the, the steps to correct his Medicaid issue and the taxes.

17 JUDGE TO MS. KHANDWALA

18 What is the relevance? We know he's taken steps to correct it. That is not an
19 issue.

20 MS. KHANDWALA TO JUDGE

21 Well, but, but Your Honor, that testimony directly goes to his good moral
22 character, right? It explains --

23 JUDGE TO MS. KHANDWALA

24 Yes.

25 MS. KHANDWALA TO JUDGE

1 -- his testimony --

2 JUDGE TO MS. KHANDWALA

3 Because --

4 MS. KHANDWALA TO JUDGE

5 -- regarding why he did what he did.

6 JUDGE TO MS. KHANDWALA

7 -- but his, his, his testimony is that his daughter was on Medicaid and this was his
8 income. You brought all these, you've had hours of testimony from people saying why
9 he filed the amount he did, how he filed his taxes. So are you saying that he was
10 correct in filing for Medicaid at a certain time in his life for his daughter?

11 MS. KHANDWALA TO JUDGE

12 No, Your Honor. But we also --

13 JUDGE TO MS. KHANDWALA

14 Right. So he's also said that since all of this came out, he has taken and is
15 taking steps to correct it. That's not an issue. He's trying to correct it. He's correcting
16 it. That's not an issue. Okay?

17 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

18 Now, do you want to do closing arguments written or do you want to do closing
19 arguments?

20 MS. KHANDWALA TO JUDGE

21 Your Honor, I actually want to object to not being able to put Mr. [REDACTED]
22 daughter on the stand. Her testimony --

23 JUDGE TO MS. KHANDWALA

24 Okay. Heard your objection.

25 MS. KHANDWALA TO JUDGE

1 Okay.

2 JUDGE TO MS. KHANDWALA

3 I'm overruling. I'm not putting her on.

4 MS. KHANDWALA TO JUDGE

5 Your Honor, actually, I haven't objected as yet, so can I please --

6 JUDGE TO MS. KHANDWALA

7 I just said, I thought you objected to not --

8 MS. KHANDWALA TO JUDGE

9 No, no, but can I --

10 JUDGE TO MS. KHANDWALA

11 -- putting his daughter on?

12 MS. KHANDWALA TO JUDGE

13 -- explain the basis for my objection?

14 JUDGE TO MS. KHANDWALA

15 Go ahead.

16 MS. KHANDWALA TO JUDGE

17 Her testimony directly goes to the extreme and unusual hardship that she would

18 suffer. It's very important for the Court to hear direct testimony about this. This is, she's

19 15 year old. I appreciate your effort to protect her, but she's prepared for this. She's

20 been preparing for it from January. And we'd like to establish a record here.

21 MS. DOUCHY TO JUDGE

22 Well, if I could just be heard, Your Honor? I, the, we've had two witnesses testify

23 about that already and if she really is as emotionally fragile, then it really is not in her

24 interest. And Your Honor, wouldn't that, a paramount be, concern be her emotional

25 status and, and her emotional state and if, if she really is in a fragile state, then I can't

1 imagine why anyone would want her to be cross-examined.

2 MS. KHANDWALA TO JUDGE

3 Again, I appreciate the concern, but that's --

4 JUDGE TO MS. KHANDWALA

5 Here's the issue.

6 MS. KHANDWALA TO JUDGE

7 -- that's the respondent's right.

8 JUDGE TO MS. KHANDWALA

9 There, the hardship to her is emotional, is being separated from her parent, is
10 being able to continue in school, is being able to do well in school, is being able to have
11 a family together. This is the issue. And I know all that already.

12 MS. KHANDWALA TO JUDGE

13 No, it's not the sole issue, Your Honor. It's also --

14 JUDGE TO MS. KHANDWALA

15 I didn't say it was the sole issue.

16 MS. KHANDWALA TO JUDGE

17 -- it's also about her as a person. There are --

18 JUDGE TO MS. KHANDWALA

19 Yeah.

20 MS. KHANDWALA TO JUDGE

21 -- there are different types of people --

22 JUDGE TO MS. KHANDWALA

23 Yes, there are.

24 MS. KHANDWALA TO JUDGE

25 -- and she, and we have in the record --

1 JUDGE TO MS. KHANDWALA

2 Did you submit any medical evidence? We have the social worker's testimony.

3 We have two persons' testifying about who she is.

4 MS. KHANDWALA TO JUDGE

5 We also have in the record, Your Honor, a psychological evaluation --

6 JUDGE TO MS. KHANDWALA

7 Yes, you do.

8 MS. KHANDWALA TO JUDGE

9 -- from 2009 --

10 JUDGE TO MS. KHANDWALA

11 And that's all part of the record. Right.

12 MS. KHANDWALA TO JUDGE

13 -- that talks about her being --

14 JUDGE TO MS. KHANDWALA

15 Yes, we do.

16 MS. KHANDWALA TO JUDGE

17 -- history of depression.

18 JUDGE TO MS. KHANDWALA

19 Yes.

20 MS. KHANDWALA TO JUDGE

21 And, and so that establishes --

22 MS. DOUCHY TO MS. KHANDWALA

23 Is she on medicine? Is she on medicine?

24 MS. KHANDWALA TO MS. DOUCHY

25 That's, I, no, I don't think so.

1 MS. DOUCHY TO MS. KHANDWALA

2 Okay. I'm just asking.

3 MS. SLOVINSKY TO MS. DOUCHY

4 That's not a --

5 MS. KHANDWALA TO MS. DOUCHY

6 But that's not the --

7 MS. DOUCHY TO MS. KHANDWALA

8 Well, if she's, if she has a history of depression, then --

9 MS. KHANDWALA TO MS. DOUCHY

10 That's not the determinative factor.

11 MS. DOUCHY TO MS. KHANDWALA

12 Well, if someone's --

13 JUDGE TO MS. KHANDWALA

14 There is no one determinative factor in this case. It is my legal conclusion, after
15 hearing all this, that I am overruling your motion to put the young woman on the stand.
16 Number one, it is not just an order of my protecting her. It is that I feel the record on her
17 is complete without putting her through this trauma. And my ruling will stand. It is
18 certainly an appealable issue. Is there anything else?

19 MS. KHANDWALA TO JUDGE

20 No, Your Honor.

21 JUDGE TO MS. KHANDWALA

22 Do you want to do written or oral closing?

23 MS. KHANDWALA TO JUDGE

24 We'll do written, please.

25 JUDGE TO MS. DOUCHY



1 Government?

2 MS. DOUCHY TO JUDGE

3 That's fine, Your Honor.

4 JUDGE TO MS. KHANDWALA

5 How long would you like to submit it to me? I realize we're having holidays.

6 Take what you need to do a thorough written closing. Just, I'm looking for a month.

7 Name a month when you're going to put it in?

8 MS. KHANDWALA TO JUDGE

9 Beginning of February, Your Honor?

10 JUDGE TO MS. KHANDWALA

11 All right.

12 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

13 Now, are these going to be simultaneous or one after the other or how are we

14 doing this? Because it can't go on to you and then you and then you and then you.

15 MS. DOUCHY TO JUDGE

16 Right, right, right.

17 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

18 That can't happen, so --

19 MS. DOUCHY TO JUDGE

20 Yeah, I'm just, I, we're, we're under, we have this big PD tasking, so I'm a little

21 concerned about whether I could do it by February, Your Honor, because --

22 JUDGE TO MS. DOUCHY

23 All right.

24 MS. DOUCHY TO JUDGE

25 -- I have all this other stuff.

1 JUDGE TO MS. DOUCHY

2 What is your time?

3 MS. DOUCHY TO JUDGE

4 Probably more like April, just to be, I'm being realistic because of the holidays
5 and everything else.

6 JUDGE TO MS. DOUCHY

7 Okay.

8 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

9 I'll split the time. How about you submit it by March 14th?

10 MS. DOUCHY TO JUDGE

11 Okay.

12 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

13 Both sides --

14 MS. DOUCHY TO JUDGE

15 Okay.

16 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

17 -- simultaneous. So a closing by March 14th and then I'll put it on for the decision
18 after that. So March 14th.

19 JUDGE TO MS. DOUCHY

20 Now, what do the clearances look like here, fingerprinting and all of that?

21 MS. DOUCHY TO JUDGE

22 They are current today. Let me see when they're from. March, he was
23 fingerprinted in March of 2011, so they'll be good until June of 2012, Your Honor.

24 JUDGE TO MS. DOUCHY

25 Okay. That's fine.

1 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

2 June, March -- excuse me. What did I say? March?

3 MS. KHANDWALA TO JUDGE

4 March 14th.

5 MS. DOUCHY TO JUDGE

6 14th.

7 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

8 March 14th?

9 MS. KHANDWALA TO JUDGE

10 Your Honor, would we have an opportunity to respond?

11 JUDGE TO MS. KHANDWALA

12 I just said --

13 MS. KHANDWALA TO JUDGE

14 The simultaneous --

15 JUDGE TO MS. KHANDWALA

16 -- simultaneous, because I have this and this and this and this.

17 MS. KHANDWALA TO JUDGE

18 Okay.

19 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

20 I will put it on for a decision on, I hope to do a written decision, quite frankly, but

21 I'm allowing, but anyway, I'll put it on for May 25th and I'll put it on for 4:00 hoping that

22 I'll get to do a written decision. But if I don't, that's when you'll have to come in.

23 JUDGE TO MS. DOUCHY

24 I didn't go around your schedule, Ms. Douchy, because it's not for testimony.

25 MS. DOUCHY TO JUDGE



1 That's fine, Your Honor.

2 JUDGE TO MR. [REDACTED]

3 Sir, you must, unless your lawyer tells you otherwise, come back on May the
4 25th, 2012 at 4:00. Make sure you come back on that day or I would have to order you
5 removed in your absence. For that to happen, you would lose for ten years any
6 remedies you might have had. The names of some of these remedies, voluntary
7 departure, cancellation of removal and adjustment of status.

8 JUDGE TO MS. KHANDWALA

9 Now, are you going to send yours in or hand deliver it to the window? How --

10 MS. KHANDWALA TO JUDGE

11 Hand deliver.

12 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

13 Would you put a cover sheet on it that says, this must be shown to Judge Lamb?
14 Here's my fear. Someone takes it, because I won't remember this necessarily, take
15 this, puts it in the file, the same with the Government. May comes, I open it up and I go,
16 oh, my. So if you could say this has to be shown to Judge Lamb, unless you want to
17 give me a courtesy copy, which I don't want to put that burden on you if I'm sitting here
18 --

19 MS. KHANDWALA TO JUDGE

20 That's fine.

21 JUDGE TO MS. KHANDWALA, MS. SLOVINSKY AND MS. DOUCHY

22 -- both sides, because then I'll read it. Because this has happened to me more
23 times --

24 MS. KHANDWALA TO JUDGE

25 And we can also follow up with your clerk and make sure you have it.

1 JUDGE TO MS. KHANDWALA

2 All right. We're very short staffed and things happen. So I know you don't want
3 him held up further, so that's it for now.

4 MS. KHANDWALA TO JUDGE

5 Your Honor, one more thing? I, I'm, I'm -- the, about the simultaneous
6 submission, I mean, I'd like to reserve our right to clarify any factual inaccuracies.

7 JUDGE TO MS. KHANDWALA

8 Then when I said will this be simultaneous, why was everyone quiet? Put it in
9 writing. If there's something more that you want to do, then put it in writing and tell me.
10 That's why I said, is this to be simultaneous? I elaborated. We can't go back and forth
11 forever. No one said anything. I go, I set the dates, and you go, oh. So, if there is
12 something that you want to respond to, put it in writing and say I want to respond to this
13 and we'll go from there.

14 MS. KHANDWALA TO JUDGE

15 Okay. Thank you.

16 JUDGE TO MS. KHANDWALA

17 You're welcome.

18 JUDGE TO MR. [REDACTED]

19 Sir, make sure you have the change of address form and if you move, you must
20 send it to me within five days of your move.

21 MR. [REDACTED] TO JUDGE

22 All right.

23 JUDGE TO MR. [REDACTED]

24 Thank you very much.

25 MR. [REDACTED] TO JUDGE

1 Thank you, Your Honor.

2 JUDGE TO MR. [REDACTED]

3 Thank you.

4 HEARING ADJOURNED

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March 14, 2012

BY HAND

Immigration Judge Elizabeth Lamb
New York Immigration Court
26 Federal Plaza, 12th Floor
New York, NY 10278

DEPARTMENT OF JUSTICE
NEW YORK, NY 10278
2012 MAR 15 AM 11:54

RE: [REDACTED] (A [REDACTED])

Respondent's Closing Statement

Dear Judge Lamb:

In connection with the above referenced case, enclosed please find Respondent's closing statement in support of his application for Cancellation of Removal.

Thank you for your time and consideration.

Respectfully submitted,



Leena Khandwala, Esq.

cc: Evalyn Douchy, Office of the Chief Counsel, 26 Federal Plaza, New York

OFFICE OF CHIEF COUNSEL
NEW YORK CITY
2012 MAR 15 PM 11:45

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NON-DETAINED

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
26 FEDERAL PLAZA
NEW YORK, N.Y.**

**In the Matter of
Jose Vicencio PEDRERO ARENAS**

A: 

In Removal Proceedings

Immigration Judge Elizabeth Lamb

Next hearing: May 25, 2012, at 4:00 pm

RESPONDENT'S CLOSING STATEMENT

Closing Statement for Mr. Jose [REDACTED]

This case is about whether [REDACTED] a long term resident of the United States, and the father of a 15 year old American daughter who would be subject to long term psychological harm if her father was deported, should be removed from the United States.

[REDACTED] should be granted cancellation of removal and adjustment of status because:

- 1) He has been physically present in the United States since 1989, well over 10 years before making this application or before the issuance of the NTA on April 10, 2009 (see Exhibits I and IA);
- 2) He is and has been a person of good moral character;
- 3) He has no criminal arrests or convictions; and
- 4) His removal would result in exceptional and extremely unusual hardship to his 15 year old U.S. citizen daughter, [REDACTED]

There is extensive testimony and evidence in the record regarding [REDACTED] good moral character. [REDACTED] has a long history of working and contributing to his community, he is a respected member of the Business Improvement District in Brooklyn, New York, where he lives, and has no criminal record whatsoever. He has been honored by the Sunset Park Business Improvement District with an outstanding property owner award for 2008. See Tab 19 and 20 of Dec 20th submission (Group Exhibit 10).

During the testimony, some questions were raised as to the accuracy of [REDACTED] tax returns and whether he was declaring all of his income. The evidence and testimony in the record clearly reflect that any inaccuracies in [REDACTED] tax statements were relatively minor and do not reflect an intent to hide his income, and that he has taken extraordinary measures to correct those inaccuracies once he became aware of them.

[REDACTED] has filed income tax returns since 2001, shortly after he started his own painting business and learned that he was able to file taxes even though he did not have a social security number. Having only a 9th grade education from Mexico and not speaking English fluently, [REDACTED] testified that he has relied completely on tax preparers to complete his tax returns from 2001 to 2009. He later learned that his tax returns may not have been completely accurate, and sought the advice of a certified public accountant, Dr. [REDACTED] and a tax attorney, Richard [REDACTED] to review his previously filed taxes and make any necessary amendments.

On December 21, 2011, the court heard testimony from Dr. [REDACTED] who explained that he undertook a comprehensive review of [REDACTED] prior tax returns, as well as documents related to [REDACTED] purchase of property, bank statements, cancelled checks, ledgers and other documents relating to receipts and disbursements for [REDACTED]. He also had several in-person meetings and phone calls with [REDACTED] to gather source information for the previously filed taxes. This data was then used to reconstruct [REDACTED] tax returns from scratch for the periods 2001 to 2009.

As a result of this comprehensive review, [REDACTED] learned that the previously filed taxes had some inaccuracies and should be amended. Since the 2007-2009 tax periods were within the three year statute of limitations for the Treasury Department to collect and assess taxes, those years were amended first and filed in December 2010.¹ The net result of the amended taxes for 2007-2009 was that [REDACTED] paid a total of \$5,461 in additional federal taxes, inclusive of penalties and interest, and received a refund of \$214 for state taxes.

[REDACTED] also resubmitted his federal and state taxes for 2001 through 2006, even though those years were beyond the three year statute of limitations for the Treasury Department to assess and collect taxes, and is in the process of making any necessary payments towards those taxes.² The amended results are consistent with [REDACTED] testimony that his net income varied from year to year but ranged on average between \$40,000 and \$60,000.³ To date,

¹ The net result of those amended taxes (included in Exhibits 4B, 4C and 4D of the December 7, 2011 filing), was as follows:

- 2007 Federal – Balance due (excluding fines and penalties): [REDACTED]. This was fully paid on April 8, 2011.
- 2007 State – Refund due: [REDACTED] -- received in April 2011.
- 2008 Federal – Balance due (excluding fines and penalties): [REDACTED]. This was fully paid on April 8, 2011
- 2008 State – Balance due (excluding fines and penalties): [REDACTED]. This was fully paid in 2011
- 2009 Federal – Refund due: \$ [REDACTED] received in February 2011
- 2009 State - Refund due: \$ [REDACTED] - adjusted against the state taxes owed for 2008
- NOTE: The 2010 taxes were completed by Dr. [REDACTED] and filed within time.

² The net result of those amended taxes (included in Exhibit 4A of the December 7, 2011 filing), was as follows:

- 2001 Federal – Balance due: [REDACTED]
- 2001 State – Balance due: [REDACTED]
- 2002 Federal – Balance due: \$ [REDACTED]
- 2002 State – Balance due: [REDACTED]
- 2003 Federal – Refund due: [REDACTED]
- 2003 State – Balance due : [REDACTED]
- 2004 Federal – No taxes due
- 2004 State – Balance due: \$ [REDACTED]
- 2005 Federal – Balance due: [REDACTED]
- 2005 State – Balance due: [REDACTED]
- 2006 Federal – Balance due: [REDACTED]
- 2006 State – Balance due: [REDACTED]

³ The adjusted gross income for 2001-2010 as reflected in the tax returns prepared by Dr. [REDACTED] is as follows:

- 2001: [REDACTED]
- 2002: [REDACTED]
- 2003: [REDACTED]
- 2004: [REDACTED]

the IRS has acknowledged the filing of the 2005 and 2006 returns. See enclosed letters from the IRS dated February 29, 2012, at Exhibit A.

Dr. [REDACTED] also testified that the income [REDACTED] generated between 2001 and 2006 was sufficient to support his family as well as the purchases of [REDACTED] two real estate properties in 2003 and 2006. Specifically, Dr. [REDACTED] explained that on average, [REDACTED] was earning gross revenues of approximately \$150,000 per year from his painting business as well as in rental income, which would have generated the amount of cash needed to purchase the buildings.⁴

The Court also heard testimony from Mr. [REDACTED] who reviewed the returns prepared by Dr. [REDACTED] along with the supporting documents, and also met in person with [REDACTED] several times to discuss the taxes. Mr. [REDACTED] testified that the difference between the originally filed and amended taxes for the years 2001 through 2009 was not very significant and did not reflect a pattern of underreporting.⁵ As an example, Mr. [REDACTED] explained that the rental income, which was mostly collected in cash, was reported with great accuracy on [REDACTED] schedule E, and was deposited into his bank account. Based on his extensive familiarity with other cash based businesses, Mr. [REDACTED] explained that this was not the methodology of someone who is hiding income. Mr. [REDACTED] also concurred with [REDACTED] in concluding that the income [REDACTED] declared was sufficient to make the down payments on his two properties.

The Court also had some questions about the use of the Medicaid Health Plus program for [REDACTED] [REDACTED] U.S. citizen daughter. In the first place, it should be noted

- 2005: [REDACTED]
- 2006: [REDACTED]
- 2007: [REDACTED]
- 2008: [REDACTED]
- 2009: [REDACTED]
- 2010: [REDACTED]

⁴ Mr. [REDACTED] testified that based on his calculations [REDACTED] had the following gross receipts between 2001 and 2006, which were sufficient to support the purchases of [REDACTED] properties:

Year	Gross Receipts from painting business	Gross Receipts from rentals
2001	[REDACTED]	No rental income
2002	[REDACTED]	No rental income
2003	[REDACTED]	[REDACTED]
2004	[REDACTED]	[REDACTED]
2005	[REDACTED]	[REDACTED]
2006	[REDACTED]	[REDACTED]

⁵ Mr. [REDACTED] explained that this was particularly true in light of the fact that the amended tax returns prepared by Dr. [REDACTED] tended to over estimate [REDACTED] income and exposed him to a greater tax liability than he would otherwise have been responsible for. This is because Dr. [REDACTED] employed a well established but conservative method of accounting, the “bank deposits method,” under which all deposits into an account are treated as income unless otherwise explained. Because the reconstruction of [REDACTED] taxes went back several years, for which [REDACTED] did not always have complete information about the breakdown of the deposits, he was penalized with a higher projected tax liability.

that [REDACTED] voluntarily disclosed in his Cancellation of Removal application that [REDACTED] had been receiving Medicaid for her routine healthcare needs since her birth. As a declaration that is against his interest, it is reflective of [REDACTED] honesty as well as his genuine belief that this type of benefit was something his daughter was entitled to.

As [REDACTED] consistently testified during the January 2011 hearing, [REDACTED] medical care was managed by his wife, [REDACTED], who assured him that [REDACTED] was eligible for those benefits because she was a U.S. citizen. He explained that his family was given an application for the program when [REDACTED] was born in 1996. He also explained that he had no idea of how the benefits were renewed over the years as that process was handled by his wife.

At the Court's request, documents relating to [REDACTED] prior enrollment in New York's Medicaid program are being provided with this submission. See Exhibit B. These documents support [REDACTED] testimony that Ms. [REDACTED] was solely responsible for the Medicaid applications. All documentation related to those applications is addressed solely to her and not [REDACTED]. Both the Enrollment Form and the Access NY Health Care Form list Ms. [REDACTED] as the "Head of Household," and all the documents show that she was the point of contact and not [REDACTED].

Given that all the evidence supports [REDACTED] testimony that he was not responsible for [REDACTED] enrollment in the Medicaid program, it would be unfair to treat the acts of his spouse as a negative factor in his case. It is well established law that husbands and wives are distinct persons and that one spouse cannot be held responsible for the acts of the other, especially in cases where one spouse acts independently, without the consent or participation of the other spouse. See, e.g., *Martin v. Robson*, 65 Ill. 129, 138-139 (1872) (A wife's "brain and hands and tongue are her own, and she should alone be responsible for slanders uttered by herself."); *Goken v. Dallugge*, 72 Neb. 16, 19 (1904) ("The unity of husband and wife have been severed. They are now distinct persons, and may have separate legal estates, contracts, debts and injuries"); accord, *Gustine v. Westenberger*, 224 Pa. 455, 460 (1909); *Bebout v. Pense*, 35 S.D. 14, 17 (1914) ("So far as the husband's liability for the acts of his wife is concerned, it places them in the position of persons who are not related at all"); *Curtis v. Ashworth*, 165 Ga. 782, 792-93 (1919); *Bourland v. Baker*, 141 Ark. 280, (1919); *Bretzfelder v. Demaree*, 102 Ohio St. 105, (1921); *Foster v. Ingle*, 147 Tenn. 217, 222-223 (1923); *Wolf v. Keagy*, 3 W.W.Harr., 362, (1927).

The Court should also consider that even though [REDACTED] was not responsible for enrolling [REDACTED] in Medicaid he has taken extraordinary measures to clarify and rectify any inaccuracies once he became aware of it. As he testified, he cancelled [REDACTED] coverage in August 2010, when he realized it may not be correct for her to receive Medicaid. A copy of the cancellation request is included with the Medicaid documents. Additionally, even though it still remains unclear whether [REDACTED] was eligible or not for coverage for the entire period that she was enrolled,⁶ [REDACTED] has chosen to fully reimburse the New York State Medicaid program for all of her medical care, and has contacted Health Plus, the agency through which [REDACTED]

⁶ See page 3 of Notice Number [REDACTED], Notice of Decision on Your Medical Assistance, dated July 9, 2010, included in Exhibit B of this submission.

received benefits, to reimburse Health Plus for all medical expenses. A copy of those documents was enclosed with the December 7, 2011 submission at Exhibit 5.

Even if it were possible to attribute responsibility to ██████████ for his wife's actions, this should not be a basis for finding that he does not have good moral character, especially in light of the extraordinary steps that he has taken to rectify any errors. The Board of Immigration Appeals has held that good moral character should not be "destroyed by a single lapse." Rather, it should be based on an evaluation of a person's natural worth derived from the sum total of all his actions in the community." *In the Matter of B*, 1 I. & N. Dec. 611, 612 (BIA 1943). In the preceding case, the Board found that a person whose sole negative factor was a four-year long adulterous relationship with another married woman was not a sufficient basis to find that he lacked good moral character, given that he was aware of gravity of his conduct and had discontinued his relationship. *Id.* at 611-612; *see also, Matter of Sanchez-Linn*, 20 I. & N. Dec. 362 (BIA 1991) (finding that evidence of a change of character, showing of remorse, or the taking of steps to rectify past mistakes is relevant to determining whether a person has good moral character). In the present case, there are even more compelling reasons not to treat ██████████ enrollment in Medicaid as a negative factor in ██████████ case given that he was not aware of or involved in this process, and has nevertheless accepted the legal and financial responsibility of coming forward to the New York Medicaid program and committing to fully reimburse that program regardless of whether or not ██████████ was eligible for the benefits or not.

Hardship to ██████████

There is also extensive testimony and evidence in the record regarding the hardship that ██████████ an American 15 year old who has only known the United States, would suffer if her father was to be deported.

The record contains a psychological evaluation of ██████████ based on a detailed clinical interview conducted in October 2009 by Dr. ██████████ a licensed psychologist working with the ██████████, who specializes in the psychological evaluations of children and adolescents. In that evaluation, Dr. ██████████ noted that ██████████ is "depressed and overwhelmed by what is happening to her father and thus to her family and to herself. She feels powerless and sometimes out of control," and Dr. ██████████ notes that there are hints of "ideation about death."

Dr. ██████████ conducted an updated psychological evaluation of ██████████ on the basis of a detailed clinical interview and an evaluation of her emotional functioning on January 27, 2012. That evaluation is attached with this submission. *See* attached, at Exhibit C. In this evaluation, which indicates a worsening of ██████████ psychological state, Dr. ██████████ notes that ██████████ "life at this point is in large measure a painful and unbalancing emotional experience, way beyond that of most adolescents her age." She writes that ██████████ "experiences fears and nightmares on a regular basis," "struggles with anxiety and depression, and with a sense of isolation" from both family and peers, "feels guilty of possessing something that those in her family want but cannot have and needs to justify her existence by dedicating herself to towards the goal of obtain[sic] it for them." Dr. ██████████ also notes that ██████████ "often feels so aggrieved and trapped in her situation that she entertains thoughts of finding peace through death."

Dr. [REDACTED] diagnoses [REDACTED] as having an “Adjustment Disorder with Mixed Anxiety and Depressed Mood,” and concludes that the “possibility of losing her father to deportation is causing [REDACTED] enormous suffering, and would cause in the long run **irreparable psychological harm.**” (emphasis added).

The Court also heard testimony from [REDACTED] a licensed social worker and certified psychoanalyst who has been seeing [REDACTED] for weekly psychotherapy sessions since 2010. Ms. [REDACTED] testified that if [REDACTED] father was deported her underlying depression would become “much more severe and would paralyze her,” and that “she would feel a tremendous amount of responsibility and self hatred.”

Ms. [REDACTED] also testified that [REDACTED] is more emotionally fragile than other immigrant children in her practice because from a very young age she has had a “heightened sense of being the only one in her family to be born here,” and has felt a “tremendous pressure to be successful and essentially to repay her parents.” Ms. [REDACTED] testified that while [REDACTED] anxiety and depression had been exaggerated by her father’s case, she would need psychological treatment regardless of the outcome of the hearing, and that she would be concerned that if [REDACTED] were to accompany her father to Mexico, she would be unable to get that treatment.

Country conditions evidence show that Ms. [REDACTED] concerns are justified. A study published in the 2008 World Health organization Bulletin found that “[l]ess than one in seven respondents with psychiatric disorders used any mental health services during the previous year. Respondents with substance-use disorders reported the highest prevalence of service use and those with anxiety disorders [what [REDACTED] suffers from] the lowest. **Approximately one in every two respondents receiving any services obtained treatment that could be considered minimally adequate.**”⁷ (emphasis added). That study concluded that there were “large unmet needs for mental health services among adolescents with psychiatric disorders in Mexico City.” Another study of adolescents residing in the Mexico City metropolitan area also concluded that improvements in the mental health care of Mexican youth are urgently needed: “[m]ost suicidal adolescents do not receive treatment Interventions to increase treatment, prevention, and monitoring are sorely needed for this vulnerable population.”⁸ (emphasis added).

If the services in an urban center like Mexico City are inadequate, one can expect that the services in a rural place like [REDACTED] where [REDACTED] is from and where he would return if he was deported, would be far worse.

Additionally, the Court heard from [REDACTED], [REDACTED] guidance counselor and college advisor at Bard High School, who knows [REDACTED] well and meets with her on a weekly basis. Ms. [REDACTED] testified that [REDACTED] has been able to employ short term coping strategies in

⁷ See Guilherme Borges, et al., *Treatment of mental disorders for adolescents in Mexico City*, Bulletin of the World Health Organization 2008;86:757–764. Included in Respondent’s Exhibit 5, Tab 35.

⁸ Guilherme Borges, et al., *Service Use Among Mexico City Adolescents with Suicidality*, Journal of Affective Disorders, Vol. 120, Issues 1-3, Jan. 2010, pgs. 32-39 (attached as Exhibit D).

order to keep pace with the academic rigors of Bard High School despite her fears and anxieties about her father's case. However, Ms. [REDACTED] was concerned that if her father was deported, [REDACTED] would be unable to complete her studies at Bard.

The evaluations of Dr. [REDACTED] and the testimony and evaluation of Ms. [REDACTED] and Ms. [REDACTED] clearly establish that [REDACTED] suffers from depression and anxiety simply as a result of her acute sense of responsibility for her parents, and that her condition has been aggravated by her father's removal case. And Dr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] all concur that [REDACTED] is struggling greatly to cope with the severe panic and anxiety that she feels on account of her father's case.

Psychological harm to a child is an important factor in the adjudication of a cancellation or removal application by the parent. *Alvarez Figueroa v. Mukasey*, 543 F.3d 487, 497 (9th Cir. 2008) (noting that evidence of the psychological harm that a U.S. citizen child would suffer is directly relevant to the parent's cancellation of removal claim).

Further, Dr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] explain that even though [REDACTED] has been able to maintain good grades at school, her mental and emotional state remains very fragile, and that she would suffer severe long term psychological consequences if her father was deported.

A proper evaluation of the hardship to [REDACTED] requires the Court to consider the future consequences to her of her father's removal. *See Alvarez Figueroa v. Mukasey*, 543 F.3d 487, 497-498 (9th Cir. 2008) ("Congress did not provide for the exercise of discretion based upon whether the citizen-children already faced an extremely unusual hardship *as they live in the United States*; rather, Congress intended that discretion in cancellation of removal cases be exercised on the basis of whether removal *would result* in an exceptional and extremely unusual hardship to the citizen-children."). Given the unanimous opinions of Dr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] regarding the serious and long term psychological impact on [REDACTED] of her father's deportation, the Court should find that she would suffer exceptional and extremely unusual hardship if he was removed from the United States.

Conclusion:

In sum, [REDACTED] has demonstrated that he is both statutorily eligible for Cancellation of Removal and that he warrants such relief in the exercise of discretion. Therefore, he respectfully requests this court to grant him cancellation of removal.

Wen-Ting Cheng
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James McCarthy
Deputy Chief Counsel
Evalyn Douchy

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
NEW YORK, NEW YORK

IN THE MATTER OF:

██████████ ██████████ A ██████████

REMOVAL PROCEEDINGS

Immigration Judge: Elizabeth Lamb

Next Hearing: May 25, 2012

DEPARTMENT OF HOMELAND SECURITY'S SUMMATION

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
HONORABLE IMMIGRATION COURT
NEW YORK, NEW YORK

IN THE MATTER OF:

██████████ ██████████ ██████████

REMOVAL PROCEEDINGS

U.S. DEPARTMENT OF HOMELAND SECURITY'S SUMMATION

The U.S. Department of Homeland Security ("Department" or "DHS") submits this summation, opposing the respondent's eligibility for cancellation of removal under INA § 240A(b). The Department urges this Court to find that the respondent failed to establish that he possessed good moral character during the statutory period and that he warrants relief in the exercise of discretion. The Department also urges the Immigration Court to rule that the respondent has failed to meet the high burden of establishing that his removal would result in "exceptional and extremely unusual hardship" to his United States citizen child.

In order to establish eligibility for cancellation of removal under INA § 240A(b), an applicant must establish that he has: 1) been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application; 2) been a person of good moral character during such period; 3) not been convicted of certain enumerated offenses; and 4) established that his removal would result in "exceptional and extremely unusual hardship" to his spouse, parent, or child, who is a citizen of the United States

or an alien lawfully admitted for permanent residence. INA § 240A(b)(1). The REAL ID Act of 2005 (REAL ID Act), Pub. L. No. 109-13, div. B, 119 Stat. 231, amended INA §§ 208(b)(1)(B) and 240(c), to expressly indicate that an alien bears the burden of proof in establishing both eligibility and discretionary entitlement for all forms of relief from removal. REAL ID Act §§ 101(a)(3) and 101(d)(2). Applicable to all applications made on or after May 11, 2005¹, § 101(h)(2), these rules essentially codify the Board decision in *Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997), holding that testimony alone may suffice to meet an alien's burden of proof, but that reasonably available corroborative evidence must be provided.

I. THE RESPONDENT'S APPLICATION FOR CANCELLATION OF REMOVAL SHOULD BE DENIED BECAUSE HE FAILED TO ESTABLISH GOOD MORAL CHARACTER AND THAT HE WARRANTS RELIEF IN THE EXERCISE OF DISCRETION.

The respondent has failed to establish that he possessed the requisite good moral character during the statutory period based upon evidence that he failed to report all his earnings on his income taxes and he committed Medicaid Fraud.

The United States Court of appeals for the Second Circuit ("Second Circuit") upheld a finding that an alien lacked good moral character for "filing grossly inaccurate and probably fraudulent income tax returns". *See, e.g., Sumbundu v. Holder*, 602 F.3d 47, 55-57 (2d Cir. 2010) (affirming the Immigration Judge's finding that the aliens lack good moral character because they misreported their income on tax returns for a period of eight years). *See, e.g., Matter of Urpi-Sancho*, 13 I&N Dec. 641, 643 (BIA 1970) (holding that where specific conduct does not preclude a finding of good moral character under one of the enumerated categories of INA § 101(f), that same conduct may nevertheless be considered in making a determination on good moral character in accordance with the catchall provision). The Second Circuit also found

¹ The respondent filed his Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B) on or about January 12, 2010.

that “[T]he fact that Petitioners amended their tax returns to reflect more accurately their income after being caught by the IJ does not negate the IJ’s finding that their original, longstanding misrepresentations to the IRS indicated a lack of good moral character.” *See, e.g., Sumbundu v. Holder, FN 7.*

The Department urges the court to find that the respondent lacked good moral character during the statutory period because he under-reported his earnings on his income tax returns and committed Medicaid Fraud. At his first court hearing on January 18, 2011, the respondent testified that by working in the United States for eleven years he was able to save \$120,000, which he used for his first known purchase of real property in 2001.² The respondent testified that he set aside \$346,000 for a second down payment only a few years later. It is incredulous that the respondent was able to save such significant sums of money from 2001-2005 when his initial income tax returns reflected *little or no taxable income* and *total income ranging from \$8,000 to \$23,000*. *See, Respondent’s Exhibit 4, Tab C, income taxes for 2001-2005.* With the exception of the year 2002, the respondent’s declared income for the tax years 2001-2005 was below the federal poverty income guidelines and grossly insufficient to support the respondent’s family of five in New York City during this time period. *See, attached copies of poverty income guidelines for 2001-2005.* More significantly, at his first court hearing in January of 2011, the respondent could not explain how he was able to purchase real estate worth over \$1.1 million when his income taxes showed minimal earnings.

The respondent tried to distance himself from under reporting his earnings by blaming it on his tax preparer. This explanation is not credible since the respondent is a successful

² It is important to note that the respondent accumulated this money while working in the United States without filing income tax returns.

businessman, who owns three properties with rental income from residential and commercial real estate.

In an effort to bolster his case, the respondent has recently paid well over \$20,000 to expert witnesses and Health Plus. Specifically, the respondent paid an accounting firm \$11,000 to review income tax returns from 2001-2010, file amended returns and testify in immigration court. Based on information and belief, the respondent also paid a tax attorney \$5000 to review his case. Finally, the respondent also paid another attorney an unknown sum of money to pay back the Medicaid funds he received from Health Plus. The fact that the respondent could easily afford to pay back Health Plus and spend significant money for the services of the aforementioned professionals further illuminates the respondent's wealth and highlights the Medicaid fraud.

Any efforts the respondent recently made to file amended tax returns during the pendency of his removal proceedings should have no bearing on the finding that the respondent lacked good moral character during the statutory period. As noted *infra*, in a similar situation, the Second Circuit rejected petitioners request to consider amended tax returns, which petitioners "promptly filed" after "discovery that their taxes were inaccurately filed". *See, e.g., Sumbundu v. Holder, FN 7*. Similarly, the court should reject the respondent's effort to rectify his gross misrepresentations and neglect of his income tax obligations during the first twenty-one years he lived and worked in the United States. It should be noted that during testimony, the respondent's tax attorney essentially admitted that one reason the respondent consulted the attorney was to assure that he would not "raise red flags" by filing amended tax returns with the Internal Revenue Service.

Further, the testimony of the Certified Public Accountant ("CPA") that the respondent did not significantly under report his income for the tax years from 2001-2010 should be given minimal weight. To begin with, the CPA is the respondent's paid witness, who has an interest in helping the respondent establish that he did not under report his income. Further, there is no way for the CPA to accurately assess the respondent's earnings during the relevant time period since most of CPA's analysis took place many years after the tax filing. Thus, the CPA testified that his review relied on interviewing the respondent and reviewing documents the respondent provided to the CPA including receipts, bank statements and credit card statements. It is therefore impossible to know the accuracy and thoroughness of the documents, which were proffered many years after the tax period.

Further, even the CPA had trouble explaining how the respondent was able to save money for his real estate down payments based on his reported earnings. When questioned about this, the CPA speculated that perhaps someone gave him the money for his down payments of \$120,000 and \$336,000 or that the respondent may have been mistaken about the exact figures.

Moreover, the respondent cannot demonstrate good moral character because his daughter received Medicaid benefits despite the fact that the respondent had significant rental income and owned real estate valued at over 1.1 million dollars. Significantly, during the time period that the respondent's daughter received Medicaid, the respondent was able to save at least \$456,000 to purchase real estate and pay monthly mortgage payments amounting to almost \$6,800. The respondent was aware that his daughter was receiving Medicaid because they "were offered the application" when she was born. In an effort to minimize his culpability, the respondent testified that his wife filled out the paperwork for Medicaid.

After evidence of the Medicaid fraud came to light during cross-examination in January of 2011, the respondent attempted to repay the funds back to Health Plus. The respondent's effort to repay Medicaid funds to Health Plus does not undermine the fact that he did not possess good moral character during the statutory period. *See, supra, Sumbundu v. Holder, FN 7.* In fact, the court should draw an adverse inference from the fact that the respondent's daughter continued to receive Medicaid benefits after he retained highly competent counsel to represent him in removal proceedings and only made an effort to pay back these funds after it became evident that the Medicaid fraud could affect his eligibility for relief.

Additionally, at least one of the respondent's children received financial aid to attend college despite his significant assets. Further, the private social worker, who treated the respondent's daughter, testified to charging the respondent a reduced fee because of his "financial situation". Thus, presumably, the respondent negotiated a lower rate for therapy despite his wealth. The record as a whole reflects concerted efforts by the respondent to under report his income for financial benefits including lower income tax obligations, Medicaid for his daughter, financial aid and reduced fees for services. Thus, based on the aforementioned factors, it is appropriate to either find that the respondent lacks good moral character or deny cancellation of removal on discretionary grounds.

II. THE RESPONDENT FAILED TO ESTABLISH THAT HIS UNITED STATES CITIZEN CHILD WOULD SUFFER ANY HARDSHIP BEYOND THE ORDINARY HARDSHIP EXPECTED WHEN A CLOSE FAMILY MEMBER LEAVES THIS COUNTRY.

The respondent's application for cancellation of removal should be denied because he failed to meet the high burden of establishing that his United States citizen daughter would suffer exceptional and extremely unusual hardship should he be removed. With the passage of the Illegal

Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), PUB. L. NO. 104-208, 110 Stat. 3546 (September 30, 1996), Congress clearly intended to raise the threshold level of hardship required to prevail on a claim for cancellation of removal under INA § 240A(b) from that required for suspension of deportation under former INA § 244. In the House Conference Report relating to cancellation of removal, Congress unequivocally expressed its dissatisfaction with the erosion of the “extreme hardship” standard applied in suspension of deportation cases:

Section 240A(b)(1) [of IIRIRA] replaces the relief now available under INA section 244(a) (“suspension of deportation”) but limits the categories of illegal aliens eligible for such relief and the circumstances under which it may be granted. The managers have *deliberately changed the required showing of hardship from “extreme hardship” to “exceptional and extremely unusual hardship” to emphasize that the alien must provide evidence of harm to his spouse, parent, or child substantially beyond that which ordinarily would be expected to result from the alien’s deportation. The “extreme hardship” standard has been weakened by recent administrative decisions holding that forced removal of an alien who has become “acclimated” to the United States would constitute a hardship sufficient to support a grant of suspension of deportation. See Matter of O--J--O--, Interim Decision 3280 (BIA 1996). Such a ruling would be inconsistent with the standard set forth in new section 240A(b)(1).*

H.R. Conf. Rep. No. 104-828 (1996)(emphasis added). It thus follows that INA § 240A(b) in its present form reflects congressional intent to bolster the hardship standard which had previously been diluted by administrative and judicial decisions relating to suspension of deportation. Congress specifically withdrew the Attorney General’s authority to “suspend” deportation where an alien shows only that his children would fare less well in the alien’s country of nationality than in the United States.

Consistent with congressional intent, the Board’s precedent decisions in *Matter of Recinas*, *Matter of Andazola-Rivas*, and *Matter of Monreal*, reflect a stringent standard for determining whether “exceptional and extremely unusual” hardship has been established. See

Matter of Recinas, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola-Rivas*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001).

In *Matter of Monreal*, the Board affirmed the decision of an Immigration Judge denying cancellation of removal to a Mexican citizen who unlawfully entered the United States in 1980, had been employed since her entry, had three healthy United States citizen children, and whose parents are lawful permanent residents of the United States. See *Matter of Monreal*, *supra* at 57. In *Matter of Recinas*, the Board granted cancellation of removal under INA § 240A(b) to an unmarried Mexican mother of four healthy United States citizen children and two Mexican citizen children. The Board found it significant that “all of the respondent's family”, including her lawful permanent resident parents and siblings, “reside *lawfully* in the United States.” *Matter of Recinas* *supra* at 472. The applicant had no close relatives remaining in Mexico. See *Matter of Recinas*, *supra* at 471-73. In *Matter of Andazola-Rivas*, the Board held that diminished educational opportunities and poor economic conditions are insufficient grounds to grant an application for cancellation of removal. See *generally Andazola*, *supra* at 323. The Board also found it significant that the applicant had accumulated substantial assets, including a home, two vehicles, a retirement plan and savings of \$7000 in the United States. *Andazola*, *supra* at 323.

Under the standard outlined in the Board's case law, an applicant for cancellation of removal is required to show that the potential hardship to a qualifying relative resulting from the applicant's removal from the United States would be “‘*substantially*’ beyond the ordinary hardship that would be expected when a close family member leaves this country.” See *Matter of Recinas*, *supra* at 468; *Matter of Andazola-Rivas*, *supra* at 322; *Matter of Monreal*, *supra* at 62 (*emphasis added*). The Board recognized Congress' clear intent to make the hardship showing required for cancellation of removal a more rigorous and higher burden than the former

“extreme hardship” standard applicable to suspension of deportation cases. The Board further recognized that cancellation of removal should be granted only in “truly exceptional” cases, such that the facts of *Matter of Recinas* represent the “outer limit” of the narrow spectrum of cases where the standard will be met. See *Matter of Recinas, supra* at 470.

The Board’s decision in *Matter of Monreal* teaches that, in assessing hardship in cancellation of removal cases, the Immigration Judge should consider many of the same factors enumerated in *Matter of Anderson*, a case dealing with suspension of deportation. *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); see *Matter of Monreal, supra* at 63. The factors relied upon in *Matter of Anderson* include: the age of the alien (at the time of entry and at the time of application of relief); family ties in the United States and abroad; length of residence in the United States; the health of the alien and any qualifying family members; the political and economic conditions in the country of return; the possibility of other means of adjusting status in the United States; community ties; and the alien’s immigration history. See *Matter of Anderson, supra* at 596. Meanwhile, factors relating to the alien are now limited to their effect on qualifying relatives. *Matter of Recinas, supra* at 470 (“[I]nsofar as some of the factors set forth in *Matter of Anderson* may relate only to the applicant for relief, they cannot be considered under the cancellation statute, where *only* hardship to qualifying relatives, and not to the applicant, may be considered. Factors relating to the applicant himself or herself can only be considered insofar as they may affect the hardship to a qualifying relative.” (*emphasis added*))

Thus, in analyzing hardship in cases where the alien has applied for cancellation of removal, the Immigration Judge should consider the ages, health, and circumstances of any qualifying relatives, and not those of the respondent or non-qualifying household members. Moreover, “[a] lower standard of living or adverse country conditions in the country of return are

factors to consider only insofar as they may affect a qualifying relative,” and, in any event, a lower standard of living and adverse political and economic conditions will generally be insufficient, in themselves, to satisfy the “exceptional and extremely unusual hardship” standard. *Matter of Monreal, supra* at 63-64. The Board recognized that “almost every case will present some *particular* hardship” but that the Immigration Judge must analyze the overall fact pattern to determine if it is “substantially different from those that would normally be expected upon removal to a less developed country.” *Matter of Andazola-Rivas, supra* at 324 (*emphasis added*). Each case must be decided on its individual facts, but “the relative level of hardship a person might suffer cannot be considered entirely in a vacuum ... [and] must necessarily be assessed, at least in part, by comparing it to the hardship others might face.” *Matter of Andazola-Rivas, supra* at 323.

The evidence presented by the respondent does not establish that his fifteen year old daughter would suffer any hardship beyond what is normally associated with the removal of a relative from the United States. Further, the respondent has extended family in Mexico, who will provide a network to ease his daughter’s adjustment to living in Mexico if she returns with the respondent. Such adjustment would also be eased by the fact that the respondent has substantial financial assets in the United States and could continue to manage his rental property here if removed to Mexico. *Matter of Andazola-Rivas, supra* at 324.

The respondent primarily alleges his daughter would suffer the requisite hardship based on her emotional state and lack of educational opportunities. The respondent provided the telephonic testimony of two social workers purporting to show that his daughter would have psychological problems if the respondent were removed to Mexico. The daughter’s private social worker testified at the court hearing on January 18, 2011. According to the social worker,

she began treating the respondent's daughter for anxiety and panic attacks on October 27, 2010, less than three months prior to the first court hearing on January 18, 2011. The social worker testified that the respondent's daughter receives tremendous pressure to be successful and a good daughter, which causes anxiety, panic attacks and depression. The social worker speculated that the underlying depression of the respondent's daughter will become "severe and paralyzing" if the respondent were removed from the United States. The social worker provided no foundation for this dire prediction, which is undermined by the social worker's own testimony that the respondent's daughter is an excellent student. Thus, at the time of hearing, there was no indication that his daughter was impaired by any emotional difficulties.

At the continued court hearing on December 21, 2010, the school social worker testified that his daughter has emotional problems because she worries that her father may be deported and feels responsible for the members of her immediate family, who all reside in the United States *illegally*. The social worker testified that his daughter was struggling a lot emotionally and frequently met with the social worker during the spring semester of 2011. However, the social worker proceeded to testify that his daughter is doing much better now. Nor did the social worker believe that the respondent's daughter is taking medication to deal with any emotional issues. Moreover, the school social worker testified that the respondent's daughter is doing very well in school, where she excels academically and has friends. This Court should find that the alleged psychological problem of the respondent's daughter's is not such that the respondent's removal to Mexico would result in exceptional and extremely unusual hardship to her.

Finally, the fact that his daughter may not receive the same quality of education in Mexico as that which is available in the United States does not in and of itself establish the requisite hardship required for cancellation of removal. *Matter of Andazola-Rivas, supra* at 324.

In this vein, it should be noted that the respondent testified that his daughter is fluent in Spanish, the main language spoken in Mexico, and can write³ in Spanish as well. Accordingly, based on the aforementioned, the Department respectfully requests the court to rule that the respondent failed to demonstrate that his daughter will suffer establish exceptional and extremely unusual hardship if he is removed from the United States.

CONCLUSION

For the foregoing reasons, the Department opposes any relief in this case.

Dated:

3/14/12

Respectfully submitted,



Evalyn Douchy
Assistant Chief Counsel
ICE, New York

³ Presumably his daughter reads Spanish since she can write in that language.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
26 FEDERAL PLZ, 12TH FL RM1237
NEW YORK, NY 10278

ATTORNEY AT LAW
CLAUDIA SLOVINSKY, ESQ.
233 Broadway, #2005
NEW YORK, NY 10279

IN THE MATTER OF

FILE A

DATE: Sep 22, 2014

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
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IMMIGRATION COURT
26 FEDERAL PLZ, 12TH FL RM1237
NEW YORK, NY 10278

✓ OTHER:

Decision & Order of the Immigration Judge - attached

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
26 FEDERAL PLAZA
NEW YORK, NEW YORK

File No.: A [REDACTED]

In the Matter of

[REDACTED]

Respondent.

IN REMOVAL PROCEEDINGS

CHARGES: INA § 212(a)(6)(A)(i) Alien present without admission or parole

APPLICATION: INA § 240A(b)(1) Cancellation of Removal for Certain Nonpermanent Residents

ON BEHALF OF RESPONDENT

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ON BEHALF OF DHS

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DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

[REDACTED] (“Respondent”) is a male native and citizen of Mexico. [Exhs. 1; 2.] He claims that he entered the United States (“U.S.”) without inspection on May [REDACTED] 1989, at or near the U.S.–Mexico border.¹ [Exh. 2.] On April [REDACTED] 2009, the Department of Homeland Security (“DHS” or “Department”) served Respondent by mail with an NTA charging him with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended (“INA”), as an alien present without permission or parole.

On January 18, 2011, through counsel, he admitted all of the allegations except allegation three² and conceded removability as charged in the NTA. Thus, removability was established.

¹ Allegation three in the Notice to Appear (“NTA”) states: “You arrived in the United States at or near Unknown, on or about unknown date.” [Exh. 1.]

² See n.1.

See INA § 240(c)(3); 8 C.F.R. §§ 1240.8, 1240.10(c). The Court designates Mexico as the country for removal. See INA § 241(b)(2).

As relief from removal, Respondent filed an application for cancellation of removal pursuant to INA § 240A(b)(1). [Exh. 2.] On January 18, 2011, Respondent testified in support of his cancellation application. On that date, [REDACTED] (“[REDACTED]”), a licensed social worker and psychotherapist, testified regarding the hardship to Respondent’s daughter, [REDACTED]. On December 21, 2011, Respondent offered three additional witnesses: (1) Dr. [REDACTED], a certified public accountant (“CPA”) and professor of accounting and taxation; (2) Richard Bonafiglio, a tax attorney; and (3) [REDACTED],³ [REDACTED]’s high school guidance counselor. Having considered all the evidence, the Court will deny Respondent’s application for relief.

II. EXHIBITS

- Exh. 1:** NTA, served Apr. [REDACTED] 2009;
- Exh. 2:** Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (“cancellation application”), proof of fee payment, and Respondent’s affidavit filed on Dec. 20, 2010;
- Exh. 2A:** I-213, dated Mar. 3, 2009;
- Exh. 2B:** Notice of Denial of Immigrant Petition for Alien Worker, dated Sept. 30, 2008;
- Exh. 3:** U.S. birth certificate of Respondent’s daughter and Respondent’s marriage certificate, filed Jan. 14, 2010;
- Group Exh. 4:** Respondent’s supporting documents related to his continuous physical presence, submitted Jan. 14, 2010, and documents related to [REDACTED]’s hardship, Respondent’s good moral character, and Respondent’s hardship if he returns to Mexico, filed Jan. 3, 2011;
- Exh. 5:** Background documents on country conditions, Jan. 3, 2011;
- Exh. ID-6:** [REDACTED]’s letter and CV, filed Dec. 20, 2010, and motion to permit [REDACTED]’s telephonic appearance, filed Jan. 3, 2011;
- Exh. 7:** Psychological evaluation of [REDACTED] by Dr. [REDACTED], licensed psychologist, and copy of her license and registration, filed Jan. 3, 2011;
- Exh. ID-8:** [REDACTED]’s affidavit, filed on Dec. 20, 2010;
- Exh. 9:** [REDACTED]’s treatment summary and CV, filed Jan. 3, 2011;
- Exh. ID-10:**⁴ Witness proffer and Respondent’s supplementary materials, Tabs 1-6, filed Dec. 8, 2011.

The Court also received the following submissions after the final merits hearing, and the Court now marks them for identification:

- Exh. ID-11:** Department’s Summation, received Mar. 14, 2012;

³ [REDACTED] appeared telephonically.

⁴ This exhibit was not marked into the record at the hearing.

- Exh. ID-12:** Respondent's Closing Statement, including supporting documents at Tabs A-D, received Mar. 15, 2012;
- Exh. ID-13:** Respondent's Response to Department's Summation, received Apr. 6, 2012;
- Exh. ID-14:** Respondent's updated supporting documents, filed Nov. 28, 2012;
- Exh. ID-15:** Respondent's updated supporting documents, filed Oct. 22, 2013.

III. STATEMENT OF FACTS

Respondent is married and has three children. Respondent's wife has no legal status in the U.S. and his two oldest children were both granted Deferred Action for Childhood Arrivals ("DACA"). *See* [Exh. ID-10.] His youngest daughter, ██████████ is an eighteen-year-old U.S. citizen ("USC"). He owns two rental properties, one purchased in 2003 and the other in 2006. He also owns his own painting business.

Respondent testified that ██████████ learned of his "immigration problems" around the end of 2009. In October 2009, ██████████ met with Dr. ██████████, who informed Respondent and his wife that ██████████ was exhibiting anxiety and depression. ██████████ began meeting with her high school guidance counselor, ██████████, in September 2010 and reported feeling sad and depressed due to the burden of responsibility she felt for her family. ██████████ met with ██████████ and his wife, and they agreed she needed therapy outside of school. In October 2010, Respondent and his wife brought ██████████ to meet with ██████████ because ██████████ was "very anxious" and experiencing daily panic attacks. [Exh. 9.] ██████████ has been meeting with ██████████ weekly for psychotherapy sessions. *See* [Exhs. ID-14; ID-15.] At the time of Respondent's last individual hearing, ██████████ testified that ██████████ was doing "very well academically."

Respondent testified that ██████████ received Medicaid benefits from her birth until approximately 2010, when he learned she was not eligible and "discontinue[d] it."

Respondent filed tax returns beginning in 2001. *See* [Exh. 4.] He explained that he met with Dr. ██████████ in September 2010 and filed amended tax returns because he "wasn't sure what his [previous] tax preparer was doing," "found out something was not correct," and "wanted to live with things in order." Dr. ██████████ reviewed Respondent's tax returns and related documentation for 2001 through 2010. *See* [Exh. ID-10.] Dr. ██████████ explained that his firm applied the "Cohan rule"⁵ when needed to reconstruct a reasonable estimate of Respondent's expenses. Respondent later retained ██████████ to opine on the efficacy of Dr. ██████████'s methodology and advise on Respondent's reporting obligations for years in which his income may have been underreported. ██████████ testified that the "bank deposit method" used by Dr. ██████████'s firm is a long-accepted and highly reliable methodology.

⁵ Dr. ██████████ explained that the Cohan rule was used when Respondent did not have sufficient records, as the method provides a reasonable estimate of what expenses would have been under the circumstances.

IV. LEGAL STANDARDS AND ANALYSIS

A. Credibility

The REAL ID Act of 2005 applies to all applications for relief or protection from removal that were “initially filed” after May 11, 2005. *Matter of S-B-*, 24 I&N Dec. 42, 45 (BIA 2006); *see also* INA § 240(c)(4). Thus, where an applicant, such as Respondent, testifies before an IJ in support of an application for cancellation of removal filed after May 11, 2005, the Court may, after considering “the totality of the evidence, and all relevant factors,” base a credibility determination on: the demeanor, candor, or responsiveness of the applicant or witness; the inherent plausibility of the account; the consistency between oral and written statements; the internal consistency of such statements; the consistency of such statements with other evidence of record; and any inaccuracy or falsehood in such statements, “without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim”; or any other factor. INA § 240(c)(4)(C); *see also Diallo v. U.S. Dep’t of Justice*, 548 F.3d 232, 234 n.1 (2d Cir. 2008); *Matter of J-Y-C-*, 24 I&N Dec. 260, 266 (BIA 2007).

On the whole, Respondent’s testimony and the testimony of each witness was generally responsive, internally consistent, and consistent with the other evidence of record. However, there were discrepancies related to Respondent’s tax returns the amount Respondent paid to his lenders as down payments for each of his rental properties. He initially testified that he always declared all of his income on his tax returns. Later, he stated that he went to a tax professional because he was not sure his tax returns had been prepared correctly in the past. He submitted copies of his initial and amended tax returns, indicating he initially underreported his income in most of the years in which he filed. *See* [Exh. ID-10, Tab 4.] Respondent also testified that the purchase price of the first property was approximately \$435,000, for which he paid a down payment of \$100,000, and the price of his second property was \$726,000, for which he paid a down payment of \$300,000 to \$330,000. Dr. ██████ testified that according to the closing statements, Respondent’s down payments were approximately \$25,000 for the first property and approximately \$125,000 for the second property. ██████ testified that the down payments were approximately \$140,000 and more than \$200,000, respectively. When weighing these discrepancies in the “totality of the circumstances,” the Court finds the discrepancies insufficient to warrant adverse credibility determinations. *See* INA § 240(c)(4)(C).

B. Cancellation of Removal

1. Statutory Eligibility

To establish eligibility for cancellation of removal under INA § 240A(b)(1), the applicant must demonstrate that: (1) he has been physically present in the U.S. for a continuous period of not less than ten years; (2) he has been a person of good moral character during such period; (3) he has not been convicted of an offense under INA §§ 212(a)(2), 237(a)(2), or 237(a)(3); and (4) his removal would result in exceptional and extremely unusual hardship to his U.S. citizen or lawful permanent resident spouse, parent, or child. INA § 240A(b)(1). If statutory eligibility is

established, the Court may grant cancellation in the exercise of discretion. *Id.* Here, Respondent is not statutorily eligible for cancellation of removal because he failed to establish good moral character or that his removal would result in exceptional and extremely unusual hardship to a qualifying relative.

a. Continuous Physical Presence

Respondent sufficiently demonstrated that he has been continuously present in the U.S. for more than ten years preceding the date of his application for cancellation of removal. *See* INA §§ 240A(d)(1), 240(c)(4). Any period of continuous physical presence in the U.S. ends when the applicant is served with an NTA, or when the applicant commits an offense referred to in INA § 212(a)(2) that renders the applicant inadmissible to the U.S. under INA § 212(a)(2) or removable under INA § 237(a)(2) or § 237(a)(4). INA § 240A(d)(1). Additionally, a single absence of 90 days or absences of 180 days in the aggregate during the statutory period breaks an applicant's continuous physical presence. INA § 240A(d)(2).

In the present matter, Respondent credibly testified that he entered the U.S. on May [REDACTED], 1989, nearly twenty years prior to the issuance of the NTA on April 10, 2009. He also submitted documents indicating his presence in the U.S. from 1997 through today, including tax returns filed from 2001 through 2010. [Exhs. 4; 8; ID-10; ID-14.] He credibly testified that he departed the U.S. only once, for a period of approximately five weeks. Therefore, Respondent met his burden of establishing his continuous physical presence in the U.S. for the requisite ten-year period.⁶ *See* INA §§ 240A(d)(1), 240(c)(4).

b. Good Moral Character

Section 101(f) of the INA provides a non-exhaustive list of traits that preclude a finding of good moral character. *See also Sumbundu v. Holder*, 602 F.3d 47, 56 (2d Cir. 2010) (finding that applicants who underreported their income on tax returns for many years while living in taxpayer-subsidized housing lacked good moral character under the “catch-all” provision in INA § 101(f)). Here, none of the statutory bars enumerated in INA § 101(f) are applicable to Respondent;⁷ however, the Court finds that the catch-all provision⁸ precludes a good moral character finding in this case.

Respondent's case is similar to *Sumbundu*, in that he misreported information on his tax returns for approximately a decade and also benefited from public assistance during that same time. He submitted amended tax returns that demonstrate he misreported his income from 2001 through 2010. *See* [Exh. ID-10, Tab 4.] According to Dr. [REDACTED]'s testimony, Respondent owed a balance of approximately \$25,000 to the Internal Revenue Service (“IRS”) for the period 2001 through 2006. Dr. [REDACTED] also testified that Respondent owed the IRS an additional amount of approximately \$7,700, plus interest, for the years 2007 through 2010. Respondent has

⁶ The Department does not contest that Respondent has acquired the requisite continuous physical presence.

⁷ Respondent also has not committed any disqualifying criminal offenses. INA § 240A(b)(1)(C).

⁸ The statute provides, in relevant part: “The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.” INA § 101(f).

made partial payments and sought payment plans for the remaining balance. *See* [Exh. ID-10; ID-14.]

Respondent also admitted that [REDACTED] received Medicaid benefits from her birth in 1996 until approximately 2010.⁹ *See* [Exh. ID-10, Tab 5.] However, Respondent claims that he was unaware that she was receiving Medicaid because his wife filed the Medicaid paperwork and handled matters related to [REDACTED]'s health care. The copies of the Medicaid applications, benefits cards, and correspondence support his credible testimony that he was not actively involved with obtaining benefits for [REDACTED]. *See* [Exh. ID-12, Tab B.] He testified that he "discontinued" [REDACTED]'s Medicaid coverage when he discovered she was ineligible. He also sought to reimburse the government the estimated expenses associated with the Medicaid benefits she received.¹⁰ *See* [ID-10, Tab 5.]

Despite taking steps to rectify his misreported income *after* he was placed in removal proceedings, Respondent failed to exhibit good moral character in the ten-year period *before* he was placed in proceedings and applied for relief. *See* INA § 240A(b)(1). In *Sumbundu*, the petitioners took steps to amend their previously misfiled taxes after they were ordered removed. *Id.* at 50, 56. Nevertheless, the Second Circuit stated, "The fact that [the petitioners] amended their tax returns to reflect more accurately their income after being caught by the [Immigration Judge ("IJ")] does not negate the IJ's finding that their original, longstanding misrepresentations to the IRS indicated a lack of good moral character." *Id.* at 56 n.7. Respondent argues that his case is distinguishable because he filed amendments while still in proceedings before the Court. However, the Court does not find this to be a meaningful distinction, as he still waited until he was in danger of removal before seeking to amend his tax returns or reimburse the government for [REDACTED]'s Medicaid benefits.

Respondent further asserts that his case is distinguishable from *Sumbundu* because he lacked fraudulent intent with regard to his inaccurate tax returns and reasonably relied on his initial tax preparer. *See* [Exh. ID-13 at 2-4.] Both Dr. [REDACTED] and [REDACTED] testified that he did not appear to be purposefully hiding his income. He also asserted that he lacked fraudulent intent with regard to [REDACTED]'s Medicaid benefits, as he was not involved with filing paperwork to obtain them. However, in *Sumbundu*, the Second Circuit declined to determine the degree to which intent to commit misconduct is a requirement for determining that a respondent lacks good moral character. 602 F.3d at 56. Indeed, it noted that "income level is clearly a requirement for subsidized housing" and "[u]nder the circumstances, whatever intent requirement may apply could be found to be present." *Id.* The Court finds that similar reasoning applies here. Though Respondent argues his wife was solely responsible for obtaining the Medicaid benefits and he

⁹ Despite [REDACTED]'s U.S. citizenship, it appears she was ineligible for Medicaid or related benefits during at least most of this time. *See* [Exh. ID-11.] According to the Access NY Health Care application instructions, a child may still qualify for Medicaid Family HealthPlus if the child's parent received income up to 150% of the Federal Poverty Level. *Id.* Respondent's amended tax returns indicate that his income exceeded these guidelines for the period at issue. *See* [Exh. ID-10.] For example, the Federal Poverty Guideline in 2001 was \$20,670 for a family of five, so 150% of that amount would be \$31,500. *See* [Exh. ID-11.] Respondent's amended tax return for 2001 indicates that his income was \$40,857, well exceeding the eligibility guidelines. *See* [Exh. ID-10.]

¹⁰ The estimated value of the benefits, as calculated by Dr. [REDACTED] was "no more than \$8036." [Exh. ID-10, Tab 5.] Respondent sent a \$2,000 check to Health Care Benefits Plus/Brooklyn for partial payment of the amount owed, and he requested a payment plan for the balance owed. *Id.*

does not know “how it was done,” the Court finds his explanation insufficient. Respondent has a ninth-grade education, speaks Spanish, and was raised in another country, but he has adapted to life in the U.S. and shown a great deal of resourcefulness in operating within the context of U.S. society throughout the past twenty-five years. Indeed, he started his own painting business and continues to profit from that business. Further, despite the difficulties non-residents can face in obtaining loans, he was able to acquire two rental properties for which the cumulative purchase price was approximately one million dollars. Moreover, he continues to operate both of these successful rental properties. Therefore, the Court finds his claims of ignorance to be insufficiently supported.

The Court notes that Respondent has demonstrated a long period of residence in the U.S., business success over many years, strong family ties in the U.S., and community involvement. However, his acceptance of public benefits for which he was not eligible, as well as his decade or more of misreported income, lead this Court to find that he is unable to establish that he has been a person of good moral character during the statutory period. INA § 240A(b)(1).

c. Exceptional and Extremely Unusual Hardship

Even if Respondent had established the requisite good moral character, he failed to demonstrate that his removal would result in “exceptional and extremely unusual hardship” to a qualifying relative. INA § 240A(b)(1). To meet this standard, an applicant must show that a qualifying relative would suffer hardship substantially beyond that which would ordinarily result from an alien’s removal, although such hardship need not be unconscionable. *See Matter of Monreal*, 23 I&N Dec. 56, 61 (BIA 2001). Factors to be considered in determining the level of hardship include the qualifying relative’s age, health, length of residence in the U.S., and family and community ties in the U.S. and abroad. *Id.* at 63; *Matter of Anderson*, 16 I&N Dec. 596, 597 (BIA 1978). A lower standard of living, diminished educational opportunities, poor economic conditions, and other adverse country conditions in the country of removal are also relevant factors, but will generally be insufficient, in and of themselves, to support a finding of exceptional and extremely unusual hardship. *Monreal*, 23 I&N Dec. at 63; *Matter of Andazola-Rivas*, 23 I&N Dec. 319, 323-24 (BIA 2002). However, all factors should be considered in the aggregate to determine whether the qualifying relative will suffer hardship that is exceptional and extremely unusual. *Monreal*, 23 I&N Dec. at 64.

For the purposes of cancellation of removal, Respondent has one qualifying relative: his youngest daughter, [REDACTED]. *See* INA § 101(c)(1). For the reasons below, he failed to establish she would face the requisite hardship.

First, Respondent did not persuade the Court that [REDACTED] would accompany him if he is removed to Mexico. [REDACTED] is a USC and therefore not subject to removal, and Respondent testified that he did not know if he would be willing to take [REDACTED] with him if he is removed to Mexico. In his cancellation application, he indicated that his children would not accompany him to Mexico. The record indicates [REDACTED] has ample support to thrive if she remains in the U.S. She is now eighteen years old and has presumably completed her education at a reputable and selective high school. The record demonstrates her academic success despite her emotional difficulties and it also attests to her maturity and leadership skills. *See, e.g.*, [Exh. 8; ID-10, Tabs

2-3; ID-14, Tab 3.] She also receives consistent psychological support weekly through psychotherapy sessions. Moreover, her older siblings currently live in the U.S. and have been approved for DACA. Thus, it appears [REDACTED] has resources available to support her and help her overcome obstacles. Accordingly, Respondent failed to establish that if [REDACTED] stays in the U.S., she will face difficulties rising to the level of “exceptional and extremely unusual hardship.”

Second, even if [REDACTED] goes to Mexico with Respondent and experiences a lower standard of living or diminished educational opportunities, this is not enough to establish “exceptional and extremely unusual hardship.” *Monreal*, 23 I&N Dec. at 63; *Andazola-Rivas*, 23 I&N Dec. at 323-24. Respondent testified that [REDACTED]’s spoken Spanish is “quite good” and she also can write in Spanish. [REDACTED] has concerns that [REDACTED] may be unable to access needed psychological services if she accompanies Respondent to Mexico. To be sure, the evidence of record pertaining to country conditions indicates improvements are needed in the mental health care for Mexican youth. [Exh. 5, Tab 35; Exh. ID-12, Tab C.] However, Respondent and his wife have shown deep concern for addressing [REDACTED]’s mental health concerns in the past. They have actively met with her school counselor to address concerns, sought out a therapist who could speak both Spanish and English so they could communicate with the therapist, and have consistently paid \$100 for each of [REDACTED]’s weekly psychotherapy sessions. Their demonstrated commitment to her emotional well-being indicates that they will be resourceful in seeking out adequate mental health services to ensure her success. *See* [Exh. 5, Tab 35 (“More educated parents¹¹ may be more likely to recognize symptoms of distress and mental disorders in their child and be able to seek treatment. It is possible that these adolescents have more supportive environments or more assistance in promoting treatment adherence.”)].

Respondent submitted numerous reports and news articles related to country conditions in Mexico. The evidence indicates violence, drug trafficking, and related criminal activities are prevalent in certain areas in Mexico, and that American youth are sometimes targeted for recruitment into trafficking rings. *See, e.g.*, [Exhs. 4; 5; ID-10, Tab C.] However, the evidence does not indicate that the violence permeates the entire country. Further, adverse country conditions is a factor to consider, but generally are insufficient in themselves to support a finding of exceptional and extremely unusual hardship. *See Monreal*, 23 I&N at 63-64.

The Court acknowledges with sympathy that [REDACTED] has lived in the U.S. her entire life and may experience considerable difficulty adjusting to a new culture if she leaves the U.S. She may also experience diminished educational opportunities. Alternatively, if she remains in the U.S. and is separated from her father, she will undoubtedly face significant emotional and psychological hardship. Nevertheless, “Congress has established an ‘exceptional and extremely unusual hardship’ standard of eligibility for cancellation of removal, and [the Court] cannot find that the evidence presented in this case rises to the high level of hardship required under [INA § 240A(b)(1)(D)].” *Monreal*, 23 I&N Dec. at 65.

Therefore, considering all relevant factors in the aggregate, Respondent has not demonstrated that his U.S. citizen daughter would face hardship substantially beyond that which

¹¹ While her parents may not have many years of education, they have already recognized her need for mental health treatment and have shown great commitment to providing such services for her.

would ordinarily result from a parent's removal. *See Monreal*, 23 I&N Dec. at 61. He has therefore not established his eligibility for relief pursuant to INA § 240A(b)(1).

Accordingly, after a careful review of the record, the following orders will be entered:

ORDERS

IT IS HEREBY ORDERED that Respondent's application for cancellation of removal pursuant to INA § 240A(b)(1) be **DENIED**.

IT IS FURTHER ORDERED that Respondent be removed from the United States to Mexico on the sustained charges of removability contained in the NTA.

Date:

9/22/14


Elizabeth Lamb
Immigration Judge

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Secondary Sources

- Kenneth G. Rice, et al., *Self-Esteem as a Mediator Between Perfectionism and Depression: A Structural Equations Analysis*, *Journal of Counseling Psychology*, 1998, Vol. 45, No. 3, 304-31419
- Kenneth G. Rice, et al., *Perfectionism, Stress and Social (Dis)Connection: A Short-Term Study of Hopelessness, Depression and Academic Adjustment Among Honors Students*, *Journal of Counseling Psychology*, 2006, Vol. 53, No. 4, 524-53419

II. Statement of facts and procedural history of the case

This case is about whether Mr. RESPONDENT, a long term resident of the United States with no criminal record and a long history of being a responsible community member and business owner, and the dedicated father of a U.S. citizen daughter who would be subject to long term psychological harm if her father was deported, should be removed from this country. In denying Mr. RESPONDENT'S application for Cancellation of Removal under section 240A(b)(1) of the Immigration and Nationality Act, the Immigration Judge (hereinafter "IJ") erroneously concluded that Mr. RESPONDENT lacks good moral character (hereinafter "GMC") because of inaccuracies on his tax returns, and because his U.S. citizen daughter was receiving Medicaid without his knowledge. The IJ also erroneously concluded that Mr. RESPONDENT'S U.S. citizen daughter would not suffer exceptional and extremely unusual hardship if her father is deported.

Mr. RESPONDENT, a citizen of Mexico, has been living in the U.S. for twenty-five years, since DATE, 1989. He was 22 years old when he came to the U.S., and is 47 now. Ex. 2. He is married to RESPONDENT'S WIFE, also a citizen of Mexico, since DATE, 2002, and together they have three children, aged 28, 27 and 18. Ex. 2. His eldest two children were born in Mexico, and his youngest daughter, RESPONDENT'S DAUGHTER, was born in the U.S. on DATE, 1996. Ex. 3. He resides in Brooklyn, New York, with his wife and three children. He is an active member of his church, and a responsible and dedicated father. Despite having only a 9th grade education himself, he has enabled his children to attend college and to seek the best education possible.¹ Due to his efforts and involvement, his youngest daughter, RESPONDENT'S DAUGHTER, was

¹ Mr. RESPONDENT' daughter, REDACTED, who graduated from Brooklyn College, The City University of New York (CUNY), with a Bachelor of Arts degree in June 2008, was granted Deferred Action for Childhood Arrivals (DACA) on DATE 2013 , and his son, REDACTED, who graduated from Baruch College, CUNY, with a Bachelor of Business Administration in May 2009, was granted DACA on DATE 2013. Ex. ID-14 and Ex. ID-15.

admitted to, and has graduated from, Bard Early College High School, one of the most competitive high schools in New York City.

Mr. RESPONDENT is a respected member of the Business Improvement District in Brooklyn, New York. He has been honored by the Sunset Park Business Improvement District with an outstanding property owner award for 2008. Group Ex. 4, Tabs 19 and 20. He has no criminal infractions.

Mr. RESPONDENT owns and operates a painting business, and also owns two properties, purchased in 2003 and 2006, from which he derives rental income. Ex. 2; Mr. RESPONDENT'S Cancellation of Removal application; Tr. at 64-65. Mr. RESPONDENT has been filing income tax returns since 2001, shortly after he started his painting business and learned that he was able to file taxes even though he did not have a social security number. Tr. at 49, 52. He credibly testified that he does not understand taxes, and had relied entirely on a tax preparer to file his returns from 2001 to 2009. Tr. at 70-71, 108. Subsequently, in a routine review of all the evidence in preparation for the cancellation trial, Mr. RESPONDENT was encouraged to engage the services of reputable tax professionals to go over his returns.

He sought the advice of a certified public accountant, ACCOUNTANT, and a tax attorney, TAX ATTORNEY, to review his previously filed taxes and make any necessary amendments. Both experts testified at Mr. RESPONDENT'S hearing and were found to be credible by the IJ. IJ Dec. at 4.

ACCOUNTANT undertook a comprehensive review of Mr. RESPONDENT'S prior tax returns, as well as bank statements, cancelled checks, ledgers and other documents relating to receipts and disbursements for his business, and documents related to his property purchases, and reconstructed his tax returns from scratch for the periods 2001 to 2009. Tr. at 153, 158-165. As a result, Mr. RESPONDENT learned that the previously filed taxes contained inaccuracies, in some

cases in his favor and requiring a refund, and in other cases requiring the payment of additional taxes.² Both ACCOUNTANT and TAX ATTORNEY stated that the differences reflected some errors in tax preparation, but not a hiding of income.

Mr. RESPONDENT voluntarily disclosed on his Cancellation application that RESPONDENT'S DAUGHTER had been enrolled in New York State's Choice for Children, a Medicaid program, since her birth in 1996. Ex. 2. He credibly testified that the healthcare of his children, including RESPONDENT'S DAUGHTER's enrollment in Choice for Children, was solely handled by his wife, without his knowledge or awareness. Tr. at 66-67, 73-74. He further testified that her enrollment was discontinued in 2010 once he became aware that RESPONDENT'S DAUGHTER was not eligible for it. Tr. at 49-50, 66. The documents for RESPONDENT'S DAUGHTER's prior enrollment in the program fully corroborate Mr. RESPONDENT'S testimony, as all documentation related to those applications, including the enrollment form and the Access NY Health Care Form, is addressed solely to Ms. RESPONDENT'S WIFE and lists her as the "Head of Household," evidencing that she was the point of contact and not Mr. RESPONDENT. Ex. ID-12, Tab B.

RESPONDENT'S DAUGHTER, Mr. RESPONDENT'S teenage U.S. citizen daughter, suffers from acute anxiety and depression which stems largely from her family's immigration status, and the pressure RESPONDENT'S DAUGHTER experiences on account of being the only member of her family to be born in the U.S. and thus be able to permanently live here legally. Having always excelled in her studies, she was admitted to Bard High School Early College in 2010, a competitive four year high school in New York City.

² Mr. RESPONDENT submitted amended federal and state taxes as prepared by ACCOUNTANT for the 2001-2009 tax periods. To date, Mr. RESPONDENT has fully paid all federal and state taxes owed for prior years. Exhs. ID-14 and 15

The record contains the testimony and evaluations of two psychological professionals, as well as RESPONDENT'S DAUGHTER's high school guidance counselor. SOCIAL WORKER, a licensed social worker and psychoanalyst who started seeing RESPONDENT'S DAUGHTER for regular weekly sessions in 2010 because RESPONDENT'S DAUGHTER started having panic attacks every morning and was having a difficult time managing in school, provided two written statements in addition to her testimony in court. She stated that RESPONDENT'S DAUGHTER struggles with underlying "depression, high levels of anxiety, and an inordinate degree of responsibility for her parents and siblings." Ex. ID-10, Tab 1. She explained that RESPONDENT'S DAUGHTER's depression and anxiety does not stem solely from the more typical anxiety and sadness that any child would experience if a parent was faced with deportation, but from a deep and acute sense of responsibility and guilt for being the only one in her family to be born in the U.S. and feeling responsible for her family's future in the U.S. SOCIAL WORKER states that if her father was deported she would suffer life-long psychological consequences and her depression and guilt could become even more severe because she would blame herself for her father's deportation for the rest of her life. Ex. 9; Ex. ID-10, Tab 1, Tr. at 78-83. Her testimony was found to be credible by the IJ. IJ. Dec. at 4. SOCIAL WORKER's conclusion was corroborated by RESPONDENT'S DAUGHTER's guidance counselor at Bard, Ex. ID-6, Tab 4, Tr. 249-252, as well as PSYCHOLOGIST, the licensed psychologist who evaluated RESPONDENT'S DAUGHTER in December 2009, as well as in January 2012, Ex. 7, Ex. ID-12, Tab D.

III. Statement of issues presented for review

1. Whether Mr. RESPONDENT lacks good moral character because he filed amended tax returns, despite the fact that his certified public accountant as well as his tax attorney, both

of whom were found credible by the IJ, concluded after conducting a comprehensive review of his finances that his tax returns, prepared by others, contained non-substantial inaccuracies, with no evidence of intent to misrepresent his income.

2. Whether Mr. Pedrero-RESPONDENT lacks good moral character because his U.S. citizen daughter was enrolled in New York State's Medicaid benefits for children for a few years when she may possibly not have been income eligible for it, despite crediting his testimony and the supporting and un-contradicted evidence that showed that those benefits were obtained by his wife without his knowledge or involvement.
3. Whether the hardship that his U.S. citizen daughter would suffer if her father were to be deported would be "exceptional and extremely unusual hardship," when RESPONDENT'S DAUGHTER's therapist and social worker, her high school guidance counselor, and a licensed therapist who twice evaluated her over a span of nearly three years, all concluded that RESPONDENT'S DAUGHTER suffers from ongoing and debilitating anxiety and depression because of the extraordinary pressure she faces of being the only U.S. citizen in her family, and the constant, looming fear that her family unit will be torn apart, and that she would suffer life-long, severe psychological consequences if her father were removed because she would blame herself for her father's removal.

IV. Standard of review

The Board of Immigration Appeals (the "Board") reviews the IJ's factual findings for clear error, and questions of law, discretion, and judgment *de novo*. 8 C.F.R. § 1003.1(d)(3); *Matter of S-H-*, 23 I.&N. Dec. 462, 464 (BIA 2002). While the review of questions of law, discretion and judgment is *de novo*, the Board's conclusion must be supported by the facts in the record. *Matter of A-S-B-*, 24 I.&N. Dec. 493, 497 (BIA 2008); *Wallace v. Gonzales*, 463 F.3d 135, 141 (2d Cir. 2006).

V. Argument

The IJ made legal and factual errors in finding that Mr. RESPONDENT was statutorily ineligible for non-legal permanent resident Cancellation of Removal because he lacked GMC under the “catch-all” provision of the Immigration and Nationality Act (INA) at section 101(f) and in finding that his teenaged U.S. citizen daughter, RESPONDENT’S DAUGHTER, would not suffer exceptional and extremely unusual hardship if he were to be removed from the United States.

A. The Immigration Judge made legal and factual errors in her determination that Mr. RESPONDENT does not possess good moral character.

1. The Immigration Judge committed legal error by finding that Mr. RESPONDENT did not have good moral character based on inaccuracies in his tax returns where there was no evidence of knowing or intentional behavior.

Mr. RESPONDENT has filed income tax returns since 2001, shortly after he started his own painting business and learned that he was able to file taxes even though he did not have a social security number. Having only a 9th grade education from Mexico and not speaking English fluently, Mr. RESPONDENT testified that he relied completely on tax preparers who were recommended to him by members of his community but who were not professional accountants, to complete his tax returns from 2001 to 2009. “[F]or me its quite complicated, figures and taxes. I’m ... not versed too much in that field.” Tr. at 71. Indeed, Mr. RESPONDENT’S good faith, and lack of understanding of the tax system, can be evidenced by the fact that based on his original returns, he was due a refund of \$1,994 in tax year 2005. Group Ex. 4. However, he did not claim it, because “I did not come here to request monies but to provide monies.” Tr. at 68.

In a routine review of all the evidence in preparing for the cancellation trial, Mr. RESPONDENT was encouraged to engage the services of reputable tax professionals to go over

his returns. He sought the advice of a certified public accountant (CPA), ACCOUNTANT, and a tax attorney, TAX ATTORNEY, to review his previously filed taxes and make any necessary amendments. Tr. at 67, 72.

ACCOUNTANT testified that he undertook a comprehensive review of Mr. RESPONDENT'S prior tax returns, as well as documents related to his property purchases, bank statements, cancelled checks, ledgers and other documents relating to receipts and disbursements for his business. Tr. at 153, 158-165. He also had several in-person meetings and phone calls with Mr. RESPONDENT to gather source information for the previously filed taxes. This data was then used to reconstruct Mr. RESPONDENT'S tax returns from scratch for the periods 2001 to 2009. As a result of this comprehensive review, Mr. RESPONDENT learned that the previously filed taxes had some inaccuracies and should be amended. Mr. RESPONDENT then submitted amended federal and state taxes for the 2001-2009 tax periods.³

Both ACCOUNTANT and TAX ATTORNEY, who were found credible by the IJ, stated that the differences reflected non-substantial errors in tax preparation, but not a deliberate misreporting of income. TAX ATTORNEY explained that the previously filed taxes were "pretty accurate," noting that tax preparation is not an exact science. "[I]f you took the same taxpayer and brought him to five different accountants and five different lawyers, you'd end up with ten different net bottom lines on it." Tr. at 280.

TAX ATTORNEY, who testified that he had been in practice for 40 years and had extensive experience in dealing with cash based businesses such as Mr. RESPONDENT, explained that the amended tax returns did not indicate that Mr. RESPONDENT had been hiding his income, for a number of reasons. First, he stated that the discrepancies between the two returns were not

³ To date, Mr. RESPONDENT has fully paid all federal and state taxes owed for prior years. Exhs. ID-14 and 15.

significant, especially given that the returns prepared by ACCOUNTANT tended to overestimate Mr. RESPONDENT' income and expose him to a greater tax liability than he would otherwise have been responsible for. Tr. at 281-82. This is because ACCOUNTANT employed a well-established but conservative method of accounting, the "bank deposits method," under which all deposits into an account are treated as income unless otherwise explained. Because the reconstruction of Mr. RESPONDENT' taxes went back several years, for which Mr. RESPONDENT did not always have complete information about the breakdown of the deposits, he was penalized with a higher projected tax liability. Tr. at 278-79. As a result, TAX ATTORNEY concluded that even though the amended returns reflected different numbers for income and expenses, they did not demonstrate that Mr. RESPONDENT had misreported his income.

Additionally, TAX ATTORNEY noted that Mr. RESPONDENT'S bank accounts going back ten years reflected a regular pattern of deposits and withdrawals. He also noted that the rents from his commercial properties, though received largely in cash, were deposited into his bank accounts, and were accurately reported on his tax returns. Based on these findings, TAX ATTORNEY concluded that "this is not the methodology of somebody who is hiding income." Tr. at 282.⁴

Despite finding Mr. RESPONDENT'S CPA and tax attorney to be credible, with no indication of doubt regarding the accuracy of their review of Mr. RESPONDENT'S tax and financial history, the IJ found that his tax returns were a basis on which to find that he lacked GMC. In doing so, the IJ ignored a long line of cases requiring intentional or knowing misconduct to

⁴ ACCOUNTANT and TAX ATTORNEY also addressed how Mr. RESPONDENT was able to purchase two real estate properties with his income and savings. ACCOUNTANT explained that Mr. RESPONDENT'S savings, plus the income generated from his businesses between 2001 and 2006 were sufficient to support his family as well as the purchases of Mr. RESPONDENT' two real estate properties in 2003 and 2006. Specifically, ACCOUNTANT explained that on average, Mr. RESPONDENT was earning gross revenues of approximately \$150,000 per year from his painting business as well as in rental income, which would have generated the amount of cash needed to purchase the buildings. Tr. at 167, 182, and 209. TAX ATTORNEY also concurred with Mr. RESPONDENT in concluding that Mr. RESPONDENT' income was sufficient to make the down payments on his two properties. Tr. at 291-293.

support a lack of good moral character under the catch-all provision.⁵ See, e.g., *Petition of Lieberman*, 50 F. Supp. 121, 122-23 (E.D.N.Y. 1943) (“morals, after all, must involve intention.”); *Etape v. Napolitano*, 664 F. Supp. 2d 498 (D. Md. 2009) (owing child support was not indicative of lack of good moral character because arrears were not due to a willful failure or refusal to support dependents); *In re Petition for Naturalization of Valad*, 465 F.Supp. 120 (E. D. Virginia 1979) (GMC finding based on the petitioner’s violation of a court ordered child support order reversed where there was a reasonable explanation for the failure to pay child support); *In re Huymaier*, 345 F. Supp. 339, 341 (E.D. Pa. 1972) (failure to make all required child support payments, in light of credible and reasonable explanation for the failure, and a good faith effort on the part of the petitioner to fulfill his obligation, could not support a lack of GMC). *Convery v. Holder*, 494 Fed. Appx. 166 (2d. Cir., Aug. 30, 2012) (unpublished) (denial of cancellation for failure to show GMC upheld where respondent *intentionally* entered into a polygamous relationship and *intentionally* omitted her arrest and first marriage from her adjustment application) (emphasis added).

The requirement of intentional or knowing conduct is further supported by judicial interpretation of the statutory bars to GMC.⁶ For the nine statutory grounds that do not require a

⁵ This is analogous to whether a crime involves moral turpitude. Moral turpitude has been defined as “a nebulous concept, which refers generally to conduct which is inherently base, vile, or depraved, contrary to the accepted rules of morality and the duties owed between persons or to society in general. . . . The essence of moral turpitude is an evil or malicious intent.” *In Re Tran*, 21 I.&N. Dec. 291, 292-93 (BIA 1996); *Matter of Flores*, 17 I.&N. Dec. 225, 227-28 (BIA 1980).

⁶ INA §101(f) provides thirteen statutory grounds that preclude a finding of good moral character. These include the following classes of people:

- 1) A habitual drunkard
- 2) Someone who has been convicted of, or has admitted to facts constituting criminal behavior relating to
 - a) Polygamy
 - b) Prostitution or commercialized vice
 - c) An alien smuggler
 - d) A CIMT
 - e) Multiple crimes regardless of whether the offenses involved moral turpitude for which the aggregate sentences were five years or more
 - f) Drug trafficking, except for a single offense of simple possession of 30 grams or less of marijuana
- 3) One whose income is derived principally from illegal gambling activities
- 4) One who has been convicted of two or more gambling activities

conviction, it is clear that all require a finding of intentional or knowing misconduct. *See, e.g., Kungys v. U.S.*, 485 U.S. 759, 780 (1988) (false testimony with subjective intent to deceive for obtaining immigration benefits will preclude a GMC finding under INA § 101(f)(6)); *Matter of G-*, 5 I. & N. Dec. 559, 559 (BIA 1953) (prior commission of prostitution precludes a GMC finding under INA § 101(f)(3)); *Estrada Iniguez v. Holder*, 380 F. App'x 718, 719 (9th Cir. 2010) (unpublished) (knowingly encouraging, inducing, assisting, abetting or aiding the unlawful entry of another precludes a GMC finding on account of being an alien smuggler under INA § 101(f)(3)).

The IJ erroneously relied on *Sumbundu v. Holder*, 602 F.3d 47 (2d. Cir. 2010) in holding that intent to commit misconduct is not a requirement for finding that a person lacks good moral character. In *Sumbundu v. Holder*, the Second Circuit upheld the decision of the IJ and BIA because in that case there had been a “decade-long pattern of gross under-reporting” of taxes on the part of the applicants that was “probably fraudulent.” 602 F.3d at 56. The court in *Sumbundu* did not in any way suggest that no intent is required.

The facts in the present case are inapposite. Mr. RESPONDENT and two expert witnesses, whose testimony the IJ found to be “responsive, internally consistent, and consistent with the other evidence of record,” testified that Mr. RESPONDENT’S tax returns, prepared by others, may have

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- 5) One who has given false testimony for the purpose of obtaining any Immigration benefits
 - 6) One who has been confined to a penal institution for an aggregate period of 180 days or more
 - 7) One who has been convicted of an aggravated felony
 - 8) One who has engaged in conduct relating to Nazi persecution, participating in genocide, or committing acts of torture or extra judicial killings or severe violations of religious freedom.

INA §101(f).

The grounds for which no conviction is required include (1) a habitual drunkard; (2) one who practices polygamy; (3) one who is engaged in prostitution; (4) one who has helped someone enter the U.S. illegally; (5) one who admits having committed a crime involving moral turpitude; (6) one who is an ‘illicit trafficker’ in narcotics; (7) one whose income is principally derived from illegal gambling activities; (8) one who has given false testimony for the purpose of obtaining benefits under the Act; and (9) one who has engaged in conduct relating to Nazi persecution, participating in genocide, or committing acts of torture or extra judicial killings or severe violations of religious freedom.

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contained inaccuracies, in some cases in his favor and requiring a refund, but that there was no evidence that he had intentionally misrepresented his income.

The IJ rejected the credible and consistent testimony of ACCOUNTANT and TAX ATTORNEY, and injected intent where there was none, by finding that Mr. RESPONDENT'S amended tax returns demonstrate that he "underreported his income in most of the years in which he filed." IJ Dec. at 4, citing Ex. ID-10, Tab 4, Mr. RESPONDENT'S amended tax returns. In doing so, the IJ incorrectly assumed that the mere fact that his tax returns were amended meant that income was previously misreported. This conclusion has no support in the record. As credibly testified to by ACCOUNTANT and TAX ATTORNEY, (1) there were non-significant errors in Mr. RESPONDENT'S original income tax returns that resulted from tax preparer error; and (2) even though the amended taxes resulted in some years in a higher tax liability for Mr. RESPONDENT, this disparity arose largely because the amended returns were reconstructed using a conservative and long-accepted method of accounting known as the "bank deposits method," which tends to overestimate income and expose the taxpayer to a greater tax liability than he would otherwise have been responsible for. Tr. at 281-82. Indeed, TAX ATTORNEY stated that the previous returns were "pretty accurate." Tr. at 280.

Further, the IJ erroneously assumed that an amendment that results in a net increase in the adjusted gross income means that the actual gross income was previously underreported. This conclusion is erroneous as a matter of tax law, because adjusted gross income is gross income *less deductions from a business or rental activity and 21 other specific items, including depreciation.* See, Your Federal Income Tax for Individuals, Your Tax Guide 2014, Publication 17, Internal Revenue Service, <http://www.irs.gov/pub/irs-pdf/p17.pdf>. Therefore, a comparison of the previous and amended

amounts for adjusted gross income cannot result in a conclusion that the gross income itself was underreported.

The IJ's erroneous and unsupported findings cannot form the basis of a finding of lack of GMC under the catch-all clause of INA §101(f). Good moral character has been defined by the courts as "that which measures up to the standard of average citizens of the community in which the alien lives. *In the Matter of S*, 3 I.&N. Dec. 393, 395 (BIA 1948); *see also In re Petition for Naturalization of Spak*, 164 F. Supp. 257, 260 (E.D. Pa. 1958); *Petition of Denesy*, 200 F. Supp. 354, 358 (D. Del. 1961); *Petition of Mayall*, 154 F. Supp. 556, 560 (E.D. Pa. 1957). An average citizen is not expected to have error-free tax returns. By failing to apply the correct legal standard, the IJ committed legal error. *Compare Gambino, v. Pomeroy*, 562 F.Supp. 974, 985 (D.N.J. 1983) (the mere existence of errors in tax returns cannot be the basis for a lack of GMC finding) *and Khamaja, v. Mueller, III, et al.*, 2012 WL 1857849 (S.D. Texas, Oct. 3, 2012) (misrepresentations stemming from misunderstanding or forgetfulness and not a subjective intent to deceive cannot support a lack of GMC finding), *with Matter of Locicero*, 11 I. & N. Dec. 805 (BIA 1966) (lack of GMC finding upheld where respondent fraudulently understated his income for the purpose of avoiding the payment of a substantial sum in taxes).

2. The Immigration Judge made a legal error in concluding that Mr. RESPONDENT lacked good moral character based on the acts of another.

Further, the IJ made a legal error in concluding that Mr. RESPONDENT lacks GMC because his daughter, RESPONDENT'S DAUGHTER, received New York State's Medicaid Choice for Children for a few years when she may possibly not have been income eligible for it, despite crediting his testimony and the supporting and un-contradicted evidence that showed that he was not involved in any way in obtaining those benefits.

The Court erred by attributing to him the actions of another, his wife, in violation of the legal principle that one spouse cannot be held responsible for the acts of the other. Overlooking credible record evidence, the Court relied on baseless speculation and conjecture to conclude that Mr. RESPONDENT knowingly accepted public benefits for which he was not eligible.

a) *The Immigration Judge's finding that Mr. RESPONDENT intentionally availed of public benefits to which he was not entitled is completely unsupported by the record.*

The IJ erroneously concluded that Mr. RESPONDENT intentionally benefitted from Medicaid benefits for his U.S. citizen daughter despite not being income eligible for them. Again, the IJ wrongly analogized the facts of this case to *Sumbundu*, where the Second Circuit found that respondents both *knowingly* and *intentionally* took advantage of taxpayer subsidized housing while substantially under-reporting their income. 602 F.3d at 56 (emphasis added).

The IJ's conclusion in this case is completely contrary to the record. Mr. RESPONDENT consistently and credibly testified that RESPONDENT'S DAUGHTER's medical care was managed by his wife, RESPONDENT'S WIFE, without his involvement or knowledge, and that she had assured him that RESPONDENT'S DAUGHTER was eligible for those benefits because she was a U.S. citizen. Tr. at 66-67, 73-74. He explained that his family was given an application for the program at the hospital when RESPONDENT'S DAUGHTER was born in 1996. He also explained that he had no idea of how the benefits were renewed over the years as his wife handled that process. Tr. at 66: "She was receiving Medicaid, but basically without my knowledge of it. Because my wife was in charge of ... the medical care for my children. And all of the time that ... it

had been done, she had applied for it.” *See also*, Tr. at 74 (“The truth is, I really don’t know how ... it was done. My wife was the person who ... provided the information.”)⁷

Mr. RESPONDENT’S testimony is corroborated by documents relating to RESPONDENT’S DAUGHTER’s prior enrollment in New York’s Medicaid program. *See* Ex. ID-12, Resp.’s Closing Statement, Tab B. These documents support Mr. RESPONDENT’S testimony that Ms. RESPONDENT’S WIFE was solely responsible for the Medicaid applications. All documentation related to those applications is addressed solely to her and not Mr. RESPONDENT. Both the Enrollment Form and the Access NY Health Care Form list Ms. RESPONDENT’S WIFE as the “Head of Household,” and all the documents show that she was the point of contact and not Mr. RESPONDENT. *Id.*

The IJ not only erred by overlooking the credible record evidence but also relied on illogical reasoning to find Mr. RESPONDENT’S “claims of ignorance to be insufficiently supported.” IJ Dec. at 7. The IJ made this finding by reasoning that despite a 9th grade education, Mr. RESPONDENT had been “resourceful” and successful in his work and real estate investments. These factors, though true, have absolutely no bearing on whether his wife solely handled the Medicaid applications for their daughter – a domestic household task that is completely unrelated to Mr. RESPONDENT’S work and business – without any involvement or knowledge on his part. To draw a conclusion that somehow Mr. RESPONDENT must have known about it, based on completely unrelated facts, is error. The IJ’s findings must be based on reasonable inferences from direct and circumstantial evidence in the record as a whole, not on speculation. *Matter of D-R-*, 25 I.&N. Dec. 445, 454 (BIA 2011); *Nuru v. Gonzales*, 404 F.3d 1207, 1226 (9th Cir. 2005) (“rank speculation and conjecture “cannot be substituted for objective and substantial evidence,” quoting

⁷ It should also be noted that Mr. RESPONDENT voluntarily disclosed in his Cancellation of Removal application that RESPONDENT’S DAUGHTER had been receiving Medicaid for her routine healthcare needs since her birth until it was cancelled by him. As a declaration that is against his interest, it is reflective of Mr. RESPONDENT’ honesty and forthrightness.

Bandari v. INS, 227 F.3d 1160, 1167 (9th Cir. 2000); *Siewe v. Gonzales*, 480 F.3d 160, 168-69 (2d Cir. 2007) (an inferential leap or deduction by the IJ must be “tethered to the evidentiary record”); *Salaam v. INS*, 229 F.3d 1234, 1238 (9th Cir. 2000) (factual findings cannot be based on an “unsupported assumption”).

b) *The Immigration Judge made a legal error in finding that Mr. RESPONDENT could be held accountable for the acts of his wife*

The IJ made legal error in holding Mr. RESPONDENT accountable for the actions of his wife. Her holding conflicts with long standing law that husbands and wives are distinct persons and that one spouse cannot be held responsible for the acts of the other. The doctrine of spousal immunity, which was based on the biblical concept that a husband and wife were a single legal entity, has been long abolished in a vast majority of the states. It is a well-recognized principle that each spouse has a separate legal identity, with his or her own rights in property, and capacity to sue and be sued. Restatement (Second) of Torts § 487 (1965); *see also.*, *Bebout v. Pense*, 35 S.D. 14, 17 (1914); (“So far as the husband's liability for the acts of his wife is concerned, it places them in the position of persons who are not related at all”); *Newsome v. Scott*, 200 Va. 833, (1959); *Hyland v. Southwell*, 320 A.2d 767, 768 (Del. Super. 1974); *Shelton v. Doster*, 99 Ga. App. 863, 863 (1959); *Bates v. Kurttz*, 36 Ala. App. 350, 351 (Ala. Ct. App. 1951); *Wolf v. Keagy*, 3 W.W.Harr. 362 (1927); *Foster v. Ingle*, 147 Tenn. 217, 222-223 (1923); *Goken v. Dallugge*, 72 Neb. 16, 19 (1904).

B. The Immigration Judge made legal and factual errors in her determination that Mr. RESPONDENT’S U.S. citizen daughter, RESPONDENT’S DAUGHTER, would not suffer exceptional and extremely unusual hardship if her father is removed from the United States.

The IJ overlooked the testimony and statements of a licensed social worker and certified psychoanalyst who had been seeing RESPONDENT’S DAUGHTER for weekly psychotherapy

sessions since 2010, a licensed psychologist specializing in the psychological evaluations of children and adolescents who twice evaluated RESPONDENT'S DAUGHTER over a span of nearly three years, and her high school guidance counselor, all of whom explained the impact on RESPONDENT'S DAUGHTER of extraordinary pressure of being the only U.S. citizen in her family and the constant fear that her family unit will be torn apart, and how these fears made her emotionally fragile and prone to depression.

The IJ overlooked strong record evidence that showed that RESPONDENT'S DAUGHTER's psychological condition would worsen substantially if her father was deported and she was unable to accompany him, and that this is not the "normal" depression that a child might experience as a consequence of a parent's deportation, but a much more complex and profound syndrome arising from the particular facts of RESPONDENT'S DAUGHTER's life and her family. The IJ also failed to properly consider the record evidence that demonstrated that RESPONDENT'S DAUGHTER would suffer exceptional and extremely unusual hardship if she accompanied her father to Mexico.

It is well established that psychological harm to a qualifying relative is an important factor in determining exceptional and extremely unusual hardship in a cancellation of removal application. *Alvarez Figueroa v. Mukasey*, 543 F.3d 487, 497 (9th Cir. 2008) (evidence of the psychological harm that a U.S. citizen child would suffer is directly relevant to the parent's cancellation of removal claim); *see also, Tukhwinich v. I.N.S.*, 64 F.3d 460, 463 (9th Cir. 1995) (IJ's failure in a suspension of deportation case to consider the particular and unusual psychological hardship to respondent if deported warranted reversal).

Specifically, the relevant inquiry requires a future-oriented analysis, not merely an analysis of RESPONDENT'S DAUGHTER's present condition. *Alvarez Figueroa*, 543 F.3d at 497-98 ("Congress did not provide for the exercise of discretion based upon whether the citizen-children

already faced an extremely unusual hardship *as they live in the United States*; rather, Congress intended that discretion in cancellation of removal cases be exercised on the basis of whether removal *would result* in an exceptional and extremely unusual hardship to the citizen-children.”) (italics in original).

The Court heard testimony from SOCIAL WORKER, a licensed social worker and certified psychoanalyst who had been seeing RESPONDENT’S DAUGHTER for weekly psychotherapy sessions since 2010. SOCIAL WORKER, who was found credible by the IJ, testified that *if RESPONDENT’S DAUGHTER’s father was deported her underlying depression would become “much more severe and would paralyze her,” and that “she would feel a tremendous amount of responsibility and self-hatred.”* Tr. at 81 (emphasis added).

SOCIAL WORKER further testified that RESPONDENT’S DAUGHTER is more emotionally fragile than other immigrant children in her practice because from a very young age she has had a “heightened sense of being the only one in her family to be born here,” and has felt a “tremendous pressure to be successful and essentially to repay her parents.” Tr. at 86-87. Finally, SOCIAL WORKER testified that while RESPONDENT’S DAUGHTER’s anxiety and depression had been exaggerated by her father’s case, it is not just related to the deportation, but rather, arises from her anxiety about “repaying her parents for coming to this country and giving her so many opportunities that they didn’t have.” Tr. at 83. SOCIAL WORKER testified that RESPONDENT’S DAUGHTER would need ongoing psychological treatment regardless of the outcome of the hearing. Tr. at 82.

The record also contains a psychological evaluation of RESPONDENT’S DAUGHTER based on a detailed clinical interview conducted in October 2009 by PSYCHOLOGIST, a licensed psychologist working with the Catholic Guardian Society and Home Bureau, who specializes in the psychological evaluations of children and adolescents. In that evaluation, PSYCHOLOGIST noted that RESPONDENT’S DAUGHTER is “depressed and overwhelmed by what is happening to her

father and thus to her family and to herself. She feels powerless and sometimes out of control.” PSYCHOLOGIST also stated that RESPONDENT’S DAUGHTER had hints of “ideation about death.” Ex. 7.

PSYCHOLOGIST conducted an updated psychological evaluation of RESPONDENT’S DAUGHTER on January 27, 2012, over two years later. *See* Ex-ID-12, Tab C. In this evaluation, PSYCHOLOGIST noted that RESPONDENT’S DAUGHTER’s “life at this point is in large measure a painful and unbalancing emotional experience, way beyond that of most adolescents her age.” She wrote that RESPONDENT’S DAUGHTER has a crushing sense of responsibility for her father’s situation, “experiences fears and nightmares on a regular basis,” “struggles with anxiety and depression, and with a sense of isolation” from both family and peers, “feels guilty of possessing something that those in her family want but cannot have and needs to justify her existence by dedicating herself to towards the goal of obtain[sic] it for them.” PSYCHOLOGIST also noted that RESPONDENT’S DAUGHTER “often feels so aggrieved and trapped in her situation that she entertains thoughts of finding peace through death.” *Id.*

PSYCHOLOGIST diagnosed RESPONDENT’S DAUGHTER as having an “Adjustment Disorder with Mixed Anxiety and Depressed Mood,” and concluded that the “possibility of losing her father to deportation is causing RESPONDENT’S DAUGHTER enormous suffering, and would cause *in the long run irreparable psychological harm.*” (emphasis added). *Id.*

The IJ completely overlooked the statements and testimony of the psychological experts who explained the impact on RESPONDENT’S DAUGHTER of the extraordinary pressure of being the only U.S. citizen in her family and the constant fear that her family unit will be torn apart. This is not the “normal” depression that a child might experience as a consequence of a parent’s deportation, but a much more complex and profound syndrome arising from the particular facts of

RESPONDENT'S DAUGHTER's life and her family. *See Matter of Monreal*, 23 I.&N. Dec. 56, 65 (BIA 2001).

The IJ also erroneously concluded that RESPONDENT'S DAUGHTER would be unlikely to leave the U.S., and relied on her age, her "academic success," her "maturity and leadership skills," the fact that she receives weekly psychological support, and the presence of her older siblings in the U.S. to conclude that any "difficulties" she would face would not rise to the level of "exceptional and extremely unusual hardship." IJ Dec. at 8. However, none of these factors support the IJ's conclusion, requiring *de novo* review by the Board.

Academic success, or having maturity and leadership skills are not factors indicative of a stable mental state. In fact, there is ample evidence to the contrary. Studies show that students like RESPONDENT'S DAUGHTER, described in psychological literature as "maladaptive perfectionists," who have set up exceedingly high standards for themselves, have an unyielding drive to be successful, are overly self-critical and are socially isolated from their peers, can suffer from severe depression despite being academically successful, often at a high cost to their mental and emotional state.⁸

Indeed, RESPONDENT'S DAUGHTER's therapist, SOCIAL WORKER, and GUIDANCE COUNSELOR, RESPONDENT'S DAUGHTER's guidance counselor and college advisor at Bard High School, explained that RESPONDENT'S DAUGHTER suffers from chronic depression and anxiety despite being academically successful and mature. SOCIAL WORKER described the enormous pressure RESPONDENT'S DAUGHTER faces to be academically

⁸ Kenneth G. Rice, et al., *Self-Esteem as a Mediator Between Perfectionism and Depression: A Structural Equations Analysis*, Journal of Counseling Psychology, 1998, Vol. 45, No. 3, 304-314 (describing the high correlation between maladaptive perfectionism – defined as having unrealistically high personal performance standards, tendencies to be extremely self-critical, having excessive concern about making mistakes, and doubting their actions – and low self-esteem and depression) (attached to this submission); Kenneth G. Rice, et al., *Perfectionism, Stress and Social (Dis)Connection: A Short-Term Study of Hopelessness, Depression and Academic Adjustment Among Honors Students*, Journal of Counseling Psychology, 2006, Vol. 53, No. 4, 524-534 (finding that maladaptive perfectionistic honors students tend to feel depressed, less socially connected, hopeless and academically inferior) (attached to this submission).

successful, and to take advantage of the opportunities that her parents never had growing up in Mexico, or even her older siblings, even though they have spent the majority of their lives in the U.S. Ex. 9, ID-10, Tab 1. She explained how RESPONDENT'S DAUGHTER is racked by guilt and an overwhelming sense of gratitude on the one hand, and a strong desire to be free of her family's hopes and expectations and to be a "normal" teenager, on the other. *Id.* She also discussed the immense mental strain on RESPONDENT'S DAUGHTER caused by the constant need to be the "perfect" child while being in a state of permanent emotional upheaval that her father, or any of the other members of her beloved and close-knit family, could be taken away from her at any time. *Id.* Finally, she described the unbearable pressure on RESPONDENT'S DAUGHTER of knowing that if her father is deported, the foundation of their family, and everything that her parents have worked hard to build, would be destroyed, and that she would have failed to protect him and keep her family intact. *Id.* She explained why RESPONDENT'S DAUGHTER is racked with anxiety, and yet needs to put on a brave face for the sake of her family, and how this has burdened her and compromised her growth as a young, independent person with her own friends and activities. *Id.*

GUIDANCE COUNSELOR, RESPONDENT'S DAUGHTER's guidance counselor, also testified that RESPONDENT'S DAUGHTER was extremely depressed despite being academically very successful. Tr. at 250. GUIDANCE COUNSELOR stated that RESPONDENT'S DAUGHTER coped with her depression and anxiety by blocking out thoughts about her father's deportation and focusing on her studies instead, but she was concerned that RESPONDENT'S DAUGHTER would be unable to sustain that coping strategy in the long-term. GUIDANCE COUNSELOR also testified that family and school were the most important aspects of RESPONDENT'S DAUGHTER's life. She concluded that if RESPONDENT'S DAUGHTER's father were to be deported she would be "emotionally destroyed." Tr. at 257.

In light of the above, it cannot be concluded that RESPONDENT'S DAUGHTER would not suffer exceptional and extremely unusual hardship psychological hardship because she is academically successful, and has maturity and leadership skills.

The IJ also found that RESPONDENT'S DAUGHTER would have sufficient support in the U.S., given that her older siblings had been granted Deferred Action for Childhood Arrivals (DACA). However, DACA does not confer any type of permanent status, so their presence in the U.S. is in no way assured. The record clearly shows that none of RESPONDENT'S DAUGHTER's immediate family members have any permanent status in the U.S.

Finally, the IJ noted that even if RESPONDENT'S DAUGHTER does accompany her father to Mexico, she would be able to access mental health services in that country. IJ Dec. at 8. This conclusion is erroneous for several reasons. First, even while conceding that RESPONDENT'S DAUGHTER would "undoubtedly face significant emotional and psychological hardship" if her father was deported, the IJ baselessly concludes that she would not suffer exceptional and extremely unusual hardship because her parents would find a way to get her mental health treatment. IJ Dec. at 8. This conclusion is erroneous because even if effective treatment were a possibility, it does not negate the fact that RESPONDENT'S DAUGHTER would suffer extremely unusual hardship on account of holding herself responsible for her father's deportation and the breakup of her family. On the contrary, the IJ's concession that mental health treatment would be needed, is itself indicative of the extreme nature of her mental condition.

Further, the IJ's conclusion that mental health services will be adequate in Mexico is not supported by the record, which shows that mental health services for young people of

RESPONDENT'S DAUGHTER's age with high levels of depression or suicidal tendencies are highly inadequate.⁹

Given the unanimous opinions of SOCIAL WORKER, PSYCHOLOGIST and GUIDANCE COUNSELOR regarding the serious and long term psychological impact on RESPONDENT'S DAUGHTER of her father's deportation, and the scholarly evidence linking high achieving, perfectionist behaviors to high levels of depression and anxiety, the IJ erred in finding that Mr. RESPONDENT'S U.S. citizen daughter would not suffer exceptional and extremely unusual hardship if he was removed from the United States. "When important aspects of the individual claim are distorted or disregarded, denial of relief is arbitrary." *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981). *See also*, discussion of cases in section A.2.a, *supra*, requiring the IJ's findings to be based on reasonable inferences drawn from evidence contained in the record as a whole, not on speculation.

In sum, there is uncontroverted evidence in the record that establishes that RESPONDENT'S DAUGHTER would suffer exceptional and extremely unusual psychological hardship if her father is removed from the United States, and that this hardship goes far beyond the ordinary level of hardship that any child would experience upon the deportation of a parent.

⁹ Country conditions information about mental health treatment in Mexico reveals that there are "large unmet needs for mental health services among adolescents with psychiatric disorders in Mexico City." Ex. ID-12, Tab C. Another study of adolescents residing in the Mexico City metropolitan area also concluded that improvements in the mental health care of Mexican youth are urgently needed: "[m]ost suicidal adolescents do not receive treatment Interventions to increase treatment, prevention, and monitoring are sorely needed for this vulnerable population."⁹ *Id.*

VI. Conclusion

For all the reasons discussed above, the IJ's denial of Cancellation of Removal should be reversed, and the Board should find that Mr. RESPONDENT is eligible for Cancellation of Removal under INA §240A(b)(1).

DATED: April 7, 2015

Respectfully submitted:

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A [REDACTED]

Date of this notice: [REDACTED] 2017

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:
Greer, Anne J.
Adkins-Blanch, Charles K.
Cole, Patricia A.

schwarzA
User team: Docket

Falls Church, Virginia 22041

File: A [REDACTED] – New York, NY

Date: [REDACTED] 2017

In re: [REDACTED] a.k.a. [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Claudia Slovinsky, Esquire

APPLICATION: Cancellation of removal

The respondent, a native and citizen of Mexico, appeals an Immigration Judge's decision dated September 22, 2014, which denied his application for cancellation of removal for certain nonpermanent residents pursuant to section 240A(b) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1229b(b). The Department of Homeland Security (the "DHS") has not filed a brief in opposition to the appeal. The appeal will be sustained and the record remanded for background checks.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review *de novo* all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

To meet the eligibility requirements of cancellation of removal, an applicant must establish that: 1) he has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the dates of such application; 2) he has been a person of good moral character during such period; 3) he has not been convicted of an offense under section 212(a)(2), 237(a)(2), or 237(a)(3), subject to paragraph (5); and 4) that his "removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." Section 240A(b)(1)(D) of the Act, 8 U.S.C. § 1229b(b)(1)(D).

Upon *de novo* review, we reverse the Immigration Judge's decision to deny the respondent's application for cancellation of removal under section 240A(b) of the Act (I.J. at 5-9). While the Immigration Judge found that the respondent had satisfied the statutory requirement of continuous physical presence in the United States, she found that the respondent had not established the requirement of "good moral character" or the requisite "exceptional and extremely unusual hardship" to his qualifying relative.

We disagree with the Immigration Judge that the respondent's removal to Mexico would not result in exceptional and extremely unusual hardship to the respondent's United States citizen daughter (I.J. at 7-9). Our decisions in *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); and *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), examine the issue of what constitutes exceptional and extremely unusual hardship. The respondent's daughter was 18 at the time of the September 2014 hearing (I.J. at 3; Exh. 2). The

respondent indicated that he was not sure that he would be willing to take his daughter with him to Mexico (I.J. at 7; Tr. at 43). He indicated in his application for cancellation of removal that his daughter would not accompany him to Mexico (I.J. at 7; Exh. 2). The daughter's therapist testified about and submitted a treatment summary report regarding the hardship the daughter would suffer if the respondent were removed to Mexico (I.J. at 2; Tr. at 75-89; Exh. 9). She indicated that she had been seeing the respondent's daughter in weekly therapy since 2010, and that the daughter was having daily panic attacks (I.J. at 3, 8; Tr. at 77-81; Exh. 9). In her summary, the therapist opined that the daughter's already fragile emotional state would be adversely impacted (Exh. 9). The daughter's high school guidance counselor testified about, and submitted a letter regarding the emotional hardship the daughter would suffer if the respondent were removed (I.J. at 2; Tr. at 243-64; Exh. 6). The respondent also submitted a report from a psychologist, [REDACTED] dated December 2009, who commented on the "irreparable psychological harm" the daughter would suffer if the respondent were removed to Mexico (I.J. at 2; Exh. 7 at 7).

We find that based on the aforementioned evidence, the emotional and psychological hardship that the respondent's daughter would face if the respondent is removed to Mexico rises to the level of exceptional and extremely unusual hardship. *See Matter of Recinas, supra; Matter of Andazola, supra; Matter of Monreal, supra.*

We also disagree that the respondent has not shown that he has been a person of good moral character for the requisite 10-year period. *See Matter of Ortega-Cabrera, 23 I&N Dec. 793 (BIA 2005) (I.J. at 5-7).* Although the Immigration Judge based her finding on the respondent's misreporting information on his tax returns for a decade and also that he benefited from public assistance during that time, we agree with the respondent that this is not sufficient to show a lack of good moral character (I.J. at 5-7; Resp. Brief at 6-15). Thus, the respondent is not precluded from establishing good moral character under section 101(f) of the Act.

Because we do not find a discretionary denial warranted in this case, we will sustain the respondent's appeal. A remand is necessary to allow the DHS to complete relevant background examinations and investigations. Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the DHS the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).



FOR THE BOARD