



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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5701 Executive Ctr Dr., Ste 300
Charlotte, NC 28212**

Name: SILVA MARADIAGA, ALEXY NA... A 206-481-827

Date of this notice: 8/8/2016

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:
Pauley, Roger

Userteam: Docket

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Falls Church, Virginia 22041

File: A206 481 827 – Charlotte, NC

Date:

AUG - 8 2016

In re: ALEXY NAHUM SILVA MARADIAGA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Amanda Bethea Keaveny, Esquire

ON BEHALF OF DHS: Scott D. Criss
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Relief from removal

The respondent appeals the Immigration Judge's May 26, 2015, decision ordering him removed from the United States. The record will be remanded to the Immigration Judge for further proceedings consistent with this opinion and for entry of a new decision.


The Immigration Judge has not prepared a separate oral or written decision. Instead, the Immigration Judge made comments in the transcript to the respondent stating that his conviction for possession of drug paraphernalia is "a conviction related to a controlled substance" and advising him that, because of this conviction, he is not eligible for any relief (Tr. at 19). We find that a separate oral or written decision is warranted in this case. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999); *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994).

In particular, we note that, *prior* to the Immigration Judge's decision, the United States Supreme Court issued its decision in *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015). In that case, which considered an alien's conviction for possession of drug paraphernalia, the Court found that, in order for an offense to qualify under section 237(a)(2)(B)(i) of the Act, an element of the conviction must be related to a drug defined in 21 U.S.C. § 802. *See id.* at 1990-91 (overruling the Board's decision in *Matter of Martinez Espinoza*, 25 I&N Dec. 118 (BIA 2009)). Thus, the Court found that, in order for a drug paraphernalia offense to qualify as an offense under section 237(a)(2)(B)(i) of the Act, it must relate to a controlled substance listed in the Federal Controlled Substances Act. *See id.* Presumably, the Immigration Judge's comments regarding the respondent's conviction were to imply that he could not qualify for relief from removal, including adjustment of status, due to his conviction for a controlled substances offense under section 237(a)(2)(B)(i) of the Act.

Upon remand, the Immigration Judge should apply the correct standards to the respondent's conviction to determine if it renders him ineligible for relief from removal. The Immigration Judge should also consider the arguments raised by the respondent on appeal regarding his conviction. Finally, the Immigration Judge should prepare and issue a separate written decision setting forth his decision and the legal and factual analyses supporting that decision.

Accordingly, the record will be remanded to the Immigration Judge for further proceedings consistent with this opinion and for entry of a new decision.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this opinion and for entry of a new decision.



FOR THE BOARD

IMMIGRATION COURT
5701 EXECUTIVE CENTER DR. #400
CHARLOTTE, NC 28212

In the Matter of

Case No.: A206-481-827

SILVA MARADIAGA, ALEX Y NAHUM
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 52615.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- ☒ The respondent was ordered removed from the United States to or in the alternative to HONDURAS.
- ☐ Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to HONDURAS.
- ☐ Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ _____ with an alternate order of removal to .

Respondent's application for:

- ☐ Asylum was () granted () denied () withdrawn.
- ☐ Withholding of removal was () granted () denied () withdrawn.
- ☐ A Waiver under Section _____ was () granted () denied () withdrawn.
- ☐ Cancellation of removal under section 240A(a) was () granted () denied () withdrawn.

Respondent's application for:

- ☐ Cancellation under section 240A(b)(1) was () granted () denied () withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Cancellation under section 240A(b)(2) was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- ☐ Adjustment of Status under Section _____ was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- ☐ Respondent's application of () withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied () withdrawn.
- ☐ Respondent's status was rescinded under section 246.
- ☐ Respondent is admitted to the United States as a _____ until _____.
- ☐ As a condition of admission, respondent is to post a \$ _____ bond.
- ☐ Respondent knowingly filed a frivolous asylum application after proper notice.
- ☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- ☐ Proceedings were terminated.
- ☐ Other: _____

Date: May 26, 2015


BARRY J. PETTINATO
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

 6.25.15