



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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1010 East Whatley Road
Oakdale, LA 71463-1128**

Name: JARAMILLO-GUILLEN, JESUS E... A 099-161-946

Date of this notice: 12/4/2017

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:
Kendall Clark, Molly

Userteam: Docket

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**JARAMILLO-GUILLEN, JESUS EFRAIN
41193-379/A099-161-946
C/O DHS/ICE
PPC, 1133 HAMPTON DUPRE ROAD
PINE PRAIRIE, LA 70576**

**DHS/ICE Office of Chief Counsel - OAK
1010 East Whatley Road
Oakdale, LA 71463-1128**

Name: JARAMILLO-GUILLEN, JESUS E... A 099-161-946

Date of this notice: 12/4/2017

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:
Kendall Clark, Molly

Userteam:

Falls Church, Virginia 22041

File: A099 161 946 – Oakdale, LA

Date: DEC - 4 2017

In re: Jesus Efrain JARAMILLO-GUILLEN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Claudia Pasillas, Esquire

ON BEHALF OF DHS: Howard J. Oestry
Assistant Chief Counsel

ORDER:

This Board has been advised that the Department of Homeland Security's appeal has been withdrawn. *See* 8 C.F.R. § 1003.4. Since there is nothing now pending before the Board, the record is returned to the Immigration Court without further action.



FOR THE BOARD

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
OAKDALE, LOUISIANA**

IN THE MATTER OF

Jesus Efrain JARAMILLO-GUILLEN

Respondent

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)

IN REMOVAL PROCEEDINGS

File No.: A099-161-946

CHARGES:

Section 237(a)(2)(C) of the Immigration and Nationality Act, as an alien, who at any time after admission, has been convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18 of the United States Code) in violation of any law.

ON BEHALF OF THE RESPONDENT:

Pro Se

ON BEHALF OF THE DEPARTMENT:

Assistant Chief Counsel
DHS/ICE/Litigation Unit
1010 East Whatley Road
Oakdale, LA 71463

DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL & FACTUAL HISTORY

On May 30, 2017, the U.S. Department of Homeland Security, Immigration and Customs Enforcement ("Department") served Respondent with a Notice to Appear ("NTA") alleging that Respondent is a native and citizen of Mexico, who was admitted to the United States at Pharr, Texas on July 20, 2004 as a B1/B2 visitor. The Department alleges his status was adjusted to that of a lawful permanent resident on January 26, 2005 under section 245 of the Immigration and Nationality Act. The Department further alleges that Respondent was convicted on September 19, 2013 in the United States District Court, Southern District of Texas for the offense of Making a False Statement or Representation with Regards to Firearm Records under 18 U.S.C. § 924(a)(1)(A). Based on these allegations, the Department charged Respondent as removable pursuant to section 237(a)(2)(C) of the Immigration and Nationality Act ("Act").

At the June 21, 2017 hearing, the issue of removability was raised. The Court reset the case for contestation of the removability charges and granted the Department an opportunity to present a brief on the matter. The Department submitted its pre-hearing brief July 3, 2017.

II. APPLICABLE LAW & ANALYSIS

Section 237(a)(2)(C) of the Act renders removable “[a]ny alien who at any time after admission is convicted under any law of...using,...possessing, or carrying, or of attempting or conspiring to ...use,...possess or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law. To determine whether an offense comes within a specific ground of removability, the Court must conduct a categorical approach. See Taylor v. United States, 495 U.S. 575 (1990); Descamps v. U.S., 133 S.Ct. 2276 (2013); see also U.S. v. Conde-Castaneda, 753 F.3d 172, 177 (5th Cir. 2014) (adopting the rules set out in Descamps). This categorical inquiry looks to the criminal statute, rather than the specific underlying facts of the particular case. Descamps, 133 S.Ct. at 2283 (citing to Taylor, 495 U.S. at 600). If the criminal statute contains elements similar to or narrower than the generic offense described in the removability charge, the criminal offense renders the alien removable. Id. On the other hand, if the criminal statute sweeps more broadly, the conviction does not fall within the ground of removability. Id.

When a statute is divisible, the Court may employ the modified categorical approach. Id. at 2284-85. A statute is divisible when it sets out one or more elements of the offense in the alternative, and at least one alternative offense matches the generic offense and another does not. Id. Under the modified categorical approach, the Court may go beyond the statutory elements and consult a limited class of documents to determine which alternative offense formed the basis of the conviction. Descamps, 133 S.Ct. at 2281 (referring to the documents outlined in Shepard v. United States, 544 U.S. 13 (2005)). These documents include the charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented. Shepard, 544 U.S. at 16. Other documents, including police reports and complaint applications, may not be considered. Id.

Respondent was convicted of violating 18 U.S.C § 924(a)(1)(A), which penalize “knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter.” 18 U.S.C.A. § 924 (West 2017). The statute is indivisible, because although it uses “or” repeatedly, the statute defines only a single crime with a single set of elements. See Mathis v. United States, 136 S. Ct. 2243, 2248 (2016).

When comparing the statute of conviction and the generic statute, section 237(a)(2)(C) does not include knowingly making false statements or representation, which are key elements to a conviction under 18 U.S.C § 924(a)(1)(A). Thus indicating that the 18 U.S.C § 924(a)(1)(A) is not a categorical match, as it sweeps more broadly than the litany of circumstances enumerated in the INA.

The Department asserts that Respondent’s conviction mandates that he is removable pursuant to section 237(a)(2)(C). The Department argues that it is a categorical match because it of the language “in this chapter” the statute is referring to information and records related to the sale, purchase, and or transfer of firearms and the statute can only be read with any clarity where words “this chapter” are read as relating to firearms. However, the Department has not provided proof of that assertion. The Department only provided the statute, and the statute does not mention

that the offensive conduct has to be conduct to the purchase or sale of firearms. Furthermore, the only reference to firearms is that it is in the chapter which relates to firearms. Therefore, the Department has not shown by evidence, which is clear and convincing, that Respondent is removable. INA § 240(c)(3)(A).

Accordingly, the following orders shall be issued:

ORDERS: IT IS HEREBY ORDERED that removal proceedings be terminated without prejudice.

July 13, 2017
Date

[Signature]
Agnes L. Reese
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [] ALIEN [☒] ALIEN c/o Custodial Officer [] ALIEN'S ATTY/REP [☒] DHS

DATE: 7-13-17

BY: COURT STAFF [Signature]

Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other
