U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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3535 Lawton Road, Suite 100
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Name: CLASE, JUAN CARLOS

A 043-986-617

Date of this notice: 10/31/2013

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John

TranC
Userteam: Docket

File: A043 986 617 – Orlando, FL

Date: OCT 31 2013

In re: JUAN CARLOS CLASE

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Ben Winograd, Esquire

ON BEHALF OF DHS: Jennifer Page-Lozano
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] - Crime involving moral turpitude

APPLICATION: Termination; 212(h) waiver; continuance; remand

The respondent, a native and citizen of the Dominican Republic, has appealed from the Immigration Judge's decision dated June 3, 2013. Alternatively, he moves to remand to allow the Immigration Judge to render a more complete decision setting forth his rationale for finding the respondent subject to removal and ineligible for relief. The record will be returned to the Immigration Court for further proceedings.

An Immigration Judge must identify and fully explain his decision so that the parties will not be deprived of the opportunity to contest the judge's determination and the Board will be able to meaningfully exercise its responsibility of reviewing the decision in light of the arguments advanced on appeal. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999); *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994).

The respondent could be properly charged with a ground of inadmissibility as a returning lawful permanent resident if he falls within one of the exceptions to the general rule that such an individual is not to be treated as an applicant for admission, such as being an alien who has been convicted of an offense described under section 212(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2). *See Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011). The Department of Homeland Security (DHS) bears the burden of showing by clear and convincing evidence that the exception applies.

The Immigration Judge, without explanation, found that the respondent's offense of second degree attempted gang assault in violation of New York Penal Law section 120.06 was a crime involving moral turpitude that made the respondent subject to removal, as charged. The Immigration Judge also provided no explanation for his determination that the respondent's offense was an aggravated felony crime of violence that rendered the respondent ineligible for a waiver of inadmissibility under section 212(h) of the Act. As noted by the respondent on appeal,

his indictment for this offense states in an ambiguous fashion that the crime was committed "on or about" April 14, 1999, around the time of his 18th birthday, thus raising the issue whether the exception to the removal charge for youthful offenders may be applicable (Brief at 13-14). Because the indictment raises the possibility that the exception applies, we agree with the respondent that the fact of conviction alone does not constitute clear and convincing evidence sufficient for the DHS to meet its burden of proof that he is subject to removal on this basis. Inasmuch as the Immigration Judge provided no factual findings or legal analysis in this regard, we are unable to determine if the charge was properly sustained.

As presently constituted, we do not find that the Immigration Judge's decision includes sufficient factual findings and legal analysis to provide the Board with a meaningful basis for review. *See generally Matter of S-H-*, 23 I&N Dec. 462, 463-65 (BIA 2002). An explanation of the reasons in the transcript is not sufficient. We will return the record to the Immigration Judge for further proceedings, if warranted, and the entry of a more complete decision which addresses the charge of removability. He should also provide appropriate findings of fact and conclusions of law with regard to any relief from removal sought by the respondent. Upon preparation of the full decision, the Immigration Judge shall issue an order administratively returning the record to the Board. The Immigration Judge shall serve the administrative return order on the respondent and the Department of Homeland Security. The Board will thereafter give the parties an opportunity to submit briefs in accordance with the regulations.

Accordingly, the following orders will be entered.

ORDER: The respondent's removal is stayed.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings in accordance with this decision.

FOR THE BOARD