



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: FLORES-NIETO, SANDRA

A087-755-789

Date of this notice: 1/3/2011

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

Sincerely,

Donna Carr
Chief Clerk

Panel Members:
Grant, Edward R.
Malphrus, Garry D.
Mullane, Hugh G.

For more unpublished BIA decisions, visit www.irac.net/unpublished

Falls Church, Virginia 22041

File: A087 755 789 - Florence, AZ

Date: JAN - 3 2011

In re: SANDRA FLORES-NIETO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se ¹

ON BEHALF OF DHS: Dion A. Morwood
Assistant Chief Counsel

APPLICATION: Determination of custody status

The Department of Homeland Security ("DHS") has appealed the Immigration Judge's decision of October 21, 2009, which ordered the respondent released on a \$4,500 bond pursuant to section 236 of the Immigration and Nationality Act, 8 U.S.C. § 1226. On November 18, 2009, the Immigration Judge issued a bond memorandum, setting for the reasons for his bond decision. The appeal will be dismissed.

We review the findings of fact made by the Immigration Judge, including any determination of credibility, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of H-L-H- & Z-Y-Z-*, 25 I&N Dec. 209, 211 (BIA 2010).

On September 9, 2009, the respondent was convicted in the Superior Court of Arizona, Maricopa County, for criminal impersonation, a class 6 felony, in violation of section 13-2006 of the Arizona Revised Statutes ("ARS") (Exh. 3). That statute states, in relevant part, that

A. A person commits criminal impersonation by:

1. Assuming a false identity with the intent to defraud another; or
2. Pretending to be a representative of some person or organization with the intent to defraud; or
3. Pretending to be, or assuming a false identity of, an employee or a representative of some person or organization with the intent to induce another person to provide

¹ Kevin Gibbons entered an appearance for the respondent in the bond proceedings but did not enter an appearance regarding the instant bond appeal. As a courtesy, a copy of this decision will be sent to Mr. Gibbons.

or allow access to property. This paragraph does not apply to peace officers in the performance of their duties.


Section 13-2006 of the ARS.

We concur with the Immigration Judge's determination that section 13-2006 of the ARS is a divisible statute, and that despite having been given multiple opportunities, the DHS failed to establish under which specific subsection of ARS § 13-2006 the respondent was convicted (I.J. at 4, 7 n.2). *Matter of Silva-Trevino*, 24 I&N Dec. 687, 698-99 (A.G. 2008).

As it has not established that the respondent was convicted under a portion of the statute that is turpitudinous or engaged in conduct of that nature, the DHS is "substantially unlikely" to prevail on a charge of removability under section 212(a)(2)(A)(i)(I) of the Act. *Matter of Joseph*, 22 I&N Dec. 799, 805 (BIA 1999). Thus, the Immigration Judge was correct in determining that the respondent was improperly included in the category of aliens subject to mandatory detention for bond purposes. 8 C.F.R. § 1003.19(d). Our determination on this issue is based on the record *as it currently stands*, and does not constitute the law of the case or a ruling on the merits.

Accordingly, the following order will be issued.

ORDER: The appeal is dismissed.



FOR THE BOARD

Board Member Hugh G. Mullane respectfully dissents without opinion.

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
3260 N. PINAL PKWY.
FLORENCE, ARIZONA 85132

FILE: A087-755-789

IN THE MATTER OF:
FLORES-NIETO, SANDRA

RESPONDENT

IN REMOVAL PROCEEDINGS

2009 NOV -3 A 9:52
EXECUTIVE OFFICE OF IMMIGRATION
REVIEW

ORDER OF THE IMMIGRATION JUDGE
WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby

 ORDERED that the request for a change in custody status be denied.

X ORDERED that the request be granted and that respondent be:

 released from custody on his own recognizance

X released from custody under bond of \$ 4500.

X OTHER lower bond than previously set and
substantially unlikely to prevail on this record.

Copy of this decision has been served on the respondent and the Department of Homeland Security.

APPEAL: waived -- reserved

FLORENCE -- FLORENCE, ARIZONA

Date: October 21, 2009

Bruce A. Taylor
Immigration Judge

XS