Matter of Cleto Marte DOMINGUEZ REYES, Respondent

Decided December 13, 2024

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

For purposes of assessing whether an offense constitutes a money laundering aggravated felony under section 101(a)(43)(D) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(D) (2018), the circumstance-specific approach applies to the requirement that the "amount of the funds exceeded $10,000."

FOR THE RESPONDENT: Lachezar I. Vanchev, Esquire, Coral Springs, Florida

BEFORE: Board Panel: HUNSUCKER, PETTY, and CLARK, Appellate Immigration Judges.

PETTY, Appellate Immigration Judge:

The respondent appeals from the Immigration Judge's decision concluding that his conviction for conspiracy to commit money laundering is an aggravated felony rendering him both removable and ineligible for cancellation of removal for certain permanent residents. The Immigration Judge correctly concluded that the circumstance-specific approach applies in determining whether the amount of funds laundered exceeds the statutory threshold and thus renders the respondent's conviction an aggravated felony. The record supports the Immigration Judge's finding that the amount of funds in this case exceeded $10,000. Accordingly, the appeal will be dismissed.

I. BACKGROUND

On June 14, 2022, the respondent, a native and citizen of the Dominican Republic and lawful permanent resident of the United States, was convicted of conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h) (2018). The United States District Court for the Middle District of Florida issued a criminal forfeiture order finding "that at least $3,934,518 was obtained and laundered by the defendant as a result of his participation in the money laundering conspiracy, for which he has pled guilty."

Based on that conviction, the Department of Homeland Security ("DHS") charged the respondent with removability under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(2)(A)(iii) (2018), for having been convicted of an aggravated felony money laundering

offense as defined by section 101(a)(43)(D) of the INA, 8 U.S.C. § 1101(a)(43)(D) (2018). The Immigration Judge found the respondent removable as charged. The respondent then filed an application for cancellation of removal for certain permanent residents. The Immigration Judge determined that the respondent was ineligible for cancellation of removal because of his aggravated felony conviction. *See* INA § 240A(a)(3), 8 U.S.C. § 1229b(a)(3) (2018). The respondent challenges the Immigration Judge's conclusion that he was convicted of an aggravated felony. We review this issue de novo. 8 C.F.R. § 1003.1(d)(3)(ii) (2024).

II. DISCUSSION

Section 101(a)(43)(D) of the INA, 8 U.S.C. § 1101(a)(43)(D), defines an aggravated felony as "an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000." It is not disputed that the respondent's conviction for conspiracy under 18 U.S.C. § 1956(h) is "an offense described in section 1956 of title 18." INA § 101(a)(43)(D), 8 U.S.C. § 1101(a)(43)(D); *see Maniar v. Garland*, 998 F.3d 235, 239–40 (5th Cir. 2021). On appeal, the respondent maintains that DHS did not meet its burden to show that the amount of money he laundered exceeded $10,000 because the *Shepard* documents do not establish that he pleaded guilty to laundering that amount. *See Shepard v. United States*, 544 U.S. 13, 20–21 (2005) (discussing documents that may be permissibly considered under the modified categorical approach).

The Supreme Court of the United States has explained that when a statute "does not refer to generic crimes but refers to specific circumstances," we are not limited to the categorical approach and may consider "the particular circumstances in which an offender committed the crime." *Nijhawan v. Holder*, 557 U.S. 29, 37–38 (2009). With respect to section 101(a)(43)(D) of the INA, 8 U.S.C. § 1101(a)(43)(D), whether "the amount of funds exceeded $10,000" does not refer to a generic category of crimes or indeed any crime at all. It instead describes the "specific way in which an offender committed the crime on a specific occasion." *Nijhawan*, 557 U.S. at 34; *see also Fuentes v. Lynch*, 788 F.3d 1177, 1180–81 (9th Cir. 2015) (holding that "the INA's $10,000 threshold for money laundering offenses refers to a specific circumstance"); *Varughese v. Holder*, 629 F.3d 272, 274–75 (2d Cir. 2010) (same).

Moreover, as two courts of appeals have noted, if the categorical approach applied to section 101(a)(43)(D) of the INA, 8 U.S.C. § 1101(a)(43)(D), it would be partially inoperative, as 18 U.S.C. § 1956 does not include a $10,000 threshold for criminal liability. *See*

Fuentes, 788 F.3d at 1181; *United States v. Mendoza*, 783 F.3d 278, 282 (5th Cir. 2015). If we were limited to the categorical approach, no conviction under 18 U.S.C. § 1956 would ever be an aggravated felony under section 101(a)(43)(D), notwithstanding the express reference to that criminal statute. We normally do not construe statutes to be inoperative or superfluous, even in part. *See Corley v. United States*, 556 U.S. 303, 314 (2009) (explaining statutes "should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant" (citation omitted)); *Fuentes*, 788 F.3d at 1181 ("[A] statute should not be construed so as to render any provision of that statute meaningless or superfluous." (quoting *Beck v. Prupis*, 529 U.S. 494, 506 (2000))).

Finally, the monetary threshold in section 101(a)(43)(D) of the INA, 8 U.S.C. § 1101(a)(43)(D), parallels the $10,000 threshold requirement under section 101(a)(43)(M)(i) of the INA, 8 U.S.C. § 1101(a)(43)(M)(i), which the Supreme Court has held is subject to a circumstance-specific inquiry. *See Mendoza*, 783 F.3d at 281 (suggesting the provisions are "identical" and citing *Nijhawan*, 557 U.S. at 40); *see also Matter of F-R-A-*, 28 I&N Dec. 460, 462 (BIA 2022) (applying the circumstance specific approach to determine if a crime of fraud or deceit resulted in a loss exceeding $10,000). Accordingly, we conclude that for purposes of assessing whether an offense constitutes a money laundering aggravated felony under section 101(a)(43)(D) of the INA, 8 U.S.C. § 1101(a)(43)(D), the circumstance-specific approach applies to the requirement that the "amount of the funds exceeded $10,000."

In applying the circumstance-specific approach, "we 'are generally free to consider any admissible evidence' to determine" whether the amount of funds exceeded $10,000. *Matter of F-R-A-*, 28 I&N Dec. at 462 (quoting *Orellana v. Mayorkas*, 6 F.4th 1034, 1041 (9th Cir. 2021)). We are not limited to the plea agreement or other *Shepard* documents in making this determination, as the respondent suggests. In *Matter of F-R-A-*, we held that "the amount of forfeiture, like the amount of restitution, may be considered to determine the amount of loss to the victims under section 101(a)(43)(M)(i) [of the INA, 8 U.S.C. § 1101(a)(43)(M),] if the proceeds received are sufficiently tethered and traceable to the conduct of conviction." 28 I&N Dec. at 463.

Here, the record establishes that the forfeiture amount ordered by the district court was specifically tied to the money laundering conspiracy offense to which the respondent pleaded guilty. Contrary to the respondent's assertion that the forfeiture amount was applied broadly to all codefendants and was not attributed to him directly, the forfeiture order specifically identifies the amount that was directly attributable to the respondent's personal conduct. He is the only defendant named on the forfeiture order,

which states: "Being fully advised of the relevant facts, the Court hereby finds that at least $3,934,518 was obtained and laundered by the defendant as a result of his participation in the money laundering conspiracy, for which he has pled guilty." The forfeiture order establishes that the loss amount is "sufficiently tethered and traceable to the conduct of conviction," *Matter of F-R-A-*, 28 I&N Dec. at 463, and not "based on acquitted or dismissed counts or general conduct." *Nijhawan*, 557 U.S. at 42 (citation omitted).

We reject the respondent's claim that the conviction records submitted by DHS were insufficient because they were not certified. The conviction records were accompanied by a sworn statement by a DHS officer attesting that the documents were true and correct copies of the electronic records maintained by the district court and identifying the court record repository from which the DHS officer obtained the records. The INA and its implementing regulations expressly provide for the admissibility of documents obtained and submitted in this manner.[1] *See* INA § 240(c)(3)(C)(ii), 8 U.S.C. § 1229a(c)(3)(C)(ii) (2018); 8 C.F.R. § 1003.41(b) (2024).

The respondent's argument that forfeiture orders do not meet the evidentiary requirements to establish the amount of funds involved in the offense also fails. The Supreme Court has considered restitution orders in assessing the parallel issue of loss to the victim under section 101(a)(43)(M)(i), 8 U.S.C. § 1101(a)(43)(M)(i).[2] *See Nijhawan*, 557 U.S. at 42–43. We have previously explained that restitution orders and forfeiture orders are broadly equivalent for evidentiary purposes and can both be considered under the circumstance-specific approach. *See Matter of F-R-A-*, 28 I&N Dec. at 463.

We therefore agree with the Immigration Judge that DHS established by clear and convincing evidence that the amount of funds laundered by the respondent exceeded $10,000. *See* INA § 240(c)(3)(A), 8 U.S.C. § 1229a(c)(3)(A). As such, the respondent has been convicted of an

[1] Contrary to the respondent's claim, we did not hold in *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980), that certified records are required to establish the factual basis for a criminal conviction. Indeed, that case does not address removability based on criminal convictions at all. It simply held that the documents at issue in that case, which were certified, had been authenticated pursuant to the regulatory framework then in effect. *Id.* at 506 n.2.

[2] The respondent contends that under *Nijhawan*, the "scale and sophistication" of conduct are relevant when determining whether an offense qualifies as an aggravated felony. He further maintains that DHS has not presented any evidence to suggest that his actions involved sophisticated or large-scale money laundering. As to the first point, we cannot locate the purportedly quoted language in *Nijhawan*, nor can we find any similar sentiment using different words. As for the second, even if the respondent had correctly stated a relevant standard, we are at a loss for how at least $3,934,518 would not be considered large-scale money laundering.

aggravated felony under section 101(a)(43)(D) of the INA, 8 U.S.C. § 1101(a)(43)(D). He is therefore removable under section 237(a)(2)(A)(iii) of the INA, 8 U.S.C. § 1227(a)(2)(A)(iii), and is ineligible for cancellation of removal for certain permanent residents under section 240A(a)(3) of the INA, 8 U.S.C. § 1229b(a)(3).

ORDER: The appeal is dismissed.