



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*

[REDACTED]

**DHS/ICE - Office of Chief Counsel
10400 Rancho Road
Adelanto, CA 92301**

Name: SILVA MADRIGAL, ELY RAMON

A 057-921-644

Date of this notice: 11/19/2019

Enclosed is a copy of the Board's decision in the above-referenced case. 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 this decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Cassidy, William A.

Userteam: Docket

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RC

Falls Church, Virginia 22041

File: A057-921-644 – Adelanto, CA

Date:

NOV 19 2019

In re: Ely Ramon SILVA MADRIGAL a.k.a. Eliseo Silva a.k.a. Tweedy Unknown

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Nicholas B. Lucic
Assistant Chief Counsel

APPLICATION: Termination; remand

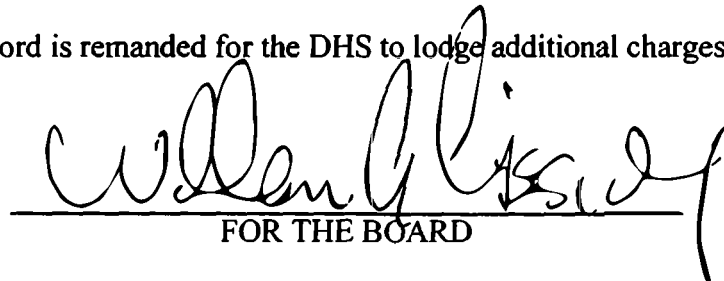
The Department of Homeland Security (DHS) appeals from the Immigration Judge's decision dated November 15, 2018, determining that the DHS had not established the respondent was removable as charged and terminating proceedings. The respondent, a native and citizen of Nicaragua, has not responded to the appeal. The record will be remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found the respondent had been a lawful permanent resident since 2005, and in 2017 he was convicted under California Penal Code section 266i(a)(1), for Pandering by Procuring (IJ at 1; Exh. 3). The Immigration Judge terminated proceedings because the DHS had not met its burden to establish by clear and convincing evidence that this conviction was an aggravated felony as described in sections 101(a)(43)(K), 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(43)(K), 1227(a)(2)(A)(iii) (IJ at 1-3; Exhs. 1, 3). We agree the DHS has not met this high burden of proof. However, we will remand for the DHS to lodge additional charges in light of intervening case law (DHS Br. at 8). 8 C.F.R. §§ 1003.30, 1240.10(e).

The following order will be entered.

ORDER: The record is remanded for the DHS to lodge additional charges of removability.


FOR THE BOARD