



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: MEZA-SALAZAR, OMAR**

**A 045-135-575**

**Date of this notice: 11/2/2018**

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:  
Malphrus, Garry D.  
Mullane, Hugh G.  
Creppy, Michael J.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A045-135-575 – Las Vegas, NV

Date: **NOV - 2 2018**

In re: Omar MEZA-SALAZAR

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Vladimir Goutsaliouk, Esquire

ON BEHALF OF DHS: Christian Parke  
Assistant Chief Counsel

APPLICATION: Termination

The respondent, a native and citizen of Mexico and a lawful permanent resident of the United States, appeals from an Immigration Judge's decision dated October 26, 2017, sustaining the removal charge under section 237(a)(2)(A)(iii), of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii), based on his conviction for an aggravated felony under section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). On April 5, 2017, the Board requested supplemental briefing from the parties addressing whether the respondent's conviction for sexually motivated coercion, in violation of Nev. Rev. Stat. §§ 207.190, 175.547, and 207.193, is a crime of violence. Both parties filed supplemental briefs. The appeal will be sustained, and the proceedings 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 respondent does not contest that on March 4, 2017, he was convicted of sexually motivated coercion, a Category B felony, in violation of Nev. Rev. Stat. §§ 207.190, 175.547, and 207.193 (IJ at 1; Exh. 2). The respondent was sentenced to an indeterminate term of imprisonment between 24-60 months. The sentence was suspended, and he was placed on probation for a period not to exceed 5 years (*Id.*). Based on the conviction, the Immigration Judge found the respondent removable under section 237(a)(2)(A)(iii) of the Act, as an alien convicted of a "crime of violence" aggravated felony under 18 U.S.C. § 16 for which the term of imprisonment is at least 1 year. *See* section 101(a)(43)(F) of the Act.

On appeal, the respondent challenges the Immigration Judge's removability determination, contending that a felony coercion under Nevada law is not a crime of violence under 18 U.S.C. § 16 (Respondent's Br. at 2-6). We review this legal question de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).


Based on a decision issued by the United States Court of Appeals for the Ninth Circuit, after the Immigration Judge decided this case, we conclude that the DHS has not established the

respondent's removability by clear and convincing evidence. Specifically, in *United States v. Edling*, 895 F.3d 1153, 1159 (9th Cir. 2018), the court held that the Nevada felony coercion statute at issue in this case is not categorically a "crime of violence." The court explained that the "physical force" element of the Nevada statute proscribes more behavior than the "violent force" necessary to satisfy the "physical force" standard set forth in *Johnson v. United States*, 559 U.S. 133, 140 (2010). *Id.* at 1159. Therefore, because the Nevada felony coercion statute criminalizes more conduct than the generic federal offense, the respondent's conviction in this case does not categorically constitute a crime of violence.

Moreover, the court held that since none of the alternative methods of violating the statute require "the use or threatened use of violent physical force against the person of another, we need not decide whether the coercion statute is further divisible into separate offenses . . . ." *Id.* at 1159. We conclude that the issue of the respondent's removability is controlled by *Edling*.

Because the respondent is not removable as charged, we will sustain the respondent's appeal in this matter and terminate proceedings. *See Matter of Sanchez-Herbert*, 26 I&N Dec. 43, 45 (BIA 2012) (finding termination to be appropriate when the DHS cannot sustain the charges of removability). Accordingly, the following order will be entered.

ORDER: The appeal is sustained, and the removal proceedings are terminated.



FOR THE BOARD