U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: GARNICA SILVA, ALEJANDRO **A 098-269-615**

Date of this notice: 6/29/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Cole, Patricia A.
Pauley, Roger
Wendtland, Linda S.

Userteam: Docket

File: A098 269 615 - San Francisco, CA Date: JUN 29 2017

In re: Alejandro GARNICA Silva

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Andrew Taylor, Esquire

ON BEHALF OF DHS: Jeanette V. Dever
Associate Legal Advisor

AMICI CURIAE: American Immigration Council et al.[1]
Federation for American Immigration Reform[2]

APPLICATION: Termination

The respondent, a native and citizen of Mexico, has appealed from an Immigration Judge's July 28, 2014, decision ordering him removed from the United States. The removal ground under which the respondent is charged—section 237(a)(2)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(i)—provides for the deportability of any alien convicted of a crime involving moral turpitude that was committed within 5 years after "the date of admission" and for which a sentence of 1 year or longer may be imposed. According to the respondent, who does not now dispute that he was convicted of a crime involving moral turpitude in California in 2012, this removal ground does not apply to him because he has never been "admitted" to the United States. The Department of Homeland Security ("DHS") opposes the appeal and urges us to affirm the Immigration Judge's determination that the respondent was "admitted" for removal purposes when in 2011 he was granted lawful nonimmigrant status under section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U). Because we agree with the Immigration Judge that the respondent's grant of U nonimmigrant status was an "admission," we will dismiss the appeal. However, we also conclude that an intervening change in California criminal law necessitates a remand of the record for further consideration of the respondent's removability.

I. FACTUAL AND LEGAL BACKGROUND

The respondent was born in Mexico in 1989 and entered the United States during the early 1990s without being admitted or paroled. In 2006, when the respondent was still a juvenile, the DHS initiated removal proceedings against him, charging him with removability by virtue of his unlawful presence in the United States. Those proceedings were terminated in January 2012,

[1] Mary Kenney, Esquire

[2] Elizabeth A. Hohenstein, Esquire

however, after the DHS granted the respondent's petition for a U nonimmigrant visa. *See* sections 101(a)(15)(U) and 214(p) of the Act, 8 U.S.C. §§ 1101(a)(15)(U), 1184(p).

The particulars of the U visa program—which are administrated exclusively by the DHS—are central to our analysis, so we restate them here in some detail. As we have explained elsewhere,

> Congress created the U visa as part of the Victims of Trafficking and Violence Protection Act of 2000, title V, Pub. L. No. 106-386, 114 Stat. 1464, 1518-37 (entitled Battered Immigrant Women Protection Act of 2000 ("BIWPA")). The purpose of the statute was to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes . . . while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States." *Id.* § 1513, 114 Stat. at 1533; *see also Lee v. Holder*, 599 F.3d 973, 974 (9th Cir. 2010). Further, "Congress wanted to encourage aliens who are victims of criminal activity to report the criminal activity to law enforcement and fully participate in the investigation and prosecution of the perpetrators of such criminal activity." New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,018 (Sept. 17, 2007) (Supplementary Information) (citing BIWPA § 1513(a)(1)(B)).
>
> Section 101(a)(15)(U)(i) of the Act, 8 U.S.C. § 1101(a)(15)(U)(i) (2006), states in relevant part that an alien is eligible for U-1 nonimmigrant status if the Secretary of Homeland Security determines that
>
> > (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity . . .
> > (II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity . . . [and]
> > (III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, . . . prosecutor, . . . judge, . . . or . . . other . . . authorities . . . prosecuting criminal activity . . . .
>
> ***
>
> Both the statute and the regulations define "criminal activity" by reference to a number of offenses "or any similar activity" in violation of Federal, State, or local criminal law. Section 101(a)(15)(U)(iii) of the Act; *see also* 8 C.F.R. § 214.14(a)(9). The criminal activity must have "violated the laws of the United States or occurred in the United States" or its territories or possessions. Section 101(a)(15)(U)(i)(IV) of the Act; *see also* 8 C.F.R. § 214.14(b)(4).

Matter of Sanchez Sosa, 25 I&N Dec. 807, 809-10 (BIA 2012) (notes omitted).

Ordinarily, nonimmigrants (e.g., tourists, students, etc.) obtain their visas at United States consulates abroad and are then admitted to the United States at ports of entry. *See* section 214(a)(1) of the Act; *see also* 8 C.F.R. § 214.1(a)(3). However, aliens seeking nonimmigrant status under the U visa program typically follow a "stateside" application procedure because their eligibility for a U visa presupposes that they have been the victim of a crime while present in the United States. *See* 8 C.F.R. § 214.14(c)(5)(i)(A).[3] It is undisputed that the respondent obtained his U visa through such stateside processing. We note, moreover, that stateside nonimmigrant visa processing is also typical for S and T nonimmigrants, *see* 8 C.F.R. §§ 214.2(t), 214.11. Thus, cases involving aliens granted visas under the S and T nonimmigrant programs will present much the same issue now before us, albeit on a smaller scale.[4]

A U visa is valid for up to 4 years, with the possibility of extension in appropriate circumstances. Section 214(p)(6) of the Act; *see also* 8 C.F.R. § 214.14(g). However, the statutory scheme treats U visa status as a transitional step on the path to lawful permanent residency, a purpose reflected in Congress's decision to establish an exclusive route to adjustment of status for U nonimmigrants, codified at section 245(m) of the Act, 8 U.S.C. § 1255(m).[5]

In pertinent part, section 245(m)(1) of the Act provides:

> (1) The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 1101(a)(15)(U) of this title to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title, unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if--
>
> (A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 1101(a)(15)(U) of this title; and

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[3] U nonimmigrant status can also be granted via consular processing to individuals living abroad, however. *See* 8 C.F.R. §§ 214.14(c)(5)(i)(B), 214.14(f)(6)(ii); *see also* Vol. 9, Foreign Affairs Manual, 48.15 (CT:VISA-1997, June 7, 2013).

[4] The S nonimmigrant program makes several hundred visas available annually to criminal informants and witnesses whose continued presence in the United States is deemed essential to the success of authorized criminal investigations. *See* sections 101(a)(15)(S) and 214(k) of the Act. Under the T nonimmigrant program, 5,000 visas are made available every year to aliens who are physically present in the United States on account of having been victims of coercive forms of human trafficking. *See* sections 101(a)(15)(T) and 214(o) of the Act.

[5] In this sense, U visa status resembles "lawful temporary resident" status under sections 210(a)(1) and 245A(a) of the Act, 8 U.S.C. §§ 1160(a)(1), 1255a(a)—a temporary safe harbor from which an undocumented alien can acquire lawful permanent residency. Indeed, in section 214(p)(3)(B) of the Act, Congress describes U visa beneficiaries as being in "lawful temporary resident status."

> (B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.[6]

The DHS granted the respondent's application for a U visa in December 2011 because he had assisted police in California in connection with their investigation of an April 2006 incident in which the respondent was assaulted. However, in June 2012, approximately 6 months after he was granted a U visa, criminal charges were lodged against the respondent in California, alleging that he was guilty of battery and making criminal threats in violation of sections 242 and 422 of the California Penal Code, respectively. In October 2012, the battery charge was dropped and the respondent pled no contest to making criminal threats. As a result, he was convicted under section 422 of the California Penal Code and ordered to serve 3 years' probation, including 60 days of probationary incarceration in county jail.

Based on that conviction, the DHS initiated these proceedings, in which the respondent is charged with deportability under section 237(a)(2)(A)(i) of the Act as an alien "convicted of a crime involving moral turpitude, committed within five years . . . after the date of admission, and . . . for which a sentence of one year or longer may be imposed." To be precise, the DHS alleges that the respondent's conviction for making criminal threats was based on an offense that he committed less than 5 years after his "admission" as a U nonimmigrant in December 2011.

The respondent disputes the section 237(a)(2)(A)(i) removal charge on the ground that he did not commit his offense of conviction within 5 years after "the date of admission."[7] Indeed, the respondent claims that he has *never* been "admitted" within the meaning of section 237(a)—despite being granted a U visa—because he never made a "lawful entry . . . into the United States after inspection and authorization by an immigration officer," as required by the definition of the term "admission" set forth at section 101(a)(13)(A) of the Act, 8 U.S.C. § 1101(a)(13)(A). In support of that argument, the respondent points out that he petitioned for and was issued his U visa entirely through stateside procedures.

In an interim decision dated June 30, 2014, the Immigration Judge sustained the removal charge over the respondent's objection and granted the respondent a continuance to permit him to complete any desired applications for relief from removal.[8] In sustaining the charge, the Immigration Judge acknowledged that the statutory definition of "admission" requires an "entry," and thus does not by its terms encompass stateside grants of U nonimmigrant status. Nevertheless, the Immigration Judge found that a stateside grant of U visa status must be treated as an

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[6] Congress has likewise created exclusive adjustment procedures for S and T nonimmigrants, codified at sections 245(j) and 245(l) of the Act, respectively.

[7] The respondent's appeal brief does not dispute that section 422 of the California Penal Code defines a categorical crime of moral turpitude. *See Latter-Singh v. Holder*, 668 F.3d 1156 (9th Cir. 2012).

[8] The respondent declined to seek any such relief, and thus the Immigration Judge ordered him removed in a decision dated July 28, 2014.

"admission" because failure to do so would result in absurd consequences that Congress could not have intended. This timely appeal followed.

Both parties have filed detailed appellate briefs. In February 2016, moreover, we asked the parties to submit supplemental briefs and also solicited amicus briefing with respect to several key issues. In response, we received a supplemental brief from the DHS as well as amicus briefs from the American Immigration Council et al. ("AIC") and the Federation for American Immigration Reform ("FAIR").[9] In summary, the DHS and AIC briefs agree with the Immigration Judge that a stateside grant of U visa status must be treated as an "admission" in order to vindicate the legislative purpose underlying the U visa program and to avoid absurd results. In contrast, FAIR supports the respondent's position that the term "admission" does not encompass a stateside grant of U nonimmigrant status.

II. DISCUSSION

A. Stateside Grant of (U) Nonimmigrant Status as an "Admission"

We begin by acknowledging that a stateside grant of U nonimmigrant status does not fit within the statutory definition of the term "admission," *see* section 101(a)(13)(A) of the Act, which requires a "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." As we have explained elsewhere, however, Congress's purpose in adopting section 101(a)(13)(A) was not to establish an *exclusive* definition of admission. *See Matter of Agour*, 26 I&N Dec. 566, 571-72, 578 (BIA 2015). Also, the United States Court of Appeals for the Ninth Circuit has acknowledged in precedential decisions that the scope of "admitted" is not limited to section 101(a)(13)(A)'s strict definition. *See Garcia-Quintero v. Gonzales*, 455 F.3d 1006 (9th Cir. 2006); *Ramirez v. Brown*, 2017 WL 1192206 (9th Cir. 2017) (holding that a grant of Temporary Protected Status is an admission).

Before section 101(a)(13)(A) was enacted, Congress often used the term "admission" to refer to changes in status which did not necessarily entail a physical entry, *see Matter of Agour, supra* at 572 n.11, and Congress's retention of this usage for decades after section 101(a)(13)(A)'s enactment underscores the fact that the term "admission" sometimes serves purposes that its statutory definition cannot satisfy. *See Matter of Rosas*, 22 I&N Dec. 616, 623 (BIA 1999); *Ocampo-Duran v. Ashcroft*, 254 F.3d 1133, 1134-35 (9th Cir. 2001). Accordingly, we have concluded that an "admission" also occurs when an alien's status is adjusted to that of a lawful permanent resident or—with respect to one who obtained lawful permanent resident status under the "legalization" procedures of sections 210 or 245A of the Act—lawful temporary resident. *See Matter of Agour*, *supra*, at 579-81 (explaining why adjustment to lawful permanent resident status must qualify as an "admission" and collecting cases so holding); *Matter of Perez*, 22 I&N Dec. 689, 692 (BIA 1999) (explaining that an alien already in the United States is "admitted" as of the date when he is granted lawful temporary resident status).

In U visa cases, the problem posed by application of the statutory "admission" definition is most vividly illustrated in the adjustment of status context. That problem is far from a hypothetical

[9] We wish to express our gratitude to the parties and amici for their thoughtful briefs.

one in this case, as the DHS informs us that in November 2015 the respondent filed an application for section 245(m) adjustment before United States Citizenship and Immigration Services ("USCIS"). As noted previously, Congress deems U visa status to be a form of "lawful temporary resident status," *see* section 214(p)(3)(B) of the Act—that is, a transitional step on the path to lawful permanent residency under section 245(m) of the Act. *See also* 8 C.F.R. § 214.14(c)(7) (clarifying that U nonimmigrants are entitled to employment authorization). The exclusive section 245(m) adjustment procedure for U nonimmigrants resembles those established in sections 245(j) and 245(l) of the Act for S and T nonimmigrants—i.e., criminal informants and victims of severe human trafficking, respectively—who, as we have noted, are also usually granted nonimmigrant status via stateside processing.

Additionally, as DHS points out, the Act and regulations repeatedly refer to a grant of U nonimmigrant status as an admission yet draw no substantive distinctions between those who obtain such status through consular versus stateside processing (DHS Brief at 6-7):

- Section 204(1)(2)(E) of the Act (describing surviving relative consideration for an alien admitted in U nonimmigrant status as described in section 101(a)(15)(U)(ii));
- Section 212(d)(14) of the Act (providing that the Secretary of Homeland Security shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(U));
- Section 214 of the Act (discussing the admission of nonimmigrants as it pertains to section 101(a)(15)(U));
- Section 245(m) of the Act (providing for adjustment of status to lawful permanent residence of U nonimmigrants who have been "present in the United States for a continuous period of at least three years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U)")
- Section 248(a) of the Act (authorizing change from one nonimmigrant classification to another "in the case of any alien admitted to the United States as a nonimmigrant" who is maintaining such status);
- 8 C.F.R. § 214.14(c)(2)(iv) (requiring the petitioner to file Form I-192 if the petitioner is inadmissible);
- 8 C.F.R. § 214.14(c)(5)(i)(A) (specifying that USCIS' notice of approval for an alien who filed his or her U-visa petition from within the United States will include a Form I-94,[10] "Arrival-Departure Record," indicating U-1 nonimmigrant status);
- 8 C.F.R. § 214.14(i) ("Nothing in this section prohibits USCIS from instituting removal proceedings . . . for conduct committed after admission");
- 8 C.F.R. § 214.1 (titled "Requirements for admission, extension, and maintenance of status," and addressing U visas at, inter alia, subsection (a)(1)(ix));
- 8 C.F.R. § 245.24(b)(2)(i) (limiting eligibility for section 245(m) adjustment of status to individuals "admitted to the United States as either a U-1, U-2, U-3, U-4, or U-5 nonimmigrant");

[10] A Form I-94 includes the collection of information on arrivals, departures, admissions or paroles by DHS. 8 C.F.R. § 1.4. When DHS issues an I-94 to an alien it creates a record of admission, or of arrival or departure, by DHS following inspection by an immigration officer. *See* 8 C.F.R. § 1.4(c).

- 8 C.F.R. § 245.24(d)(7) (requiring an applicant for adjustment of status to submit evidence that he or she was lawfully admitted in U nonimmigrant status and continues to hold such status at the time of application).

These regulations have the force and effect of law in immigration proceedings, and cannot simply be discounted, as the respondent and FAIR imply in their briefs. On the contrary, Congress's decision to delegate primary authority over the U visa program to the DHS counsels deference to its understanding of the contours of that program. Moreover, the authorization that Congress provided for an alien admitted to the United States as a nonimmigrant to change his or her nonimmigrant classification makes no distinction for aliens in U nonimmigrant status. *See* sections 248(a), (b) of the Act.

Section 245(m)(1) of the Act limits adjustment eligibility to "an alien *admitted* into the United States (or otherwise provided nonimmigrant status)[11] under section 101(a)(15)(U) . . . if . . . the alien has been physically present in the United States for a continuous period of at least 3 years since the date of *admission* as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U). . . ." (emphases added). This requirement that an adjustment applicant have been "admitted" as a U nonimmigrant is echoed in sections 245(j) and 245(l) of the Act, discussed above, which likewise limit adjustment eligibility to "[a] nonimmigrant *admitted into the United States* under section 101(a)(15)(S)(i)," *see* section 245(j)(1)(A) of the Act (emphasis added), and to "a nonimmigrant *admitted into the United States* under section 101(a)(15)(T)(i) [who] has been physically present in the United States for a continuous period of at least 3 years since the date of *admission* as a nonimmigrant," *see* section 245(l)(1)(A) of the Act (emphases added).[12]

Since U visas (like S and T visas) are typically granted from within the United States, interpreting the term "admission" in accordance with its statutory definition, as the respondent urges, would lead to the incongruous result that section 245(m) adjustment is unavailable to virtually all U nonimmigrants, the only exceptions being those few individuals (typically derivative beneficiaries) who were "admitted" through a port of entry after obtaining U visas abroad. One paradoxical effect of such an interpretation would be to render *the respondent himself* ineligible for adjustment of status.

Nothing in the legislative history of the U visa program suggests that Congress intended to make eligibility for section 245(m) adjustment dependent upon the manner in which the applicant acquired U nonimmigrant status. On the contrary, drawing such a distinction would largely defeat the humanitarian purpose of the U visa program by eliminating undocumented aliens' main

[11] The DHS and AIC persuasively argue that the parenthetical phrase "(or otherwise provided nonimmigrant status)" appearing in the opening clause of section 245(m)(1) refers to individuals who changed to U nonimmigrant status after having been admitted in some other lawful nonimmigrant category. *See* section 248(b) of the Act, 8 U.S.C. § 1258(b); 8 C.F.R. § 248.2(b). *See also* section 248(a) of the Act (authorizing change from one nonimmigrant classification to another—including U visa status—"in the case of any alien lawfully admitted to the United States as a nonimmigrant," where certain other conditions are met).

[12] *See also* section 204(l)(2)(E) of the Act (providing for surviving relative consideration for certain aliens who were "admitted" in T or U nonimmigrant status).

incentive to report violent crime and assist in its prosecution. Without the prospect of a path to lawful permanent resident status, such aliens will be much less likely to emerge from the shadows and risk exposing themselves to the attention of law enforcement officials, even for their own protection.

Congress's use of the term "admission" in connection with U nonimmigrant status can be reflective of Congress's understanding that a grant of such status is a form of "admission," independent of the kinds of "lawful entr[ies]" contemplated by the language of section 101(a)(13)(A) of the Act. That understanding is consistent with the Immigration and Nationality Act and regulations that reference and consistently treat nonimmigrants as "admitted" aliens. *See Matter of Blancas*, 23 I&N Dec. 458 (BIA 2002) (holding that acquisition of lawful nonimmigrant status is an "admission" for purposes of establishing an alien's eligibility for cancellation of removal). In this regard, we observe that section 214 of the Act bears the title "Admission of Nonimmigrants," [13] provides for "[t]he admission to the United States of any alien as a nonimmigrant" at section 214(a)(1), and includes a specific provision for the issuance of U visas (at section 214(p)), thereby implying that the specific U visa procedures constitute a subset of the general "admission" procedures. Additionally, at section 101(a)(13)(B) of the Act, Congress specifically provided that parolees and crewmen shall not be considered to have been admitted, but set forth no such exclusion for U visa recipients.

Furthermore, Congress has created several *deportability* grounds—applicable solely to aliens "in and admitted to the United States," *see* section 237(a) of the Act—which are specifically targeted at nonimmigrants, and which contain no language making exceptions for those who obtained that status through stateside processing. Specifically, section 237(a)(1)(B) of the Act applies to aliens whose nonimmigrant status has been revoked, while section 237(a)(1)(C)(i) of the Act applies to nonimmigrants who have failed to maintain or violated the terms or conditions of their status. Strict adherence to the section 101(a)(13)(A) "admission" definition would render these deportability grounds inapplicable to most U nonimmigrants (and most S and T nonimmigrants as well), despite the absence of any plausible rationale for such an exception.

The foregoing considerations—which generally did not apply to the asylee and Family Unity Program beneficiaries at issue in *Matter of V-X-*, *Matter of Fajardo Espinoza*, and *Matter of Reza*—lead us to conclude that an alien granted U nonimmigrant status through stateside processing has been "admitted" to the United States as a lawful temporary resident, even if he never made an "entry" within the meaning of section 101(a)(13)(A) of the Act. Accordingly, the Immigration Judge properly determined that the respondent was convicted of a crime involving moral turpitude that was committed within 5 years after the date of his "admission," as required by section 237(a)(2)(A)(i) of the Act.

[13] While the title of a statutory section "cannot undo or limit" plain statutory text, it can help to "shed light on some ambiguous term or phrase." *See Bhd. of R.R. Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528-29 (1947). We conclude that the term "admission" is ambiguous as applied to U nonimmigrants.

B. The Effect of Section 18.5 California Penal Code on the Respondent's Removability

Although the respondent has been convicted of a crime involving moral turpitude that was committed within 5 years after the date of his admission, a recent change in California law may affect whether the underlying crime—making a terroristic threat under section 422 of the California Penal Code—is one "for which a sentence of one year or longer may be imposed," as required by section 237(a)(2)(A)(i)(II) of the Act.

When the Immigration Judge rendered her removal order, the respondent's misdemeanor violation of section 422 was punishable by a maximum term of imprisonment of 1 year in county jail, thereby qualifying it as an offense "for which a sentence of one year or longer may be imposed." *See Ceron v. Holder*, 747 F.3d 773, 777-78 (9th Cir. 2014). However, on January 1, 2017—during the pendency of this appeal—section 18.5(a) of the California Penal Code was amended to state as follows:

> (a) Every offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to or not exceeding one year shall be punishable by imprisonment in a county jail for a period not to exceed 364 days. This section shall apply retroactively, whether or not the case was final as of January 1, 2015.

We will remand the record so the Immigration Judge may consider this potentially dispositive change in law and enter such further orders as she deems appropriate.

III. CONCLUSION

In conclusion, although we agree with the Immigration Judge that the respondent was convicted of a crime involving moral turpitude, committed less than 5 years after the date of his admission as a U nonimmigrant, it is now an open question whether his offense is one for which a sentence of 1 year or longer may be imposed. Accordingly, the following orders shall be issued.

ORDER: The appeal is dismissed.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

File: A098-269-615 July 28, 2014

In the Matter of

ALEJANDRO GARNICA SILVA	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGE: Section 237(a)(2)(A)(i).

APPLICATION: Motion to terminate.

ON BEHALF OF RESPONDENT: ANDREW TAYLOR

ON BEHALF OF DHS: ELIZABETH CROSS

ORAL DECISION OF THE IMMIGRATION JUDGE

These proceedings were commenced with the filing of the Notice to Appear with the Immigration Court on November 28, 2012. The charging document was amended on Form I-261 dated December 17, 2012.

Respondent is alleged to be a native and citizen of Mexico, admitted to the United States as a U-1 non-immigrant on December 9, 2011, under Section 101(a)(15)(U) of the Act. It is further alleged that respondent was convicted of the act of criminal threat on October 4, 2012, an offense committed May 27, 2012. And for that offense, a sentence of one year or longer may be imposed. He is charged under Section 237(a)(2)(A)(i) of the Act.

In response to the Notice to Appear, respondent admitted all factual allegations with the exception of admission to the United States as a U-1 non-immigrant. He denies the charge.

Respondent filed a motion to terminate proceedings arguing that his grant of status under Section 101(a)(15)(U) of the Act was not an admission and that conviction under Section 422 of the California Penal Code is not categorically a crime involving moral turpitude. The Court denied respondent's motion to terminate in an order dated June 30, 2014. The reader is referred to that order for the Court's reasoning.

Based on the same reasoning articulated in the Court's decision of June 30, 2014, the Court finds that removability has been established by clear and convincing evidence.

Respondent makes no application for relief in these proceedings. He is therefore ordered deported to Mexico on the charge contained in the Notice to Appear.

Please see the next page for electronic signature

MIRIAM HAYWARD
Immigration Judge

//s//

Immigration Judge MIRIAM HAYWARD

haywardm on January 13, 2015 at 6:25 PM GMT