



U.S. Department of Justice

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*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 20530

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120 South Street
Harrisburg, PA 17101**

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

Name: SINGH, GURPREET

A 060-605-541

Date of this notice: 12/12/2014

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:
Malphrus, Garry D.
Mann, Ana
Mullane, Hugh G.

Userteam: Docket

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**SINGH, GURPREET
A060-605-541
YORK COUNTY
3400 CONCORD ROAD
YORK, PA 17402**

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

Name: SINGH, GURPREET

A 060-605-541

Date of this notice: 12/12/2014

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Malphrus, Garry D.
Mann, Ana
Mullane, Hugh G.

Userteam:

Falls Church, Virginia 20530

File: A060 605 541 – York, PA

Date: DEC 12 2014

In re: GURPREET SINGH

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Daniel B. Conklin, Esquire

ON BEHALF OF DHS: Alice Song Hartye
Assistant Chief Counsel

CHARGE:

- Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony as defined in section 101(a)(43)(B)
- Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] -
Convicted of controlled substance violation
- Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] -
Convicted of crime involving moral turpitude
- Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony as defined in section 101(a)(43)(G)

APPLICATION: Termination; remand

The respondent, a native and citizen of India, appeals from the Immigration Judge's June 23, 2014, decision finding him removable as charged and ordering him removed from the United States.¹ The respondent's unadjudicated motion to reopen, filed before the Immigration Judge on June 25, 2014, is construed as a motion to remand and considered along with this appeal. 8 C.F.R. § 1003.2(c)(4). The motion to remand will be granted and the matter will be remanded to the Immigration Judge for further proceedings in accordance with this opinion.

¹ On June 18, 2014, the Immigration Judge denied the respondent's motion to terminate proceedings, finding him removable as charged under the first, second, and fourth grounds of removal listed on the Notice to Appear (I.J.1 at 2-5; Exh. 1). The Immigration Judge then held a hearing on June 23, 2014, and additionally found the respondent removable under the third ground of removal, incorporated the findings from the motion to terminate and, since the respondent requested no form of relief from removal, entered an order removing him to India (I.J. 2 at 2-3).

The respondent was admitted for lawful permanent residence on May 1, 2009 (I.J.1 at 1; Exh. 1). Thereafter, on June 18, 2013, the respondent was convicted of conspiracy to possess with intent to distribute a counterfeit substance in violation of 18 Pa. Stat. § 903(a)(1) and possession with intent to distribute a counterfeit substance in violation of 35 Pa. Stat. § 780-113(a)(3) (I.J.1 at 1; Exh. 2, Tab E). On the basis of those convictions, the DHS initiated removal proceedings, charging the respondent with removability on four separate grounds: (1) section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony under section 101(a)(43)(B) of the Act, illicit trafficking in a controlled substance; (2) section 237(a)(2)(B)(i) of the Act for having committed a crime relating to a controlled substance; (3) section 237(a)(2)(A)(i) of the Act, for having committed a crime involving moral turpitude (CIMT); and (4) section 237(a)(2)(A)(iii) of the Act, for having been convicted of an aggravated felony under section 101(a)(43)(U) of the Act, conspiracy or attempt to commit an aggravated felony (Exh. 1).

As noted above, on June 23, 2014, the Immigration Judge found respondent removable as charged and ordered him removed. On June 25, 2014, the respondent submitted a motion to reopen and reconsider with the Immigration Judge, alleging that the Immigration Judge erred as a matter of law in finding the police report was expressly incorporated into the plea agreement, and that the respondent pled to possessing a specific substance (Resp. Mot. to Reop. At 1-4). In conjunction with this motion, the respondent submitted a joint stipulation agreement, entered into between the defense counsel and state prosecutor in the respondent's criminal trial, agreeing that the respondent had not specifically pled guilty to any facts in the record, but only "to the delivery of an unidentified counterfeit substance under Pennsylvania law" (Resp. Mot. to Reop. at 20).²

Before the Immigration Judge ruled on this motion, the respondent filed the instant appeal. Accordingly, that motion is now before us as a motion to remand, and the arguments are incorporated into the appeal. 8 C.F.R. § 1003.2(c)(4); BIA Practice Manual Rule 4.2(a)(ii).

We find it necessary to remand this matter to the Immigration Judge for consideration, in the first instance, of the respondent's evidence submitted with his motion to reopen. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (stating that the Board may not engage in fact finding in the course of deciding appeals except for taking administrative notice of commonly known facts; *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002) (in light of Board's limited fact-finding ability on appeal, a remand is appropriate when the record is inadequate for review). The respondent has submitted evidence that has not yet been considered by the Immigration Judge, which potentially bears on the DHS's ability to meet its burden.

² While the stipulation indicates that the respondent pled to "delivery" of an unidentified counterfeit substance, this appears to be an error as the Immigration Judge properly found that the respondent's convictions were for possession with intent to distribute and conspiracy to possess with intent to distribute (I.J.1 at 1; I.J.2 at 1; Exh. 2, Tab E).

Accordingly, we will remand to the Immigration Judge to consider whether this information is relevant, and whether the DHS has met its burden in light of the evidence, if applicable, and the respondent's arguments, and the relevant case law.

On remand, the parties shall be permitted to supplement the record with additional evidence and arguments.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this opinion and the entry of a new decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
YORK, PENNSYLVANIA

File: A060-605-541

June 23, 2014

In the Matter of

GURPREET SINGH

RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGES:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (INA) as amended - alien at any time after admission convicted of an aggravated felony as defined in Section 101(a)(43)(B) of the INA an offense related to illicit trafficking in a controlled substance as described in Section 102 of the Controlled Substances Act including drug trafficking crimes as defined in Section 924(c) of Title 18 United States Code; Section 237(a)(2)(B)(i) of the INA - alien at any time after admission convicted of a violation (or conspiracy or attempt to violate) any law or regulation of a State, United States, or a foreign country relating to controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802) other than a single offense involving possession for one's own use of 30 grams or less of marijuana; Section 237(a)(2)(A)(i) of the INA - alien convicted of a crime involving moral turpitude committed within five years after admission for which a sentence of one year or longer may be imposed; Section 237(a)(2)(A)(iii) of the INA - alien at any time after admission convicted of an aggravated felony as defined in Section 101(a)(43)(U) of the INA, a law relating to any attempt or conspiracy to commit an offense described in Section 101(a)(43) of the INA.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: CRAIG R. SHAGIN, ESQUIRE
THE INNS OF ST. JUDE
120 SOUTH STREET
HARRISBURG, PENNSYLVANIA 17101

| ON BEHALF OF DHS: ALICE HARTYE, ESQUIRE, ASSISTANT CHIEF COUNSEL
IMMIGRATION CUSTOMS ENFORCEMENT
YORK, PENNSYLVANIA

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

Respondent is a 44-year-old male, native, and citizen of India. On April 24, 2014 the Department of Homeland Security filed a Notice to Appear in this matter. The filing of the Notice to Appear vested jurisdiction with this Court. That document is marked as Exhibit 1.

On April 30, 2014 the respondent appeared with counsel. On that date the respondent conceded proper service of the Notice to Appear. Based on the respondent's concessions and admissions and the certificate of service, the Court finds that that document is properly served. On that date the Court took pleadings. The respondent admitted allegations 1, 2, and 3, denied allegations 4 and 5, and denied the grounds for removability. Respondent filed a motion to terminate. By order dated June 18, 2014 the Court found that the respondent was removable under the first, second, and fourth grounds of removal.

| The Court finds, moreover, in accordance with Matter of Khourn, 21 I&N Dec. 1041 (BIA 1997) that in light of the Court's findings with respect to allegations 1, 2, and 4 that the respondent's conviction of June 18, 2013 for conspiracy to possess with intent to distribute the counterfeit substance and for possession with intent to distribute a counterfeit substance are each convictions for crimes involving moral turpitude committed within five years after the respondent's lawful admission as a lawful

permanent resident for which a sentence of a year or longer may be imposed. ~~And~~ that, therefore, the respondent is removable based on the third charge of removal. The respondent seeks no forms of relief in this matter. Accordingly, the following is the order of the Court.

ORDER

The Court finds that the Government has established allegations 4 and 5 by clear and convincing evidence. The Court finds that the respondent is removable as charged. In making these findings, the Court incorporates its findings and analysis as set forth in the June 18, 2014 order of the Court.

Date: June 23, 2014

Please see the next page for electronic

signature

ANDREW R. ARTHUR
Immigration Judge

//s//

Immigration Judge ANDREW R. ARTHUR

arthura on August 4, 2014 at 6:51 PM GMT