



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

**Fellom, Nancy Ann
Law Offices of Fellom & Solorio
231 SANSOME STREET
SIXTH FLOOR
San Francisco, CA 94104**

**DHS/ICE Office of Chief Counsel - SFR
P.O. Box 26449
San Francisco, CA 94126-6449**

Name: ZUMEL, JOSE L

A 079-192-469

Date of this notice: 9/7/2016

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

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Malphrus, Garry D.

Userteam: Docket

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Falls Church, Virginia 22041

File: A079 192 469 – San Francisco, CA

Date:

SEP - 7 2016

In re: JOSE L. ZUMEL

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Nancy Ann Fellom, Esquire

ON BEHALF OF DHS: Patricia Spaletta
Senior Attorney

APPLICATION: Termination

This case is presently before us pursuant to September 29, 2015, order of the United States Court of Appeals for the Ninth Circuit granting the respondent's petition for review. The record will be remanded to the Immigration Court for further proceedings.

Under the totality of circumstances presented, we will remand the record to the Immigration Judge for a decision to further address whether the respondent is inadmissible as an alien who engaged in terrorist activities. The court concluded that the respondent engaged in terrorist activity and that the 1989 coup attempt was unlawful under Philippine law. However, the court also found that, for purposes of this appeal, intent under § 1182(a)(3)(B)(iii)(V)(b) of the Immigration and Nationality Act is a factual question, and that the Board may review an Immigration Judge's factual findings only to determine whether the findings are clearly erroneous. The court further found that the Board did not apply the clear error standard of review to the Immigration Judge's factual findings regarding the coup participants' intent.

In view of the Ninth Circuit's decision, we find that a remand to the Immigration Judge is necessary. Because the remand raises issues which warrant further elaboration and possible fact finding, and given our limited fact-finding ability, we will remand the case to the Immigration Judge to address the issues discussed in the Ninth Circuit's remand. See 8 C.F.R. § 1003.1(d)(3)(iv) (stating that the Board may not engage in fact finding in the course of deciding appeals except for taking administrative notice of commonly known facts). Specifically, the Immigration Judge shall address issues raised in the Ninth Circuit remand and make any additional factual and legal findings as warranted regarding whether the 1989 coup participants used weapons "with intent to endanger, directly or indirectly, the safety of one or more individuals." See § 1182(a)(3)(B)(iii)(V)(b) of the Act. On remand, both parties should have the opportunity to submit additional evidence and arguments. Accordingly, the following orders are entered.

ORDER: The Board's decisions of September 7, 2007, June 30, 2009, and February 7, 2012, are vacated.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for entry of a new decision.



FOR THE BOARD