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 - MIA
333 South Miami Ave., Suite 200
Miami, FL 33130

Name: G[redacted] G[redacted], M[redacted] **A[redacted]686**

Date of this notice: 9/13/2017

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

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Cole, Patricia A.
Greer, Anne J.
Wendtland, Linda S.

Userteam: Docket

File: [redacted] 686 – Miami, FL Date: SEP 13 2017

In re: M[redacted] G[redacted] G[redacted] a.k.a. [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jose B. Lovo, Esquire

ON BEHALF OF DHS: Y. Michelle Ramirez
Assistant Chief Counsel

APPLICATION: Termination of proceedings; cancellation of removal; waiver of inadmissibility

The respondent appeals the Immigration Judge's September 12, 2016, decision denying her motion to terminate her proceedings and finding her ineligible for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a) (2012), and waivers under sections 212(h) and (c) of the Act, 8 U.S.C. §§ 1182(h), (c). The appeal will be sustained, and the proceedings will be terminated.

The Immigration Judge's decision finding that the Department of Homeland Security ("DHS") met its burden to establish by clear and convincing evidence the respondent's removability based on her conviction for an aggravated felony as defined by section 101(a)(43)(M)(i) of the Act, 8 U.S.C. § 1101(a)(43)(M)(i) (IJ at 2-9), is not supported by the record. *See* 8 C.F.R. § 1003.1(d)(3)(ii) (2017) (de novo review). Specifically, the respondent was convicted in 1997 for the offense of public assistance fraud in violation of Florida Statutes sections 409.325(1)(a), (b), and (5)(b) (Exhs. 3 and 4). The record reflects that the respondent was charged with having received $8,334 from the State based on her fraud (Exhs. 3 and 4). However, she was ordered to pay $10,423.32 in restitution (Exhs. 3 and 4).

The respondent does not dispute that her offense involved fraud and deceit such that it qualifies as an aggravated felony under section 101(a)(43)(M)(i). *See* Respondent's Brief at 3. Rather, she argues the Immigration Judge erred in finding the amount of loss involved in the offense exceeded $10,000. *See id.* at 3-6. In this regard, the Immigration Judge concluded the amount of loss exceeded $10,000 based on the restitution order which she found reflected the actual amount of loss to the State because the respondent was ordered to pay the restitution directly to the State's benefits and recovery fund and because, under Florida law, the restitution order was based on the losses resulting from the convicted conduct (IJ at 8). On appeal, the respondent argues that the amount of loss in this case is the $8,334 reflected in the complaint because there is no evidence indicating how the court reached the $10,423.32 amount in the restitution order and because the Immigration Judge misapplied the Board's decision in *Matter of Babaisakov*, 24 I&N Dec. 306 (BIA 2007). *See* Respondent's Br. at 3-6.

As we observed in *Matter of Babaisakov*, 24 I&N Dec. 306, some removal charges depend on proof of both the elements leading to a conviction as well as certain non-element facts. While the former may be determined only by looking to the record of conviction, *see Mathis v. United States*, 136 S. Ct. 2243 (2016), the latter is not subject to such limitation. *See Nijhawan v. Holder*, 129 S. Ct. 2294 (2009). Under section 101(a)(43)(M)(i) of the Act, which describes "an offense that involves fraud or deceit in which the loss to the victim or victims exceeds $10,000," the loss requirement is not tied to an element of the fraud or deceit offense and therefore may be determined using evidence outside the record of conviction, provided that the loss is still shown to relate to the conduct of which the person was convicted and, for removal purposes, is proven by clear and convincing evidence (IJ at 6-7).

The Immigration Judge noted that, under Florida law, "restitution" requires that the amount of damages and/or loss reflected in the order be "caused directly or indirectly by a defendant's offense" and be "related to the defendant's criminal episode." *See* Florida Statutes section 775.089(1)(a). *See also Schneider v. State*, 972 So. 2d 1079 (Fla. Dist. Ct. App. 2008) (Only those damages or losses that flow from a defendant's criminal activity may be assessed as restitution.); *Strout v. State*, 180 So. 3d 1052 (Fla. Dist. Ct. App. 2015) (Prior to ordering restitution, a trial court must determine that the damage or loss for which restitution is ordered was caused directly or indirectly by a defendant's offense, and that it bears a significant relationship to the offense.).

However, the Immigration Judge did not consider that the Florida statute also allows an award of restitution where the damage or loss was not even "indirectly" caused by the offense, i.e., when damage or loss is "related to the defendant's criminal episode." *See* Florida Statutes section 775.089(1)(a)2 (1993); *see also A.G. v. State*, 718 So. 2d 854, 855 (Fla. Dist. Ct. App. 1998) (allowing inclusion in a restitution award of losses relating to a count of indictment that was nolle prossed). Under these circumstances, we cannot agree that the DHS met the stringent burden of proving the respondent's removability, based on a conviction for an aggravated felony, by clear and convincing evidence, as required. The DHS did not lodge any other charges against the respondent.

Accordingly, the appeal will be sustained, and the proceedings will be terminated.

ORDER: The appeal is sustained, and the proceedings are terminated.

FOR THE BOARD

Board Member Anne J. Greer respectfully dissents without opinion.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
MIAMI, FLORIDA

File: [redacted]686 September 12, 2016

In the Matter of

M[redacted] G[redacted] G[redacted]) IN REMOVAL PROCEEDINGS
)
RESPONDENT)

CHARGES: Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA" or "Act"), an alien who has been convicted of an aggravated felony as defined in Section 101(a)(43)(M)(i) of the Act, a law relating to welfare fraud.

APPLICATIONS:

ON BEHALF OF RESPONDENT: JOSE BERNARDO LOVO
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ON BEHALF OF DHS: JOHN THOMPSON
PAULETTE TAYLOR, Assistant Chief Counsel
333 South Miami Avenue, Suite 200
Miami, Florida 33130

ORAL DECISION AND ORDERS OF THE IMMIGRATION JUDGE

Procedural History

Respondent, M[redacted] G[redacted] G[redacted], is a native and citizen of Honduras.

Respondent entered the United States on an IR-2 immigrant visa and was accorded

lawful permanent resident status on September 18, 1988. See Exhibits 1, 5, and 7. On or about February 10, 1997, respondent was convicted of public assistance fraud under Section 409.325 of the Florida statutes in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, and sentenced to five years' probation. Id.; see also Exhibit 3 (plea, judgment, order of probation - case number 96-15876).

On October 22, 2013, the Department of Homeland Security ("Government") issued respondent a Notice to Appear ("NTA"), setting forth five factual allegations and charging respondent with removability under Section 237(a)(2)(A)(iii) of the Act for having committed an aggravated felony as defined in Section 101(a)(43)(M)(i) of the Act. On January 8, 2014, the respondent, through counsel, admitted the five factual allegations set forth in the Notice to Appear and denied the sole charge of removability.

Respondent filed a motion to terminate on June 19, 2014, arguing that her public assistance fraud conviction is not an aggravated felony. See respondent's motion to terminate (June 19, 2014) [hereinafter "respondent's motion to terminate"]. On July 21, 2014, respondent filed an application for cancellation of removal for certain permanent residents (Form EOIR-42A). See Exhibit 5. The Government then filed a motion to pretermit respondent's EOIR-42A application on July 30, 2014, and respondent filed an opposition to the motion on August 12, 2014. See the Government's motion to pretermit respondent's application for cancellation of removal for certain lawful permanent residents (July 30, 2014) [hereinafter "the Government's motion to pretermit"]; respondent's response to the Government's motion to pretermit (August 12, 2014) [hereinafter "opposition to the Government's motion"].

On June 29, 2016, the Court heard arguments from both parties regarding the pending motions. Respondent indicated that if the Court determines that she indeed

had been convicted of an aggravated felony, that she would seek to readjust her status with an applicable waiver, either under Sections 212(h) or former Section 212(c) of the Act.[1] The Court will now address the Court's prior finding that the charge of removability had been sustained, as well as respondent's motion to terminate, respondent's request for various forms of relief, the Government's motion to pretermit respondent's EOIR-42A application, and respondent's eligibility for any other relief stated or sought on this record.[2]

Removability under INA Section 237(a)(2)(A)(iii)

In the case of an alien who is an LPR, the Government has the burden of establishing, by clear and convincing evidence, that the alien is removable as charged. See Section 240(c)(3)(A); see also 8 C.F.R. 100240.8(a)(2016). Respondent became an LPR on September 18, 1988, see Exhibit 1; thus, the Government bears the burden of proving by clear and convincing evidence that respondent is removable under the above-referenced aggravated felony charge for having been convicted of an aggravated felony as defined under Section 101(a)(43)(M)(i) of the Act.

The Government alleges that respondent is removable as an aggravated felon for having been convicted of an offense defined in Section 101(a)(43)(M)(i) of the Act. See Exhibit 1. Specifically, the Government alleges that respondent's conviction

[1] The Court will note that when this matter began, it was before a different Immigration Judge. However, subsequently, the matter, for internal administrative purposes, was transferred to the undersigned's docket. Pursuant to regulations, the undersigned has completely apprised herself of all of the salient information, law, and most importantly factual evidence and oral and legal arguments set forth in this matter. Therefore, this Court is completely apprised of the procedural and substantive status of this case prior to entering this decision.

[2] The Court also notes that on June 29, 2016, respondent initially indicated that she wished to file an application for withholding of removal under the Act and the Torture Convention. The Court gave the respondent until August 19, 2016 to file such application with the receipt notice showing that the application had been submitted for biometrics processing. No such application was filed. At the individual hearing on September 12, 2016, respondent, through counsel, indicated that she would not be seeking withholding of removal under the Act or the Torture Convention (asylum). In addition, this Court finds that by the respondent's failure to file the application as ordered by this Court, that the opportunity to file such application is being waived and abandoned pursuant to governing regulations.

for public assistance fraud under Section 409.325 of the Florida statues constitutes "an offense that involves fraud or deceit in which the loss to the victim or victims exceeds $10,000." See Section 101(a)(43)(M)(i); see also the Government's motion at 2. Respondent argues that the Government has not met its burden of proving that the loss to the victim exceeded $10,000 and, as a result, she is not removable under Section 237(a)(2)(A)(iii). See Government's motion to pretermit at 1-2; see also respondent's opposition to the Government's motion at 1-2.

Under Section 101(a)(43)(M), an aggravated felony is defined as an offense that "involves fraud or deceit in which the loss to the victim or victims exceeds $10,000." Id. Since Section 101(a)(43)(M)(i) requires that; (1) the underlying offense involved fraud or deceit, and (2) the victim(s) suffered a loss in excess of $10,000, the Court must find that DHS has proven both of these elements before the Court can sustain the charge. See Section 240(c)(3)(A) of the Act.

The Court will first consider whether respondent's conviction under Section 409.325 of the Florida statutes "involve fraud or deceit." The Supreme Court has held that in order to determine whether an offense involves fraud or deceit, the reviewing Court must apply the categorical approach. Kawashima v. Holder, 132 S.Ct. 1166, 1172 (2012). The Court looks to the statute, rather than the underlying facts, to assess whether the elements of the offense "necessarily entail fraudulent or deceitful conduct." Id. Therefore, "fraud" or "deceit" need not comprise formal elements of the statute so long as the offense necessarily entails such conduct. Id. Moreover, the word "deceit" refers to "the act or process of deceiving (as by falsification, concealment, or cheating)." Id.

On February 10, 1997, respondent was convicted of public assistance fraud in violation of Sections 409.325(1)(a) and (b) of Florida's statutes, see Exhibit 3,

which reads as follows:

> (1) any person who knowingly: (a) fails, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to such person's qualification to receive public assistance under any state or Federally-funded assistance program; or that (b) fails to disclose a change in circumstances in order to obtain or continue to receive any such public assistance to which he or she is not entitled or in an amount larger than that to which he or she is entitled [ ] is guilty of a crime and shall be punished as provided in subsection (5).

See Fla.Stat. Section 409.325(1) (1996).[3] The Florida Supreme Court has explained Section 409.325(1) of the Florida statutes is "aimed at those who, by malicious or deceitful motives, cheat the Government by fraudulent conduct," and in order to be convicted under this statute, one must have "fraudulently and by misrepresentation secured public assistance for [herself] or assisted others in receiving it." See Allen v. State, 347 So.2d 615, 615-616 (Fla. 1977); see also Riggins v. State, 369 So.2d 948, 949 (explaining that Section 409.325(1) of the Florida statutes "prohibits the fraudulent failure to disclose a material fact used to determine eligibility for the food stamp program").

Based upon the foregoing, it is clear to this Court that the respondent's conviction necessarily entailed and indeed involved fraud and deceit or the act or

[3] The Government correctly notes that the statute was renumbered as Section 414.39 of Florida statutes in 1996. See Exhibit 2 at 1, 3.

process of deceiving as by falsification, concealment, or cheating. See Kawashima v. Holder, supra.

The next inquiry is whether respondent's conviction resulted in the victim suffering a loss in excess of $10,000. See Section 101(a)(43)(M)(i). The Supreme Court has held that the determination of a $10,000 loss to the victim proceeds under a "circumstance-specific" approach that "applies to the specific circumstances surrounding an offender's commission of a fraud and deceit crime on a specific occasion." Nijhawan v. Holder, 557 U.S. 29, 40 (2009). The circumstance-specific analysis requires the Court to consider the facts and circumstances underlying an offender's crime to determine the amount of loss to the victim(s). Id. at 34.

The Government bears the burden of establishing, by clear and convincing evidence, that the amount of loss exceeded $10,000 and that the loss was "tied to the specific counts covered by the conviction." Id. at 42 (internal quotation marks and citations omitted). Under this standard, the record of conviction "is an uncertain source of reliable information on the loss to the victim." Matter of Babaisakov, 24 I&N Dec. 306, 320 (BIA 2007). This is because the information generated on loss is routinely done for sentencing purposes, rather than for conviction purposes, and may have been assessed under a lesser burden of proof standard, such as preponderance of the evidence rather than clear and convincing evidence. Id. at 320. In addition, sentencing factors may "cover losses associated with transactions outside the particular count or counts covered by the conviction." Id. In contrast, a defendant's admission during the criminal proceeding as to the amount of loss suffices to meet the clear and convincing standard of removal proceedings, if the admission pertained to losses arising from the conduct and the particular charges or criminal counts covered by the conviction. Id.; see also Nijhawan, 557 U.S. at 42 (holding that burden was satisfied

where DHS submitted into evidence the alien's stipulation that the amount of loss exceeded $100 million and the restitution order of $683 million).

Additionally, the Court "must assess a finding if made at sentencing with an eye to what losses are covered and to the burden of proof employed." See Nijhawan, 557 U.S. at 42 (quoting Matter of Babaisakov, 24 I&N Dec. 306, 319 (2007)). Under Section 775.089(1)(a) of the Florida statutes, "restitution" requires that restitution be ordered for damage or loss "caused directly or indirectly by a defendant's offense" and damage or loss "related to the defendant's criminal episode;" the state has the burden to show that a defendant's offense or criminal episode caused the victim's loss. See Florida statute Section 775.089(1)(a), (7); see also Delvalle v. State, 80 So.3d 999, 1007 (Fla. 2011) (explaining that the Florida legislature "sent a clear message that at the time of the determination of the amount of restitution, the Trial Court should consider only the victim's loss in imposing restitution"). See Koile v. State, 934 So.2d 1226, 1234 (Fla. 2006) ("[T]he statute itself requires that the loss must be causally connected to the offense.").

In the instant case, respondent's conviction for public assistance fraud was the result of her failure to report her employment and income to the Department of Health and Rehabilitative Services ("HRS"). See Exhibit 3 (affidavit of complaint). The affidavit of complaint alleged that respondent, by failing to report income of $18,695.19, received $4,500 in aid to families with dependent children payments and $3,834 in food stamp program benefits for an aggregate total of $8,334 in public assistance to which she was not legally entitled. Id. For this offense, respondent was sentenced to five years' probation and $10,423.32 in restitution. Id. (acknowledgement and waiver of rights). The parties do not dispute that respondent was ordered to pay $10,423.32 of restitution, the amount reflected on respondent's appearance record. See the

Government's motion to pretermit at 2; opposition to the Government's motion at 2.

However, the parties disagree on whether respondent's restitution reflects the actual loss to the victim. Respondent argues that DHS submitted no evidence that clarifies how the criminal court reached the final restitution amount or directly ties the $10,423.32 figure to an actual loss to the victim. See opposition to the Government's motion at 2. In addition, respondent argues that the affidavit of complaint, which indicates that the respondent received an aggregate total of $8,334 in public assistance, should be the figure that denotes the actual loss to the victim. The Court disagrees with the respondent's arguments.

First, the Court finds that clear and convincing evidence establishes that the loss to the respondent's victim exceeded $10,000. See Matter of Babaisakov, 24 I&N Dec. at 319-321. Respondent's record of conviction reflects that respondent was ordered to pay $10,423.32 in restitution to "HRS [the Department of Health and Rehabilitative Services] benefit recovery." See Exhibit 3. (Acknowledgement and waiver of rights) (violation of probation affidavit). The victim of respondent's fraud was the Department of Health and Rehabilitative Services or "HRS." Therefore, the fact that respondent was ordered to pay $10,423.32 in restitution directly to HRS - the victim - as the result of her conviction for public assistance fraud establishes that the loss to respondent's victim exceeds the $10,000 threshold. Furthermore, it is clear from the record that respondent's restitution order was solely based on the victim's loss that resulted from the convicted conduct. See Florida statute Section 7775.089(1)(a), (7); see also Delvalle, 80 So.3d at 1007; Koile, 934 So.2d at 1034; cf. Obasohan v. U.S. Attorney General, 479 F.3d 785, 789-790 (11th Cir. 2007), abrogated on other grounds by Nijhawan, 557 U.S. 29.

Accordingly, the Court finds that respondent's public assistance offense

involves fraud or deceit in which the loss to the victim or victims exceeds $10,000 and is therefore an aggravated felony under Section 101(a)(43)(M)(i).

With respect to the respondent's argument that the affidavit of complaint indicates that the respondent received $8,334 in public assistance to which she was not legally entitled; and such is evidence of the actual loss to the victim, the Court does not find this argument to be persuasive. First, the Court notes that the affidavit of complaint merely sets forth what amounts that the respondent may have received illegally. It does not necessarily in any way, shape, or form denote what the actual loss to HRS or the Department of Health and Rehabilitative Services incurred as a result of respondent's illegal conduct. In fact, the information specifically denotes that the respondent's conduct was directly involving the victim being the Department of Health and Rehabilitative Services. Furthermore, the respondent executed and signed an affidavit and waiver of rights in which it was clear that in addition to the penalty imposed of five years' probation, she had to make restitution in the amount of $10,423.32. See Exhibit 3. In addition, in the appearance of record, also included as Exhibit 3, it indicates that with respect to the sentence, the respondent was sentenced to probation and was ordered to pay restitution in the amount of $10,423.32 to the HRS (or Department of Health and Rehabilitative Services) benefit recovery fund.

Furthermore, the respondent even violated her probation because she failed to make the full restitution amount. And in the affidavit of violation of probation, it specifically states that the respondent was to pay "restitution $10,423.32 payable to HRS benefit recovery." See Exhibit 3. That affidavit of violation of probation stated that respondent still owed $5,285.91. See Exhibit 3. Based upon the foregoing, this Court finds that the overwhelming factual evidence in this record, which includes the appearance record indicating the probation and restitution amount that respondent was

ordered to pay, the HRS benefit recovery, the acknowledgement and waiver of rights where the respondent signed, acknowledging that she was to pay a restitution amount of $10,423.32, an affidavit of violation of probation in which it also reiterates that the respondent was ordered to pay $10,423.32 to the HRS benefit recovery fund, clearly outweighs the mere affidavit of complaint which simply set forth what actions the respondent took and what monies the respondent received, to which she was not legally entitled.

The affidavit of complaint is not dispositive of the actual loss to HRS. This Court finds that the overwhelming evidence indicates that the loss to HRS was in excess of $10,000, as demonstrated by the restitution amount set forth in the conviction records, including the acknowledgement and waiver of rights signed by the respondent herself, in which she acknowledged that she had to pay the HRS benefit recovery an amount in excess of $10,000.

For the foregoing reasons, this Court again finds that the Government has established, by clear and convincing evidence, that the respondent is removable for having been convicted of an aggravated felony under Section 237(a)(2)(A)(iii) of the Act, to wit, an aggravated felony as defined in Section 101(a)(43)(M)(i) of the Act, a crime involving fraud or deceit in which the loss to the victim exceeds $10,000. Therefore, the charge of removability is and has been sustained.

Respondent's Motion to Terminate

On June 19, 2014, respondent filed a motion to terminate, arguing that her conviction of public assistance fraud under Section 409.325 of the Florida statute is not an aggravated felony as defined in Section 101(a)(43)(M)(i) of the Act. Based upon the foregoing discussion and findings, this Court will be denying the respondent's motion to terminate, as it has found that respondent in fact has been convicted of an aggravated

felony under Section 237(a)(2)(A)(iii).

The Government's Motion to Pretermit

On July 30, 2014, the Government filed a motion to pretermit respondent's application for cancellation of removal for certain permanent residents (EOIR-42A), arguing that respondent's public assistance fraud conviction was an aggravated felony, rendering her statutorily ineligible for cancellation of removal under Section 240A(a) of the Act. To establish statutory eligibility for cancellation of removal pursuant to Section 240A(a) of the Act, an applicant must prove that she has not been convicted of an aggravated felony. See Section 240A(a)(3) of the Act. The Court previously determined that respondent's public assistance fraud conviction is indeed an aggravated felony. Therefore, the Court finds that respondent is statutorily ineligible for cancellation of removal for certain permanent residents under Section 240A(a) of the Act. Accordingly, the Court will grant the Government's motion to pretermit respondent's application for cancellation of removal.

Eligibility for a Waiver under Section 212(h) of the Act

At a hearing on June 29, 2016, respondent, through counsel, argued that respondent may be eligible for a Section 212(h) waiver. Pursuant to Lanier v. U.S. Attorney General, respondent is precluded from establishing eligibility for a Section 212(h) waiver if she entered the United States as a permanent resident and thereafter committed an aggravated felony. Therefore, respondent's eligibility to seek a Section 212(h) waiver turns on whether she has been previously admitted to the United States as a lawful permanent resident. 631 F.3d 1363, 1366 (11th Cir. 2011). The Court finds that the respondent is precluded from establishing eligibility for a Section 212(h) waiver because she was lawfully admitted to the United States as a lawful permanent resident. See Exhibits 1, 5, and 7; and thereafter committed and was convicted of an aggravated

felony. Consequently, the Court concludes that respondent is not statutorily eligible for a Section 212(h) waiver.

Eligibility for a Waiver under Former Section 212(c) of the Act

Also at the hearing conducted on June 29, 2016, respondent, through counsel, argued that she may be eligible for a former Section 212(c) waiver because she pled guilty to or was convicted of an aggravated felony on February 10, 1997. See Exhibit 3. However, a lawful permanent resident who has accrued seven years of lawful unrelinquished domicile in the United States and who is removable by virtue of a plea or conviction entered between April 24, 1996 and April 1, 1997 may be eligible for relief under former Section 212(c), unless the lawful permanent resident's conviction rendered her removable under Section 440(d) of the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"). See AEDPA, pub. L.No. 104-132, 110 stat. 1214). As AEDPA renders aggravated felons ineligible for 212(c) relief, see 8 C.F.R. 1003.44(c), respondent is ineligible for relief under former Section 212(c) by virtue of her conviction of an aggravated felony. Consequently, the Court also concludes that respondent is not statutorily eligible for relief under former Section 212(c) of the Act.

ORDERS OF THE COURT

Based upon the foregoing, the Court issues the following orders:

IT IS THEREFORE ORDERED that the charge of removability under Section 237(a)(2)(A)(iii) is sustained by the requisite clear and convincing evidence;[4]

IT IS FURTHER ORDERED that respondent's motion to terminate be denied;

IT IS FURTHER ORDERED that the Government's motion to pretermit

[4] The Court would note that respondent is clearly also properly in removal proceedings under Section 237 of the Act.

respondent's application for cancellation of removal for certain lawful permanent residents be granted;

IT IS FURTHER ORDERED that respondent's request to apply for a waiver under Section 212(h) be pretermitted;

IT IS FURTHER ORDERED that respondent's request to file a waiver under former Section 212(c) of the Act be pretermitted;

IT IS FURTHER ORDERED that respondent be ordered removed on the charge of removability contained in the Notice to Appear.

Please see the next page for electronic signature

MARSHA K. NETTLES
Immigration Judge

//s//

Immigration Judge MARSHA K. NETTLES

nettlesm on December 16, 2016 at 2:52 PM GMT