



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: NAJERA-RODRIGUEZ, JULIO C...

A 060-280-595

Date of this notice: 12/9/2019

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

User team: Docket

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RL

Falls Church, Virginia 22041

File: A060-280-595 – Chicago, IL

Date: DEC - 9 2019

In re: Julio Cesar NAJERA-RODRIGUEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Charles G. Roth, Esquire

APPLICATION: Removability; termination of proceedings

This case is before the Board pursuant to a June 4, 2019, decision of the United States Court of Appeals for the Seventh Circuit. *Najera-Rodriguez v. Barr*, 926 F.3d 373 (7th Cir. 2019). In its decision, the court held that the statute under which the respondent was convicted, 720 ILCS 570/402(c) (possession of a controlled substance) was not categorically a controlled substance offense. *Najera-Rodriguez v. Barr*, 926 F.3d at 347-48. The Seventh Circuit noted that the parties agreed that, because the Illinois statute included controlled substances not included in the five federal schedules of controlled substances, the respondent was not removable unless the modified categorical approach could be applied. *Id.* at 348. The court found that the statute, state court decisions, jury patterns, and the record of conviction did not indicate that the identity of the controlled substance was a necessary element for conviction and thus the respondent's conviction did not render him removable for a controlled substance offense. *Id.* at 350-56. The Seventh Circuit vacated the removal order and remanded the case to the Board for further proceedings. *Id.* at 356.

The Board set a post-remand briefing schedule. No response was received from the Department of Homeland Security (DHS). The lawful permanent resident respondent filed a brief in which he argues that proceedings should be terminated in light of the Seventh Circuit's decision. The record reflects that the respondent was charged with removability only under section 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i), for having been convicted of a controlled substance offense (Exh. 1). In light of the Seventh Circuit's decision and the absence of a response from DHS regarding the respondent's removability, the removal proceedings against the respondent will be terminated.

Accordingly, the following order will be entered:

ORDER: The removal proceedings against the respondent are hereby terminated without prejudice.



FOR THE BOARD