



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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31 Hopkins Plaza, Room 1600  
Baltimore, MD 21201**

**Name: LOPEZ-LOPEZ, VICTOR MANUEL      A 042-916-662**

**Date of this notice: 12/21/2016**

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:  
Guendelsberger, John  
Pauley, Roger  
Geller, Joan B

USCIS  
User team: Docket

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**LOPEZ-LOPEZ, VICTOR MANUEL  
00000/A042-916-662  
DHS-HOWARD COUNTY  
7301 WATERLOO RD, POB 250  
JESSUP, MD 20794**

**DHS/ICE Office of Chief Counsel - BAL  
31 Hopkins Plaza, Room 1600  
Baltimore, MD 21201**

**Name: LOPEZ-LOPEZ, VICTOR MANUEL      A 042-916-662**

**Date of this notice: 12/21/2016**

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:  
Guendelsberger, John  
Pauley, Roger  
Geller, Joan B

Userteam: 0 10

Falls Church, Virginia 22041

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File: A042 916 662 – Baltimore, MD

Date:

DEC 21 2016

In re: VICTOR MANUEL LOPEZ-LOPEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Shanta Ramson, Esquire

ON BEHALF OF DHS: Andrew V. Bonic  
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -  
Convicted of aggravated felony

APPLICATION: Termination

The respondent appeals from an Immigration Judge's May 31, 2016, decision ordering him removed from the United States.<sup>1</sup> The Department of Homeland Security ("DHS") moves for summary affirmance. Due to a recent intervening decision by the United States Court of Appeals for the Fourth Circuit in which this case arises, the appeal will be sustained and the proceedings will be terminated.

The respondent is a native and citizen of Mexico and a lawful permanent resident of the United States. In 2015, he was convicted in Maryland of "Sex Offense in Third Degree" in violation of Md. Code Ann., Crim. Law § 3-307(a). The issue on appeal is whether that conviction renders the respondent removable from the United States as an alien convicted of an "aggravated felony," namely a "sexual abuse of a minor." Sections 101(a)(43)(A) and 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(43)(A), 1227(a)(2)(A)(iii). We conclude that it does not.<sup>2</sup>

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<sup>1</sup> The Immigration Judge issued a written decision on March 7, 2016, sustaining the charge of removability. The respondent filed a motion to reconsider the Immigration Judge's decision on May 6, 2016. On May 31, 2016, the Immigration Judge denied the respondent's motion to reconsider, incorporated her previous written decision on removability, and ordered the respondent removed to Mexico.

<sup>2</sup> Whether the respondent's offense of conviction is an aggravated felony is a legal question that we review de novo. See 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found that the respondent was convicted under Md. Code, Crim. Law §3-307(a)(3) and we discern no clear error in this finding (I.J. at 3-4). At the time of the respondent's conviction, § 3-307(a)(3) provided that a person may not "engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim."

The United States Court of Appeals for the Fourth Circuit recently issued a decision, post-*Mathis v. United States*, 136 S. Ct. 2243 (2016), analyzing Md. Code Ann. Crim. Law §3-307(a)(3). See *Larios-Reyes v. Lynch*, No. 15-2170, --F.3d--, 2016 WL 7099825 (December 6, 2016). In that decision, the court adopted a definition of "sexual abuse of a minor" as "the perpetrator's physical or non-physical misuse or maltreatment of a minor for a purpose associated with sexual gratification."<sup>3</sup> See also *United States v. Diaz-Ibarra*, 522 F.3d 343, 350-51 (4th Cir. 2008). Based on that definition, the court determined that §3-307(a)(3) is overbroad because it encompasses conduct outside the Fourth Circuit's definition of the generic offense of "sexual abuse of a minor." Further, the court found that in Maryland, a jury would not need to distinguish between "gratification" and "abuse" in order to find a defendant guilty under §3-307(a)(3). Thus, per the court's holding in *Larios-Reyes*, *supra*, the statute of conviction is not divisible as "sexual gratification" and "abuse" are not alternative "elements" of the offense, but alternative "means" of committing the offense.

In conclusion, the offense defined by §3-307(a)(3) is neither a categorical "sexual abuse of a minor" offense under section 101(a)(43)(A) of the Act nor divisible vis-à-vis the "sexual abuse of a minor" offense concept as defined by the Fourth Circuit in *Larios-Reyes*, *supra*, and *Diaz-Ibarra*, *supra*. Accordingly, the DHS has not established by clear and convincing evidence that the respondent's conviction renders him removable as an alien convicted of an aggravated felony. No other removal charges are pending against the respondent, and therefore the proceedings will be terminated.<sup>4</sup>

ORDER: The appeal is sustained, the Immigration Judge's decision is vacated, and the removal proceedings are terminated.

  
FOR THE BOARD

<sup>3</sup> The court determined that the federal generic definition of "sexual abuse of a minor" adopted in the context of United States sentencing guidelines is equally applicable in the immigration context.

<sup>4</sup> We note that the respondent's offense was not committed within 5 years of his admission. See section 237(a)(2)(A)(i) of the Act. The respondent argues that he was convicted under paragraph (a)(4) of the statute which includes the term "sexual act" as opposed to paragraph (a)(3). However, we need not address the respondent's arguments, as we would reach the same result for the same reasons, i.e. "sexual gratification" and "abuse" are alternative "means" of committing the offense and not alternative "elements" of the offense itself.

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
BALTIMORE, MARYLAND

File: A042-916-662

May 31, 2016

In the Matter of

VICTOR MANUEL LOPEZ-LOPEZ

RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: SHANTA RANSOM

ON BEHALF OF DHS: ANDREW BONIC

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a native and citizen of Mexico. He became a permanent resident in September 2004. He was issued a Notice to Appear on December 10, 2015. At a master calendar hearing, the respondent admitted all of the allegations in the NTA, but denied removability as charged. The case was set for a preliminary individual hearing on removability. Following a consideration of all of the evidence in the record, the Court issued a written decision on removability. That decision is in the record. It is incorporated herein. It is headed Decision and Order of the Immigration Judge on Removability. It was signed and issued on March 7, 2016.

Following that decision, both sides filed additional briefing. The respondent's counsel specifically filed a motion to reconsider, arguing that, in part, the Montgomery County sex offense registry notice indicated that the respondent's conviction was in fact pursuant to 3-307(A)(4). After considering briefing and argument from both side, the Court concludes that the sex offense registry notice is, in fact, not a permissible document to be considered part of the record of conviction for immigration purposes in applying the modified categorical approach. See Shepard v. U.S. For that reason, the Court denies the respondent's motion to reconsider. The Court continues to conclude for reasons outlined in detail in the written decision that the respondent has been convicted for sexual abuse of a minor. The respondent is not seeking any relief from removal.

The Court hereby orders respondent removed from the United States to Mexico.

**Please see the next page for electronic**

**signature**

ELIZABETH A. KESSLER  
Immigration Judge

//s//

Immigration Judge ELIZABETH A. KESSLER

kessler on July 21, 2016 at 11:34 AM GMT

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