



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**Pires, Manuel R., Esq.  
RODRIGUES PIRES, P.C.  
1212 Hancock Street  
Suite 130  
Quincy, MA 02169**

**DHS/ICE Office of Chief Counsel - BOS  
P.O. Box 8728  
Boston, MA 02114**

**Name: SOUTO, MARIO LINO BARBOSA**

**A 040-144-389**

**Date of this notice: 12/5/2016**

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

Userteam: Docket

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*CLS*



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**SOUTO, MARIO LINO BARBOSA  
A040-144-389  
BRISTOL CTY HOC  
400 FAUNCE CORNER RD  
N. DARTMOUTH, MA 02747**

**DHS/ICE Office of Chief Counsel - BOS  
P.O. Box 8728  
Boston, MA 02114**

**Name: SOUTO, MARIO LINO BARBOSA**

**A 040-144-389**

**Date of this notice: 12/5/2016**

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

Userteam:

Immigrant & Refugee Appellate Center, LLC | [www.irac.net](http://www.irac.net)

Falls Church, Virginia 22041

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File: A040 144 389 – Boston, MA

Date: **DEC – 5 2016**

In re: MARIO LINO BARBOSA SOUTO a.k.a. Mario Souto a.k.a. Mario Dosouto

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Manuel R. Pires, Esquire

APPLICATION: Voluntary departure

In an oral decision dated July 26, 2016, an Immigration Judge found the respondent removable, denied his application for voluntary departure, and ordered him removed from the United States to Cape Verde. The respondent appealed from that decision. While the appeal was pending, the respondent filed a motion to remand. The motion will be granted, and the record will be remanded.

The respondent was found removable as charged, as convicted of an aggravated felony under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii), in conjunction with section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). He was admitted to the United States as a lawful permanent resident in October 1985. The removability charge was based on his July 2015 Rhode Island conviction for assault on an officer with injury, for which crime he was sentenced to imprisonment of 3 years.

The respondent's motion to remand is accompanied by a copy of a November 10, 2016, order from the Rhode Island criminal court vacating the order dismissing his appeal of his 2015 conviction. Consequently, the conviction underlying the removability charge now is on direct appeal.

We find it appropriate to grant the motion and remand the record, so that the Immigration Judge may consider the effect of the criminal court's order on the respondent's removability and eligibility for relief. *See Matter of Montiel*, 26 I&N Dec. 555 (BIA 2015) (holding that removal proceedings may be delayed, where warranted, pending the adjudication of a direct appeal of a criminal conviction). *See also Griffiths v. INS*, 243 F.3d 45 (1<sup>st</sup> Cir. 2001). On remand, both the respondent and the Department of Homeland Security will have the opportunity to provide the Immigration Judge with additional documentation.

Accordingly, we enter the following order.

ORDER: The motion to remand is granted, and the record is remanded to the Immigration Court for further proceedings and for the issuance of a new decision, consistent with this opinion.

  
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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
BOSTON, MASSACHUSETTS

File: A040-144-389

July 26, 2016

In the Matter of

MARIO LINO BARBOSA SOUTO

RESPONDENT

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)  
)  
)

IN REMOVAL PROCEEDINGS

**CHARGE:** Immigration and Nationality Act (INA) Section 237(a)(2)(A)(iii) - in that the respondent was convicted of an aggravated felony relating to a crime of violence for which the term of imprisonment ordered is at least one year.

**APPLICATIONS:** Voluntary departure and termination.

**ON BEHALF OF RESPONDENT:** MANUEL RODRIGUES PIRES

**ON BEHALF OF DHS:** MARY C. KELLEY

**ORAL DECISION OF THE IMMIGRATION JUDGE**

Removal proceedings against the respondent, Mario Lino Barbosa Souto, were initiated on June 29, 2016, with the filing in Immigration Court of the Notice to Appear. The Notice alleged that he was not a citizen or national of the United States, but was a native and citizen of Cape Verde; that he was admitted to the United States at

New York on or about October 5, 1985, as a legal permanent resident; that on July 7, 2015, he was convicted in Rhode Island Superior Court in Providence for the offense of assault on an officer with injury; and that he was sentenced to a term of imprisonment of three years. He was charged with removability pursuant to INA Section 237(a)(2)(A)(iii). See Exhibit 1.

On the issue of removability, the respondent, through counsel, submitted written pleadings on July 26, 2016, in which he admits to the allegations, concedes removability, designates Cape Verde as a country to which removal can be directed and seeks voluntary departure and termination of proceedings. See Exhibit 2. Based upon the admissions to the allegations and the concession of removability contained at Exhibit 2, this Court finds by clear, convincing and unequivocal evidence that the allegations set forth in the Notice to Appear are true and the charge of removability is sustained.

The respondent is not eligible for voluntary departure because he has been convicted of an aggravated felony. The Court received into evidence Exhibit 3 indicating respondent was convicted of the charged offense, as well as other offenses, and was sentenced to a term of imprisonment of three years in the house of corrections. The respondent appealed the decision, but the conviction record reflects that the appeal was dismissed on December 28, 2015. See Exhibit 3. The respondent is apparently attempting to have the dismissal of his appeal set aside so that he can appeal once again to the Rhode Island Supreme Court. This is in the nature of a collateral attack at this point. The conviction is final at this point for Immigration purposes and the respondent is not seeking any form of relief for which he is eligible. Accordingly, the Court will sustain the charge of removability, which it has already done, and order the respondent's removal.

ORDERS

Respondent's application for voluntary departure is denied.

The respondent is hereby ordered removed from the United States and returned to Cape Verde.

**Please see the next page for electronic**

**signature**

STEVEN F. DAY  
Immigration Judge  
July 26, 2016

//s//

Immigration Judge STEVEN F. DAY

days on September 21, 2016 at 10:30 AM GMT

Immigrant & Refugee Appellate Center, LLC | [www.irac.net](http://www.irac.net)