



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

**REID, CAINO KENARIS
A204-697-163
PIKE COUNTY
175 PIKE COUNTY BLVD
LORDS VALLEY, PA 18428**

**DHS LIT./York Co. Prison/YOR
3400 Concord Road
York, PA 17402**

Name: REID, CAINO KENARIS

A 204-697-163

Date of this notice: 8/4/2015

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:
Guendelsberger, John

Userteam: Docket

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Falls Church, Virginia 22041

File: A204 697 163 – Lords Valley, PA¹

Date: AUG 4 2015

In re: CAINO KENARIS REID

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Pro se

CHARGE:

Notice: Sec. 237(a)(2)(E)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(E)(ii)] -
Violated court protective order

APPLICATION: Termination

The United States Court of Appeals for the Third Circuit has remanded this matter to this Board for further consideration of the respondent's appeal of the decision of the Immigration Judge, dated June 16, 2014, ordering his removal from the United States to Jamaica. *Reid v. Holder*, No. 14-4200 (3d Cir. Mar. 27, 2015) (amended order). The Department of Homeland Security ("DHS") has not filed a brief in these remanded proceedings.

In his initial decision, the Immigration Judge held that the respondent, a native and citizen of Jamaica who has adjusted his status to that of lawful permanent resident, was subject to removal from the United States under the provisions of section 237(a)(2)(E)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(E)(ii), as the Luzerne County, Pennsylvania Court of Common Pleas found that he violated a protective order (I.J. at 1-2; Exhs. 1, 2). *See Matter of Strydom*, 25 I&N Dec. 507 (BIA 2011). In our initial decision, dated September 25, 2014, we affirmed the Immigration Judge's holding because, although the respondent may have believed that his civil proceedings, which resulted in his conviction for indirect criminal contempt, were constitutionally defective, he could not collaterally challenge his conviction in these instant removal proceedings. *See Drakes v. INS*, 330 F.3d 600, 606 (3d Cir. 2003). Moreover, the pendency of a post-conviction motion did not negate the finality of his conviction for immigration purposes until the conviction is overturned or modified. *See Paredes v. U.S. Att'y Gen.*, 528 F.3d 196, 198-99 (3d Cir. 2008).

A conviction is not required in order to sustain a charge of removability under the provisions of section 237(a)(2)(E)(ii) of the Act. Instead, the Department of Homeland Security need only establish, by clear and convincing evidence, that the respondent is "any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court

¹ Removal proceedings before the Immigration Judge in this matter were completed at the Pike County Correctional Facility in Lords Valley, Pennsylvania (*see* OPPM No. 04-06). The Immigration Judge conducted the hearings there remotely from the Immigration Court in York, Pennsylvania, via video teleconference pursuant to section 240(b)(2)(A)(iii) of the Act.

determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued.” Nonetheless, in its motion to remand which was filed with the Third Circuit, the Government referenced *Moncrieffe v. Holder*, 133 S.Ct. 1678 (2013), which held that a categorical approach should ordinarily be utilized to establish a “conviction” in the immigration purpose. Cf. *Parra-Rojas v. U.S. Att’y Gen.*, 747 F.3d 164, 169 (3d Cir. 2014) (holding that, with respect to a charge of inadmissibility resulting from alien smuggling, the Third Circuit looks to the alien’s actual conduct, as opposed to his conviction); *Rojas v. U.S. Att’y Gen.*, 728 F.3d 203, 215-16 (3d Cir. 2013) (en banc) (holding that the categorical approach does not apply to the determination of whether an offense is one “relating to a controlled substance” under section 237(a)(2)(B)(i) of the Act); see also *Nijhawan v. Holder*, 557 U.S. 29 (2009) (holding that, in some circumstances, courts should look “to the specific circumstances surrounding an offender’s commission of [the defined] crime on a specific occasion” to determine removability).

Based upon the position of the Government which was expressed in its motion to remand, we will remand the record to the Immigration Judge for further consideration of the sole charge of removability presented in this case. Upon remand, the Immigration Judge should provide the respondent and the DHS with an opportunity to present their respective positions with regards to the charge of removability and additional evidence. The Immigration Judge should then enter a new decision in this matter which makes further findings of facts and conclusions of law based upon the record before him. At the present time, we express no opinion regarding the ultimate outcome of these proceedings.

For the reasons set forth above, the following order is entered.

ORDER: The prior decisions of the Immigration Judge and this Board are vacated and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and the entry of a new decision.



FOR THE BOARD