

APPEAL BOARD REVERSES DECISION ON DEPORTATIONS BASED ON DUI CONVICTIONS

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Byline: Peter Shinkle Of The Post-Dispatch

Body

A little-known federal appeal board has reversed its own ruling on whether aliens can be deported for drunken driving. As a result, it appears that an Irishman with three felony DUI convictions in Missouri may stay here.

The Board of Immigration Appeals ruled April 4 in a case from Massachusetts that driving under the influence does not constitute a crime of violence and is therefore not grounds for deportation. The board reviews decisions made by the Immigration and Naturalization Service.

Before that ruling, the Justice Department argued in a case in the 8th U.S. Circuit Court of Appeals in St. Louis that Frank P. Byrne should be deported. Now, the department wants the Board of Immigration Appeals to take a look.

"It's just a matter of time before the Board of Immigration Appeals terminates the case," said Byrne's attorney, Tim Wichmer of Clayton. "It's a win, a total win."

The INS released Byrne from custody in St. Louis on April 18. Byrne is on parole from his state prison sentence and living in Kansas City.

Byrne, 41, said that during the case INS officials promised him legal documents so he could pursue his appeal, but then failed to provide them. "I felt like they were pounding me into giving up the opportunity to fight," he said.

Heather Phillips, an attorney for the Justice Department, said that depending on a review of how Byrne's case fits with the Massachusetts decision, he still might be deported.

The law on this issue has been unsettled. Four federal appellate courts - the 2nd, 5th, 7th and 9th circuits - have ruled that DUI convictions are not a foundation for deportation; two others said they are.

The board's decision April 4 overturned a precedent it set in 1999 that regarded driving under the influence as a crime of violence. It said the reversal ensures uniform treatment of aliens nationwide.

INS spokeswoman Karen Kraushaar said figures were not readily available on DUI deportations. But of the 174,430 people deported in the year that ended Sept. 30, 1,325 were for traffic offenses, she said.

Byrne has been a permanent U.S. resident since 1986, and lived in St. Louis for periods in 1998 and 1999. His DUI convictions were in Jackson County.

Notes

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Reporter Peter Shinkle;; E-mail: pshinkle@post-dispatch.com; Phone: 314-340-8215

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