U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: GONZALEZ, THOMAS ROCHA

A 090-912-784

Date of this notice: 5/14/2019

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:
Guendelsberger, John
Grant, Edward R.
Kendall Clark, Molly

Userteam: Docket

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File: A090-912-784 – Huntsville, TX

Date: MAY 14 2019

In re: Thomas ROCHA GONZALEZ

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Eric Brown, Esquire

ON BEHALF OF DHS: Carrie Law
Assistant Chief Counsel

APPLICATION: Reopening

On June 18, 2018, the respondent, a native and citizen of Mexico, submitted a motion to reopen and terminate proceedings in which the Board summarily affirmed the Immigration Judge's decision finding him removable and ineligible for relief from removal on July 18, 2002. The Department of Homeland Security (DHS) opposes reopening. The motion will be granted and these removal proceedings will be terminated without prejudice.

As this is the respondent's second motion to reopen and since it was filed almost 16 years after the Board's final administrative decision, it is statutorily both time and number-barred. Section 240(c)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c)(2). The respondent, however, asks that this statutory deadline be equitably tolled, alternatively seeking sua sponte reopening and termination, averring that he is no longer removable under section 237(a)(2)(A)(iii) of the Act, because the holding in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018)[1] constitutes a fundamental change in the law. *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999); 8 C.F.R. § 1003.2(a).

The respondent was charged with being removable under section 237(a)(2)(A)(iii) of the Act for having been convicted of an aggravated felony crime of violence, as defined in section 101(a)(43)(F) of the Act, in light of his felony conviction for assault (Exhs. 1, 2). Following the Supreme Court's decision in *Sessions v. Dimaya*, the Fifth Circuit's decisions regarding 18 U.S.C. § 16(b) have been abrogated, and the respondent's offense can no longer be considered a crime of violence under 18 U.S.C. § 16(b). *See, e.g., United States v. Gonzalez-Longoria*, 831 F.3d 670, 675–77 (5th Cir. 2016), *cert. denied*, (U.S. May 14, 2018), and *abrogated by Sessions v. Dimaya*, 138 S. Ct. 1204 (2018); *see also Leocal v. Ashcroft*, 543 U.S. 1 (2004) (holding that 18 U.S.C. § 16(a) suggests a category of violent, active crimes).

[1] Therein, the Supreme Court recently held that the residual clause crime of violence definition under 18 U.S.C. § 16(b), as incorporated into the Act's definition of aggravated felony, was impermissibly vague in violation of due process, and, thus, unconstitutional.

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We recognize that the DHS reports that the respondent was removed to Mexico on April 27, 2002, and that such removal was lawful and in accordance with applicable legal principles at the time. However, in light of the intervening Supreme Court precedent the respondent is not removable on the sole ground of removability charged in the Notice to Appear.

Therefore, we find that termination of the proceedings is warranted. Accordingly, the following order shall be entered.

ORDER: The respondent's motion is granted, and these removal proceedings are terminated without prejudice.

FOR THE BOARD

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Cite as: Thomas Rocha Gonzalez, A090 912 784 (BIA May 14, 2019)