No. 11-103

In the Supreme Court of the United States

ERIC H. HOLDER, JR., ATTORNEY GENERAL,
PETITIONER

v.

LUIS ARTURO PARRA CAMACHO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a parent's years of lawful permanent resident status can be imputed to an alien who resided with that parent as an unemancipated minor, for the purpose of satisfying 8 U.S.C. 1229b(a)(1)'s requirement that the alien seeking cancellation of removal have "been an alien lawfully admitted for permanent residence for not less than 5 years."

2. Whether a parent's years of residence after lawful admission to the United States can be imputed to an alien who resided with that parent as an unemancipated minor, for the purpose of satisfying 8 U.S.C. 1229b(a)(2)'s requirement that the alien seeking cancellation of removal have "resided in the United States continuously for 7 years after having been admitted in any status."

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LUIS ARTURO PARRA CAMACHO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of Attorney General Eric H. Holder, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-2a) is unreported. The decisions of the Board of Immigration Appeals (App. 4a-7a) and the immigration judge (App. 8a-15a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 24, 2011. A petition for rehearing was denied on April 26, 2011 (App. 3a). This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in the appendix to this petition. App. 16a-18a.

STATEMENT

1. Under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, the Attorney General, in his discretion, may cancel the removal of an alien who is found to be removable. 8 U.S.C. 1229b (2006 & Supp. II 2008). The statute sets forth the eligibility criteria for cancellation of removal of a lawful permanent resident as follows:

> **(a) Cancellation of removal for certain permanent residents**
>
> The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—
>
> (1) has been an alien lawfully admitted for permanent residence for not less than 5 years,
>
> (2) has resided in the United States continuously for 7 years after having been admitted in any status, and
>
> (3) has not been convicted of any aggravated felony.

8 U.S.C. 1229b(a).

The INA defines the phrase "lawfully admitted for permanent residence," as used in Subsection (a)(1), as "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." 8 U.S.C. 1101(a)(20).

The INA defines "residence," as used in Subsection (a)(2) ("resided"), as the alien's "principal, actual dwelling place in fact, without regard to intent." 8 U.S.C. 1101(a)(33). And the INA defines "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. 1101(a)(13)(A). An alien may be "admitted" to the United States either at a port of entry or by adjusting to a lawful status while already in the country. See, *e.g.*, *In re Alyazji*, 25 I. & N. Dec. 397, 399-400 (B.I.A. 2011).

The cancellation-of-removal statute further provides that an alien's period of continuous residence is deemed to end

> when the alien is served a notice to appear under section 1229(a) of this title, or * * * when the alien has committed an offense referred to in section 1182(a)(2) of this title that renders the alien inadmissible to the United States under section 1182(a)(2) of this title or removable from the United States under section 1227(a)(2) or 1227(a)(4) of this title, whichever is earliest.

8 U.S.C. 1229b(d)(1)(A)-(B).

To obtain cancellation of removal, the alien must demonstrate both that he is statutorily eligible for such relief and that he warrants a favorable exercise of discretion. *In re C-V-T-*, 22 I. & N. Dec. 7, 10 (B.I.A. 1998). The alien bears the burden of proof on those issues. 8 U.S.C. 1229a(c)(4)(A)(i); 8 C.F.R. 1240.8(d). The ultimate discretion of the Attorney General to grant such relief is akin to "a judge's power to suspend the execution of a sentence, or the President's to pardon a con-

vict." *INS* v. *Yueh-Shaio Yang*, 519 U.S. 26, 30 (1996) (citation omitted).

2. a. In 1991, at the age of four, respondent, a native and citizen of Mexico, illegally entered the United States and thereafter resided in the United States with his mother. App. 9a. In 1995, respondent's mother subsequently married his stepfather, who had become a lawful permanent resident (LPR) in 1990. *Ibid.*; Administrative Record 105. Both respondent and his mother became lawful permanent residents in 2004, when respondent was seventeen years old. App. 9a.

b. In December 2007, immigration officials apprehended respondent at the border returning from Mexico with marijuana in his vehicle. App. 9a. He eventually pleaded guilty to transportation of more than 28.5 grams of marijuana, in violation of California Health & Safety Code § 11360(a) (West 2007). App. 9a. The government served and filed a Notice to Appear that, as amended, charged respondent with being inadmissible under 8 U.S.C. 1182(a)(2)(A)(i)(II) for having been convicted of a controlled-substance offense. App. 9a. Respondent admitted to the facts establishing his removability for this charge, but sought cancellation of removal pursuant to 8 U.S.C. 1229b(a). App. 10a.

In June 2008, after a merits hearing, the immigration judge (IJ) found respondent ineligible for cancellation of removal. App. 11a-12a. Applying *Cuevas-Gaspar* v. *Gonzales*, 430 F.3d 1013, 1021-1029 (2005), in which the Ninth Circuit held that a parent's period of continuous residence after the parent's lawful admission could be imputed to a minor child residing with the parent for the purpose of satisfying Section 1229b(a)(2)'s seven-year residency requirement, the IJ permitted respondent to rely on his stepfather's years of lawful residence after

they began residing together to satisfy that latter requirement.[1] App. 11a, 14a. Following the recent precedential decision of the Board of Immigration Appeals (Board) in *In re Escobar*, 24 I. & N. Dec. 231 (2007), however, the IJ declined to extend the reasoning of *Cuevas-Gaspar* to permit imputation to respondent of his stepfather's 1990 adjustment to LPR status to satisfy Section 1229b(a)(1)'s five-year LPR status requirement. App. 11a-12a.[2]

c. The Board agreed that respondent was ineligible for cancellation of removal and dismissed his appeal. App. 5a.

The Board acknowledged *Cuevas-Gaspar*'s holding that imputation was permitted for the purpose of satisfying the seven-year residency requirement in Section 1229b(a)(2). App. 6a. For Section 1229b(a)(1), however, the Board considered itself bound by its more recent precedential decision in *In re Escobar*. *Ibid.* The Board further reasoned that, notwithstanding *Cuevas-Gaspar*'s contrary implication, the Ninth Circuit would be required to defer to *Escobar*'s intervening decision pursuant to *National Cable & Telecommunications Ass'n* v. *Brand X Internet Services*, 545 U.S. 967 (2005).

d. Subsequently, in *In re Ramirez-Vargas*, 24 I. & N. Dec. 599 (2008), the Board rejected an alien's invocation of imputation to satisfy Section 1229b(a)(2)'s seven-

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[1] The term "parent" is defined by the INA to include a stepparent if the marriage creating the status of stepparent occurred before the child reached age 18. See 8 U.S.C. 1101(b)(1)(B), 1101(b)(2) (2006 & Supp. II 2008).

[2] The IJ also found that respondent satisfied 8 U.S.C. 1229b(a)(3) because the record of conviction did not establish that his conviction was for a drug-trafficking aggravated felony. App. 12a-14a. The government did not appeal that determination to the Board. App. 6a n.1.

year continuous residence requirement, again citing *Brand X*. See 24 I. & N. Dec. at 600-601.

3. The Ninth Circuit granted respondent's petition for review and remanded to the Board for reconsideration of his cancellation-of-removal application in light of the Ninth Circuit's intervening decision in *Mercado-Zazueta* v. *Holder*, 580 F.3d 1102 (2009). App. 2a. In *Mercado-Zazueta*, the Ninth Circuit rejected the Board's decisions in *Ramirez-Vargas* and *Escobar* and treated *Cuevas-Gaspar*'s holding as binding with respect to Section 1229b(a)(2). 580 F.3d at 1115. The Ninth Circuit also extended *Cuevas-Gaspar* to Section 1229b(a)(1), holding that "for purposes of satisfying the five years of lawful permanent residence required under [Section 1229b(a)(1)], a parent's status as a lawful permanent resident is imputed to the unemancipated minor children residing with that parent." *Id.* at 1113.

4. The government petitioned for panel rehearing and asked the court of appeals to stay its consideration of the petition pending the Solicitor General's decision on whether to seek certiorari in *Sawyers* v. *Holder*, 399 Fed. Appx. 313 (9th Cir. 2010), reh'g denied (9th Cir. Feb. 1, 2011), cert. pending, No. 10-1543 (filed June 23, 2011), as well as any further review granted in that case. The court of appeals denied the petition. App. 2a.

REASONS FOR GRANTING THE PETITION

The question whether 8 U.S.C. 1229b(a) permits imputation of a parent's lawful admission date, years of residence after that admission, and period of lawful permanent resident status to an alien for purposes of satisfying the statutory eligibility criteria for cancellation of removal is presented in two petitions for a writ of certiorari currently pending before the Court. See *Gutierrez*

v. *Holder*, 411 Fed. Appx. 121 (9th Cir. 2011), petition for cert. pending, No. 10-1542 (filed June 23, 2011); *Sawyers* v. *Holder*, 399 Fed. Appx. 313 (9th Cir. 2010), petition for cert. pending, No. 10-1543 (filed June 23, 2011). If the Court grants those petitions and concludes that imputation is not permitted to satisfy the eligibility criteria of Section 1229b(a)(1) and (2), then respondent in this case would not be eligible for cancellation of removal. Accordingly, the Court should hold this petition pending the final disposition of *Gutierrez* and *Sawyers*, including any subsequent proceedings on the merits, and then dispose of the petition as appropriate in light of those decisions.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's final disposition of *Gutierrez* and *Sawyers*, and disposed of as appropriate in light of those decisions.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
TONY WEST
Assistant Attorney General
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CAROL FEDERIGHI
Attorneys

JULY 2011

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-74249
Agency No. A095-660-807

LUIS ARTURO PARRA CAMACHO,
A.K.A. LUIS CAMACHO PARRA, PETITIONER

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,
RESPONDENT

On Petition for Review of an Order of the Board of Immigration Appeals

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MEMORANDUM[*]

[Filed: Jan. 24, 2011]
Submitted: Jan. 10, 2011[**]

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

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[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Luis Arturo Parra Camacho, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's order pretermitting his application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law, *Mercado-Zazueta v. Holder*, 580 F.3d 1102, 1104 (9th Cir. 2009), and we grant the petition for review.

The BIA decided this case without the benefit of our decision in *Mercado-Zazueta v. Holder*, in which we held that for purposes of satisfying the five years of lawful permanent residence required under 8 U.S.C. § 1229b(a)(1), a parent's status as a lawful permanent resident is imputed to the unemancipated minor children residing with that parent. 580 F.3d at 1113. Accordingly, we grant the petition for review and remand to the BIA for further proceedings. *See INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-74249
Agency No. A095-660-807

LUIS ARTURO PARRA CAMACHO,
A.K.A. LUIS CAMACHO PARRA, PETITIONER

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL,
RESPONDENT

[Filed: Apr. 26, 2011]

ORDER

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

The government's petition for panel rehearing is denied.

APPENDIX C

[SEAL OMITTED]

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

Aguirre, Dario, Esq.
1225 17th Street, Suite 1530
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Office of the District
Counsel/SND
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San Diego, CA 92101-8834

Name: PARRA CAMACHO, LUIS ARTURO

A095-660-807

Date of this notice: 9/30/2008

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

Sincerely,

/s/ DONNA CARR
DONNA CARR
Chief Clerk

Enclosure

Panel Members:
Greer, Anne J.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Date: [Sept. 30, 2008]

File: A095 660 807-San Diego, CA

In re: LUIS ARTURO PARRA CAMACHO a.k.a. Luis Camacho Parra

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Dario Aguirre, Esquire

ON BEHALF OF DHS: Zachary N. James
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] Convicted of crime involving moral turpitude

APPLICATION: Cancellation of removal

ORDER:

PER CURIAM. The respondent's appeal of the Immigration Judge's June 16, 2008, decision denying his application for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a), is dismissed.

The Immigration Judge's denial of the respondent's application for cancellation of removal under section 240A(a) of the Act based upon his inability to establish 5 years' lawful permanent residency is supported by the record (I.J. at 4-5).[1] We concur in the Immigration Judge's conclusion that the respondent, who was admitted to the United States as a lawful permanent resident on November 15, 2004, cannot establish the requisite 5 years prior to his April 14, 2008, conviction (1.J. at 3-5). Pursuant to this Board's decision in *Matter of Escobar*, 24 I&N Dec. 231 (BIA 2007), the respondent cannot impute his stepfather's lawful permanent residence to himself for purposes of establishing the 5 year requirement under section 240A(a) of the Act (I.J. at 4-5). On appeal, the Respondent has not addressed the applicability of this Board's decision in *Matter of Escobar, supra*, other than to state that he is eligible for cancellation of removal in accordance with the Ninth Circuit's decision in *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013 (9th Cir. 2005) (holding that lawful admission and residence can be imputed to an unemancipated minor to satisfy the continuous residence requirement for cancellation of removal under section 240(a)(2) of the Act). The Board's decision in *Matter of Escobar, supra*, was not available for review by the Ninth Circuit when it ruled in *Cuevas-Gaspar*. The Ninth Circuit affords

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[1] The respondent has not filed a brief; therefore, we address only the argument raised in his Notice of Appeal. On appeal, the respondent does not dispute the Immigration Judge's conclusion that his 2008 conviction for transportation of marijuana in violation of California Health and Safety Code section 11360(a) is not an aggravated felony as that term is defined in section 101(a)(43)(B) of the Act, 8 U.S.C. § 1101(a)(43)(B). The DHS has filed an appellate brief but also does not dispute the Immigration Judge's findings in this regard.

"Chevron deference" to an agency's statutory interpretation that conflicts with its own earlier interpretation. *Gonzales v. Department of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007); *see also Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 843 1984) (stating that where a statute is silent or ambiguous on a specific issue, an agency's interpretation of it should be given deference if it is based on a permissible construction of the statute). We consider ourselves bound by our more recent precedent in *Matter of Escobar, supra. See generally, Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

Accordingly, the appeal is dismissed.

/s/ ANNE J. GREEN
ANNE J. GREEN
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
San Diego, California

File No. A 95 660 807

IN THE MATTER OF LUIS ARTURO PARRA CAMACHO,
RESPONDENT

Filed: June 16, 2008

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act.

APPLICATION: Cancellation of removal pursuant to Section 240A(a) of the Immigration and Nationality Act.

ON BEHALF OF RESPONDENT:

Thomas P. Haine

ON BEHALF OF DHS:

Zachary James
Assistant Chief Counsel

DECISION AND ORDER OF THE IMMIGRATION COURT PROCEDURAL FACTS

The respondent, Luis Arturo Parra Camacho, is a 21-year-old native and citizen of Mexico. Respondent has resided in the United States since 1991. Respondent is the child of parents, both of whom are lawful permanent residents. Respondent's stepfather, Salvador Zamudio Luis, has been a lawful permanent resident since November 13, 1990. Respondent and his mother both became lawful permanent residents on November 15, 2004.

The respondent came to the attention of officers, from the Department of Homeland Security, at the port of entry at San Ysidro, California on December 4, 2007. At that time, respondent made an application for admission and provided Immigration officers with proof of his legal resident status. The respondent was subjected to an inspection, which included the inspection of a vehicle that he was driving. During that inspection, Immigration officers found that respondent was transporting marijuana. The respondent was turned over to the local custody for criminal prosecution. On December 6, 2007, respondent was convicted for possession of marijuana for sale in violation of Health and Safety Code Section 11359. *See* Exhibit 1-2.

Respondent subsequently withdrew the guilty plea for possession of marijuana for sale pursuant to Health and Safety Code Section 11359, and entered a guilty plea to the transportation of more than 28.5 grams of marijuana in violation of California Health and Safety Code Section 11360(a). That plea was entered on April 14, 2008.

Respondent was served with a Notice to Appear following the December 6, 2007 conviction. That Notice to Appear was filed with the United States Immigration Court in San Diego, California on January 18, 2008. This Court has jurisdiction over these removal proceedings pursuant to 8 C.F.R. 1003.14(a).

Respondent has appeared in removal proceedings before this Court since his initial Master Calendar hearing on January 31, 2008. The respondent has been represented in these removal proceedings, and has entered a plea admitting allegations of fact relevant to citizenship, nationality, and his lawful permanent resident status on November 15, 2004. Respondent has also admitted the conviction pursuant to Health and Safety Code Section 11360. This Court marked conviction documents relevant to both the initial plea and the subsequent plea as Exhibit No. 2. This Court finds clear, cogent, and convincing evidence to establish the grounds of removal relating to a conviction for a controlled substance pursuant to Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, as amended. *Woodby v. INS*, 385 U.S. 276 (1966).

The remaining issues relevant to respondent's case involve his eligibility for relief from removal.

CANCELLATION OF REMOVAL,
SECTION 240A(a) OF THE ACT

In light of respondent's lawful permanent resident status having been provided to him on November 15, 2004 and the conviction for a violation of California Health and Safety Code Section 11360, this Court is required to analyze whether or not respondent is eligible to make an application to cancel his deportation as it

relates to the lawful permanent resident provisions of Section 240A(a) at (1)-(3).

It is undisputed that respondent has resided in the United States since at least 1991. Despite this fact, respondent did not receive his lawful permanent resident status until he was issued that legal status through his stepfather on November 15, 2004. The question before the Court is whether or not respondent has the opportunity to impute his stepfather's lawful permanent resident status to the five years required prior to meeting the qualifications for lawful permanent resident status under Section 240A(a)(1) of the Act.

It is undisputed that the Ninth Circuit Court of Appeals has provided certain relief to unemancipated minors through its decision in *Cuevas-Gaspar v. Ashcroft*, 430 F.3d 1013 (9th Cir. 2005). There is no question that the Ninth Circuit, in *Cuevas-Gaspar*, provided the opportunity for unemancipated minors to use the lawful residence of a parent or stepparent toward the seven years of continuous physical presence required pursuant to Section 240A(a)(2) of the Act. There is, however, a dispute regarding whether or not an unemancipated minor may have the status of a parent imputed for purposes of meeting the five year requirement pursuant to Section 240A(a)(1) of the Act.

Despite how this Court might read the decision in *Cuevas-Gaspar, supra*, this Court is bound by the analysis given these issues by the Board of Immigration Appeals. On July 11, 2007, the Board decided *In re Escobar*, 24 I&N Dec. 231 (BIA 2007). That decision specifically holds that a parent's lawful permanent resident status cannot be imputed to a child for purposes of calculating the five years of lawful permanent residence

required to establish eligibility for cancellation of removal under Section 240A(a)(1) of the Act. Where this Court is bound by the precedent decisions of the Board of Immigration Appeals, and there remains a question with respect to the five year requirement interpretation in *Cuevas-Gaspar*, this Court must hold that respondent does not meet the eligibility requirements in order for this Court to consider the cancellation of his removal as a matter of discretion.

Respondent is not entitled to have the Court consider his application to cancel deportation and removal when he is statutorily ineligible pursuant to Section 240A(a)(1) of the Act.

Counsel for the Department and respondent's counsel have raised issues regarding whether or not respondent's guilty plea to Health and Safety Code Section 11360(a) remains an aggravated felony offense. In this regard, Government counsel argues that respondent cannot meet the eligibility requirements pursuant to Section 240A(a)(3) of the Act where his plea to Count 2 of the information includes language that respondent, in admitting the transportation of a controlled substance, has admitted that that transportation was not for personal use, as defined in Penal Code Section 1210(a).

Respondent argues that where respondent's guilty plea states that the plea has been limited to acknowledging facts that respondent "transported more than 28.5 grams of marijuana," that respondent has not admitted facts which encompass an acknowledegment that his transportation was not for personal use.

This Court is aware of its responsibilities with respect to the assessment of statutory language and guilty plea statements in making a determination as to aggra-

vated felony crimes. There is no question that the transportation statute, pursuant to Health and Safety Code Section 11360(a), is overbroad. As a consequence, it is not categorically an aggravated felony crime. The Court is required to engage in what is referred to as the modified categorical approach, and take into account the portions of the record that can be referred to for purposes of making a determination regarding the factual basis for the plea entered by a respondent. The Court has referenced what evidence it has available to it. That evidence consists of the felony complaint and the guilty plea form. There are no other documents that have been provided by either party for the Court's use in making a determination regarding whether or not the transportation crime is, in fact, an aggravated felony. Both counsels have made persuasive arguments in support of their position regarding whether or not respondent's guilty plea to transportation of more than 28.5 grams of marijuana is an aggravated felony crime. Now, this Court is inclined to find, where the guilty plea is limited to the actual language of Count 2, that respondent has not specifically acknowledged that he transported marijuana not intended for his personal use. The Court does not have the benefit of the guilty plea hearing from which to make a determination whether or not there was an expressed acknowledgement regarding transportation. Where the Court is required to specifically find an element of the crime that relates to trafficking, the Court is not satisfied that respondent's guilty plea establishes a sufficient factual basis to encompass an acknowledgement of a trafficking element. The Court makes this specifically in light of the fact that Appellate Court decisions have specifically stated that transportation alone is insufficient acknowledgement to establish the desig-

nation of an aggravated felony crime as a trafficking offense.

The parties are in agreement that respondent has established at least one of the statutory requirements for cancellation of removal. There is no question, based on this record, that where respondent was in the United States as an unemancipated minor, he is entitled to impute the residence period of his a stepfather towards his seven years of continuous residence in the United States. Respondent has met the requirement pursuant to Section 240A(a) of the Act relevant to continuous residence.

CONCLUSION

Where respondent has failed to meet the statutory requirements for having been admitted into the United States as a lawful permanent resident for not less than five years, this Court finds that respondent has failed to establish his eligibility for cancellation of removal for certain permanent residents pursuant to Section 240A(a)(1) of the Act. Although there is a dispute whether or not respondent has met the eligibility requirement pursuant to Section 240A(a)(3) as that section relates to aggravated felony offenses, this Court finds, in a careful review of the related documents, that respondent has not acknowledged facts sufficient from which this Court could find he has admitted his involvement in a drug trafficking offense which would bar his consideration from cancellation of removal for having been convicted of "any aggravated felony." Where respondent meets the provisions of Section 240A(a) as they relate to continuous residence and the aggravated felony designation, respondent is not entitled to have

this Court consider his application as a matter of discretion where he fails to meet the requirement for having been a lawful permanent resident for the requisite five years required by Section 240A(a)(1).

Accordingly, IT IS ORDERED that, having been determined to be ineligible for cancellation of removal for certain permanent residents, respondent be removed from the United States as designated on the Notice to Appear pursuant to Section 212(a)(2)(A)(i)(II) of the Act.

ZSA ZSA DE PAOLO
Immigration Judge

APPENDIX D

1. 8 U.S.C. 1101 provides in pertinent part:

Definitions

(a) As used in this chapter—

* * * * *

(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 1182(d)(5) of this title or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days,

(iii) has engaged in illegal activity after having departed the United States,

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,

(v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the

alien has been granted relief under section 1182(h) or 1229b(a) of this title, or

(vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

* * * * *

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

* * * * *

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

* * * * *

2. 8 U.S.C. 1229b provides in pertinent part:

Cancellation of removal; adjustment of status

(a) Cancellation of removal for certain permanent residents

The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—

(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,

(2) has resided in the United States continuously for 7 years after having been admitted in any status, and

(3) has not been convicted of any aggravated felony.

* * * * *