



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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2350 Freedom Way, Suite 254
York, PA 17402**

Name: ARIZAGA-VALLEJO, MIGUEL A... A 078-230-633

Date of this notice: 9/30/2020

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:
Geller, Joan B

Sharietta
Userteam: Docket

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DC

Falls Church, Virginia 22041

File: A078-230-633 – York, PA

Date: **SEP 30 2020**

In re: Miguel Alberto ARIZAGA-VALLEJO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Troy J. Mattes, Esquire

ON BEHALF OF DHS: Jeffrey T. Bubier
Senior Attorney

APPLICATION: Termination

The Department of Homeland Security (DHS) appeals the Immigration Judge's March 31, 2020, decision terminating these removal proceedings without prejudice. The respondent, who is a native and citizen of Ecuador and a lawful permanent resident of the United States, has filed a motion to summarily dismiss the appeal. We will deny the motion for summary dismissal, but will dismiss the appeal.

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).

Preliminarily, the respondent moves to summarily dismiss the appeal because the attached Statement for Basis of Appeal appears to reference another case and does not set forth the actual basis for the DHS's appeal in this case. We deny the respondent's motion, as the DHS subsequently explained and corrected its error.

We adopt and affirm the decision of the Immigration Judge. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). The DHS alleges the respondent is removable under section 237(a)(2)(E)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(E)(ii), for having violated a protection order entered on December 24, 2017. However, the record does not contain a copy of the December 24, 2017, protection order. The only protection order in the record is a subsequent one entered on January 10, 2018, the same day the criminal judgment was entered based on the alleged protection order violation. Without a copy of the December 24, 2017, protection order, the generic references to a protection order in other documents do not constitute clear and convincing evidence that the respondent violated a portion of that order "that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued." Section 237(a)(2)(E)(ii) of the Act.

Also absent from the record is the criminal information or complaint referenced in the judgment of conviction. The judgment indicates that the respondent pleaded guilty to "Count 1 of Criminal no. 17-0012174." Without evidence of the charge in "Count 1," we are unable to

determine what the “State court has determined about the alien’s violation” of a protection order. *Matter of Obshatko*, 27 I&N Dec. 173, 176-77 (BIA 2017). The DHS did not meet its burden to establish the respondent’s removability by clear and convincing evidence.

Accordingly, we will dismiss the DHS’s appeal.

ORDER: The DHS’s appeal is dismissed.



FOR THE BOARD