



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**DHS/ICE Office of Chief Counsel - ATL
180 Ted Turner Dr., SW, Ste 332
Atlanta, GA 30303**

Name: VALDEZ GARCIA, LEONEL

A 208-932-090

Date of this notice: 2/15/2017

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:
Grant, Edward R.
Adkins-Blanch, Charles K.
Mann, Ana

USCIS
User team: Docket

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**VALDEZ GARCIA, LEONEL
A208-932-090
IRWIN COUNTY DETENTION CENTER
132 COTTON DRIVE
OCILLA, GA 31774**

**DHS/ICE Office of Chief Counsel - ATL
180 Ted Turner Dr., SW, Ste 332
Atlanta, GA 30303**

Name: VALDEZ GARCIA, LEONEL

A 208-932-090

Date of this notice: 2/15/2017

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:
Grant, Edward R.
Adkins-Blanch, Charles K.
Mann, Ana

U.S. Department of Justice
UserTeam: [redacted]

Falls Church, Virginia 22041

File: A208 932 090 – Atlanta, Georgia

Date:

FEB 15 2017

In re: LEONEL VALDEZ GARCIA

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Lynn M. Burke, Esquire

ON BEHALF OF DHS: Danielle Kosacci
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] -
Crime involving moral turpitude

Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Remand

The respondent, a native and citizen of Mexico, filed a timely appeal of an Immigration Judge's September 27, 2016, decision, ordering his removal from the United States. The record will be remanded to the Immigration Court for further proceedings.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, and the likelihood of future events, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015); *Matter of R-S-H-*, 23 I&N Dec. 629 (BIA 2003); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). The Board reviews questions of law, discretion, judgment, and all other issues in an appeal from an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

Although the respondent acknowledges that his former counsel conceded removability below, and that the Immigration Judge relied upon this concession to find him removable, he claims that he was ineffectively represented. In the interest of finality and administrative economy, there is a strong presumption that a formal concession of removability, entered by counsel during the pleadings stage of a removal hearing, was a reasonable tactical decision that is binding upon the client. *See Matter of Velasquez*, 19 I&N Dec. 377, 382 (BIA 1986). This presumption may be rebutted only upon a showing of "egregious circumstances" — that is, where the concession was "the result of unreasonable professional judgment or [was] so unfair that [it has] produced an unjust result." *Id.* at 383.

The Immigration Judge found the respondent inadmissible and subject to removal under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), based on former counsel's concession removability and admission to allegation 5 in the Notice to Appear (Form I-862) ("NTA") (Exh. 1), that the respondent had sustained a 2015 Georgia conviction for criminal damage to property-2d degree (Tr. at 57-58). However, accompanying the brief on appeal and in support of his motion to remand, the respondent argues that the 2015 Georgia conviction for criminal damage to property-2d degree conviction found in allegation 5 of the NTA did not relate to him, but rather to his brother, Luis. The respondent contends that he has not sustained any criminal convictions, and was not inadmissible and subject to removal on account of the alleged 2015 Georgia conviction.

The respondent has thus shown egregious circumstances that serve to rebut the presumption associated with her concession of the respondent's removability. The respondent has demonstrated that his former counsel exercised "unreasonable professional judgment" in conceding removability on his behalf. See *Matter of Velasquez*, *supra*, at 383.

Consequently, we will remand the record to enable the Immigration Judge to consider the respondent removability under section 212(a)(2)(A)(i)(I) of the Act. In addition, the Immigration Judge will provide the respondent an opportunity to establish his eligibility for any relief from removal to which he may be entitled.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings in accordance 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
ATLANTA, GEORGIA

File: A208-932-090

September 27, 2016

In the Matter of

LEONEL VALDEZ GARCIA

RESPONDENT

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)
)
)

IN REMOVAL PROCEEDINGS

CHARGES: A violation of Section 212(a)(6)(A)(i) and 212(a)(2)(A)(i).

APPLICATION: None stated.

ON BEHALF OF RESPONDENT: MELISSA ARCILA
Roswell, Georgia

ON BEHALF OF DHS: PHILIP BARR
Atlanta, Georgia

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a male native and citizen of Mexico who was issued a Notice to Appear on August 5, 2016. The respondent is detained at the Irwin County Detention Facility in Ocilla, Georgia, and has appeared by video to the Court in Atlanta.

The respondent appeared before the Court on August 25, 2016. He was given a full rights advisal. He indicated he had hired an attorney whose name he could not remember and who had failed to appear in court. Therefore, the Court granted the

respondent a continuance and reset the case from August 25 until September 14 to get his lawyer present.

On September 14, 2016, the respondent appeared with Ms. Arcila. The respondent acknowledged proper receipt and service of the NTA, which had been marked and admitted as Exhibit 1. The respondent, through counsel, admitted to allegations 1 through 6 and conceded removability from the United States under both of the charges as alleged on the Notice to Appear. The respondent designated Mexico as the country of removal.

Based on the admissions and concessions entered by the respondent through his attorney of record, the Court finds that the counsel for the respondent has conceded the respondent's removability from the United States as charged.

With regard to relief, the respondent's counsel indicated on the record that they had reached out to the Office of Chief Counsel seeking a favorable consideration for prosecutorial discretion or to identify other relief. The Court granted counsel's request for a continuance for attorney prep, reset the case from September 14, 2016, until September 27, 2016, and indicated to counsel on the record that she needed to be prepared to identify relief at that court setting.

On September 27, 2016, the parties again appeared before the Court and counsel for the respondent indicated that the Government had declined to exercise prosecutorial discretion in this case. The respondent's counsel indicated that the respondent also was unhappy with that decision and was seeking to possibly to change counsel and was asking the Court to give the respondent another continuance to explore changing lawyers.

The Court declines to continue the case further for that reason. The respondent is detained at taxpayer expense. He has been given two previous continuances to be

ready for today. At the last calendar hearing, he was specifically instructed to be ready through counsel to identify relief today.

The respondent's counsel indicated then, when asked to identify what relief the respondent had available, counsel on the record stated the respondent had no relief available.

Therefore, the Court having determined that the respondent is removable from the United States as charged based on his pleadings through counsel, counsel for the respondent having identified Mexico as the country of removal and having stated on the record that the respondent has no relief available to him, it is hereby ordered that the respondent be removed from the United States to the nation of Mexico.

The respondent will be advised of his appeal rights separately on the record.

Please see the next page for electronic

signature

MICHAEL P. BAIRD
United States Immigration Court Judge

//s//

Immigration Judge MICHAEL P. BAIRD

bairdm on November 28, 2016 at 12:52 PM GMT