



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**DHS/ICE Office of Chief Counsel - ATL
180 Spring Street, Suite 332
Atlanta, GA 30303**

Name: PASHA, PERVEZ

A042-436-375

Date of this notice: 2/24/2011

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:
Cole, Patricia A.**

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Falls Church, Virginia 22041

File: A042 436 375 - Atlanta, GA

Date: FEB 24 2011

In re: PERVEZ PASHA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Socheat Chea, Esquire

ON BEHALF OF DHS: Randall W. Duncan
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 Department of Homeland Security ("DHS") appeals from the Immigration Judge's April 28, 2010, decision terminating these proceedings. The respondent opposes the appeal, and has also moved to supplement the record with evidence that Georgia has pardoned the conviction which forms the basis of these proceedings. The DHS has not responded to the supplemental filing.

The record appears unequivocal, and therefore we take administrative notice of the pardon. GA. CONST. art. IV § 2 (providing for a State Board of Pardons to exercise executive power to pardon); *see also Stinski v. State*, 691 S.E.2d 854, 864 (Ga. 2010) (recognizing State Board of Pardons wields constitutionally granted executive power over pardons); 8 C.F.R. § 1003.1(d)(3)(iv) (authorizing the Board to take administrative notice of appropriate facts). As the respondent's conviction has been pardoned, he is no longer deportable for immigration purposes. *See* section 237(a)(2)(A)(vi) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(vi); *Matter of D-*, 7 I&N Dec. 476 (BIA 1957) (a conviction pardoned by the Georgia State Board of Pardons did not render an alien deportable under predecessor provision). As the pardon requires termination of these proceedings in its own right, the DHS's appeal is moot. Accordingly, we enter the following order.

ORDER: The proceedings are terminated and the appeal is dismissed as moot.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Atlanta, Georgia

File No.: A 042 436 375

April 28, 2010

In the Matter of)
PERVEZ PASHA) IN REMOVAL PROCEEDINGS
Respondent)

CHARGE: Section 237(a)(2)(A)(iii).

APPLICATIONS: The respondent has filed a motion to terminate proceedings.

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

Eli Echols
3500 Duluth Park Ln, Bldg 300
Duluth, Georgia 30096

Randall W. Duncan
Assistant Chief Counsel
Dept. of Homeland Security

ORAL DECISION OF THE IMMIGRATION JUDGE

This case came before the Court as a result of a Notice to Appear that was issued by the Department of Homeland Security. The charging document alleges that the respondent is a lawful permanent resident of the United States and that he was convicted on February 27, 2006, for the offense of theft and that he received the sentence of five years confinement.

The respondent has admitted the first four allegations of the Notice to Appear, but contests the allegation indicating that he was sentenced to five years in prison. The importance of this

sentence is that it relates to the charge of removal in this case. The charge of removal is that the respondent was convicted of an aggravated felony in that he was convicted for a crime relating to a theft offense for which a term of imprisonment of at least one year was imposed.

The record in this case contains the original plea agreement and sentence. That document reflects that the respondent was in fact sentenced to five years imprisonment on Count 3. The Government correctly charged that the respondent was being removable based on this document that is in the record.

The respondent has filed a motion to terminate proceedings because there was a subsequent order of clarification by the state court judge. That order was issued on March 2, 2010. The state court judge order reflected that its original sentence was incorrectly set forth in the document. The sentence was apparently meant to be a probated sentence from the date of disposition. The state court clarified that it did not intend that the respondent be incarcerated as a result of the sentence and judgment. In fact, the respondent said he never spent any time in jail. In fact, it is now less than five years after the respondent was convicted and he is present in Court and there is no evidence at all to suggest that he ever served any time in prison.

In essence, the original sentence was clarified to reflect that the respondent was not sentenced to one to five years in


prison, but rather was sentenced to probation. The Court is satisfied that the modification of the sentence in this case was not for the purposes of Immigration problems. The Court has reviewed that motion filed in the state court proceedings. It does not reflect that the respondent sought to immediately rate the consequences of the original sentence on the grounds that he would be deported. It appears that the respondent simply notified the Court that, in fact, the intent of the sentence was for probation and not a term of imprisonment.

The Court finds that the respondent has not been sentenced to at least one year of imprisonment. The Court finds that the charge of removal in this case has not been sustained. Allegation number five of the Notice to Appear has not been sustained.

In light of the foregoing, the Court will issue an order terminating these proceedings.

ORDER

IT IS HEREBY ORDERED that the proceedings against the respondent be terminated.



EARLE B. WILSON
United States Immigration Judge

CERTIFICATE PAGE


I hereby certify that the attached proceeding before
JUDGE EARLE B. WILSON, in the matter of:

PERVEZ PASHA

A 042 436 375

Atlanta, Georgia

is an accurate, verbatim transcript of the recording as provided by
the Executive Office for Immigration Review and that this is the
original transcript thereof for the file of the Executive Office
for Immigration Review.



Kristen J. Bellotti, Transcriber
Free State Reporting, Inc.

May 28, 2010

(completion date)

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