



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Banuelos, Jesse J., Esquire
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Los Angeles, CA 90010-0000

U.S. DHS/SPD
2001 Seaside Ave.
San Pedro, CA 90731

Name: REYNA [REDACTED]

A36-728-577

Date of this notice: 11/08/2005

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

Sincerely,

A handwritten signature in black ink, appearing to read "F. F. Krider".

Frank Krider
Chief Clerk

Enclosure

Panel Members:
PAULEY, ROGER

FRANK

Falls Church, Virginia 22041

File: A36 728 577 - San Pedro

Date:

In re: AL [REDACTED] REYNA [REDACTED]

NOV - 8 2005

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Jess J. Bañuelos, 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

Sec. 237(a)(2)(E)(i), I&N Act [8 U.S.C. § 1227(a)(2)(E)(i)] -
Convicted of crime of domestic violence, stalking, or child abuse, neglect,
or abandonment

APPLICATION: Remand

ORDER:

PER CURIAM. The respondent appeals the Immigration Judge's June 21, 2005, decision denying his motion to terminate proceedings based upon his claim of derivative citizenship under former section 321(a) of the Act, 8 U.S.C. § 1432(a), via the 1987 naturalization of his mother. During the pendency of his appeal, the respondent filed a motion to remand. The motion is granted, and the record is remanded to the Immigration Judge for further proceedings and for entry of a new decision.

The record reflects that the respondent, born on August 30, 1969, in Mexico, was admitted to the United States as a lawful permanent resident on May 8, 1981, at the age of 11 years old. The respondent's parents were married at the time of his birth. Subsequently, on April 29, 1987, the respondent's mother became a naturalized United States citizen. During his time in the United States, on March 23, 2004, the respondent was convicted in the Superior Court of California, Los Angeles, for the offenses of making a criminal threat, false imprisonment, and contempt of court: failure to obey a court order, in violation of California Penal Code sections 422, 236 and 166(A)(4), respectively (Exh. 3). The respondent was sentenced to prison for a total of 4 years and 2 months (Exh. 3). Based upon this, the Immigration Judge correctly concluded that the respondent is removable under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(iii), as an aggravated felon as that term is defined in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F) (I.J. Dec. at 3). See *Rosales-Rosales v. Ashcroft*, 347 F.3d 714 (9th Cir. 2003).

During his proceedings, the respondent made a motion to terminate based upon his claim of derivative citizenship. The Immigration Judge denied the respondent's request due to his failure to provide any evidence that his parents were ever divorced and/or "legally separated" and his failure to provide evidence that his father naturalized prior to his 18th birthday (I.J. Dec. at 4). Through his motion, the respondent has submitted evidence in the form of a court order issued by the Superior Court of California, Los Angeles, and dated October 11, 2005, setting a date for the legal separation of the respondent's parents. The court order states that the respondent's parents were separated as that term is defined under California law on July 26, 1986, prior to the respondent's 18th birthday, and that the respondent's mother exercised legal custody of the respondent from then on. In light of recent precedent issued by the United States Court of Appeals for the Ninth Circuit, in which this case arises, we find it necessary to grant the respondent's motion to remand for further proceedings regarding his claim of derivative citizenship. See *Minasyan v. Gonzalez*, 401 F.3d 1069 (9th Cir. 2005) (judgment of dissolution of marriage entered by California court, recognizing that alien's parents had separated, and that alien's mother had assumed sole custody over him, on date that was prior to her naturalization, not only established date of legal separation for purposes of California law, but also established date of separation for purposes of alien's derivative citizenship claim under section 321(a) of the Act that was in effect at time).

Accordingly, the motion is granted, and the record is remanded to the Immigration Judge for further proceedings consistent with this opinion and for entry of a new decision.



FOR THE BOARD