U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: B[redacted], W[redacted]

A [redacted]-187

Date of this notice: 6/17/2020

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:
Hunsucker, Keith
Gemoets, Marcos
Morris, Daniel

Userteam: Docket

File: A[redacted]-187 – Detroit, MI

Date: JUN 17 2020

In re: B[redacted] W[redacted]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Russell Arbutyn, Esquire

APPLICATION: Termination; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Iraq and a lawful permanent resident of the United States, appeals the Immigration Judge's April 10, 2018, decision denying his applications for withholding of removal and protection under the Convention Against Torture. Section 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c), 1208.18. During the pendency of the appeal, the respondent filed a motion to terminate proceedings based on new evidence, and subsequently filed an appellate brief, accompanied by a renewed motion to terminate proceedings. The Department of Homeland Security ("DHS") did not respond to the original motion to terminate or to the renewed motion to terminate proceedings. The motion will be granted, and the removal proceedings will be terminated.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent adjusted his status to that of a lawful permanent resident on June 13, 1996 (Exh. 1). On April 5, 1999, the respondent was convicted in the 16th Circuit Court, Mount Clemens, Michigan, for the offense of criminal sexual conduct in the fourth degree, committed in violation of M.C.L. section 750.520E1A-A (Exh. 1).[1] The respondent was subsequently charged with removability as an alien who has been convicted of a crime involving moral turpitude committed within 5 years after admission for which a sentence of one year or longer may be imposed, and as an alien convicted of an aggravated felony (as defined in section 101(a)(43)(A) of the Act, a law relating to sexual abuse of a minor), and (Exh. 1). *See* sections 237(a)(2)(A)(i) and 237(a)(2)(A)(iii) of the Act, 8 U.S.C. §§ 1227(a)(2)(A)(i) and 1227(a)(2)(A)(iii).

With his motion to terminate, the respondent has submitted new evidence that, on October 31, 2018, a Michigan court granted the prosecutor's oral motion to nolle prosequi the 1998 matter nunc pro tunc, as well as the defendant's motion for entry of an order to nolle prosequi the matter nunc pro tunc. The state court judge stated that the basis of the order was that the defendant (the respondent in these proceedings) was "not properly advised of the possible immigration

[1] The conviction records indicate that the offense was filed as Case No. 1998-3105-FH.

consequences of his plea in this matter; resulting in ineffective assistance of counsel rendering his plea unknowing and involuntary." The Order of Nolle Prosequi was entered nunc pro tunc to August 12, 1998 (Respondent's Motion to Terminate, Exh. A). Because the state court judge entered the order of nolle prosequi on the basis of a procedural or substantive defect in the underlying criminal proceedings, the conviction is not valid for immigration purposes. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). As such, neither charge of removability can be sustained. Thus, termination is appropriate.

In light of our disposition, we need not address the respondent's contentions on appeal regarding his eligibility for relief. *Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach")). Accordingly, the following orders will be entered.

ORDER: The motion to terminate is granted.

FURTHER ORDER: The removal proceedings are terminated.

FOR THE BOARD