



U.S. Department of Justice

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Name: DOEH, KOKOU JONITO

A 042-949-629

Date of this notice: 12/5/2016

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:
Greer, Anne J.
Pauley, Roger
Geller, Joan B

Userteam: Docket

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**DOEH, KOKOU JONITO
A042-949-629
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13880 BUSINESS CENTER DR
ELK RIVER, MN 55330**

**DHS/ICE Office of Chief Counsel –BLM
(MSP)
1 Federal Drive, Suite 1800
Ft. Snelling , MN 55111**

Name: DOEH, KOKOU JONITO

A 042-949-629

Date of this notice: 12/5/2016

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:
Greer, Anne J.
Pauley, Roger
Geller, Joan B

cc: [redacted]
User team: [redacted]

Falls Church, Virginia 22041

File: A042 949 629 – Ft. Snelling, MN

Date: **DEC - 5 2016**

In re: KOKOU JONITO DOEH

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Linus Chan, Esquire

ON BEHALF OF DHS: Colin P. Johnson
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 is a native and citizen of Togo. This case was last before us on May 13, 2016, when we administratively closed proceedings so that the respondent could pursue a nonimmigrant U visa petition under section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U). On May 20, 2016, the DHS filed a motion to reinstate the respondent's proceedings. While the DHS's motion was pending, the respondent filed a motion to terminate proceedings. The respondent's motion will be granted, and the DHS's motion will be denied as moot.

In the respondent's motion, he argues that proceedings should be terminated because he is no longer removable as an aggravated felon under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(iii). Specifically, the respondent argues that his conviction for the offense of burglary in violation of title 21 of the Oklahoma Statutes section 1435 does not constitute an aggravated felony as defined by section 101(a)(43)(G) of the Act, 8 U.S.C. § 1101(a)(43)(G), in light of *Mathis v. United States*, 136 S.Ct. 2243 (2016). In this regard, there is no dispute that the statute under which the respondent was convicted is overbroad because of the various places in which a burglary can take place. However, the respondent argues that the statute is not divisible because the various places where a burglary can take place are alternate means rather than elements of the offense.

We will grant the respondent's motion to terminate proceedings. Specifically, we agree with the respondent's argument that he is no longer removable as charged. "[T]he generic, contemporary meaning of burglary contains at least the following elements: an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." *Taylor v. United States*, 495 U.S. 575, 598 (1990). Title 21 of the Oklahoma Statutes section 1435 provides:

Cite as: Kokou Jonito Doeh, A042 949 629 (BIA Dec. 5, 2016)

Every person who breaks and enters any building or any part of any building, room, booth, tent, railroad car, automobile, truck, trailer, vessel or other structure or erection, in which any property is kept, or breaks into or forcibly opens, any coin operated or vending machine or device with intent to steal any property therein or to commit any felony, is guilty of burglary in the second degree.

21 O.S. sec. 1435. Subsequent to our prior decisions in this case, the Supreme Court issued its decision in *Mathis v. United States*, *supra*. *Mathis* applied the categorical approach to a state burglary statute that contained alternative means to satisfy one of its elements. In so doing, *Mathis* provided helpful guidance for determining whether a predicate statute of conviction is divisible. A statute that outlines only various *means* of committing the predicate offense is not divisible, whereas a statute that sets forth alternative *elements* of each offense is divisible. *See id.* at 2256 (emphasis added); *see also Matter of Chairez*, 26 I&N Dec. 819 (BIA 2016) (holding that the approach to divisibility announced in *Mathis* is applicable in removal proceedings nationwide). A statute remains indivisible even if it “enumerates various factual means of committing a single element.” *See Mathis v. U.S.*, *supra* at 2249.

Oklahoma has defined the elements of the offense of burglary as: (1) breaking; (2) entering; (3) a/an building/room/booth/tent/railroad car/automobile/truck/trailer/vessel/structure/erection; (4) of another; (5) in which property is kept; and (6) with intent to steal/commit a felony. *See Farris v. Workman*, 2008 WL 4570485 (W.D. Okla. 2008). Since the various places where a burglary can take place are alternate means rather than elements of the offense, we agree with the respondent’s argument that the statute is not divisible and he is not removable as charged. Because we conclude that the respondent is not removable as charged, we need not address the DHS’s motion to reinstate proceedings.

Accordingly, the following orders will be entered.

ORDER: The respondent’s motion to terminate proceedings is granted.

FURTHER ORDER: The DHS’s motion to reinstate is denied as moot.


FOR THE BOARD