



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: HNATYUK, MYKOLA

A 055-034-818

Date of this notice: 6/24/2019

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:
Creppy, Michael J.
Liebowitz, Ellen C
Baird, Michael P.

Userteam: Docket

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Falls Church, Virginia 22041

File: A055-034-818 – Hartford, CT

Date: **JUN 24 2019**

In re: Mykola HNATYUK

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Holli B. Wargo, Esquire

APPLICATION: Termination; asylum; withholding of removal

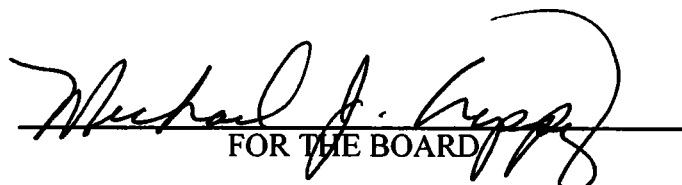
This case is before us on remand from the United States Court of Appeals for the Second Circuit pursuant to a November 21, 2018, order granting the respondent's petition for review, vacating our prior decision, and remanding the matter for further proceedings. *Hnatyuk v. Whitaker*, 757 F. Appx. 10 (2d Cir. 2018). On August 16, 2017, we upheld the October 17, 2016, decision of the Immigration Judge finding the respondent removable as charged under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), and denying his applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Act, 8 U.S.C. §§ 1158 and 1231(b)(3). In response to a new briefing schedule, the respondent submitted an additional brief. The Department of Homeland Security (DHS) has not filed a brief in this matter. The respondent's appeal will be sustained, and proceedings will be terminated.

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 Court of Appeals held that the respondent's conviction under Conn. Gen. Stat. § 21a-279(a) was not categorically related to a "controlled substance" as that term is defined in 21 U.S.C § 802 because the statute was overbroad on its face, and thus, did not render him inadmissible. *Hnatyuk v. Whitaker*, 757 F. Appx. at 13. In light of the Court of Appeals' decision, we will sustain the respondent's appeal. As the DHS has not established the respondent's removability, we will terminate the proceedings.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, and the proceedings are terminated.


FOR THE BOARD