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

Cruz, Maria Isabel
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Dallas, TX 75247

DHS/ICE Office of Chief Counsel - DAL
125 E. John Carpenter Fwy, Ste. 500
Irving, TX 75062-2324

Name: LEMUS, MONICA

A 089-392-828

Date of this notice: 3/9/2017

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

Sincerely,

Cynthia L. Crosby
Acting Chief Clerk

Enclosure

Panel Members:
Pauley, Roger
Guendelsberger, John
Malphrus, Garry D.

Userteam: Docket

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5107 Leesburg Pike, Suite 2000
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LEMUS, MONICA
A089-392-828
ROLLING PLAINS DETENTION CENTER
118 CR 206
HASKELL, TX 79521

DHS/ICE Office of Chief Counsel - DAL
125 E. John Carpenter Fwy, Ste. 500
Irving, TX 75062-2324

Name: LEMUS, MONICA

A 089-392-828

Date of this notice: 3/9/2017

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Cynthia L. Crosby
Acting Chief Clerk

Enclosure

Panel Members:
Pauley, Roger
Guendelsberger, John
Malphrus, Garry D.

Userteam:

File: A089 392 828 – Dallas, TX

Date: MAR - 9 2017

In re: MONICA LEMUS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Isabel Cruz, 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

APPLICATION: Termination of proceedings

The respondent, a native and citizen of Mexico, who was previously granted lawful permanent resident status, has appealed from the Immigration Judge's decision dated September 19, 2016. The Immigration Judge found the respondent removable and ordered the respondent removed. On appeal, the respondent challenges removability. The record will be remanded.

This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). This Board reviews questions of law, discretion, and judgment, and all other issues raised in an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The Notice to Appear alleges that, on February 27, 2015, the respondent was convicted of Conspiracy to Launder Monetary Instruments, in violation of 18 U.S.C. sections 1956(a)(1)(A)(i), (h), and sentenced to 27 months in prison (Exh. 1). The respondent admitted the conviction (I.J. at 2; Tr. at 11). *See* 8 C.F.R. §§ 1003.41(d), 1240.10(c). In addition, a record of this conviction was entered into the record of proceedings (Exh. 2). *See* 8 U.S.C. § 1229a(c)(3)(B); 8 C.F.R. § 1003.41(a).

The respondent was charged with being removable for having been convicted of an aggravated felony conviction relating to laundering monetary instruments, under section 101(a)(43)(A) of the Act, 8 U.S.C. § 1101(a)(43)(D) (Exh. 1). The Immigration Judge found the respondent removable as charged (I.J. at 2-3; Tr. at 13, 18-19).

On a review of the record, we conclude that removability has not been proved by clear and convincing evidence. *See* section 240(c)(3) of the Act, 8 U.S.C. § 1229a(c)(3); 8 C.F.R. § 1240.8(a); *Woodby v. INS*, 385 U.S. 276, 286 (1966). *Cf.* 8 C.F.R. §§ 1003.15, 1240.10.

A money laundering offense is an aggravated felony only "if the amount of the funds exceeded $10,000." *See* 8 U.S.C. § 1101(a)(43)(D). These funds include commingled legitimate funds because they facilitate and advance the money laundering. *See Hakim v. Holder*, 628 F.3d 151, 153-54 (5th Cir. 2010). This is a factual inquiry not governed by the categorical approach. *See Nijhawan v. Holder*, 557 U.S. 29, 37-38, 42-43 (2009); *United States v. Mendoza*, 783 F.3d 278, 280-82 (5th Cir. 2015).

The Immigration Judge equated forfeiture to restitution, and, because the amount of the funds forfeited was $26,215, the Immigration Judge found "the amount of funds exceeded $10,000" and found removability proved (I.J. 3; Tr. at 13, 18-19). According to the Information, the forfeiture includes "any property involved in, or traceable to property involved in, the offense" (Exh. 2). Because the forfeiture could include profits from an investment made using the laundered funds, the amount forfeited does not necessarily reflect the amount of funds involved in the money laundering. In light of this, we find it appropriate to remand the record to the Immigration Judge for further proceedings and appropriate fact-finding.

On remand, the Department of Homeland Security (DHS) may introduce evidence outside the record of conviction (e.g., the presentence report) to show how much money was laundered. Moreover, since the conviction was for a conspiracy, it may be necessary only to show how much was *agreed* to be laundered. *See Matter of S-I-K-*, 24 I&N Dec. 324, 328-29 (BIA 2007); *United States v. Richardson*, 925 F.2d 112, 116-17 (5th Cir. 1991).

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and entry of a new decision.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
DALLAS, TEXAS

File: A089-392-828 September 19, 2016

In the Matter of

MONICA LEMUS	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGE: Section 237(a)(2)(A)(iii) of the Act.

APPLICATIONS:

ON BEHALF OF RESPONDENT: Maria Isabelle Cruz, esquire

ON BEHALF OF DHS: Yas Sadri, esquire
U.S. Department of Homeland Security
Office of the Chief Counsel
125 East John Carpenter Freeway, Suite 500
Irving, Texas 76042

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent is a native and citizen of Mexico. The present action commenced when the Department of Homeland Security issued a Notice to Appear dated July 14th, 2016. The notice was served on respondent on the same date. [Exhibit 1].

In the Notice to Appear, the Department alleged that respondent was subject to removal from the United States, notwithstanding her status as a lawful

permanent resident, as a consequence of a February 27th, 2015 conviction in the United States District Court for the Northern District of Texas for the offense of conspiracy to launder monetary instruments in violation of 18 U.S. code 1956 (a)(A)(i) and (h).

This conviction, according to the Department, constitutes a violation of Section 237(a)(2)(A)(iii) in that respondent was convicted of an aggravated felony as defined in Section 101(a)(43)(D) of the Act, a law relating to laundering monetary instruments. Although it is not specifically set forth in the Notice to Appear, a violation of Section 101(a)(43)(D) requires an amount of funds exceeding $10,000.

Respondent first came before the court on August 8th, 2016. At that time, respondent's rights were explained to her in both English and her native language of Spanish.[1] On August 8th and August 25th, respondent's counsel sought additional time to plead. However, on August 25th, 2016, respondent admitted the four factual allegations contained in the Notice to Appear but denied the charge of removability. Respondent sought and obtained a stay in the proceedings so that respondent could brief the issue of whether or not respondent's conviction falls under Section 101(a)(43)(D) of the Act.

For its part, the Department submitted copied of respondent's conviction documents, as well as a copy of the bill of information which sets forth the offense for which respondent was ultimately convicted. [Exhibit 2]. In the judgement, the district court ordered a forfeiture of $26, 215.14 in U.S. currency, along with four firearms.

Respondent argues that the forfeiture does not meet the $10,000 threshold set forth in 101(a)(43)(D), because it was a forfeiture, rather than a quote "loss to a victim." The court disagrees.

[1] The proceedings were conducted in English.

The plain language of Section 101(a)(43)(D) shows that any time the amount of funds involved in laundering of money instruments exceeds $10,000, the threshold is met. The court does not believe that there is a distinction between funds ordered for restitution and funds ordered forfeited, since they are both products of the illegal activity. Therefore, the court sustains the charge of removability under Section 237(a)(2)(A)(iii) of the Act, finding that was proven by clear and convincing evidence.

At a hearing on September 19th, 2016, respondent designated Mexico as the country of removal and declined to seek any relief before this court, seeking instead to appeal on the issue of whether her offense constitutes an "aggravated felony" as set forth in Sections 101(a)(43)(D) and Section 237(a)(2)(A)(iii) of the Act. In the absence of any applications for relief, and, in view of the court's findings the following order is entered.

ORDER

It is ordered that the charge of removability under Sections 101(a)(43)(D) and 237(a)(2)(A)(iii) of the Act are found proven by clear and convincing evidence.

It is further ordered that respondent, having previously been found subject to removal by clear and convincing evidence, and, in the absence of any viable applications for relief, be and is hereby ordered removed from the United States to Mexico based on the charge contained in the Notice to Appear.

Please see the next page for electronic signature

JAMES NUGENT
Immigration Judge

//s//

Immigration Judge JAMES NUGENT

nugentj on November 28, 2016 at 12:44 PM GMT