

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 21 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NGHIA HUU TANG,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-71507

Agency No. A028-019-969

MEMORANDUM*

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

Argued and Submitted July 12, 2010
Seattle, Washington

Before: RYMER and N.R. SMITH, Circuit Judges, and WALTER, Senior District
Judge.**

Nghia Huu Tang petitions for review of a final order of removal issued by
the Board of Immigration Appeals (BIA). We dismiss the petition.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Donald E. Walter, Senior United States District Judge
for Western Louisiana, sitting by designation.

Assuming (as the parties do) that Or. Rev. Stat. § 164.325 does not categorically qualify as a crime of violence, Tang's conviction for first degree arson constituted an aggravated felony under the modified categorical approach. The judgment makes clear that Tang was found guilty of the crime in Count 1 of the indictment, which mirrors subsection 1(a) of § 164.325.¹ This means the court found that by starting the fire, Tang intentionally damaged the property of someone else. In turn, this constitutes a crime of violence under 18 U.S.C. § 16.²

Tang is deportable due to his conviction of an aggravated felony. We need not address the BIA's conclusion that Tang is also deportable for committing two crimes of moral turpitude.

DISMISSED.

¹ Tang faults the BIA for mistakenly relying on *Matter of Palacios*, 22 I & N Dec. 434 (BIA 1998), something we do not decide as our review is *de novo*.

² We do not consider Tang's further argument that the government failed to submit enough additional evidence to show he was found guilty under subsection (1)(a), because he made no such argument before the BIA.