BOARD OF IMMIGRATION APPEALS CASES

Matter of VELASQUEZ-RIOS, 27 I&N Dec. 470 (BIA 2018)

The amendment to Section 18.5 of the California Penal Code, which retroactively lowered the maximum possible sentence that could have been imposed for an alien's State offense from 365 days to 364 days, does not affect the applicability of section 237(a)(2)(A)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(i)(II) (2012), to a past conviction for a crime involving moral turpitude "for which a sentence of one year or longer may be imposed."

Matter of M-G-G-, 27 I&N Dec. 469 (A.G. 2018)

The Attorney General referred the decision of the Board of Immigration Appeals to himself for review of issues relating to the authority to hold bond hearings for certain aliens screened for expedited removal proceedings, ordering that the case be stayed during the pendency of his review.

Matter of S-O-G- & F-D-B-, 27 I&N Dec. 462 (A.G. 2018)

(1) Consistent with *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), immigration judges have no inherent authority to terminate or dismiss removal proceedings.

(2) Immigration judges may dismiss or terminate removal proceedings only under the circumstances expressly identified in the regulations, *see* 8 C.F.R. § 1239.2(c), (f), or where the Department of Homeland Security fails to sustain the charges of removability against a respondent, *see* 8 C.F.R. § 1240.12(c).

(3) An immigration judge's general authority to "take any other action consistent with applicable law and regulations as may be appropriate," 8 C.F.R. § 1240.1(a)(1)(iv), does not provide any additional authority to terminate or dismiss removal proceedings beyond those authorities expressly set out in the relevant regulations.

(4) To avoid confusion, immigration judges and the Board should recognize and maintain the distinction between a dismissal under 8 C.F.R. § 1239.2(c) and a termination under 8 C.F.R. § 1239.2(f).

Matter of VALENZUELA GALLARDO, 27 I&N Dec. 449 (BIA 2018)

(1) An "offense relating to obstruction of justice" under section 101(a)(43)(S) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(S) (2012), encompasses offenses covered by chapter 73 of the Federal criminal code, 18 U.S.C. §§ 1501–1521 (2012), or any other Federal or State offense that involves (1) an affirmative and intentional attempt (2) that is motivated by a specific intent (3) to interfere either in an investigation or proceeding that is ongoing, pending, or reasonably foreseeable by the defendant, or in another's punishment resulting from a completed proceeding. *Matter of Valenzuela Gallardo*, 25 I&N Dec. 838 (BIA 2012), *clarified*.

(2) A conviction for accessory to a felony under section 32 of the California Penal Code that results in a term of imprisonment of at least 1 year is a conviction for an aggravated felony offense relating to obstruction of justice under section 101(a)(43)(S) of the Act.

Matter of BERMUDEZ-COTA, 27 I&N Dec. 441 (BIA 2018)

A notice to appear that does not specify the time and place of an alien's initial removal hearing vests an Immigration Judge with jurisdiction over the removal proceedings and meets the requirements of section 239(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a) (2012), so long as a notice of hearing specifying this information is later sent to the alien. *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), *distinguished*.

Matter of J. M. ACOSTA, 27 I&N Dec. 420 (BIA 2018)

(1) A conviction does not attain a sufficient degree of finality for immigration purposes until the right to direct appellate review on the merits of the conviction has been exhausted or waived.

(2) Once the Department of Homeland Security has established that a respondent has a criminal conviction at the trial level and that the time for filing a direct appeal has passed, a presumption arises that the conviction is final for immigration purposes, which the respondent can rebut with evidence that an appeal has been filed within the prescribed deadline, including any extensions or permissive filings granted by the appellate court, and that the appeal relates to the issue of guilt or innocence or concerns a substantive defect in the criminal proceedings.

(3) Appeals, including direct appeals, and collateral attacks that do not relate to the underlying merits of a conviction will not be given effect to eliminate the finality of the conviction.

Matter of L-A-B-R- et al., 27 I&N Dec. 405 (A.G. 2018)

(1) An immigration judge may grant a motion for a continuance of removal proceedings only "for good cause shown." 8 C.F.R. § 1003.29.

(2) The good-cause standard is a substantive requirement that limits the discretion of immigration judges and prohibits them from granting continuances for any reason or no reason at all.

(3) The good-cause standard requires consideration and balancing of multiple relevant factors when a respondent alien requests a continuance to pursue collateral relief from another authority—for example, a visa from the Department of Homeland Security. *See Matter of Hashmi*, 24 I&N Dec. 785, 790 (BIA 2009).

(4) When a respondent requests a continuance to pursue collateral relief, the immigration judge must consider primarily the likelihood that the collateral relief will be granted and will materially affect the outcome of the removal proceedings.

Title search: Board of Immigration Appeals Cases

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