



**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

**Winograd, Benjamin Ross  
Immigrant & Refugee Appellate Center, LLC  
3602 Forest Drive  
Alexandria, VA 22302**

**DHS LIT./York Co. Prison/YOR  
3400 Concord Road  
York, PA 17402**

**Name: P [REDACTED]-C [REDACTED], R [REDACTED]**

**A [REDACTED]-469**

**Date of this notice: 11/13/2017**

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:  
Mullane, Hugh G.  
Creppy, Michael J.  
Liebowitz, Ellen C

From:  
Userteam: Docket

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Falls Church, Virginia 22041

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File: [REDACTED] 469 – York, PA

Date:

NOV 13 2017

In re: R [REDACTED] P [REDACTED] -C [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Benjamin R. Winograd, Esquire

ON BEHALF OF DHS: Jeffrey T. Bubier  
Senior Attorney

APPLICATION: Termination; adjustment of status; waiver of inadmissibility; withholding of removal

The respondent, a native and citizen of Guatemala, appeals the Immigration Judge's May 17, 2017, decision terminating his asylum status under section 208(c)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1158(c)(2), denying his application for adjustment of status in conjunction with a waiver of inadmissibility under sections 209(b) and 209(c) of the Act, 8 U.S.C. §§ 1159(b), 1159(c), and denying of his application for withholding of removal under section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A). The Department of Homeland Security ("DHS") opposes the appeal. The appeal will be sustained and the record will be remanded for further proceedings.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

On December 10, 2003, an Immigration Judge granted the respondent asylum as a derivative beneficiary of his mother's asylum application under section 208(b)(2) of the Act (IJ at 1-2; Exh. 1; Exh. 2 at Tab D). The respondent did not thereafter adjust his status to lawful permanent resident (Respondent's Br. at 1). On January 5, 2016, the respondent was convicted of flight to avoid apprehension in violation of 18 PA. CONS. STAT. § 5126(a) [hereinafter "§ 5126(a)"] and sentenced to a term of imprisonment of 1 to 3 years (IJ at 2; Exh. 1; Exh. 2 at Tab B). Based on this conviction, the DHS placed the respondent in removal proceedings and sought to terminate the respondent's asylum status (IJ at 1-2; Exh. 1). With regard to terminating the respondent's asylum status, the DHS argued that the respondent's criminal conviction constituted an aggravated felony as defined in section 101(a)(43)(S) of the Act 8 U.S.C. § 1101(a)(43)(S) (an offense relating to the obstruction of justice), and therefore a "particularly serious crime" under section 208(b)(2)(A)(ii) of the Act (IJ at 2; Exhs. 3-6). See sections 208(b)(2)(B)(i) and 208(c)(2)(B) of the Act. The Immigration Judge agreed with the DHS, terminated the respondent's asylum status, found the respondent removable, denied the respondent's applications for relief and protection from removal, and ordered him removed to Guatemala (IJ at 2-3, 26; Tr. at 21-22).

On appeal the respondent argues that a remand is warranted “because Judge Golparvar never issued a separate decision explaining his conclusion that flight to avoid apprehension under 18 Pa. Cons. Stat. 5126(a) relates to obstruction of justice...” (Respondent Br. At 11). We agree that remand is warranted in this case because the reasoning in support of the conclusion that 18 Pa. Cons. Stat. 5126(a) is an aggravated felony is unclear, *see Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999), and the Court of Appeals for the Third Circuit’s recent decision in *Flores v. U.S. Att’y Gen.*, 856 F. 3d 280 (3d Cir. 2017), undermines such a conclusion. We recognize that *Flores* was decided after Immigration Judge Golparvar’s decision on the aggravated felony issue. Clarifying whether or not the respondent has been convicted of an aggravated felony is essential to resolving the appeal.

The respondent also raises a number of other arguments on appeal relating to the procedural posture of his case, his due process rights, the termination of his asylum status, and his eligibility for relief from removal (Respondent’s Br. at 11-31). We find it unnecessary to address these arguments, at this time. The Immigration Judge may reconsider any of these issues on remand or any other issues raised by the parties.

Accordingly, the following order will be entered.

ORDER: The respondent’s appeal is sustained in part and the record is remanded to the Immigration Court for further proceedings.

  
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FOR THE BOARD