



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: S [REDACTED] C [REDACTED], S [REDACTED]... A [REDACTED]-765

Date of this notice: 5/3/2019

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:
Baird, Michael P.
Greer, Anne J.
Donovan, Teresa L.

User team: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-765 – Batavia, NY

Date: **MAY - 3 2019**

In re: S [REDACTED] D [REDACTED] S [REDACTED] C [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Brenda A. Cisneros Vilchis, Esquire

ON BEHALF OF DHS: Peter J. Marché
Assistant Chief Counsel

APPLICATION: Withholding of removal; Convention Against Torture

The respondent, a native and citizen of the Philippines, appeals from an Immigration Judge's October 15, 2018, decision denying her applications for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), and protection pursuant to the Convention Against Torture, 8 C.F.R. §§ 1208.16(c)-1208.18.¹ The appeal will be sustained and the record will be remanded.

This Board reviews the Immigration Judge's factual findings, including credibility findings and predictions as to the likelihood of future events, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The record supports the Immigration Judge's determination that on January 20, 2017, the respondent was convicted of bail jumping—underlying offense theft by unlawful taking in the third degree for which a sentence of 3 years of imprisonment may be imposed—in violation of N.J.S.A. § 2C:29-7, with a maximum sentence of 2 years or more of imprisonment (IJ at 1-2, 6; Tr. at 19-21; Exhs. 1-1A; Exh. 2; Exh. 3, Tab C). We also will not disturb the Immigration Judge's finding that on December 27, 2017, the respondent was convicted of bail jumping in the third degree pursuant to N.Y.P.L. § 215.55, and sentenced to 6 months of incarceration (IJ at 5-6; Tr. at 41; Exh. 2).

The respondent argues that the Immigration Judge erroneously concluded that her bail jumping convictions were for particularly serious crimes barring her from receiving withholding of removal under section 241(b)(3)(B)(ii) of the Act considering the nature of the convictions, the

¹ The respondent does not dispute that she is ineligible for asylum on the basis of the time bar of section 208(a)(2)(B) of the Act, 8 U.S.C. § 1158(a)(2)(B) (IJ at 3 n.2). Likewise, the respondent has not challenged the Immigration Judge's ruling that she is ineligible for asylum pursuant to the particularly serious crime bar of section 208(b)(2)(A)(ii) of the Act due to her conviction for an aggravated felony, as defined in section 101(a)(43)(T) of the Act, 8 U.S.C. § 1101(a)(43)(T) (IJ at 6 n.3; Tr. at 11-12). See section 208(b)(2)(B)(i) of the Act.

sentences imposed, and the facts underlying the convictions (Respondent's Br. at 5-6). *See Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007); *see also Nethagani v. Mukasey*, 532 F.3d 150, 155 (2d Cir. 2008). We agree.

In relevant part, the New Jersey bail jumping statute provides:

A person set at liberty by court order, without or without bail, or who has been issued a summons, upon condition that he will subsequently appear at a specified time and place in connection with any offense or any violation of law punishable by a period of incarceration, commits an offense if, without lawful excuse, he fails to appear at that time and place.

N.J.S.A. § 2C:29-7. Furthermore, the New York bail jumping statute states:

A person is guilty of bail jumping in the third degree when by court order he has been released from custody or allowed to remain at liberty, either upon bail or upon his own recognizance, upon condition that he will subsequently appear personally in connection with a criminal action or proceedings, and when he does not appear personally on the required date or voluntarily within thirty days thereafter.

N.Y.P.L. § 215.55.

We conclude that the elements of these offenses potentially bring them within the ambit of particularly serious crimes. *See Matter of N-A-M-*, 24 I&N Dec. at 342. In this regard, we acknowledge the Immigration Judge's reasoning that bail jumping conveys an inherent disregard for a court's authority (IJ at 7). At the same time, the offenses require no serious threat to others. *Cf. id.* at 343 (alien found convicted of a particularly serious crime where the relevant Colorado menacing statute required using, or representing that one was armed with, a deadly weapon and knowingly placing or attempting to place another person in fear of imminent, serious bodily injury). The respondent further testified that she committed the New Jersey offense because she could not obtain transportation to her sentencing hearing while living in New York, and she committed the New York offense because she could not control her drug addiction (IJ at 6; Tr. at 69-70, 78). Although we do not suggest that these facts underlying the respondent's bail jumping convictions excuse her criminal conduct, the facts do not indicate that her crimes rose to the level of "particularly serious." *See id.* at 342. Finally, we disagree with the Immigration Judge's finding that it is significant that the respondent committed other criminal offenses after jumping bail, as factors which are subsequent and unrelated to the bail jumping offenses are not germane to whether *bail jumping itself* is a particularly serious crime (IJ at 6-7). *See id.* at 343. For these reasons, we reverse per our de novo review the Immigration Judge's ruling that the respondent's bail jumping convictions were for particularly serious crimes which bar her from receiving withholding of removal under section 241(b)(3)(B)(ii) of the Act.

The respondent asserts that she has otherwise demonstrated eligibility for withholding of removal (Respondent's Br. at 8-11). We will remand the record for the Immigration Judge to consider this question as a matter of first impression. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (the Board may remand when additional fact-finding is required in a given case).

Moreover, in light of our foregoing rulings, we reverse per our de novo review the Immigration Judge's holding that the respondent is ineligible for withholding of removal under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(d)(2) (IJ at 9-10). On remand, the Immigration Judge should determine in the first instance the respondent's eligibility for withholding of removal under the Convention Against Torture. *See* 8 C.F.R. § 1208.16(c).

The Immigration Judge may take whatever action he deems necessary to comply with our order. We express no opinion as to the ultimate outcome of the case.

Accordingly, the following order is entered.

ORDER: The appeal is sustained and the record is remanded for the entry of a new decision consistent with this opinion.



FOR THE BOARD