



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: RODRIGUEZ-DANU, JESUS

A 095-538-919

Date of this notice: 1/11/2019

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:
Adkins-Blanch, Charles K.
Crossett, John P.
Guendelsberger, John

W2-11-19
User team: Docket

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Falls Church, Virginia 22041

File: A095-538-919 – Orlando, FL

Date: JAN 11 2019

In re: Jesus RODRIGUEZ-DANU a.k.a. Lorenzo B. Quintanilla-Hernandez

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John R. Gihon, Esquire

ON BEHALF OF DHS: David Delgado
Assistant Chief Counsel

APPLICATION: Termination

The respondent appeals the Immigration Judge's July 19, 2018, written decision denying his motion to terminate proceedings.¹ The Immigration Judge concluded that the respondent's conviction for traveling to meet a minor in violation of Fla. Stat. § 847.0135(4)(a) is an aggravated felony rendering him removable under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii), as it falls within the federal definition of sexual abuse of a minor offense. Section 101(a)(43)(A) of the Act, 8 U.S.C. § 1101(a)(43)(A). The Department of Homeland Security moves for a summary affirmance. The appeal will be sustained and the proceedings terminated without prejudice.

We review the factual findings, including the Immigration Judge's credibility determination, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent's only removability charge is that his conviction constitutes an aggravated felony sexual abuse of a minor offense under section 101(a)(43)(A) of the Act.² We apply the categorical approach involving an elements comparison rather than considering the facts underlying the respondent's crime to determine whether his conviction is a federal aggravated felony. *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1567-68 (2017); *Choizilme v. U.S. Att'y Gen.*, 886 F.3d 1016, 1022 (11th Cir. 2018). The state statute will constitute a conviction for the generic offense only "if the statute's elements are the same as, or narrower than, those of the generic offense." *Descamps v. United States*, 570 U.S. 254, 257 (2013). Therefore, unless the minimally culpable conduct under the respondent's section 847.0135(4)(a) offense falls within the generic aggravated sexual abuse of a minor

¹ The respondent also appeals the Immigration Judge's August 1, 2018, decision ordering him removed to Mexico.

² As the Immigration Judge discussed, the DHS withdrew the additional removability charge under section 237(a)(2)(E)(i) of the Act (IJ at 2).

definition the respondent's conviction is not an aggravated felony. *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016); *Moncrieffe v. Holder*, 569 U.S. 184 (2013).

As the respondent observes, the Supreme Court has held that under the generic federal definition of sexual abuse of a minor the victim must be under 16 years-old. *Esquivel-Quintana v. Sessions*, 137 S. Ct. at 1568; *Matter of Deang*, 27 I&N Dec. 57, 63 (BIA 2018) (citing Supreme Court's conclusion that the generic definition of aggravated felony sexual abuse of a minor under section 101(a)(43)(A) of the Act "requires that the victim be younger than 16"). By contrast, the respondent's crime applies to a broader group of victims, including those older than 16 years-old. Fla. Stat. § 847.001(8) (defining minor as those under 18 years-old). Because the respondent's offense is overbroad as compared to the federal definition of sexual abuse of a minor, he is not removable as charged.

Accordingly, the following orders are entered.

ORDER: The appeal is sustained, and the respondent's proceedings are terminated without prejudice.



FOR THE BOARD