U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: ZAVALA, JOSE ADAN

A 095-049-781

Date of this notice: 4/1/2019

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:
Liebmann, Beth S.

Userteam: Docket

File: A095-049-781 – Charlotte, NC

Date: APR - 1 2019

In re: Jose Adan ZAVALA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: William J. Vasquez, Esquire

APPLICATION: Adjustment of status; waiver of inadmissibility under section 212(h) of the Act

ORDER:

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's decision dated December 5, 2017, which denied his application for adjustment of status under section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255, and his application for a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). The Department of Homeland Security has not replied to the respondent's brief. The record will be remanded.

The record shows that in 2006 the respondent was convicted in Connecticut of possession of marijuana, though the amount in question was not specified (IJ at 1, 3; Exhs. 2 at Tab F, 3 at Tab I). The Immigration Judge found that this conviction rendered the respondent inadmissible under section 212(a)(2)(A)(i)(II) of the Act (controlled substance violation) (IJ at 2). The Immigration Judge also found that the respondent did not meet his burden to prove that he was statutorily eligible for a waiver of inadmissibility under section 212(h) of the Act (IJ at 3-4).

Where, as here, the amount of marijuana the respondent has been convicted of possessing cannot be readily determined from the record of conviction, the respondent must provide credible and convincing testimony or other evidence to meet his burden to show that the conviction involved 30 grams or less of marijuana. *Matter of Grijalva*, 19 I&N Dec. 713, 718 (BIA 1988). In finding that the respondent did not meet his burden, the Immigration Judge noted that the respondent claimed, through the brief submitted by counsel, that the amount of marijuana was not reported because there was virtually nothing in the bag, just a little residue (IJ at 3). The Immigration Judge correctly noted that counsel's arguments are not evidence (IJ at 3 n.4). *See Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). However, the Immigration Judge did not discuss the respondent's testimony in this regard or determine whether that testimony was credible (Tr. at 35, 37-38, 50-54). Respondent's Br. at 3-4. Under the circumstances, we find that the Immigration Judge's decision lacks sufficient findings of fact for proper appellate review, necessitating a remand. *See* 8 C.F.R. § 1003.1(d)(3)(iv). Accordingly, the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and the entry of a new decision.

FOR THE BOARD