



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**AGUILAR-GONZALES, JOSE ELIAS  
A208-786-831  
c/o NEVADA SOUTHERN DET. CENTER  
2190 EAST MESQUITE AVE  
PAHRUMP, NV 89060**

**DHS/ICE Office of Chief Counsel - LVG  
3373 Pepper Lane  
Las Vegas, NV 89120**

**Name: AGUILAR-GONZALES, JOSE ELI...    A 208-786-831**

**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:  
O'Leary, Brian M.  
O'Connor, Blair  
Mann, Ana

Userteam: Docket

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Falls Church, Virginia 22041

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File: A208 786 831 – Las Vegas, NV

Date: **AUG - 8 2016**

In re: JOSE ELIAS AGUILAR-GONZALEZ a.k.a. Jose Aguilar

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

The respondent, a native and citizen of Honduras, appeals the decision of the Immigration Judge, dated May 4, 2016, ordering his removal from the United States. The record will be remanded.

We review Immigration Judges' findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

Considering the totality of the circumstances, specifically, the respondent's expressed fear of returning to Honduras (Tr. at 7), we conclude that remand is warranted in order to provide the respondent with an opportunity to file an Application for Asylum and for Withholding of Removal (Form I-589). *See Matter of C-B-*, 25 I&N Dec. 888 (BIA 2012). Moreover, upon remand, the respondent should be provided an opportunity to file an Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B) and renew his request for voluntary departure.

We recognize that the respondent has been charged with a crime which, if convicted, could disqualify him for relief. As such, upon remand, it may be appropriate for the Immigration Judge to continue these removal proceedings while his criminal proceedings are completed. *See* 8 C.F.R. §§ 1003.29, 1240.6. However, we do not agree with the Immigration Judge's holding that, due to the possible future conviction for a disqualifying offense, the respondent is precluded from filing for relief at the present time (I.J. at 2-3). The possibility that an alien, at a later date, may be convicted of a disqualifying criminal offense is not, in itself, a statutory bar to cancellation of removal. *See* section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1).

At the present time, we express no opinion regarding the underlying merits of the respondent's claims to relief. The following order is entered.

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

  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
LAS VEGAS, NEVADA

File: A208-786-831

May 4, 2016

In the Matter of

JOSE ELIAS AGUILAR-GONZALES

RESPONDENT

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)

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act) - present in the United States without having been admitted or paroled.

APPLICATIONS: Voluntary departure.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: CHRISTIAN PARKE  
Assistant Chief Counsel

ORAL DECISION AND ORDERS OF THE IMMIGRATION JUDGE

The respondent is a 38-year-old male who is a native and citizen of Honduras. On April 19, 2016, the Department of Homeland Security (DHS) issued a Notice to Appear (NTA) against the respondent. The NTA was filed with the Immigration Court in Las Vegas on April 22, 2016. See Exhibit 1.

At today's hearing, the respondent was informed of his right to counsel at no expense to the United States Government. See Section 292 of the Act. However, the

respondent elected to represent himself.

The respondent has admitted the four factual allegations in the NTA. Based upon these admissions, as well as the Court's review of the Form I-213 at Exhibit 2, the Court finds that the respondent's inadmissibility has been established in accordance with Section 240(c)(2) of the Act. The respondent designated Honduras as the country for removal.

The record reflects that the respondent signed a guilty plea agreement on or about April 19, 2016. The respondent submitted a guilty plea agreement to respond to the two felony charges that were filed against him in the District Court for Clark County, Nevada. The respondent's plea was entered in accordance with the decision of North Carolina v. Alford, 400 U.S. 25 (1970). The respondent was charged in count 1 with lewdness with a child in violation of Nevada Revised Statute Section 201.230 and attempt coercion under count 2 in violation of Nevada Revised Statute Sections 193.330 and 207.190. The respondent acknowledged in his guilty plea agreement with respect to count 1 that the District Court Judge must sentence the respondent to a minimum of one year imprisonment and a maximum of ten years.

The respondent is awaiting sentencing in the District Court in Clark County, Nevada, with the sentencing hearing to be conducted in August 2016. The respondent was transferred to Immigration custody after he had signed the guilty plea agreement, but before the District Court for Clark County, Nevada, had proceeded with the sentencing hearing.

It is apparent to the undersigned Immigration Judge that as soon as the sentence is imposed in August 2016 that the respondent will have an aggravated felony conviction on his record, because the conviction for lewdness with a child constitutes an aggravated felony within the meaning of Section 101(a)(43)(A) of the Act.

The Court inquired from the respondent about possible relief from removal, to include the respondent's presenting an asylum request to the Immigration Court. The respondent said that he had some fear about returning to Honduras, but that he had a greater fear about being detained in ICE custody in Henderson, Nevada. The Form I-213 indicates that the respondent told the Immigration officer who interviewed him at the Clark County Detention Center on February 25, 2016, that he did not have a fear of persecution or torture in Honduras.

The respondent also will be not eligible for cancellation of removal under Section 240A(b)(1) of the Act, because the conviction for lewdness with a child will be both an aggravated felony and a crime involving moral turpitude, thus, barring him in accordance with Sections 240A(b)(1)(B) and (C) of the Act.

The respondent inquired about voluntary departure and he advised that he has four United States citizen children. However, the Form I-213 reflects that the respondent was granted a voluntary return at the border ten separate times in the year 1999. Furthermore, when the Court considers the information to which the respondent pled guilty, the Court would deny any application for post-conclusion voluntary departure as a matter of discretion. In pertinent part, the information under count 1 provides that the respondent: "did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to-wit: K. C., a child under the age of 16 years, by touching the said [victim's] breasts, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the defendant." Under these circumstances where the respondent has committed the felony offense of lewdness with a child, the Court considers this to be an egregious criminal offense, and any request for voluntary departure would be denied in the exercise of discretion.

Based on the forgoing, the Court will enter the following order.

**ORDER**

IT IS HEREBY ORDERED that any application for post-conclusion voluntary departure be denied, and that the respondent shall be removed from the United States to Honduras pursuant to the charge contained in the NTA.

**Please see the next page for electronic**

**signature**

JEFFREY L. ROMIG  
Immigration Judge

//s//

Immigration Judge JEFFREY L. ROMIG

romigje on June 6, 2016 at 11:37 PM GMT