U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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JEANNITON, JEAN JUNIOR
A062-597-967
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DHS/ICE Office of Chief Counsel - KRO
18201 SW 12th St.
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Name: JEANNITON, JEAN JUNIOR **A 062-597-967**

Date of this notice: 7/19/2019

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Creppy, Michael J.
Malphrus, Garry D.
Baird, Michael P.

Userteam: Docket

File: A062-597-967 – Miami, FL

Date: JUL 19 2019

In re: Jean Junior JEANNITON

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Alexander Garcia
Assistant Chief Counsel

APPLICATION: Termination

The respondent appeals the Immigration Judge's February 8, 2019, decision finding him removable as charged and ordering him removed from the United States. The Department of Homeland Security ("DHS") has filed a motion for summary affirmance. We will sustain the appeal in part and dismiss the appeal in part.

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).

The respondent is a native and citizen of Haiti, and a lawful permanent resident of the United States. On November 9, 2018, less than 5 years after obtaining lawful permanent resident status, he was convicted of False Statement to a Federally Licensed Firearms Dealer in violation of 18 U.S.C. § 922(a)(6). He was charged with removability under sections 237(a)(2)(A)(i) and 237(a)(2)(C) of the Immigration and Nationality Act, 8 U.S.C. §§ 1227(a)(2)(A)(i), (C).

The statute under which the respondent was convicted, 8 U.S.C. § 922(a)(6), makes it unlawful:

> "for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter [18 USCS §§ 921 et seq.]."

We must employ the categorical approach to determine whether an offense qualifies as a removable firearms offense under section 237(a)(2)(C) of the Act, meaning we examine the statutory elements for the minimum conduct that has a realistic probability of being prosecuted.

Matter of Chairez-Castrejon, 26 I&N Dec. 349, 356 (BIA 2014) (addressing removability under section 237(a)(2)(C) of the Act), *superseded on other grounds by Matter of Chairez-Castrejon*, 26 I&N Dec. 819 (BIA 2016). Section 237(a)(2)(C) of the Act applies to offenses involving firearms or other destructive devices. The statute under which the respondent was convicted involves acquisition of either a firearm or ammunition. An offense involving acquisition of ammunition would not fall under section 237(a)(2)(C) of the Act. *See Dulal-Whiteway v. United States Dep't of Homeland Sec.*, 501 F.3d 116, 123 (2d Cir. 2007) (holding that because of this firearm/ammunition distinction, "it is possible to be convicted of violating § 922(a)(6) without having committed a removable offense"), *abrogated on other grounds by Nijhawan v. Holder*, 557 U.S. 29 (2009).

Also, only one offense occurs if a defendant makes a false statement to acquire both a firearm and ammunition. *United States v. Evans*, 854 F.2d 56 (5th Cir. 1988) (holding that a false statement during the purchase of both a firearm and ammunition is a single crime under 18 U.S.C. § 922(a)(6)).

Because the statute is, thus, not divisible with respect to whether the false statement was made in connection with the purchase of a firearm or the purchase of ammunition, it is overbroad with respect to the ground of removability in section 237(a)(2)(C) of the Act. Accordingly, the respondent is not removable under section 237(a)(2)(C) of the Act, and we will sustain the appeal with respect to this charge of removability.

The respondent does not explicitly challenge the Immigration Judge's determination that his felony conviction is for a crime involving moral turpitude and thus this issue is not before us. However, even if it were, we would agree with the Immigration Judge on this issue. The respondent's offense requires either a knowingly false statement or use of a false and deceptive identification. Crimes involving fraud or deceit have long been considered morally turpitudinous. *Matter of L-V-C-*, 22 I&N Dec. 594, 603 (BIA 1999); *see also Matter of Flores*, 17 I&N Dec. 225, 228 (BIA 1980) (uttering and selling false counterfeit registry papers involves moral turpitude because it is inherently fraudulent). We conclude that a conviction under 18 U.S.C. § 922(a)(6) is categorically a crime involving moral turpitude. *See generally Matter of Silva-Trevino*, 26 I&N Dec. 826 (BIA 2016) (describing the categorical approach to determining whether a crime is one involving moral turpitude). The respondent's offense was committed within 5 years of his admission as a lawful permanent resident, and is punishable by up to 10 years of imprisonment. Thus, the respondent is removable under section 237(a)(2)(A)(i) of the Act.

The respondent does not challenge the determination that he lacks the requisite years of continuous residence to be eligible for cancellation of removal under section 240A(a) of the Act, 8 U.S.C. § 1229b(a) (IJ at 4). He points out on appeal that the conviction documents submitted on appeal do not include page 4 of 6 (*see* Exh. 2). He suggests that the omission relates in some way to the DHS's alleged failure to transfer him in a timely manner from incarceration to immigration detention (Respondent's Br. at 3). The omission of page 4 of the conviction records does not impact the DHS's ability to establish the fact of his conviction, which he does not contest, and prove his removability by clear and convincing evidence.

The respondent also claims to not have received pages 1 and 3 of the Notice to Appear ("NTA") (Respondent's Br. at 4). He points out that the signature of the Chief CBP Officer on the Notice of Custody Determination, which the respondent describes as "page 4" of the NTA, differs from that officer's signature on pages 1 and 3 of the NTA. The respondent did not raise this issue before the Immigration Judge. The respondent was represented by counsel at his initial hearing and did not contest the Immigration Judge's statement that he had been provided with the NTA (Tr. at 1). The respondent acknowledged receipt of the NTA by signing it on page 2. In light of his signature on the NTA and failure to challenge service of the NTA before the Immigration Judge, we are not persuaded by his allegation that he was not properly served with the Notice to Appear. *See generally Matter of Valdez & Valdez*, 27 I&N Dec. 496, 499 (BIA 2018) ("Courts have held in various contexts, including immigration cases, that one's signature on a form or contract establishes a strong presumption that the signer knows its contents and has assented to them, absent evidence of fraud or other wrongful acts by another person.") (citations and internal quotation marks omitted).

Accordingly, we will sustain the appeal will respect to removability under section 237(a)(2)(C) of the Act and dismiss the appeal in all other respects.

ORDER: The appeal sustained with respect to the charge of removability under section 237(a)(2)(C) of the Immigration and Nationality Act.

FURTHER ORDER: The appeal is dismissed in all other respects, and the respondent shall be removed from the United States to Haiti.

FOR THE BOARD