



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

**Vilar, Rodrigo
Law Office of Rodrigo Vilar P.A.
66 West Flagler Street
Suite 500
Miami, FL 33130**

**DHS/ICE Office of Chief Counsel - MIA
333 South Miami Ave., Suite 200
Miami, FL 33130**

Name: VON GLAHN, FELIPA

A 042-438-943

Date of this notice: 8/3/2018

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:
Grant, Edward R.

Userteam: Docket

For more unpublished decisions, visit
www.irac.net/unpublished/index

[Handwritten signature]

Falls Church, Virginia 22041

File: A042 438 943 – Miami, FL

Date:

AUG - 3 2018

In re: Felipa VON GLAHN a.k.a. Maria Glahn

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Rodrigo Vilar, Esquire

APPLICATION: Reopening

The respondent is a native and citizen of Nicaragua who was accorded lawful permanent resident status on November 18, 1990. This matter was last before the Board on June 7, 2017, when we dismissed the respondent's appeal from the Immigration Judge's March 31, 2015, decision that denied her application for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a). The respondent has now filed a motion to reopen the proceedings based upon intervening precedent. The Department of Homeland Security (DHS) has not responded to the motion. The motion will be granted and the record will be remanded for further proceedings.

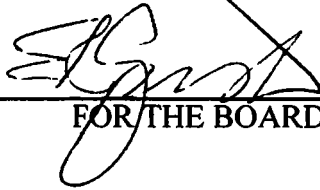
We previously affirmed the Immigration Judge's determination that the respondent's conviction for delivery of cannabis under Florida Statutes section 893.13(1)(a) was for an illicit trafficking aggravated felony under section 101(a)(43)(B) of the Act, 8 U.S.C. § 1101(a)(43)(B), that rendered the respondent ineligible for cancellation of removal. *See* section 240A(a)(3) of the Act. We applied a modified categorical analysis to examine the charging document in the respondent's criminal case to determine that her plea of guilty to delivery of cannabis "for consideration" involved a commercial transaction that would constitute illicit trafficking for purposes of the aggravated felony definition.

The United States Court of Appeals for the Eleventh Circuit has indicated in a recent published decision that a charging document may only be examined under the modified categorical approach to determine which element of a divisible statute an alien was convicted of, not the actual conduct of the alien. *See Gordon v. United States Att'y Gen.*, 861 F.3d 1314, 1318-20 (11th Cir. 2017) (holding that alien's conviction for a "sale or delivery" of a controlled substance under Fla. Stat. § 893.13(1)(a) was not an illicit trafficking aggravated felony because "delivery" under Florida law does not require consideration). Under the circumstances, we will reverse the Immigration Judge's decision that the respondent is ineligible for cancellation of removal and vacate our prior decision in this matter. The record will be returned to the Immigration Judge to determine if the respondent is otherwise eligible for and deserving of relief in the exercise of discretion.

Accordingly, the following orders will be entered.

ORDER: The motion to reopen is granted, and the June 7, 2017, decision of the Board is hereby vacated.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.



FOR THE BOARD