



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**BLACKMAN HINDS, ROGELIO
A035-197-709
PLYMOUTH CTY HOC
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PLYMOUTH, MA 02360**

**DHS/ICE Office of Chief Counsel - BOS
P.O. Box 8728
Boston, MA 02114**

Name: BLACKMAN HINDS, ROGELIO

A 035-197-709

Date of this notice: 8/16/2013

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:
Greer, Anne J.

lulsegas
Userteam: Docket

Immigrant & Refugee Appellate Center | www.irac.net

Falls Church, Virginia 22041

File: A035 197 709 – Boston, MA

Date: AUG 16 2013

In re: ROGELIO BLACKMAN HINDS a.k.a. Rogelio Blackman

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony (sustained)

APPLICATION: Termination

The respondent, a native and citizen of Panama and lawful permanent resident of the United States, appeals from the Immigration Judge's March 27, 2013, decision ordering his removal from the United States. The respondent's request for a waiver of the appellate filing fee is granted; his request for oral argument is denied. *See* 8 C.F.R. §§ 1003.1(e)(7), 1003.8(a)(3). The appeal will be dismissed.

We review findings of fact, including credibility findings, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review questions of law, discretion, or judgment, and all other issues *de novo*. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent does not dispute the Immigration Judge's determination that he is an alien convicted of an aggravated felony, as described in section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii) (I.J. at 2; Exhs. 1-2, 4; Respondent's Brief at 10). Rather, he maintains his objection to the entry of a removal order against him on the basis that such order constitutes a disproportionate penalty and a violation of his rights under the Due Process Clause of the Fifth Amendment of the United States Constitution (Respondent's Brief at 5-12).¹

Upon *de novo* review, we conclude that the Immigration Judge did not err in declining to adjudicate the respondent's constitutional challenge to his removability (I.J. at 2-3). The Immigration Judge properly observed that he is without authority to rule on the constitutionality of the Act or the regulations governing removal proceedings (I.J. at 2-3). *See* 8 C.F.R. § 1003.10(b) (stating that "immigration judges shall exercise the powers and duties delegated to

¹ The respondent's appellate brief is identical to the brief he submitted below through former counsel (Exh. 5; Attachment to Notice of Appeal, Exhs. A-B). The documentary evidence submitted on appeal was also presented below and admitted into the record (Exh. 5).


them by the Act and by the Attorney General through regulation"). In his decision, the Immigration Judge determined that the respondent was removable based upon the respondent's record of conviction and his admission to the factual allegations contained in the Notice to Appear (Form I-862) (I.J. at 1-2; Exhs. 1-2, 4). As such, the Immigration Judge's actions comply with the language set forth in section 240(c)(1)(A) of the Act, 8 U.S.C. § 1229a(c)(1)(A). See section 240(c)(1)(A) of the Act ("At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable . . . based only on the evidence produced at the hearing.").

Like the Immigration Judge, this Board has no authority to rule on the constitutionality or validity of the Act or the regulations it administers. See *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992); *Matter of Fede*, 20 I&N Dec. 35, 36 (BIA 1989); *Matter of Valdovinos*, 18 I&N Dec. 343, 345 (BIA 1982). Thus, although the respondent asserts that constitutional principles of due process require that section 240(c)(1)(A) of the Act include a "proportionality review," we are bound by the plain language of that provision, as well as the other provisions of the Act (Respondent's Brief at 5-6). Notably, section 237(a) of the Act mandates that certain classes of admitted aliens, including those convicted of aggravated felonies, be removed from the United States, barring an available form of relief from removal. See generally section 237(a) of the Act ("Any alien . . . in and admitted to the United States shall . . . be removed if the alien is within one or more . . . classes of deportable aliens[.]") (emphasis added). Accordingly, notwithstanding the respondent's constitutional arguments, the Immigration Judge properly ruled on the respondent's removability and entered an order of removal in accordance with statutory authority.

We acknowledge the respondent's assertion that he fears returning to Panama due to the reprisal efforts of his former co-defendant, who is associated with a Panamanian gang (Respondent's Brief at 4, 9, 11; Exh. 5, Respondent's Declaration, at ¶ 12). However, the respondent has presented no application for relief from removal based on such fear, and the record reflects that he specifically declined to apply for protection under the Convention Against Torture, despite being advised of his potential eligibility by the Immigration Judge (I.J. at 3; Tr. at 21-22, 38-39).

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS

File: A035-197-709

March 27, 2013

In the Matter of

ROGELIO BLACKMAN HINDS

RESPONDENT

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)

IN REMOVAL PROCEEDINGS

CHARGES: Immigration and Nationality Act (INA) Section 237(a)(2)(A)(iii) - in that after admission the respondent was convicted of an aggravated felony for an offense relating to the illicit trafficking in a controlled substance.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: ANANT SARASWAT

ON BEHALF OF DHS: MELISSA C. GAVEGNANO

ORAL DECISION OF THE IMMIGRATION JUDGE

Removal proceedings against the respondent, Rogelio Blackman Hinds, were initiated on November 7, 2012, with the filing in Immigration Court of a Notice to Appear. The notice alleged that he was not a citizen or national of the United States, but was a native and citizen of Panama; that he was admitted to the United States at New York on or about August 25, 1975, as a lawful permanent resident; and that on April 1, 1994, he was convicted in the U.S. District Court, in the Eastern District of New York, at Brooklyn, New York, for the offense of possession with intent to distribute cocaine. He was

charged with removability pursuant to INA Section 237(a)(2)(A)(iii). See Exhibit 1.

On the issue of removability the respondent, through counsel, submitted written pleadings on February 12, 2013, in which he admitted to all of the allegations in the Notice to Appear, but denied removability and declined to designate a country to which removal should be directed. Moreover, in these pleadings the respondent did not seek any relief other than to note a violation of the due process clause of the Fifth Amendment. See Exhibit 4. Based upon the respondent's admissions in the pleadings, as well as the conviction record at Exhibit 2, this Court finds by clear, convincing and unequivocal evidence that the allegations set forth in the Notice to Appear are true, and accordingly, the charge of removability is sustained.

As noted, the respondent is not seeking any specific relief from removal, but rather is arguing that his removal would violate his due process rights. The respondent was born on December 4, 1954, and is 58 years old. He has been in the United States since he was a 20-year-old. The Court has been advised that the respondent has served honorably in the United States Marine Corps, and was discharged with the rank of corporal. The respondent's counsel has submitted his argument to the Court at Exhibit 5, in which he contends that to remove the respondent under these circumstances, given the length of time that he has been in the United States, and given his vested interest in remaining in this country, would constitute a violation of the respondent's Fifth Amendment due process rights.

This Court notes that Immigration Judges lack the authority to consider constitutional challenges to the statutes and regulations that we administer. 8 C.F.R. §1003.10(b) (Immigration Judges must exercise the powers and duties delegated to them by the Immigration and Nationality Act and the Attorney General through regulation); see also Matter of Fede, 20 I&N Dec. 35 (BIA 1989). The Court cannot

adjudicate the respondent's constitutional attack, and inasmuch as the Court has not been presented with an application for relief from removal and has sustained the charge of removability, this Court must order that the respondent be removed to Panama. The following order shall issue:

ORDER

IT IS HEREBY ORDERED that the respondent is to be removed to Panama.

Please see the next page for electronic

signature

STEVEN F. DAY
Immigration Judge

//s//

Immigration Judge STEVEN F. DAY

days on May 22, 2013 at 10:27 AM GMT