



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: LOUISSAINT, ROSIER

A 074-624-853

Date of this notice: 4/30/2018

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

Userteam: Docket

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Falls Church, Virginia 22041

File: A074 624 853 – Orlando, FL

Date:

APR 30 2018

In re: Rosier LOUISSAINT a.k.a. Rusier Louissaint

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David H. Stoller, Esquire

ON BEHALF OF DHS: Tamaira Rivera
Assistant Chief Counsel

The respondent, a native and citizen of Haiti, appeals decision of the Immigration Judge, dated December 21, 2017, ordering his removal from the United States. The Department of Homeland Security (“DHS”) has moved for summary affirmance of the Immigration Judge’s decision.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The DHS charges that the respondent, who was admitted to the United States as a lawful permanent resident, is subject to removal under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii), as he was convicted of a crime of violence aggravated felony under section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F) (IJ at 1-2; Exh. 1). The Immigration Judge held that the respondent has been convicted of a crime of violence under 18 U.S.C. § 16(b), as his offense was a felony which, by its nature, involved a substantial risk that physical force against the person or property of another may be used in the course of committing the offense (IJ at 3-6). The DHS has not argued that the respondent was convicted of a crime of violence under 18 U.S.C. § 16(a) or that he is otherwise subject to removal from the United States.

Since the entry of the Immigration Judge’s decision, the Supreme Court has held that 18 U.S.C. § 16(b), as incorporated into the Act’s definition of aggravated felony, is impermissibly vague in violation of due process. *Sessions v. Dimaya*, ___ S.Ct. ___, 2018 WL 1800371 (Apr. 17, 2018). In light of the decision in *Dimaya*, the DHS is unable to establish the respondent’s removability based upon a conviction for an aggravated felony crime of violence under 18 U.S.C. § 16(b). Accordingly, the following order is entered.

ORDER: These removal proceedings are terminated.


FOR THE BOARD