U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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DHS LIT./York Co. Prison/YOR
3400 Concord Road
York, PA 17402

Name: ROJAS, RAMIRO ENRIQUE **A056-123-018**

Date of this notice: 1/17/2012

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:
Pauley, Roger

U.S. Department of Justice

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ROJAS, RAMIRO ENRIQUE
A056-123-018
175 PIKE COUNTY BLVD
LORDS VALLEY, PA 18428

DHS LIT./York Co. Prison/YOR
3400 Concord Road
York, PA 17402

Name: ROJAS, RAMIRO ENRIQUE **A056-123-018**

Date of this notice: 1/17/2012

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Pauley, Roger

File: A056 123 018 - York, PA

Date: JAN 17 2012

In re: RAMIRO ENRIQUE ROJAS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Tracey M. Hubbard, Esquire

ON BEHALF OF DHS: Richard S. O'Brien
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] - Convicted of controlled substance violation

APPLICATION: Termination

The respondent, a native and citizen of the Dominican Republic, and a lawful permanent resident since his admission as an immigrant on or about March 8, 2003, has filed a timely appeal of an Immigration Judge's September 22, 2011, decision. In that decision, the Immigration Judge incorporated by reference his interlocutory decision dated May 19, 2011, denying the respondent's motion to terminate; and finding the respondent removable as charged, based on his admissions (Tr. at 19) and his record of conviction as to his 2009 Pennsylvania controlled substance violations. The appeal will be dismissed. The respondent's request for oral argument before the Board is denied. 8 C.F.R. § 1003.1(e)(7). The request for three-member review is denied. *See* 8 C.F.R. § 1003.1(e)(6).

The respondent admitted that on December 14, 2009, he was convicted, upon a plea of guilty, in the Court of Common Pleas, Lackawanna County, Commonwealth of Pennsylvania, for the offense of Use/Possession of Drug Paraphernalia, in violation of 35 PA. STAT. ANN. § 780-113(a)(32), as alleged and charged in the Notice to Appear (Exh. 1) (Tr. at 19). In addition, the record reflects that the respondent admitted that on March 31, 2009, he was convicted, upon a plea of guilty, in the Court of Common Pleas, Lackawanna County, Commonwealth of Pennsylvania, for the offense of Possession of Marijuana, to wit: 30 or fewer grams, in violation of 35 PA. STAT. ANN. § 780-113(a)(31) (Tr. at 19).

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of R-S-H-*, 23 I&N Dec. 629 (BIA 2003); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review questions of law, discretion, and judgment and all other issues in an appeal of an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent argues on appeal that the Immigration Judge erred in finding that his 2009 Pennsylvania drug paraphernalia conviction was for a controlled substance offense because the "controlled substance" involved in his drug paraphernalia conviction is not identified in the record of conviction.

Whether the respondent's Pennsylvania drug paraphernalia conviction categorically renders the respondent removable under section 237(a)(2)(B)(i) of the Act turns on the meaning of the phrase "relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802)." The phrase is not defined in the Act, and is ambiguous. *See Negusie v. Holder*, 129 S.Ct. 1159, 1167 (2009) (ambiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gaps in a reasonable fashion). As we have noted, "the 'relating to' concept has a broad ordinary meaning, namely, to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." *Matter of Martinez Espinoza*, 25 I&N Dec. 118 (BIA 2009), quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (internal quotations omitted); *see also Matter of T-C-*, 7 I&N Dec. 100 (BIA 1956) (the phrase "related to" has "broad coverage"). We acknowledge that by using the phrase "relating to" in section 237(a)(2)(B)(i) of the Act, Congress evidenced an intent to define the listed offenses in their broadest sense. *See Park v. Attorney General*, 472 F.3d 66 (3d Cir. 2006) (holding that trafficking in counterfeit goods is an aggravated felony because it is related to the offense of counterfeiting); *Drakes v. Zimski*, 240 F.3d 246 (3d Cir. 2001) (considering "relating to forgery" language used in section 101(a)(43) of the Act). As it is used in the Act, the phrase is to be construed broadly, and a one-to-one correspondence between state and federal law is not required. *See Desai v. Mukasey*, 520 F.3d 762, 764-66 (7th Cir. 2008) (the phrase "relating to" in the Act has a broadening effect, and does not require one-to-one correspondence); *see also Peters v. Ashcroft*, 383 F.3d 302 (5th Cir. 2004) (construing the "relating to" language in section 237(a)(2)(B)(i) of the Act broadly).

Acknowledging that it has not "ruled directly on this question," the United States Court of Appeals for the Third Circuit, the jurisdiction wherein this case arises, in an unpublished decision, noting that "several of our sister circuits have held that the crime of possessing drug paraphernalia relates to the crime of possessing drugs, as 'it is the relation of the given pipe to its use with the forbidden drug that makes it 'drug paraphernalia,'" agreed with their determinations that "the offense of possessing drug paraphernalia is closely linked to the offense of possessing drugs," and that "[a]s such, an alien convicted of either offense may be deemed removable and inadmissible under the BIA's broad construction of these provisions." *See Hussein v. Attorney General of U.S.*, 413 Fed.Appx. 431, 434-435 (3d Cir. 2010) (citing *Barraza v. Mukasey*, 519 F.3d 388, 392 (7th Cir. 2008); *Alvarez Acosta v. Att'y Gen.*, 524 F.3d 1191, 1193, 1196 (11th Cir. 2008); *see also Luu-Le v. INS*, 224 F.3d 911, 915-16 (9th Cir. 2000). Thus, we similarly look for guidance to the decision of the United States Court of Appeals for the Ninth Circuit that involved an Arizona drug paraphernalia statute that is substantially similar to the Pennsylvania statute at issue in this case.[1]

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[1] The statute of conviction, found at 35 PA. STAT. ANN. § 780-113(a)(32) prohibits:

"The use of, or possession with intent to use, drug paraphernalia for the purpose of planting,

(continued...)

In *Luu-Le v. INS*, 224 F.3d 911 (9th Cir. 2000), the Ninth Circuit held that a conviction for possession of drug paraphernalia under ARIZONA REV. STAT. § 13-3415 constitutes a conviction "relating to a controlled substance" for immigration purposes, even though Arizona's definition of "drug" does not map perfectly with the definition of "controlled substance" in the Act. *See Luu-Le v. INS, supra*, at 915. *See also Estrada v. Holder*, 560 F.3d 1039, 1042 (9th Cir. 2009).

The Arizona and Pennsylvania are alike in that the definition of the term "drug paraphernalia" referenced in both statutes makes abundantly clear that an object is not drug paraphernalia unless it is in some way linked to drugs. Specifically, the Pennsylvania courts have found that "for an item to be classified as 'drug paraphernalia,' the prosecution must establish that the person charged with violating the Drug Paraphernalia Act, 35 PA. STAT. ANN. § 780-101 et seq., had specific intent that the item possessed or delivered be used with controlled substances." *Com. v. Torres*, 617 A.2d 812, 421 Pa. Super. 233 (Super. 1992). In addition, both statutes contain similar definitions of the term "drug," and both statutes list factors to be considered in determining whether an object is drug paraphernalia. Compare 35 PA. STAT. ANN. § 780-113(a)(32) with ARIZONA REV. STAT. § 13-3415.

The factors required to be considered by the Pennsylvania statute ensure that the statute does not criminalize the non-drug-related use of an object potentially characterized as "drug paraphernalia." *See Luu-Le v. INS, supra*, at 915. We further agree with the Immigration Judge that using the Ninth Circuit's decision in *Luu-Le v. INS* as a guide, although the definition of "drug" as used in the Pennsylvania statute at issue does not map perfectly the definition of "controlled substance" as used in section 241(a)(2)(B)(i) of the Act, such a statute is clearly a law "relating to" a controlled substance. Therefore, even if we were to accept *arguendo* the respondent's contention that the identity of the particular controlled substance is not found in the respondent's record of conviction, we nevertheless find that the respondent's 2009 Pennsylvania drug paraphernalia conviction in violation of 35 PA. STAT. ANN. § 780-113(a)(32) constitutes a controlled substance violation pursuant to section 237(a)(2)(B)(i) of the Act.

Notwithstanding that the respondent also sustained a 2009 Pennsylvania conviction for possession of a small amount of marijuana, the fact that the respondent was convicted of two controlled substance violations means that he is not eligible for the exception under

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[1] (...continued)
propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this Act.

Similarly, we note that ARIZONA REV. STAT. § 13-3415 provides in relevant part that:

"[i]t is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a drug in violation of this chapter."

section 237(a)(1)(B)(i) of the Act for a single offense involving possession for one's own use of 30 grams or less of marijuana. Therefore, we find that the respondent is removable, as charged, pursuant to section 237(a)(2)(B)(i)of the Act.

Accordingly, the appeal will be dismissed.

ORDER: The respondent's appeal is dismissed.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
YORK, PENNSYLVANIA

File: A056-123-018 September 22, 2011

In the Matter of

RAMIRO ENRIQUE ROJAS	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: 237(a)(2)(B)(i).

APPLICATIONS:

ON BEHALF OF RESPONDENT: TRACY HUBBARD

ON BEHALF OF DHS: RICHARD O'BRIEN

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 20 year old single male alien, native and citizen of the Dominican Republic, placed into removal proceedings with the issuance of a Notice to Appear, Form I-862, served on January 29, 2010. At prior proceedings, the respondent conceded allegations 1, 2, and 3, denied 4, and conceded 5.

The Court has issued an interlocutory ruling in

writing dated May 19, 2011, essentially denying the respondent's motion to terminate for the reasons set forth in the motion. The Court hereby fully incorporates its interlocutory ruling into this order today.

The respondent is offered voluntary departure. He has declined it, which is certainly his right. He wishes to reserve on salient issues for the appeal. Therefore, the following orders are hereby entered.

ORDER

The respondent is hereby ordered removed from the United States to the Dominican Republic.

WALTER A. DURLING
United States Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE WALTER A. DURLING, in the matter of:

RAMIRO ENRIQUE ROJAS

A056-123-018

YORK, PENNSYLVANIA

is an accurate, verbatim transcript of the recording as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

Stacy A. Sobieck

STACY A. SOBIECK (Transcriber)

DEPOSITION SERVICES, Inc.

NOVEMBER 1, 2011

(Completion Date)