



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

**LAICER, RAVI SATULO
A096-675-284
BUTLER COUNTY JAIL
701 SE STONE ROAD
EL DORADO, KS 67042**

**DHS/ICE Office of Chief Counsel - KAN
2345 Grand Blvd., Suite 500
Kansas City, MO 64108**

Name: LAICER, RAVI SATULO

A 096-675-284

Date of this notice: 1/15/2014

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:
Mullane, Hugh G.

yungc
Userteam: Docket

For more unpublished BIA decisions, visit www.irac.net/unpublished

623

Falls Church, Virginia 20530

File: A096 675 284 - Kansas City, MO ¹

Date: JAN 15 2014

In re: RAVI SATULO LAICER

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Jennifer A. May
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: Removability; continuance; relief from removal

The respondent, a native of India and citizen of Tanzania, appeals from the August 15, 2013, decision of the Immigration Judge, which found the respondent removable as charged, found him ineligible for relief from removal, denied his request for a continuance, and ordered him removed. The respondent's appeal will be dismissed.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

We affirm the Immigration Judge's decision. The Immigration Judge properly found the respondent removable as charged under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an aggravated felony under section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F) (I.J. at 2, 6-7; Exh. 1). We agree that the respondent's March 19, 2012, conviction for the offense of aggravated battery in violation of 21-3414(a)(2)(A) of the Kansas Statutes (K.S.A.), for which he was sentenced to 31 months of imprisonment, is categorically a crime of violence under 18 U.S.C. §§ 16(a) and (b) (I.J. at 1-2, 6-7; Exhs. 2, 4f at 2; Tr. at 48).

Under 18 U.S.C. § 16(a), an offense is a crime of violence if it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." *See also Matter of Velasquez*, 25 I&N Dec. 278, 283 (BIA 2010) (physical force must be the

¹ The proceedings before the Immigration Judge in this matter were completed in Kansas City, Missouri through video conference pursuant to section 240(b)(2)(A)(iii) of the Act, 8 U.S.C. § 1229a(b)(2)(A)(iii).

intentional use of violent force that is capable of causing physical pain or injury to another person). The language of K.S.A. 21-3414(a)(2)(A) defines the offense of aggravated battery as recklessly causing great bodily harm to another person or disfigurement of another person (I.J. at 6). Bodily harm has been defined as any touching of the victim against the victim's will, with physical force, in an intentional hostile and aggravated manner. *State v. Dubish*, 675 P.2d 877, 715 (1984). The word "great" distinguishes the bodily harm necessary from slight, trivial, minor or moderate harm, and as such it does not include mere bruises, which are likely to be sustained in simple battery. *Id.* Further, the term "disfigurement" is a factual circumstance that proves "great bodily harm." *State v. Ultreras*, 295 P.3d 1020, 1035-36 (2013). Because the statute under which the respondent was convicted requires the use of violent force that is capable of causing physical pain or injury to another, we affirm the Immigration Judge's determination that a violation of K.S.A. 21-3414(a)(2)(A) is a crime of violence under 18 U.S.C. § 16(a).

Similarly, we agree with the Immigration Judge that a violation of K.S.A. 21-3414(a)(2)(A) is also a crime of violence under 18 U.S.C. § 16(b), which includes "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense" (I.J. at 6). The substantial risk referred to in § 16(b) "relates not to the general conduct or to the possibility that harm will result from a person's conduct, but to the risk that the use of physical force against another might be required in committing a crime." *Leocal v. Ashcroft*, 543 U.S. 1, 10 (2004). As noted above, an offense under K.S.A. 21-3414(a)(2)(A), which is a felony under Kansas and federal law, requires the intent to use violent physical force against the victim (I.J. at 6-7). Therefore, the respondent's conviction for aggravated battery under K.S.A. 21-3414(a)(2)(A) is a categorical crime of violence under 18 U.S.C. § 16(b), and he is removable as charged.

We disagree with the respondent's contention that the Immigration Judge should have granted him a continuance because he filed a motion to withdraw his plea with the criminal court which is pending (I.J. at 4, 7; Exh. 5; Tr. at 47). An Immigration Judge may grant a continuance for good cause shown. 8 C.F.R. §§ 1003.29, 1240.6. A decision to deny a motion for continuance will not be reversed unless the alien establishes that the denial caused him actual prejudice and harm and materially affected the outcome of his case. *Matter of Villarreal-Zuniga*, 23 I&N Dec. 886 (BIA 2006); *Matter of Sibrun*, 18 I&N Dec. 354, 356-57 (BIA 1983); *Matter of Perez-Andrade*, 19 I&N Dec. 433 (BIA 1987).

Even if the respondent is seeking post-conviction relief, this Board has held that the availability of post-conviction motions do not serve to negate the finality of the criminal conviction or the charge of removability, unless and until the conviction has been overturned pursuant to such a motion (Tr. at 49, 53). See *Matter of Onyido*, 22 I&N Dec. 552, 555 (BIA 1999); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323 (BIA 1996). Moreover, we cannot go behind the judicial record to determine the guilt or innocence of an alien. See *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984) (an Immigration Judge cannot adjudicate guilt); *Matter of S-S-*, 21 I&N Dec. 900, 904 (BIA 1997); *Madrigal-Calvo*, *supra*. Therefore, the Immigration Judge appropriately found that the respondent did not demonstrate good cause to warrant a continuance (I.J. at 7-8).

The respondent also argues that he, an alleged religious preacher, fears returning to Tanzania (Tr. at 58). The Immigration Judge found however that the respondent does not qualify for

withholding of removal and protection under the Convention Against Torture because he testified that he had no fear of persecution or torture by the government in Tanzania (I.J. at 7; Tr. at 31, 58). Further, we agree with the Immigration Judge that the respondent's fear is too generalized to constitute a reasonable fear of future of persecution or torture (Tr. at 58). *See Setiadi v. Gonzales*, 437 F.3d 710, 713 (8th Cir. 2006) (a showing of tension and conflict between Muslims and Christians in Indonesia alone is insufficient to show persecution). While the respondent also claims that Tanzania and Rwanda are on the brink of war, harm arising from general conditions such as anarchy, civil war, or mob violence will not ordinarily support a claim of persecution. *See Mohamed v. Ashcroft*, 396 F.3d 999, 1003 (8th Cir. 2005). Accordingly, the following order will be entered.

ORDER: The respondent's appeal is dismissed.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
KANSAS CITY, MISSOURI

File: A096-675-284

August 15, 2013

In the Matter of

RAVI SATULO LAICER

RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGES: Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), at any time after admission, alien convicted of an aggravated felony as defined in Section 101(a)(43)(F) of the Act, a crime of violence (as defined in Section 16 of Title 18 United States Code, but not including a purely political offense) for which a term of imprisonment ordered is at least one year.

APPLICATIONS: Motion for a continuance.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: JENNIFER A. MAY

2345 Grand Boulevard, Suite 500
Kansas City, Missouri 64108

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 40-year-old divorced male, native of India and citizen of Tanzania, who is a lawful permanent resident of the United States. On May 1, 2012, the respondent was convicted in the district court of Sedgwick County, Kansas for the felony offense of aggravated battery in violation of K.S.A. Section 21-3414 for which a

sentence of 31 months was imposed.

On June 19, 2013, the Department of Homeland Security (DHS or Department) personally served a Notice to Appear charging respondent with removal under Section 237(a)(2)(A)(i) of the Immigration and Nationality Act (Act), as noted above. The Notice to Appear was filed with the Kansas City Immigration Court initiating removal proceedings on June 24, 2013. See Exhibit 1.

At a master calendar hearing on June 27, 2013, the respondent acknowledged proper service of the Notice to Appear. His rights were explained to him as well as the charge of removal. The respondent requested a continuance for additional time to obtain representation by an attorney and this was granted by the Court. At the master reset hearing on July 18, 2013, the respondent appeared before the Court without an attorney and indicated he did not have an attorney to represent him. The respondent admitted factual allegations 1 through 4 contained in the Notice to Appear noting in allegation 2 that he is a native of India. The respondent did deny allegation 5 contained in the Notice to Appear that he had been convicted of an aggravated battery under Kansas law because he believes he was not properly convicted of that offense. The respondent also denied that he had been convicted of a crime of violence aggravated felony as charged in the Notice to Appear.

Because the respondent has been admitted to the United States first as a student and then also subsequently adjusted status to that of a lawful permanent resident, the Department of Homeland Security must prove by clear and convincing evidence that the respondent is subject to removal as charged. No decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence. Section 240(c)(3)(A) of the Act. The Department presented documentary evidence in support of the denied allegation and charge of removal.

These documents include the certified conviction record including the complaint/information, the respondent's application to adjust status on Form I-485 which was approved August 8, 2008, and the respondent's documents from the respondent's Tanzanian passport including his student visa and other identifying information. See Exhibit 2, tabs A through C, pages 1 through 18. The Department also filed supplemental documents including the Kansas statute under which the respondent was convicted for aggravated battery pursuant to Kansas statutes annotated Section 21-3414. See Exhibit 3, tab D, page 19. The respondent objected at the final hearing to the Department's supplemental document at tab D because he was not properly convicted. That is because he believes he was not properly convicted of aggravated battery. The Court does find the Department's documents material and relevant to the issues before the Court, and, therefore, admissible. The document will, therefore, be admitted into the record.

The Department also filed a second supplemental packet of documents including the respondent's waiver of rights and acknowledgement that he had been advised pursuant to Padilla, that his criminal case may impact his Immigration status. The packet also includes the transcript of the respondent's guilty plea, as well as the transcript of his sentencing. The Department filed records relating the respondent's appeal and request for post-conviction relief, and a Kansas case State v. Lowe submitted for the proposition that validating advisals used in Sedgwick County, Kansas, written plea agreements are sufficient to satisfy Padilla. See Exhibit 4, tabs E through I, pages 20 through 73. The respondent also objected to Exhibit 4. He acknowledged the documents did relate to him and that he is the person named in the documents. His objection related to the way he was convicted constituted ineffective assistance on behalf of his criminal counsel. The Court also finds these documents material and

relevant to the issues that must be decided by the Court and has admitted the documents into the record as Exhibit 4.

Any alien convicted of an aggravated felony at any time after admission is deportable. The term "aggravated felony" is defined in Section 101(a)(43) of the Act. To determine whether a particular conviction is an aggravated felony, the Court first applies the "categorical" approach looking only to the statutory definition of the offense. If the statutory definition of the offense of conviction is broader than the definition of the relevant removal offense, the Court applies a "modified categorical approach" in an attempt to determine the conduct for which the defendant was actually convicted. Under the modified categorical approach, the Court looks beyond the language of the statute to a narrow set of documents that are part of the record of conviction in order to determine whether the conduct for which the alien was convicted constitutes an aggravated felony. See generally Shepard v. United States, 544 U.S. 13 (2005).

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilty has been withheld, where a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere, or has admitted sufficient facts to warrant a finding of guilty and the judge has ordered some form of penalty, punishment, or restraint on the alien's liberty to be imposed. Any reference to a term of imprisonment of a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by the Court regardless of any suspension of the imposition or execution of that imprisonment of sentence in whole or in part. See Section 101(a)(48).

In this case, the respondent has filed with the District Court of Sedgwick County, Kansas a "motion to withdraw plea" filed on July 17, 2013, in case number 13CV2143. In the respondent's motion to withdraw the plea in his case, he argues

there was not a proper factual basis for the plea. The respondent also contends his counsel was ineffective because he was not advised that his conviction could constitute an aggravated felony, his counsel ignored his desire to plea to a misdemeanor and go to trial, and misled the respondent as to the ability to remain in the United States among other claims. He provided the Court with a 59 page fax of his motion. See Exhibit 5. The respondent indicates that there has not yet been a hearing set in the Sedgwick County District Court relating to his motion to withdraw his plea. The respondent does not know the time frame, but believes the District Court judge cannot make a decision on the motion without having first a hearing on the post-conviction motion. A conviction is final for Immigration purposes unless and until the respondent's conviction is vacated or the motion to withdraw the plea is granted. As the respondent's conviction stands before the Court today, his conviction is final for Immigration purposes pursuant to Section 101(a)(48) of the Act.

A crime of violence aggravated felony is defined in 18 U.S.C. Section 16 to include: (1) an offense that has as an element the use, attempted use, or threatened use of physical force against a person or property of another, or (2) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. The Supreme Court of the United States has held that a "crime of violence" requires a higher mens rea than merely accidental or negligent conduct. Leocal v. Ashcroft, 543 U.S. 1 (2004).

The Department has presented the statute for aggravated battery under which the respondent was convicted. The criminal conviction records contained at Exhibit 2, page 1 do indicate that the respondent was convicted under subsection 21-3414(a)(1)(A) for intentionally causing great bodily harm to another person or

disfigurement of another person. However, the respondent's plea agreement, as well as the judgment at page 3 of Exhibit 2, do indicate that count 1, the count the respondent was convicted of, was amended from aggravated battery severity level 4 felony to aggravated battery severity level 5 felony. In looking at the Kansas statute, the proper section for the Court to review is 21-3414(a)(2)(A) recklessly causing great bodily harm to another person or disfigurement of another person. In addition, the reckless mens rea was mentioned in the transcript of the guilty plea. The Court does find that the reckless mens rea is sufficient to define a crime of violence aggravated felony and that the respondent's offense does have an element of the use of physical force against his wife, Mia Laicer. For the respondent to be convicted of this offense, he had to cause great bodily harm. The Department has presented the plea agreement as well as the sentencing document in Exhibit 4, tab F which describe the physical force that was used.

Even if the respondent's offense was not a crime of violence as described in Section 16(a) of the Act, it is also an offense that is a felony and by its nature involves the substantial risk of physical force against a person or property of another may be used in the course of committing the offense. For Section 16(b), it is necessary to examine the criminal conduct required for conviction rather than the consequence of the crime to find the offense by its nature involves the substantial risk that physical force may be used in the course of committing the offense. The respondent in the plea indicated he lost control of his temper and hit his wife, and that is why he is guilty of bodily harm. The transcript of the plea also indicates that the respondent kicked his wife, and also threw some sort of a glass which seriously cut her eye. Therefore, the Court does find that the respondent's criminal conviction constitutes an aggravated felony crime of violence after reviewing the documents submitted by the Department

including the conviction records as well as the other documents. In this case, the respondent was sentenced to 31 months incarceration, and therefore, the term of imprisonment imposed is at least one year as required. Therefore, the Court does sustain allegation 5 and the charge of removal under Section 237(a)(2)(A)(iii).

The respondent has designated Tanzania and indicated that he had no fear or any persecution or torture if he returns there. However, the respondent does have two United States citizen daughters. He wants to have the opportunity to remain in the United States as their father. The daughters at one time were in state custody, but are now apparently in the custody of his wife from whom he believes he is divorced. The respondent was sentenced to 31 months in jail, and did spend at least 11 months of that sentenced imposed in the Kansas Department of Corrections. The respondent does have his mother and brother in Tanzania, but his father apparently is deceased. The respondent is a lawful permanent resident of the United States. However, because he has been convicted of an aggravated felony, he is not eligible to request cancellation of removal for a permanent resident pursuant to Section 240A(a) of the Act.

The respondent requests a further continuance of his removal proceeding in order for the District Court of Sedgwick County to consider his motion to withdraw his plea based on ineffective assistance of counsel and the lack of a proper factual foundation for his plea. The Department is opposed to a further continuance as the respondent is detained and does not have any relief from removal. The conviction is final for Immigration purposes. An Immigration Judge may grant a further continuance for good cause shown. 8 C.F.R. Section 1003.29. In this case, the Court does not find good cause for a further continuance. The respondent does not yet have any hearing date on the post-conviction motion set in Sedgwick County. In addition, the Department has filed a number of documents with the Court to show that the respondent was

advised of the Immigration consequences of his guilty plea. See Exhibit 4, page 24. The respondent takes issue with that, and of course the Court does not know what will happen in the District Court of Sedgwick County on this issue. However, after reviewing all of the documents the Department filed relating to this issue and having no time frame to know when the criminal court will make any decision, the Court does not find good cause for a further continuance.

After considering the record in totality, the only order the Court can enter today is an order of removal to Tanzania. The Court will reserve appeal for the respondent on all the issues in his case.

ORDERS

ORDER: The respondent's motion for continuance is denied.

FURTHER ORDER: The respondent is ordered removed from the United States to Tanzania on the charge contained in the Notice to Appear.

PAULA V. DAVIS
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE PAULA V. DAVIS, in
the matter of:

RAVI SATULO LAICER

A096-675-284

KANSAS CITY, MISSOURI

was held as herein appears, and that this is the original transcript thereof for the file of
the Executive Office for Immigration Review.



STACY A. SOBIECK (Transcriber)

DEPOSITION SERVICES, Inc.-2

SEPTEMBER 5, 2013

(Completion Date)