



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 - SDC  
146 CCA Road, P.O.Box 248  
Lumpkin, GA 31815

Name: LUNA AGUIRRE, ANGEL

A 091-802-632

Date of this notice: 7/7/2015

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:  
Greer, Anne J.  
Mullane, Hugh G.  
Pauley, Roger

schwarzA  
Userteam: Docket

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Falls Church, Virginia 20530

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File: A091 802 632 – Lumpkin, GA

Date:

JUL - 7 2015

In re: ANGEL LUNA AGUIRRE a.k.a. Angel Luna Aguirre

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Evelyn Rose Griggs Smallwood, Esquire

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -  
Convicted of aggravated felony (as defined in sec. 101(a)(43)(B))  
(withdrawn)

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


APPLICATION: Cancellation of removal for certain permanent residents

The respondent, a native and citizen of Mexico, has appealed from the decision of the Immigration Judge dated January 30, 2015. In that decision, the Immigration Judge determined that the Department of Homeland Security (DHS) has established “by clear and convincing evidence” that the respondent’s marijuana conviction under North Carolina General Statutes § 90-95(a)(1) (2014) constitutes a conviction for a “drug trafficking crime” aggravated felony as defined in section 101(a)(43)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(B) (I.J. at 7). As a result, the Immigration Judge determined further that the respondent is statutorily ineligible for cancellation of removal for certain permanent residents pursuant to section 240A(a)(3) of the Act, 8 U.S.C. § 1229b(a)(3) (I.J. at 7).

However, the respondent may not be ordered removed as an aggravated felon unless the DHS charges him with deportability under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(iii), and although the DHS initially charged the respondent under this ground of deportability, it subsequently withdrew the aggravated felony charge on December 11, 2014 (Tr. at 61-65; Exh. 1 (hard-written notations reflecting the withdrawal)). Furthermore, the DHS agrees with the respondent that his conviction under North Carolina General Statutes § 90-95(a)(1) has not rendered him ineligible for cancellation of removal under section 240A(a)(3) of the Act (Tr. at 80-81, 91). We find the analysis of the unpublished Board decision dated March 25, 2015 (A091 983 344), which the respondent has submitted on appeal, persuasive. There, we determined that §90-95(a)(1) is neither a categorical aggravated felony under section 101(a)(43)(B) of the Act nor divisible. Therefore, the respondent is eligible to apply for cancellation of removal.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, and the record of proceeding is remanded for further proceedings and the entry of a new decision.

  
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FOR THE BOARD