



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 - EAZ
P.O. Box 25158
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Name: CHAPARRO DE MARTINEZ, YA...

A 043-362-190

Date of this notice: 11/28/2014

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

Userteam: Docket

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CHAPARRO DE MARTINEZ, YADIRA
A043-362-190
C/O ICE
1705 E. HANNA RD
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P.O. Box 25158
Phoenix, AZ 85002

Name: CHAPARRO DE MARTINEZ, YA...

A 043-362-190

Date of this notice: 11/28/2014

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

Userteam:

Falls Church, Virginia 20530

File: A043 362 190 – Eloy, AZ

Date: NOV 28 2014

In re: YADIRA CHAPARRO DE MARTINEZ

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Christopher J. Stender, Esquire

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] -
Convicted of controlled substance violation

APPLICATION: Remand and abeyance

The respondent, a native and citizen of Mexico, has appealed from an Immigration Judge's May 5, 2014, decision finding her removable as charged and ordering her removed from the United States. The respondent has also filed a motion to hold her appeal in abeyance or in the alternative to remand. The Department of Homeland Security has not filed a response to the respondent's appeal. The respondent's motion will be denied, and the appeal will be dismissed.

The respondent was admitted to the United States as a lawful permanent resident on January, 31, 1992. She was convicted on September 29, 2005, of unlawful possession of drug paraphernalia in violation of A.R.S. § 13-3415 and solicitation to unlawfully possess a narcotic drug in violation of A.R.S. §§ 13-3407 and 13-3408 (Exh. 4B). The respondent was also convicted on February 10, 2012, of possession of drug paraphernalia in violation of A.R.S. § 13-3415 (Exh. 4D). The Immigration Judge found the respondent removable and ineligible for relief from removal because of her 2012 conviction for possession of drug paraphernalia (I.J. at 2).

The respondent concedes on appeal that under the law of the United States Court of Appeals for the Ninth Circuit, her conviction under A.R.S. § 13-3415 is an offense related to a controlled substance, which renders her removable under section 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(B)(i). *See United States v. Oseguera-Madrigal*, 700 F.3d 1196 (9th Cir. 2012); *Bermudez v. Holder*, 586 F.3d 1167 (9th Cir. 2009); *Luu-Le v. INS*, 224 F.3d 911 (9th Cir. 2000). However, she argues that the Board should hold her case in abeyance because there is a circuit split, and the United States Supreme Court is considering two cases raising the issue of whether a state drug paraphernalia conviction must relate to a controlled substance that is specifically listed in the Federal Controlled Substances Act in order to be considered an offense relating to a controlled substance under section 237(a)(2)(B)(i) of the Act. *See Mellouli v. Holder*, 134 S. Ct. 2873 (2014). The Supreme Court has denied a petition for certiorari in the other case the respondent has cited. *See Madrigal-Barcenas v. Holder*, 82 USLW 3379 (2013). However, despite the pendency of this issue before the Supreme Court,

Cite as: Yadira Chaparro de Martinez, A043 362 190 (BIA Nov. 28, 2014)

A043 362 190

we must follow current Ninth Circuit law. The respondent's conviction documents show that she was convicted of possession of drug paraphernalia in violation of A.R.S. § 13-3415, which has been held by the Ninth Circuit to be an offense relating to a controlled substance under section 237(a)(2)(B)(i) of the Act, and thus she is removable as charged.

The respondent also argues that her due process rights were violated because she was denied a full and fair opportunity to apply for asylum and related relief. However, the record shows that when the respondent expressed fear of harm because of violence in Mexico, the Immigration Judge specifically asked her whether she had any reason to believe that she would be persecuted by the government of Mexico or by a group or individual that the Mexican government cannot or chooses not to control and that the persecution would be on account of one of the five protected grounds (Tr. at 79). The Immigration Judge also asked whether the respondent believed she would be tortured for any reason in Mexico. The respondent answered "no." (Tr. at 79-80). Nor has the respondent articulated on appeal a specific fear of persecution or claim for asylum. We find that the Immigration Judge adequately asked the respondent whether she had a fear of persecution and did not violate her due process rights. Nor has the respondent shown that she has been prejudiced by the Immigration Judge's actions. *Cf. Matter of C-B-*, 25 I&N Dec. 888 (BIA 2012).

Accordingly, the following orders are entered.

ORDER: The respondent's motion is denied.

FURTHER ORDER: The appeal is dismissed.


FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ELOY, ARIZONA

File: A043-362-190

May 5, 2014

In the Matter of

YADIRA CHAPARRO DE MARTINEZ

RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGES: INA Section 237(a)(2)(B)(i) - conviction after admission of
an offense related to a controlled substance.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: CHRISTOPHER S. KELLY, Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

PROCEDURAL HISTORY

These removal proceedings were initiated by the filing of a Notice to Appear dated March 28, 2012 by the Department of Homeland Security. Exhibit 1. The Department alleges that the respondent is not a citizen or national of the United States, but is a native and citizen of Mexico, who was admitted to the United States as a permanent resident effective January 31, 1992. The Department further alleges that the respondent was, on February 10, 2012, convicted in the Justice Court, Pima County,

Arizona, for possession or use of drug paraphernalia in violation of Arizona law, an offense committed on January 17, 2012. Based on those allegations, the Department charges that the respondent is subject to removal from the United States pursuant to INA Section 237(a)(2)(B)(i) as an alien who, after her admission, has been convicted of an offense related to a controlled substance.

REMOVABILITY

The respondent admitted her alienage as well as her status as a permanent resident as alleged; however, the respondent contested the alleged conviction, as well as the charge of removability under Section 237(a)(2)(B)(i). In support of the contested allegation and the charge of removal, the Government has submitted several documents, including the record of the respondent's alleged conviction, Exhibit 4, Tab D. That document establishes, by clear and convincing evidence that the respondent was, as alleged, convicted in the Pima County Justice Court, February 10, 2012, for possession or use of drug paraphernalia in violation of A.R.S. Section 13-3415.

The Court finds that based on the respondent's admissions, as well as the found Allegation 4, that the charge of removal is established by clear and convincing evidence. The Court notes that in making that determination it relies also on the existence of the previous conviction suffered by the respondent, the documentation of which is included at Exhibit 4, Tab B, which indicates that the respondent was convicted on September 29, 2005 of two counts of unlawful possession of drug paraphernalia. The Court finds, therefore, that the exception for a single offense involving possessions for one's own use of 30 grams or less of marijuana does not apply.

RELIEF

The respondent designated Mexico as the country of removal, should that become necessary, and expressed no fear of return to that country cognizable under

INA Sections 208 or 241(b)(3) or Article 3 of the Convention against Torture.

The record establishes that the respondent has been a recipient of cancellation of removal as a lawful permanent resident pursuant to INA Section 240A(a) by order of an Immigration Judge on November 21, 2007. The respondent, in testimony, acknowledged that she has been granted that relief. Consequently, the Court finds that the respondent is statutorily ineligible for cancellation of removal inasmuch as she has been a previous recipient of that relief. Inasmuch as the respondent has been convicted of three drug offenses, two in 2005 and one in 2012, she would not be eligible to seek readjustment of her status inasmuch as no waiver of inadmissibility would be available to waive all of those drug offenses. See INA Section 212(h). The Court considered the respondent for voluntary departure; however, inasmuch as there are contested issues of removability, the respondent is ineligible for pre-conclusion voluntary departure. Further, inasmuch as the respondent was convicted of an offense involving a controlled substance in 2012, an offense which she committed on January 17, 2012, the respondent is unable to demonstrate good moral character over the last five years, and is therefore statutorily ineligible for post-conclusion cancellation of removal. See INA Sections 101(f) and 240B(b).

There appearing to the Court to be no forms of relief for which the respondent may be eligible, the Court sees no alternative but to order the respondent's removal from the United States to Mexico.

ORDERS

The following order is hereby entered.

The respondent is hereby ordered removed from the United States to Mexico on the charge reflected in the Notice to Appear.

RICHARD A. PHELPS
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE RICHARD A.
PHELPS, in the matter of:

YADIRA CHAPARRO DE MARTINEZ

A043-362-190

TUCSON, ARIZONA

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

Donna L. Manning

DONNA L. MANNING (Transcriber)

FREE STATE REPORTING, Inc.-2

SEPTEMBER 28, 2014

(Completion Date)