U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: MARTINEZ-GARCIA, LEONARDO **A 200-679-434**

Date of this notice: 5/25/2018

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:
Crossett, John P.
Cole, Patricia A.
Pauley, Roger

Userteam: Docket

File: A200 679 434 – Detroit, MI

Date: MAY 25 2018

In re: Leonardo MARTINEZ-GARCIA a.k.a. Leonardo Martinez Garcia

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Manuela Daniela Policicchio, Esquire

APPLICATION: Adjustment of status

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's May 9, 2017, decision denying his application for adjustment of status under section 245(a) of the Immigration and Nationality Act, 8 U.S.C. § 1255(a), and ordering him removed. The appeal will be sustained.

We review Immigration Judges' factual findings for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other questions de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge concluded that the respondent's admission, during cross-examination, that he "tried drugs" (specifically, marijuana and cocaine on one occasion when he was 14 or 15 years old) rendered him inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II)—and, by extension, ineligible for adjustment of status—as an alien who has "admitted having committed, or admitted committing acts which constitute the essential elements of ... a violation of ... any law or regulation of a State, the United States, or a foreign country relating to a controlled substance" (IJ at 14; Tr. at 74). We respectfully disagree. In *Matter of K-*, 7 I&N Dec. 594 (BIA 1957), and other precedents, this Board has set forth the following requirements for a validly obtained "admission": (1) the admitted conduct must constitute the essential elements of a crime in the jurisdiction in which it occurred; (2) the applicant must have been provided with the definition and essential elements of the crime prior to making the admission; and (3) the admission must have been made voluntarily. *See also Matter of G-M-*, 7 I&N Dec. 40 (BIA 1955); *Matter of E-V-*, 5 I&N Dec. 194 (BIA 1953); *Matter of J-*, 2 I&N Dec. 285 (BIA 1945). The present respondent was not advised in advance of the definition and elements of the admitted offense (Tr. at 74, 84). Accordingly, the record is insufficient to support a finding that his admission renders him inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

In light of this determination, we will remand the record to allow the respondent to apply for adjustment of status and any other relief for which he is eligible.

ORDER: The appeal is sustained, the Immigration Judge's decision is reversed in part, and the record is remanded for further proceedings consistent with the foregoing opinion.

FOR THE BOARD

File: A200 679 434 – Detroit, MI Date: MAY 25 2018

In re: Leonardo Martinez-Garcia a.k.a. Leonardo Martinez Garcia

CONCURRING/DISSENTING OPINION: Roger A. Pauley

Board Member Roger A. Pauley respectfully concurs in the result. While I would not apply *Matter of K-*, 7 I&N 594 (BIA 1957), to the instant circumstances of a represented alien testifying before a neutral adjudicator, given that decision's purpose to prevent entrapment, I concur in the result because there is no showing that a 14 year old may be convicted of a crime in Michigan (as opposed to being found delinquent) for drug use. *See People v. Thenghkam*, 610 N.W. 2d 571, 579-80 (Ct. App. Mich. 2000).

Roger A. Pauley
Board Member