



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041*

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4400 SW 44th Street, Suite A
Oklahoma City, OK 73119-2800**

Name: GONZALEZ-MANJARREZ, SERG... A 093-108-092

Date of this notice: 5/22/2013

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:
Pauley, Roger**

**williams
User team: Docket**

Immigrant & Refugee Appellate Center | www.irac.net

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**GONZALEZ-MANJARREZ, SERGIO
A093-108-092
DAVID L. MOSS JUSTICE CTR
300 NORTH DENVER
TULSA, OK 74103**

**DHS/ICE - Office of Chief Counsel - OKT
4400 SW 44th Street, Suite A
Oklahoma City, OK 73119-2800**

Name: GONZALEZ-MANJARREZ, SERG... A 093-108-092

Date of this notice: 5/22/2013

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
Chief Clerk

Enclosure

Panel Members:
Pauley, Roger

williams
User team: Docket

Falls Church, Virginia 22041

File: A093 108 092 – Tulsa, OK¹

Date: MAY 22 2013

In re: SERGIO GONZALEZ-MANJARREZ a.k.a. Sergio Majarrez

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Steven F. Langer, Esquire

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony (as defined in section 101(a)(43)(B))

APPLICATION: Remand

The respondent, a native and citizen of Mexico, appeals from the decision of the Immigration Judge dated January 30, 2013, finding him removable as charged and ordering his removal to Mexico. The decision of the Immigration Judge will be vacated and the decision will be remanded for further consideration.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge concluded that the respondent's conviction of unlawful possession of a controlled dangerous substance with the intent to distribute under 63 Okl. St. Ann. § 2-401 is categorically a drug trafficking aggravated felony pursuant to section 101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(B), rendering him removable under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(iii).

Subsequent to the Immigration Judge's decision in this matter, the United States Supreme Court issued *Moncrieffe v. Holder*, 133 S.Ct. 1678 (U.S. 2013), in which the Court held that, "[i]f a noncitizen's conviction for a marijuana distribution offense fails to establish that the offense involved either remuneration or more than a small amount of marijuana, the conviction is not for an aggravated felony under the INA." *Id.* at 1693-94. The record here discloses that the controlled substance at issue is marijuana, but does not disclose either that the offense involved

¹ The proceedings before the Immigration Judge in this matter were completed in Tulsa, Oklahoma through video conference pursuant to section 240(b)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(2)(A)(iii).

remuneration or more than a small amount of marijuana (Exh. 2).² Accordingly, in light of *Moncrieffe v. Holder*, *supra*, we will vacate the decision of the Immigration Judge and remand for further proceedings to determine the respondent's removability under the sole lodged charge.³ Accordingly, the following orders will be entered.

ORDER: The Immigration Judge's order dated January 30, 2013, is vacated.

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


FOR THE BOARD

² The term "distribution" under Oklahoma law includes exchanges without remuneration. *See Goodner v. State*, 546 P.2d 653, 57-58 (Okla.Cr.1976) (holding that the plain meaning of the word "distribute" includes not only selling or dealing, but also dividing, sharing, or delivering, with or without compensation and with or without the existence of an agency relationship).

³ Though not so charged by the Department of Homeland Security, the respondent's conviction renders him subject to removal under section 237(a)(2)(B)(i) of the Act. *Moncrieffe v. Holder*, *supra*, at 1692.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
DALLAS, TEXAS

File: A093-108-092

January 30, 2013

In the Matter of

SERGIO GONZALEZ-MANJARREZ)	
)	IN REMOVAL PROCEEDINGS
RESPONDENT)	
)	

CHARGE: Violation of Section 237(a)(2)(A)(iii).

APPLICATION: None stated.

ON BEHALF OF RESPONDENT: STEVEN LANGER
Oklahoma City, Oklahoma

ON BEHALF OF DHS: JACK SPENCER
Oklahoma City

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a male native and citizen of Mexico who is detained at the David L. Moss Correctional Facility in Tulsa, Oklahoma. Proceedings were conducted by video to the court in

Oklahoma City.

The respondent was issued a Notice to Appear on September the 13th, of 2012. See Exhibit 1.

The respondent was originally seen in a detained environment on January 22, 2013. The NTA was marked and admitted as Exhibit 1. The respondent acknowledged proper receipt and service of the same. The Court then granted the respondent's request for a continuance and reset the case for one week until January 30, 2013.

On January 30, the Court received into evidence and marked, without objection, as Exhibit 2 a certified copy of the criminal information from the District Court of Oklahoma County, case CF2006-2437, which corresponds to the conviction which the respondent acknowledged.

Through the respondent's attorney of record, the respondent admitted allegations 1, 2, 3 and 4 on the NTA, but denied removability under Section 237(a)(2)(A)(iii). It is the respondent's contention that because the information does not disclose the weight of the marijuana and the method in which it was transferred, that the Government cannot meet its burden of proof.

The Court disagrees. The United States Board of Immigration Appeals has previously held that a violation of Section 630.S.-2-401, possession of a controlled substance with the intent to distribute, is categorically a drug trafficking

crime as defined in Section 101(a)(43)(B).

The respondent has acknowledged the fact of the conviction. An admission when pleading is sufficient to resolve the fact of a conviction. Cite the Matter of Pichardo, 21 I&N Dec. 330 (1996). So the Government is not required to produce a certified copy of the conviction when the respondent has admitted it in accordance with the Board's decision in Matter of Pichardo.

Having determined that the violation of 63 Oklahoma Statute-2.401 is categorically a drug trafficking crime, it, therefore, follows that the Government has met its burden by clear and convincing evidence in establishing that the respondent is removable from the United States as charged pursuant to Section 237(a)(2)(A)(iii) of the Act.

The respondent was asked through counsel to designate a country of removal and the respondent designated the nation of Mexico.

Therefore, the Court finds that the respondent is removable ~~from~~ the United States as charged.

Counsel for the respondent was asked to identify any potential relief and he indicated that there was no relief available and that they merely desired to appeal the Court's ruling on the question of removability.

ORDER

Therefore, no relief having been identified by this

respondent, it is hereby ordered that he be removed from the United States to the nation of Mexico.

The respondent will be advised separately on the record of his appeal rights.

Please see the next page for electronic signature

MICHAEL P. BAIRD
Immigration Judge

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January 30, 2013

1003-108-092

//s//

Immigration Judge MICHAEL P. BAIRD

bairdm on March 26, 2013 at 8:42 PM GMT