

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

United States Court of Appeals
Fifth Circuit

FILED

June 23, 2010

Lyle W. Cayce
Clerk

No. 08-60586
Summary Calendar

BARRINGTON BERTON MORGAN-WHITE

Petitioner

v.

ERIC H HOLDER, JR, U S ATTORNEY GENERAL

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A90 395 622

ON PETITION FOR REHEARING EN BANC

(Opinion 12/15/09, 5 Cir., _____, _____, F.3d _____)

Before HIGGINBOTHAM, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is GRANTED.

Morgan-White petitioned this court for review of the decision of the Board of Immigration Appeals dismissing his appeal and affirming the immigration judge's order that Morgan-White is ineligible for cancellation of removal pursuant to 8 U.S.C. § 1229b(a) because he committed an aggravated felony.

This court affirmed the Board's decision, finding Morgan-White's appeal foreclosed by our decision in *Carachuri-Rosendo v. Holder*.¹ The Supreme Court has since reversed that decision, rejecting this court's "hypothetical approach" and holding that "the defendant must . . . have been *actually convicted* of a crime that is itself punishable as a felony under federal law."² As in *Carachuri-Rosendo*, Morgan-White was not actually convicted under the state recidivist statute. In accordance with the Supreme Court's ruling, we now REVERSE and REMAND. The outstanding motion is moot.

¹ 570 F.3d 263 (5th Cir. 2009).

² *Carachuri-Rosendo v. Holder*, No. 09-60 (U.S., June 14, 2010).