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

DHS/ICE Office of Chief Counsel - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014

Name: ZEA-FLORES, JUAN PABLO **A041-737-150**

Date of this notice: 4/6/2011

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.

File: A041 737 150 - Los Angeles, CA Date: APR - 6 2011

In re: JUAN PABLO ZEA-FLORES

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Kristin Piepmeier
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] - Crime involving moral turpitude

APPLICATION: Termination of proceedings

The Department of Homeland Security ("DHS") appeals from the Immigration Judge's June 3, 2009, decision terminating proceedings. The respondent has not filed a brief on appeal. The appeal will be dismissed.

This matter was last before the Board on May 3, 2007, when we sustained the DHS's appeal from the Immigration Judge's June 27, 2005, decision. In that decision, the Immigration Judge held that the respondent was not removable as charged because his 1999 conviction for false imprisonment under section 236 of the California Penal Code ("CPC")[1] was not for a crime involving moral turpitude ("CIMT") and terminated proceedings. On appeal, we concluded that the respondent's conviction for felony false imprisonment was for a CIMT and remanded for further proceedings. In her 2009 decision, the Immigration Judge acknowledged our 2007 decision, but determined that she should follow *Matter of Ueno*, A70 043 017 (BIA Feb. 28, 2008), an unpublished Board decision holding that a conviction for misdemeanor false imprisonment under CPC § 236 was not for a CIMT (I.J. at 3).

[1] False imprisonment is defined under CPC § 236 as "the unlawful violation of the personal liberty of another." The punishment for false imprisonment is described in CPC § 237(a):

> False imprisonment is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment in the state prison.

On appeal, the DHS argues that the Immigration Judge should have followed the "law of the case" doctrine in rendering her 2009 decision. Under this doctrine, a "decision of an appellate court on a legal issue must be followed in all subsequent proceedings in the same case." *Jeffries v. Wood*, 114 F.3d 1484, 1489 (9th Cir. 1997) (en banc) (internal citations omitted), *cert. denied*, 522 U.S. 1008 (1997), *overruled on other grounds by Lindh v. Murphy*, 521 U.S. 320 (1997). The Board, however, is not bound by the law of the case doctrine in determining whether the respondent's conviction is for a CIMT, and we find it appropriate to reexamine this issue.

As noted in our 2007 decision, the record of conviction shows that the respondent was charged with and pleaded *nolo contendere* to *felony* false imprisonment. It has now come to our attention, however, that the offense was later declared a misdemeanor pursuant to CPC § 17(b)(3) by a California state court. The California court's declaration that the offense was a misdemeanor is binding on the Board. *See Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 845-86 (9th Cir. 2003). In addition, the United States Court of Appeals for the Ninth Circuit recently held that a CPC § 236 misdemeanor violation is not a categorical CIMT. *Saavedra-Figueroa v. Holder*, 625 F.3d 621 (9th Cir. 2010). Accordingly, we find that the respondent's conviction for misdemeanor false imprisonment was not a conviction for a categorical CIMT, as the DHS argues.

We also disagree with the DHS's contention that the respondent is nonetheless inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), because he admitted to committing and admitted committing acts which constitute the essential elements of a CIMT by pleading guilty to a felony count of false imprisonment (DHS Br. at 5-6). The DHS cites no authority for the proposition that the "admissions" prongs of section 212(a)(2)(A)(i)(I) of the Act reach aliens who, like the respondent, were actually "convicted" of lesser offenses based on their plea agreements. We have never extended the scope of the "admissions" language to such "convicted" aliens, and we do not believe Congress intends us to do so.

Lastly, the Immigration Judge concluded in her 2005 decision that the respondent's 1994 conviction for infliction of corporal injury upon a spouse or cohabitant in violation of CPC § 273.5 was for a CIMT, but that it was a petty offense (I.J. at 4). *See* section 212(a)(2)(A)(ii)(II) of the Act. The DHS has not challenged this determination, and we find no reason to disturb the Immigration Judge's ruling.

ORDER: The DHS's appeal is dismissed.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL.
LOS ANGELES, CA 90014

LAW OFFICE OF KONKOL AND OH
CHRISTINA OH, ESQ.
643 S. OLIVE STREET, STE. 530
LOS ANGELES, CA 90014

IN THE MATTER OF
ZEA-FLORES, JUAN PABLO

FILE A 041-737-150 DATE: Jun 3, 2009

__ UNABLE TO FORWARD - NO ADDRESS PROVIDED

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:
BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
P.O. BOX 8530
FALLS CHURCH, VA 22041

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL.
LOS ANGELES, CA 90014

X OTHER: TERMINATION ORDER/DECISION.

COURT CLERK
IMMIGRATION COURT

FF

CC: SCHACK, CATHERINE, ESQ.
606 S. OLIVE ST., 8TH FLOOR
LOS ANGELES, CA, 900140000

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL.
LOS ANGELES, CA 90014

In the Matter of:
ZEA-FLORES, JUAN PABLO

Case No: A041-737-150

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

After considering the facts and circumstances of this case and as there is no opposition from the parties, it is HEREBY ORDERED that these proceedings be terminated with / without prejudice.

NTA dated: May 21, 2003.

Reason for Termination: Deportability Not Established

C. Bither

CHRISTINE A. BITHER
Immigration Judge
Date: Jun 3, 2009

Appeal Waived/Reserved by A/I: NO APPEAL (DHS)
Appeal Due Date: 7-2-09

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [✓] Alien's ATT/REP [ ] DHS (P)
DATE: 6/3/09 BY: COURT STAFF (Imelda)
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

Form EOIR 35 - 6T (Termination)