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 20530

Mondragon, Orlando, Esq.
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1028 E. Rio Grande Avenue
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DHS/ICE Office of Chief Counsel - ELP
1545 Hawkins Blvd.
El Paso, TX 79925

Name: RINQUILLO DE CORRALES, BL... **A 074-662-392**

Date of this notice: 1/22/2014

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:
Pauley, Roger

schwarzA
Userteam: Docket

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5107 Leesburg Pike, Suite 2000
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RINQUILLO DE CORRALES, BLANCA JOSEFINA
A074-662-392
EL PASO SPC
8915 MONTANA AVE
EL PASO, TX 79925

DHS/ICE Office of Chief Counsel - ELP
1545 Hawkins Blvd.
El Paso, TX 79925

Name: RINQUILLO DE CORRALES, BL... **A 074-662-392**

Date of this notice: 1/22/2014

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). 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 the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Pauley, Roger

schwarzA
Userteam: Docket

File: A074 662 392 – El Paso, TX Date: JAN 22 2014

In re: BLANCA JOSEFINA RINQUILLO DE CORRALES

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Orlando Mondragon, Esquire

ON BEHALF OF DHS: Judith F. Bonilla
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

APPLICATION: Termination

The respondent appeals from an Immigration Judge's October 29, 2013, decision ordering her removed from the United States. The Department of Homeland Security ("DHS") opposes the appeal. The appeal will be dismissed.

The respondent is a native and citizen of Mexico and a lawful permanent resident of the United States. In October 2012 she sustained a Federal conviction in Texas for three counts of violating 18 U.S.C. § 1030(a)(4), which provides in relevant part that "[w]hoever ... knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value" is guilty of a felony. As a result of this conviction, the respondent was sentenced to three 11-month terms of imprisonment (to be served concurrently) and was ordered to pay $37,763.67 in restitution to her victim.

Based on the foregoing facts, the Immigration Judge found the respondent removable from the United States as an alien convicted of an "aggravated felony," namely, "an offense that ... involves fraud or deceit in which the loss to the victim or victims exceeds $10,000." *See* sections 101(a)(43)(M)(i) and 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(43)(M)(i), 1227(a)(2)(A)(iii). This appeal followed.

The respondent does not dispute that the offense defined by 18 U.S.C. § 1030(a)(4) "involves fraud or deceit," and thus the only issue on appeal is whether the DHS established by clear and convincing evidence that the respondent's offenses of conviction caused more than $10,000 in loss to her victim. The amount of victim loss arising from the respondent's offenses of conviction is a fact which an Immigration Judge is permitted to find by means of a "circumstance-specific" inquiry. *See Nijhawan v. Holder*, 557 U.S. 29 (2009). According to the

respondent, the Immigration Judge erred by relying upon the sentencing court's restitution order as a measure of victim loss because the Federal restitution statute, 18 U.S.C. § 3664(e), requires that evidence of such loss be proven by a mere preponderance of the evidence—a lower standard of proof than the clear and convincing evidence required in removal proceedings.

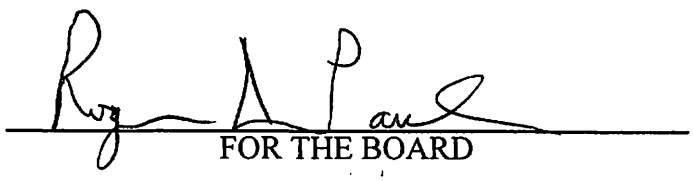
Although we agree that the amount of restitution may not always be a reliable measure of victim loss for purposes of section 101(a)(43)(M)(i), on the facts presented here we discern no error in the Immigration Judge's reliance upon it. The respondent did not dispute the $37,763.67 loss calculation during her sentencing proceedings, nor has she argued that the losses in question were attributable to acts other than her offenses of conviction. Thus, the fact that the sentencing court could have found that amount of loss by a preponderance of the evidence is not determinative:

> We do not agree with the respondent that restitution orders and presentence reports can never suffice [to establish the requisite loss] if a preponderance of the evidence standard was employed in entering the order or developing the report. Facts found by a preponderance may also meet more stringent evidentiary tests. For example, a defendant's failure to contest, during the criminal proceedings, a fact found by a preponderance would bear on whether that fact was reliable for removal purposes as well, especially in the absence of any showing in removal proceedings that there was error in the criminal proceedings respecting that fact.

Matter of Babaisakov, 24 I&N Dec. 306, 319-20 (BIA 2007); *see also James v. Mukasey*, 464 F.3d 505, 510-12 (5th Cir. 2006) (relying upon restitution as proof of victim loss under section 101(a)(43)(M)(i)). The fact that the amount of victim loss found by the sentencing court exceeded section 101(a)(43)(M)(i)'s $10,000 threshold by more than $25,000 was also a relevant consideration for the Immigration Judge. *Matter of Babaisakov, supra*, at 320 n. 11.

In view of the foregoing, we conclude that the Immigration Judge properly found the respondent removable from the United States as an alien convicted of an aggravated felony. The respondent has not requested, or established eligibility for, any form of relief from removal. Accordingly, the following order shall be issued.

ORDER: The appeal is dismissed and the Immigration Judge's removal order is affirmed.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
8915 MONTANA AVENUE, SUITE 100
EL PASO, TX 79925

IN THE MATTER OF:	**IN REMOVAL PROCEEDINGS**
RONQUILLO de Corrales, Blanca Josefina **Respondent**	**FILE NO.:** A074 662 392
	DATE: OCTOBER 29, 2013

Charge: INA § 237(a)(2)(A)(iii): Aggravated Felony (Fraud)

Application: Termination of Removal Proceedings

On Behalf of the Respondent:
Orlando Mondragon, Esq.
Law Office of Orlando Mondragon
1028 Rio Grande
El Paso, TX 79902

On Behalf of the Government:
Assistant Chief Counsel
Department of Homeland Security
1545 Hawkins Boulevard, Room 275
El Paso, Texas 79925

WRITTEN DECISION AND ORDER OF THE IMMIGRATION COURT

I. Procedural History

The respondent is a forty-three year old female who is a native and citizen of Mexico. She adjusted her status to that of a lawful permanent resident ("LPR") on or about August 23, 1996. On July 31, 2013, the respondent was placed in removal proceedings via the issuance of a Notice to Appear (Exh. 1, "NTA") by the Department of Homeland Security ("DHS") charging her with removability based on a federal criminal conviction for Accessing a Protected Computer in Furtherance of Fraud, in violation of 18 U.S.C. §§ 1030(a)(4) and 1030(c)(3)(A) for which she was ordered to pay restitution in the amount of $37,763.67.

At master calendar hearings, the respondent appeared represented by counsel, acknowledged being advised of all of her rights, conceded service of the NTA, and entered the following pleadings to the allegations contained in NTA:

Allegations

(1) The respondent admitted she is not a citizen or national of the United States;
(2) The respondent admitted she is a native and citizen of Mexico;
(3) The respondent admitted she adjusted her status to that of a lawful permanent resident (IR-6) on or about August 23, 1996, under Section 245 of the Act;
(4) The respondent admitted she was convicted on October 24, 2012, in the United States District Court, Western District of Texas, for the offense of Accessing a Protected Computer in Furtherance of Fraud, in violation of Title 18, United States Code, Section 1030(a)(4) and Title 18, United States Code, Section 1030(c)(3)(A), for which a sentence of eleven (11) months was imposed and for she was ordered to pay $37,763.67 in restitution.

Charge

The respondent was charged with removability pursuant to the following sections of the Immigration and Nationality Act, as amended ('Act'):

> Section 237(a)(2)(A)(iii) as an alien who at any time after admission has been convicted of an aggravated felony as defined in Section 101(a)(43)(M) of the Act, a law relating to an offense that involves fraud or deceit in which the loss to the victim or victims exceeds $10,000.

The respondent designated Mexico as the country for removal if it became necessary, denied removability, moved to terminate removal proceedings, and sought no relief from removal other than termination. The respondent asserted that the DHS could not prove that the conviction resulted in a loss to the victim exceeding $10,000. However, based on the evidence of record, the Court sustained the charge of removability and ordered the respondent removed to Mexico. The respondent reserved appeal of that decision and the case was adjourned for issuance of a written decision.

II. Evidence Considered

The Court has considered the testimony of the respondent and the following exhibits in the record:

Exhibit 1 is the NTA.

Exhibit 2 is the respondent's Motion to Terminate Removal Proceedings.

Exhibit 3 is the DHS Opposition to the Respondent's Motion to Terminate, and conviction records relating to the respondent's federal criminal conviction for Accessing a Protected Computer in Furtherance of Fraud, in violation of 18 U.S.C. §§ 1030(a)(4) and 1030(c)(3)(A).

III. Relevant Factual Findings of the Court

The respondent is a forty-three year old female who is a native and citizen of Mexico. She adjusted her status to that of a lawful permanent resident ("LPR") on or about August 23, 1996. On October 24, 2012, the respondent was convicted in the United States District Court, Western District of Texas, for the offense of Accessing a Protected Computer in Furtherance of Fraud, in violation of Title 18, United States Code, Section 1030(a)(4) and Title 18, United States Code, Section 1030(c)(3)(A). As a result of this conviction the respondent was sentenced to eleven (11) months imprisonment and was ordered to pay $37,763.67 in restitution (Exhibit 3, Tabs A, B).

IV. Legal Analysis and Findings of Law

Removability Under INA § 237(a)(2)(A)(iii): Conviction for Aggravated Felony

Based on the admissions of the respondent through counsel and the evidence of record (Exh. 3) the Court finds that on October 24, 2012, the respondent was convicted in the United States District Court, Western District of Texas, for the offense of Accessing a Protected Computer in Furtherance of Fraud, in violation of Title 18, United States Code, Section 1030(a)(4) and Title 18, United States Code, Section 1030(c)(3)(A). As a result of this conviction the respondent was sentenced to eleven (11) months imprisonment and was ordered to pay $37,763.67 in restitution (Exhibit 3, Tabs A, B).

Pursuant to *Matter of Babaisakov*, 24 I&N Dec. 306, 319 (BIA 2007), the restitution order itself is reliable evidence of the amount of loss. The Fifth Circuit has also affirmed this conclusion in *Martinez v. Mukasey*, 508 F.3d 255, 259-60 (5th Cir. 2008) and *James v. Gonzales*, 464 F.3d 505 (5th Cir. 2006). However, in this case *both* the restitution order (Exhibit 3, Tab A, p. 10) and the transcript of the sentencing hearing (Exhibit 3, Tab B, pp. 16, 23) leave no doubt not only that the respondent was ordered to pay restitution in the amount of $37,763.67, but that her criminal conduct and conviction *in fact* resulted in a loss to the victim(s) in this same amount of $37,763.67. Thus, the Court will **deny** the respondent's motion to terminate and **sustain** the charge of removability.

As there are no other applications for relief, the following orders shall be entered:

> **IT IS ORDERED THAT** the respondent's motion for termination of removal proceedings be **DENIED.**
>
> **IT IS FURTHER ORDERED THAT** the respondent be **REMOVED** from the United States to **MEXICO.**

October 29, 2013
Date

Sunita B. Mahtabfar
Sunita B. Mahtabfar
U.S. Immigration Judge