No. 19-5133

IN THE SUPREME COURT OF THE UNITED STATES

ANDREW ANTHONY BROWN, PETITIONER

v.

WILLIAM P. BARR, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether the court of appeals correctly dismissed petitioner's petition for review of a decision of the Board of Immigration Appeals as untimely under 8 U.S.C. 1252(b)(1).

ADDITIONAL RELATED PROCEEDINGS

United States Court of Appeals (11th Cir.):

Brown v. U.S. Att'y Gen., No. 18-14151 (Jan. 31, 2019), petition for reh'g denied (Apr. 10, 2019)

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BRIEF FOR THE RESPONDENT

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OPINION BELOW

The opinion of the court of appeals (Pet. App. C1-C2) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 31, 2019. A motion for reconsideration was denied on April 10, 2019 (Pet. App. C3). The petition for a writ of certiorari was filed on July 1, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., "gives the courts of appeals jurisdiction to review 'final order[s] of removal.'" Mata v. Lynch, 135 S. Ct. 2150, 2154 (2015) (quoting 8 U.S.C. 1252(a)(1)) (brackets in original). "That jurisdiction, as the INA expressly contemplates, encompasses review of decisions refusing to reopen or reconsider such orders." Ibid. (citing 8 U.S.C. 1252(b)(6)).

The INA sets forth a deadline for seeking such review in the courts of appeals. It provides that "[t]he petition for review must be filed not later than 30 days after the date of the final order of removal." 8 U.S.C. 1252(b)(1). That statutory time limit is "mandatory and jurisdictional" and "not subject to equitable tolling." Chao Lin v. U.S. Att'y Gen., 677 F.3d 1043, 1045 (11th Cir. 2012) (citation omitted); see Stone v. INS, 514 U.S. 386, 405 (1995) (describing the time limit set forth in Section 1252(b)(1)'s predecessor statute -- 8 U.S.C. 1105a(a)(1) (Supp. V 1993) -- as "'mandatory and jurisdictional'" and "not subject to equitable tolling") (citation omitted).

The prison mailbox rule applies to the filing of a petition for review. Chavarria-Reyes v. Lynch, 845 F.3d 275, 277-278 (7th Cir. 2016). Thus, in the case of a pro se prisoner, a petition for review is "filed" for purposes of Section 1252(b)(1) when it is delivered to prison officials for mailing to the court of

appeals. See ibid.; Houston v. Lack, 487 U.S. 266, 272 (1988); Fed. R. App. P. 25(a)(2)(A)(iii).

2. Petitioner is a native and citizen of Jamaica. Administrative Record (A.R.) 299. He was admitted to the United States as a temporary nonimmigrant visitor in 2009 and became a lawful permanent resident in 2012. Ibid. In August 2015, following guilty pleas in Florida state court, petitioner was convicted on two counts of trafficking in cocaine, in violation of Florida law, and sentenced to eight years of imprisonment on each count. A.R. 260-273, 275-284.

Later that same month, the Department of Homeland Security (DHS) served petitioner with a notice to appear for removal proceedings. A.R. 297-299. The notice to appear charged that petitioner was subject to removal because he had been convicted of a violation of a law relating to a controlled substance. A.R. 299; see 8 U.S.C. 1227(a)(2)(B)(i). DHS later charged that petitioner was subject to removal on the additional ground that he had been convicted of an aggravated felony -- namely, illicit trafficking in a controlled substance. A.R. 300; see 8 U.S.C. 1101(a)(43)(B), 1227(a)(2)(A)(iii).

In May 2017, an immigration judge (IJ) sustained both grounds of removability and denied petitioner's applications for relief and protection from removal. A.R. 106-118. The IJ found petitioner ineligible for cancellation of removal because he had

been convicted of an aggravated felony and because he lacked the requisite period of continuous residence in the United States. A.R. 110. The IJ also found petitioner ineligible for asylum and withholding of removal because he had been convicted of an aggravated felony and "a particularly serious crime." Ibid. Finally, the IJ denied deferral of removal under the Convention Against Torture (CAT), A.R. 118, finding that petitioner had not met his burden of demonstrating that he would more likely than not be tortured in Jamaica, A.R. 116. The IJ therefore ordered petitioner removed. A.R. 104.

Petitioner, proceeding pro se, filed a notice of appeal with the Board of Immigration Appeals (Board), A.R. 94-96, listing his mailing address as the Northwest Florida Reception Center, a Florida state prison facility where petitioner had been serving his terms of imprisonment, A.R. 96; see A.R. 93. In July 2017 -- while his appeal was still pending -- petitioner filed with the Board a notice stating that his address had changed to Liberty Correctional Institution, a different Florida state prison facility. A.R. 88; Pet. App. B1. DHS subsequently filed with the Board a motion to remand to the IJ for consideration of "the merits of [petitioner's] applications." A.R. 81. The Board granted the motion and remanded the case. A.R. 65.

On remand, the IJ held a hearing at which petitioner appeared via telephone from Liberty Correctional Institution. A.R. 130.

During the hearing, the IJ asked why DHS had moved to remand, ibid., but counsel for DHS was unable to provide an explanation, A.R. 131. The IJ stood by her earlier decision, A.R. 139, explaining that she had "already addressed the merits of [petitioner's] applications for relief," A.R. 59. The IJ therefore certified the record "to the Board for adjudication of [petitioner's] previously filed appeal." Ibid.

In January 2018, petitioner filed with the Board his brief on appeal. A.R. 29-36. The brief listed his address as Wakulla Correctional Institution, another Florida state prison facility. A.R. 29, 36. DHS filed a motion for summary affirmance, A.R. 42-49, likewise listing petitioner's address as Wakulla Correctional Institution, A.R. 49.

In March 2018, the Board dismissed petitioner's appeal. A.R. 26-27. The Board observed that petitioner had not "specifically contested the [IJ's] determinations that his conviction for cocaine trafficking is an aggravated felony and presumptively a particularly serious crime," and that he "is ineligible for any relief except deferral of removal under the [CAT]." A.R. 26. The Board thus found that petitioner had "waived appeal of those determinations." Ibid. The Board then affirmed the IJ's denial of deferral of removal under the CAT, finding no clear error in the IJ's "determination that [petitioner] failed to show that it is more likely than not that he would be tortured in Jamaica."

A.R. 27. The Board prepared two separate cover letters for its decision -- one listing petitioner's address as Wakulla Correctional Institution, A.R. 24, and the other listing his address as the Department of Corrections in Tallahassee, Florida, A.R. 25.

Petitioner filed a motion for reconsideration with the Board. Pet. App. B2-B9; A.R. 11-18. The motion listed his address as Liberty Correctional Institution, Pet. App. B8-B9; A.R. 17-18, and explained that he had been "transferred from one institution in the Florida Department of Corrections to another," Pet. App. B9; A.R. 18. DHS filed an opposition to the motion, A.R. 4-6, likewise listing petitioner's address as Liberty Correctional Institution, A.R. 6, and attaching a print-out from the Florida Department of Corrections' website showing petitioner's "[c]urrent [f]acility" as Liberty Correctional Institution, A.R. 7.

On July 13, 2018, the Board denied petitioner's motion for reconsideration. Pet. App. B11-B12; A.R. 2-3. The Board declined to consider arguments that petitioner could have raised earlier. Pet. App. B11; A.R. 2. The Board also rejected petitioner's contention that the IJ had erred "in treating [petitioner's] application for relief as an application for deferral under the [CAT]." Pet. App. B12; A.R. 3. The Board's cover letter to its decision listed petitioner's address as Wakulla Correctional Institution. Pet. App. B10; A.R. 1.

3. On September 24, 2018, petitioner, still proceeding pro se, gave to prison officials for mailing to the court of appeals a petition for review of the Board's July 13, 2018 decision denying reconsideration. Pet. App. A1-A2. In that filing, petitioner listed his address as Liberty Correctional Institution, id. at A2, and asserted that although he had "tried to file a timely" petition, the Board had sent its decision to an "old" address, id. at A1 (capitalization omitted). Petitioner attached the cover letter to the Board's decision, which listed his address as Wakulla Correctional Institution in the upper left-hand corner, underneath his name. Id. at A5. He also attached the envelope in which the Board had mailed the cover letter and its decision. Id. at A3. The envelope has a clear window in the lower left-hand corner, through which petitioner's name and address on the cover letter would be visible if the letter were folded into thirds and put inside the envelope. Ibid. The envelope also bears a label, placed in the vicinity of the clear window, on which appears "LIBERTY C.I. - 120/121," the address for Liberty Correctional Institution, and the designation "*****INMATE MAIL*****." Ibid.

Petitioner further stated in his filing that he had previously attempted to file his petition for review in federal district court, Pet. App. A1, and he attached the petition he had given to prison officials on August 23, 2018, for mailing to the U.S. District Court for the Northern District of Florida, see C.A. Pet.

for Review 8-9 (Sept. 27, 2018). Petitioner stated, however, that his mailing to that court had been returned to him on September 19, 2018. Pet. App. A1; see C.A. Pet. for Review 12.

The court of appeals directed the parties to file simultaneous briefs addressing whether it could exercise jurisdiction under the circumstances petitioner described. C.A. Order 1-2 (Nov. 2, 2018). In response, the government moved to dismiss the petition for review. Gov't C.A. Resp. 1-7 (Nov. 16, 2018). The government argued that the court lacked jurisdiction because petitioner had not filed his petition for review with the appropriate court within 30 days of the date of the Board's decision denying reconsideration. Id. at 3. The government further argued that petitioner's "untimely filing" should not be excused on the ground that the Board's decision "was not properly served on him." Id. at 4. The government acknowledged that "the Board sent notice of its decision to the Wakulla Correctional Institution," ibid., but contended that the record was "ambigu[ous]" as to whether Wakulla was the wrong address, id. at 5. The government further contended that, in any event, "it is not evident that [petitioner] was deprived of the opportunity to timely seek judicial review," because he had "not present[ed] any definitive evidence" that "he was 'unaware' of the decision until it was too late." Ibid.

Petitioner responded to the court of appeals' jurisdictional question by arguing that the 30-day time limit for filing a

petition for review "did not begin to run until he received notice of the [Board's] decision." Pet. C.A. Resp. 3 (Nov. 19, 2018). Petitioner argued that although he "eventually received" the Board's decision, the Board had mailed it to an "incorrect address" -- Wakulla Correctional Institution. Pet. C.A. Traverse 3 (Dec. 10, 2018). That address, petitioner noted, was neither the "address [he] last filed from" nor "the address he notified the Board of" in his notice of a change of address. Id. at 1. And petitioner argued that because the Board had mailed its decision to an "incorrect address," id. at 3, the petition for review that he had delivered to prison officials for mailing to the district court on August 23, 2018, should be treated as timely, id. at 1.

4. The court of appeals dismissed the petition for review in an unpublished opinion. Pet. App. C1-C2. The court explained that the petition for review filed in the court of appeals "may be deemed filed no earlier than when it was delivered to prison officials for mailing on September 24, 2018." Id. at C1. The court held that "[b]ecause [petitioner's] petition was filed more than 30 days after the [Board's] denial of reconsideration, his petition for review was untimely, and [the court] lack[ed] jurisdiction." Ibid. The court noted petitioner's "request[] that he be given the benefit of the filing date of another petition for review that he mistakenly filed in district court." Id. at C2. But the court of appeals determined that "even if [it] gave

him the benefit of that filing date, that petition was also untimely because it may be deemed filed no earlier than when [petitioner] delivered it for mailing on August 23, 2018." Ibid. That date was more than 30 days after the Board's July 13, 2018 decision denying petitioner's motion for reconsideration.

The court of appeals also rejected petitioner's "contention that the statutory time limit to file a petition for review never started running because the [Board] never mailed its decision to him at his correct address at Liberty Correctional Institution." Pet. App. C2. The court found that "[t]he record here indicates that the [Board] timely mailed its decision to the correct address." Ibid. The court reasoned that petitioner "attached to his petition for review an envelope from the [Board] to him, which envelope was addressed to Liberty and postmarked July 13, 2018." Ibid.

5. Petitioner filed a motion for reconsideration of the court of appeals' decision. Pet. C.A. Mot. for Recons. 1-5 (Feb. 19, 2019). Petitioner asserted that, contrary to the court's opinion, the Board had mailed its decision denying reconsideration to Wakulla Correctional Institution, not Liberty Correctional Institution. Id. at 1. Petitioner noted that "[e]ach time the [Board] makes a decision it is customary for it to place the name and mailing address in the top left corner of the order before mailing." Id. at 3. Petitioner argued that the address label on

the envelope -- on which the court had relied in concluding that the Board had mailed the envelope to Liberty -- was placed there only as part of "the forwarding process" that occurred after the Board had mailed the envelope to Wakulla, the wrong address. Ibid. The court denied petitioner's motion. Pet. App. C3.

ARGUMENT

Petitioner contends (Pet. 10-11) that the Board mailed its July 13, 2018 decision to him at the wrong address, thereby delaying his filing of a petition for review of that decision. Although the government argued below that the record was "ambigu[ous]" on the issue, Gov't C.A. Resp. 5, the Board now agrees with petitioner that it mailed its July 13, 2018 decision to the wrong address, App., infra, 1a. Accordingly, on February 27, 2020, the Board reissued its decision and mailed it to petitioner's current address, giving petitioner a fresh 30 days to file a timely petition for review of the decision. Id. at 1a-3a. In light of the submission in this brief regarding the Board's error, and the Board's reissuance of its decision, this Court should grant the petition for a writ of certiorari, vacate the judgment below, and remand the case for further proceedings (GVR).

1. The INA provides that a "petition for review must be filed not later than 30 days after the date of the final order of removal." 8 U.S.C. 1252(b)(1). "[T]he statute means what it says: the time runs from the date on the face of the order, not on the

date it is received." Lemos v. Holder, 636 F.3d 365, 366 (7th Cir. 2011). That time limit is "jurisdictional" and "not subject to equitable tolling." Chao Lin v. U.S. Att'y Gen., 677 F.3d 1043, 1045 (11th Cir. 2012) (citation omitted); see Stone v. INS, 514 U.S. 386, 405 (1995) (explaining that "statutory provisions specifying the timing of review" -- including Section 1252(b)(1)'s predecessor statute, 8 U.S.C. 1105a(a)(1) (Supp. V 1993) -- are "'mandatory and jurisdictional'" and "are not subject to equitable tolling") (citation omitted). A petition for review filed more than 30 days after the date of the final order of removal is therefore jurisdictionally out of time, regardless of whether the alien received notice of the order. The time for filing a petition for review is thus analogous to the time for filing a notice of appeal of a decision of a district court: in both instances, "[l]ack of notice" does not affect the time for seeking review. Fed. R. Civ. P. 77(d)(2); see Nowak v. INS, 94 F.3d 390, 391 (7th Cir. 1996).

When lack of notice prejudices an alien's ability to file a timely petition for review, however, the alien is not without recourse. When, for example, the Board has mailed its decision to the wrong address, an alien may move the Board to reopen its proceedings and reissue its decision, sending it to the correct address. See Firmansjah v. Ashcroft, 347 F.3d 625, 627 (7th Cir. 2003) (holding that "nothing prevents the Board from

entering a new removal order, which is subject to a fresh petition for review"); cf. Fed. R. App. P. 4(a)(6) (authorizing a district court to "reopen the time to file an appeal" in certain cases where the moving party did not receive notice of the order sought to be appealed). The Board's reissuance of its decision then would give the alien a fresh 30 days from the date of the reissued decision to file a petition for review. See Lewis v. Holder, 625 F.3d 65, 68 (2d Cir. 2010) (per curiam) (holding that the Board's "reissuance of [a] decision triggers a new thirty-day period to obtain judicial review"). If the Board denied the motion to reopen, the alien could petition the court of appeals for review of that denial, and the court could order the Board to reissue its decision if the court concluded that the Board had abused its discretion in denying the motion. See Fuller v. Board of Immigration Appeals, 702 F.3d 83, 88 (2d Cir. 2012). When the Board has mailed its decision to the wrong address, the Board may also reissue its decision sua sponte in order to give the alien a fresh 30 days to file a petition for review of that decision. See 8 C.F.R. 1003.2(a); Mata v. Lynch, 135 S. Ct. 2150, 2153 (2015).

2. The Board has followed that course here. On February 27, 2020, the Board sua sponte reissued its decision denying petitioner's motion for reconsideration and mailed its reissued decision to petitioner's current address, as listed on this Court's docket. App., infra, 1a-3a. The Board's reissuance of its

decision gives petitioner a fresh 30 days to file a petition for review of that decision, and thus eliminates any legal impediment to his seeking review of the Board's denial of reconsideration in the court of appeals.

The Board reissued its decision in light of petitioner's contention (Pet. 10-11) that the Board mailed its original decision to the wrong address -- Wakulla Correctional Institution. See App., infra, 1a. Although the government contended below that the record was "ambigu[ous]" as to whether Wakulla was the wrong address, Gov't C.A. Resp. 5, the government, including the Board, now agrees that it was, and that the correct address was Liberty Correctional Institution. That is because petitioner had previously notified the Board that his address was Liberty Correctional Institution, A.R. 88; Pet. App. B1; both his motion for reconsideration before the Board and DHS's opposition to that motion had listed Liberty as his address, Pet. App. B8-B9; A.R. 6, 17-18; and DHS had attached to its opposition a print-out from the Florida Department of Corrections' website showing the same, A.R. 7.

The government further acknowledges -- as it did below, see Gov't C.A. Resp. 4 -- that the Board mailed its original decision to Wakulla, not Liberty. Wakulla is the address shown on the cover letter to the Board's decision. Pet. App. A5. And as petitioner observes (Pet. 11), "[i]t is customary for the Board" to "fold[]"

the cover letter into thirds, with the address visible through the "cellophane" window in the "left hand corner" of a standard-size envelope. See Hernandez-Velasquez v. Holder, 611 F.3d 1073, 1078 (9th Cir. 2010) (explaining that the Board "enjoys a rebuttable 'presumption of mailing' when it issues a decision accompanied by a properly addressed and dated cover letter") (citation omitted).

It is true that the envelope in this case bears a label addressed to "LIBERTY C.I. - 120/121," with the designation "*****INMATE MAIL******." Pet. App. A3; see id. at C2. But the Clerk's Office of the Board has informed this Office that it does not recognize that label; that the numbers "120/121" do not mean anything to the Clerk's Office; and that the Clerk's Office does not use the designation "INMATE MAIL." Petitioner therefore appears to be correct in contending (Pet. 11) that the label was placed on the envelope by someone other than the Board -- presumably a "prison official at Wakulla" as part of the prison's mail "forwarding" process. That label therefore does not establish that the Board mailed its original decision to Liberty. Rather, as explained above, the cover letter to that decision indicates that the Board mailed the decision to Wakulla, not Liberty. Pet. App. A5. And in light of petitioner's assertion (Pet. 11) that the Board's mailing of its decision to the wrong address "caused [him] to receive the decision late" -- that is, only after it had been forwarded from Wakulla to Liberty -- the Board reissued its

decision, giving petitioner a fresh 30 days to file a petition for review. App., infra, 1a-3a.

3. A GVR is appropriate in light of the submission in this brief regarding the Board's error and the Board's reissuance of its decision.

In dismissing the instant petition for review as untimely, the court of appeals concluded that the Board mailed its original decision to "the correct address" (Liberty). Pet. App. C2. That finding was premised on the view that the label on the envelope, addressed to Liberty, was placed there by the Board. As explained above, however, that premise is incorrect: the Board has now concluded that it mailed its original decision to the wrong address (Wakulla). See App., infra, 1a; pp. 13-16, supra. Because there is a "reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration," a GVR is appropriate. Lawrence v. Chater, 516 U.S. 163, 167 (1996) (per curiam).

On remand, the court of appeals would then have the opportunity to consider whether the Board's reissuance of its decision renders moot the issue of whether petitioner timely petitioned for review of the Board's original decision. See Gau v. Gonzales, 464 F.3d 728, 730 (7th Cir. 2006) (explaining that when "[t]he order sought to be reviewed is no more," "any judicial act * * * would be advisory"); Bronisz v. Ashcroft, 378 F.3d

632, 637 (7th Cir. 2004) (explaining that the reopening of removal proceedings "vacates the previous order of deportation or removal"). But see Ordonez-Tevalan v. Attorney Gen. of the United States, 837 F.3d 331, 336, 338 (3d Cir. 2016) (holding that the Board's reissuance of previous decisions without change did not divest the court of appeals of jurisdiction to consider the merits of a timely filed petition for review from the original decisions). And if petitioner files a new petition for review of the Board's reissued decision, the court of appeals can consider petitioner's arguments on the merits in that proceeding, and there would be no reason for the court to consider this case any further.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment of the court of appeals vacated, and the case remanded to the court of appeals for further proceedings in light of the submission in this brief regarding the Board's error and the Board's February 27, 2020 reissuance of its decision denying reconsideration.

Respectfully submitted.

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MARCH 2020

APPENDIX

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

BROWN, ANDREW ANTHONY
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DHS/ICE Office of Chief Counsel - RG1
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Name: BROWN, ANDREW ANTHONY **A 089-231-555**

Date of this notice: 2/27/2020

The Board's order dated 7/13/2018 was mailed to the wrong address for the respondent. The order is hereby reissued and shall be deemed rendered and mailed as of the date of this transmittal letter, for all regulatory and statutory purposes.

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:
Malphrus, Garry D.

Userteam: Docket

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A089 231 555 – Miami, FL

Date: JUL 13 2018

In re: Andrew Anthony BROWN

IN REMOVAL PROCEEDINGS

MOTION

REISSUED DECISION

FEB 27 2020

BOARD OF IMMIGRATION APPEALS

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Thomas Ayze
Assistant Chief Counsel

APPLICATION: Reconsideration

The respondent has filed a motion to reconsider the Board's March 15, 2018, decision, in which we dismissed the respondent's appeal from the Immigration Judge's decision denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture. The Department of Homeland Security has opposed the motion. The motion will be denied.

In the motion, the respondent argues that the Board erred in the prior decision because the Board did not conduct an independent review of the record to find that his offenses were not "serious drug offenses" or that the respondent is removable (Motion at 1-4). The respondent also argues that his offense was not a drug trafficking aggravated felony (*id.*). However, as noted in the Board's prior decision, the respondent did not specifically contest on appeal the Immigration Judge's determinations that his conviction for cocaine trafficking is an aggravated felony and presumptively a particularly serious crime, and such presumption was not overcome. Therefore, these issues were waived on appeal. *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012). A motion to reconsider based on an argument that could have been raised earlier in the proceedings will be denied.[1] *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

The respondent also argues that the Immigration Judge and the Board erred in adjudicating his application for deferral of removal under Convention Against Torture, because he did not apply for deferral of removal under Convention Against Torture but for asylum, withholding of removal, and withholding of removal under the Convention Against Torture (Motion at 1). However, an application for asylum and withholding of removal also constitutes an application for protection under the Convention Against Torture, including withholding of removal under the Convention

[1] We also note that the respondent denies that he was convicted under Florida Statute section 893.135(1)(B)1.c., which applies to trafficking in cocaine 400 grams to 150 kilograms (Motion at 3). However, the record indicates that the respondent was convicted under this provision, as well as under Florida Statute section 893.135(1)(B)1.b (IJ at 2-3; Exhs. 1-3).

Against Torture and deferral of removal under the Convention Against Torture. Also as noted in the Board's prior decision, the Immigration Judge found that due to his criminal record the respondent is ineligible for any relief from removal other than deferral of removal under the Convention Against Torture. The respondent did not challenge this finding on appeal. We find no legal or factual error in treating the respondent's application for relief as an application for deferral under the Convention Against Torture. Based on the above, the respondent's motion will be denied.

ORDER: The motion to reconsider is denied.

FOR THE BOARD