



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*

**colon, luis antonio
Luis Colon
1900 Saint James Place, Suite 450
Houston, TX 77056**

**DHS/ICE Office of Chief Counsel
Montgomery Proc Ctr, 806 Hilbig Rd
Conroe, TX 77301**

Name: J [REDACTED], H [REDACTED]

A [REDACTED]-659

Date of this notice: 12/10/2019

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:
Creppy, Michael J.
Liebowitz, Ellen C
Hunsucker, Keith

User team: Docket

For more unpublished decisions, visit
www.irac.net/unpublished/index

RC

Falls Church, Virginia 22041

File: A [REDACTED]-659 – Conroe, TX

Date: DEC 10 2019

In re: H [REDACTED] J [REDACTED] a.k.a. [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Luis A. Colon Perez, Esquire¹

ON BEHALF OF DHS: Jennifer Riester
Assistant Chief Counsel

APPLICATION: Withholding of removal

The respondent, a native and citizen of South Korea and lawful permanent resident of the United States, appeals from the Immigration Judge's June 21, 2019, decision pretermittting her application for withholding of removal.² Section 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3)(A). The Department of Homeland Security filed a motion for summary affirmance. The record will be remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The sole issue on appeal is whether the Immigration Judge erred by pretermittting the respondent's application for withholding of removal under section 241(b)(3)(A) of the Act. The Immigration Judge found that the respondent is removable under sections 237(a)(2)(A)(ii) and (iii) and, without additional fact finding or legal analysis, that as a result of her conviction for an aggravated felony she is ineligible for asylum and withholding of removal (IJ at 6). While an aggravated felony conviction renders the respondent per se ineligible for asylum, it does not necessarily render her ineligible for withholding of removal. Compare sections 208(b)(2)(A)(ii) an (B)(i) of the Act (providing that for the purposes of asylum, an aggravated felony is per se a particularly serious crime), with section 241(b)(3)(B) of the Act (providing that an alien who has

¹ The respondent is represented before the Board, as she was before the Immigration Judge, by a Qualified Representative. We note that the respondent submitted documents to the Board pro se. Given our disposition of the respondent's appeal, we need not determine if these documents were properly filed or, if so, they would constitute new evidence warranting remand.

² The respondent has not challenged on appeal the Immigration Judge's denial of her application for protection under the Convention Against Torture. 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18. We therefore deem this issue waived. See e.g., *Matter of J-G-P-*, 27 I&N Dec. 642, 651 n.1 (BIA 2019).

been convicted of a particularly serious crime is ineligible for withholding of removal and that an alien who has been convicted of an aggravated felony for which she has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime).

Because the respondent was not sentenced to a term of imprisonment of at least 5 years, her aggravated felony conviction does not render her per se ineligible for withholding of removal. Accordingly, further consideration of the respondent's conviction is required in order to determine whether it was for a particularly serious crime. *See Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007) (generally, where a conviction is not for an aggravated felony for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years, to determine whether an offense was a particularly serious crime, we consider a variety of factors, including the nature of the conviction, the type of sentence imposed, and the circumstances and underlying facts of the conviction.); *see also Hakim v. Holder*, 628 F.3d 151, 155 (5th Cir. 2010) (finding that the Board applied the correct legal standard "because the B[oard's] opinion clearly indicates that it performed a case-specific analysis of [an alien]'s claim consistent with precedent).

We will therefore remand the record to the Immigration Judge to make factual findings and engage in legal analysis with respect to whether the respondent has been convicted of a particularly serious crime and, if not, to further consider the respondent's application for withholding of removal.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD