No. 10-1543

In the Supreme Court of the United States

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

v.

DAMIEN ANTONIO SAWYERS

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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QUESTION PRESENTED

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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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. 5a-8a) and the immigration judge (App. 9a-15a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 14, 2010. A petition for rehearing was denied on February 1, 2011 (App. 3a). On April 20, 2011, Justice Kennedy extended the time within which to file a peti-

tion for a writ of certiorari to and including June 1, 2011. On May 25, 2011, Justice Kennedy further extended the time to and including June 23, 2011. 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. III 2009). The statute sets forth the eligibility criteria for cancellation of removal of a lawful permanent resident alien 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 convict." *INS* v. *Yueh-Shaio Yang*, 519 U.S. 26, 30 (1996) (citation omitted).

2. a. In October 1995, at the age of fifteen, respondent, a native and citizen of Jamaica, was admitted to the United States as a lawful permanent resident (LPR). App. 10a. According to respondent, his mother already had been living in the United States as an LPR at the time. App. 6a. The record does not indicate whether respondent had been present in the United States prior to his admission as an LPR in 1995.

b. On August 9, 2002, respondent was convicted of maintaining a dwelling for keeping a controlled substance, in violation of Delaware law. App. 11a. On December 14, 2005, he was convicted of criminal possession of a controlled substance, cocaine, in violation of New York law. App. 10a. DHS subsequently commenced removal proceedings against respondent by filing a Notice to Appear alleging (as amended) that he is subject to removal from the United States under 8 U.S.C. 1227(a)(2)(B)(i) as an alien convicted of a controlled-substance offense. App. 10a-11a. Before the immigration judge (IJ), respondent denied the charge of removability and, in the alternative, sought relief in the form of cancellation of removal pursuant to 8 U.S.C. 1229b(a). App. 11a-13a.

In September 2007, after a merits hearing, the IJ found respondent removable as charged and further held that he was ineligible for cancellation of removal. App. 11a-14a. As to the latter question, the IJ deter-

mined that respondent's 2002 conviction would have made him removable at that time and therefore cut off his period of residence in the United States before he had accrued the seven continuous years of residency required by 8 U.S.C. 1229b(a)(2). App. 13a.[1]

c. The Board of Immigration Appeals (Board) agreed that respondent was ineligible for cancellation of removal and dismissed his appeal. App. 5a-8a. As an initial matter, the Board agreed with the IJ that respondent's 2002 Delaware conviction qualified as a conviction for a removable offense (thereby cutting off his period of continuous residency short of the requisite seven years). App. 6a.

The Board then noted that the IJ did not address respondent's argument that his mother's period of lawful residence should be attributed to him for purposes of meeting Section 1229b(a)(2)'s seven-year continuous-residence requirement. The Board, however, ultimately deemed that omission harmless. App. 6a-7a. The Board acknowledged the holding in *Cuevas-Gaspar* v. *Gonzales*, 430 F.3d 1013, 1021-1029 (9th Cir. 2005), 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 the seven-year residency requirement in Section

[1] At the time of the hearing, respondent had been "an alien lawfully admitted for permanent residence" for more than five years and hence satisfied 8 U.S.C. 1229b(a)(1). See 8 C.F.R. 1.1(p); *Sinotes-Cruz* v. *Gonzales*, 468 F.3d 1190, 1197 (9th Cir. 2006). In addition, although DHS originally charged respondent with being subject to removal for having been convicted of a drug-trafficking aggravated felony, it later withdrew that charge and the agency made no determination as to whether any of respondent's convictions were aggravated felony offenses. App. 11a. Accordingly, the government does not dispute that respondent also satisfied 8 U.S.C. 1229b(a)(3) for present purposes.

1229b(a)(2). App. 6a-7a. But the Board considered itself bound by its more recent precedential decision, *In re Escobar*, 24 I. & N. Dec. 231 (B.I.A. 2007), in which the Board had explained its disagreement with *Cuevas-Gaspar* in declining to extend the imputation rule to Section 1229b(a)(1)'s five-year LPR status requirement. App. 7a. Notwithstanding *Cuevas-Gaspar*'s contrary holding, the Board reasoned that the Ninth Circuit was required to defer to the Board's intervening decision in *Escobar* pursuant to *National Cable & Telecommunications Ass'n* v. *Brand X Internet Services*, 545 U.S. 967 (2005). App. 7a.

d. Subsequently, in *In re Ramirez-Vargas*, 24 I. & N. Dec. 599 (2008), the Board issued a published decision squarely rejecting the use of imputation for meeting Section 1229b(a)(2)'s seven-year continuous-residence requirement.

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. 1a-2a. In *Mercado-Zazueta*, rejecting the Board's decisions in *Ramirez-Vargas* and *Escobar*, the Ninth Circuit treated *Cuevas-Gaspar*'s holding as binding with respect to Section 1229b(a)(2), 580 F.3d at 1115, and extended it to Section 1229b(a)(1), *id.* at 1113. In the present case, the Ninth Circuit remanded "on an open record for any further determinations that the [Board] deems necessary," including findings "regarding the residency of [respondent's] mother and regarding whether [respondent] was a minor residing with her." App. 2a.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit is the only court of appeals that permits imputation to an alien of his parent's lawful admission date and years of residence after that admission for purposes of enabling the alien to satisfy the statutory eligibility criteria for cancellation of removal. Invoking *Mercado-Zazueta* v. *Holder*, 580 F.3d 1102 (9th Cir. 2009), which in turn relied on *Cuevas-Gaspar* v. *Gonzales*, 430 F.3d 1013 (9th Cir. 2005), the Ninth Circuit granted the petition for review in this case challenging the Board's determination that respondent was ineligible for cancellation of removal. The Ninth Circuit did so notwithstanding the fact that respondent had not "resided in the United States continuously for 7 years after having been admitted in any status" (8 U.S.C. 1229b(a)(2)). For the reasons set forth in the government's petition for a writ of certiorari (at 8-24) in *Martinez Gutierrez* v. *Holder*, No. 08-70436 (9th Cir. Jan. 24, 2011), filed concurrently with this petition, this Court's review is warranted.[2]

---

[2] The respondent in *Martinez Gutierrez* does not satisfy either the seven-year continuous residency requirement of Section 1229b(a)(2) or the five-year LPR status requirement of Section 1229b(a)(1). The certiorari petition in *Martinez Gutierrez* therefore presents both issues. The Board's decision in that case, however, ultimately appeared to deny eligibility for cancellation of removal based on the latter requirement only. See Pet. 22 n.4, *Martinez Gutierrez*, *supra*. This case squarely presents the former requirement. Accordingly, to ensure that both requirements are properly before this Court, the government requests that certiorari be granted in both cases and that the cases be consolidated for argument.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

DONALD B. VERRILLI, JR.
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TONY WEST
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EDWIN S. KNEEDLER
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PRATIK A. SHAH
Assistant to the Solicitor General
DONALD E. KEENER
CAROL FEDERIGHI
Attorneys

JUNE 2011

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-70181
Agency No. A044-852-478

DAMIEN ANTONIO SAWYERS, ETC. PETITIONER

v.

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

[Filed: Oct. 14, 2010]

MEMORANDUM[*]

Submitted Oct. 8, 2010[**]

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

---

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

Before: BEEZER and GRABER, Circuit Judges, and CARNEY,[***] District Judge.

Petitioner Damien Antonio Sawyers petitions for review of the Board of Immigration Appeal's dismissal of his appeal from the immigration judge's denial of his request for cancellation of removal under 8 U.S.C. § 1229b(a)(1). We grant the petition.

Petitioner argues that, pursuant to *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013 (9th Cir. 2005), we must impute to him his mother's residency for purposes of cancellation of removal. In its response brief, the government argued that our decision in *Cuevas-Gaspar* no longer controls. As the government concedes in its Federal Rule of Appellate Procedure 28(j) letter to this court, however, we thereafter rejected those same arguments in *Mercado-Zazueta v. Holder*, 580 F.3d 1102 (9th Cir. 2009).

Accordingly, we grant the petition and remand on an open record for any further determinations that the BIA deems necessary, including a determination of when imputation should start. *See INS v. Orlando Ventura*, 537 U.S. 12 (2002) (per curiam); *Soto-Olarte v. Holder*, 555 F.3d 1089 (9th Cir. 2009). The agency must make findings in the first instance regarding the residency of Petitioner's mother and regarding whether Petitioner was a minor residing with her.

Petition GRANTED. Case REMANDED.

[***] The Honorable Cormac J. Carney, United States District Judge for the Central District of California, sitting by designation.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 08-70181
Agency No. A 044-852-478

DAMIEN ANTONIO SAWYERS,
A.K.A. DAMIEN SAWYERS, PETITIONER

v.

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

[Filed: Feb. 1, 2011]

ORDER

Before: BEEZER and GRABER, Circuit Judges, and CARNEY,[*] District Judge.

Judge Graber has voted to deny Respondent's petition for rehearing en banc, and Judges Beezer and Carney have so recommended.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it.

The petition for rehearing en banc is DENIED.

[*] The Honorable Cormac J. Carney, United States District Judge for the Central District of California, sitting by designation.

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

Larios, Hugo F.
3110 S. Rural Rd.
Suite 101
Temep, AZ 85282-0000

U.S. DHS-Trial
Attorney Unit/EAZ
P.O. Box 25158
Phoenix, AZ 85002

Name: SAWYERS, DAMIEN ANTONIO A44-852-478

Date of this notice:

12/26/2007

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:
GRANT, EDWARD R.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A44 852 478 - Eloy, AZ

Date: [Dec. 26, 2007]

In re: DAMIEN ANTONIO SAWYERS a.k.a. Damien Sawyers

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Hugo F. Larios, Esquire

ON BEHALF OF DHS: D'Anna Harrison
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony (withdrawn)

Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(I)] - Convicted of controlled substance violation

APPLICATION: Cancellation of removal

The respondent is a native and citizen of Jamaica. In a decision dated September 20, 2007, an Immigration Judge found him statutorily ineligible for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a)(1), and ordered him removed to Jamaica. This timely appeal followed. The appeal will be dismissed.

The Immigration Judge noted that the respondent failed to show that his Delaware conviction for maintaining a dwelling for keeping controlled substances was a conviction involving less than 30 grams of marijuana for personal use. I.J. at 5. We agree, and note that the conviction in question necessarily involved either cocaine (as established by the reference in count 6, the count under which the respondent was convicted, to the allegations of count 1-4) or the possession of marijuana with the intent to deliver (as established by the reference in count 6 to the allegations of count 5). *See* Exh. 9.

In his decision, the Immigration Judge did not address the respondent's argument (set forth in a pre-trial brief) that his mother's period of residence (as a lawful permanent resident) should be attributed to him for purposes of counting the 7-year continuous residence requirement for cancellation of removal under section 240A(a)(2) of the Act. *See Cuevas-Gaspar v. Gonzales,* 430 F.3d 1013 (9th Cir. 2005); *cf. Matter of Escobar,* 24 I&N Dec. 231 (BIA 2007) (rejecting *Cuevas-Gaspar* analysis and noting that *Cuevas-Gaspar* dealt with *section 240A(a)(2)* of the Act and holding that under *section 240A(a)(1)* of the Act a parent's lawful permanent resident status cannot be imputed to a child). While the Immigration Judge made no factual findings with re-

spect to this issue, and did not mention the respondent's argument in his decision, we find this omission harmless.

The Ninth Circuit in *Cuevas-Gaspar* interpreted a provision of the Act that it found to be "silent or ambiguous" on the issue of imputing lawful permanent residence. 430 F.3d at 1021-1022. Subsequent to *Cuevas-Gaspar* this Board, in a published decision, rejected the Ninth Circuit's interpretation and held that the lawful permanent residence of a parent could not be imputed to a child in these circumstances. *Matter of Escobar, supra*, at 233-234. In the course of so doing, we provided a fuller explanation of our reasons for not imputing the lawful admission of a parent to a child who was later admitted as a lawful permanent resident. *Id*. This fuller rationale was not before the Ninth Circuit when it ruled in *Cuevas-Gaspar.* Recently, the Ninth Circuit held in similar circumstances that it must give "*Chevron* deference" to an agency's statutory interpretation that conflicts with its own earlier interpretation. *Gonzales v. Department of Homeland Security,* __ F.3d __, 2007 WL 4209273 (9th Cir., Nov. 30, 2007). In the prior Ninth Circuit decision at issue in *Gonzales,* the court - using language virtually identical to that employed in Cuevas-*Gaspar* - had found this Board's interpretation of an ambiguous provision to be "unreasonable". *See Perez-Gonzales v. Ashcroft,* 379 F.3d 783, 788-789 (9th Cir. 2004), *reversed by Gonzales v. Department of Homeland Security, supra.* The court nevertheless found that if it was required to defer to the subsequent interpretation by this Board. We thus consider ourselves bound by our more recent precedent in *Matter of Escobar. See generally National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967 (2007); *Chevron*

USA, Inc. v. National Resources Defense Council, 467 U.S. 837 (1984).

ORDER: The respondent's appeal is dismissed.

/s/ [EDWARD R. GRANT]
FOR THE BOARD

APPENDIX D

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Eloy, Arizona 85231

File No.: A 44 852 478 September 20, 2007

In the Matter of

DAMIEN ANTONIO SAWYERS Respondent

IN REMOVAL PROCEEDINGS

CHARGE: Section 237(a)(2)(A)(iii) of the Act - conviction of an aggravated felony for trafficking in a controlled substance.

Section 237(a)(2)(B)(i) of the Act - conviction of a controlled substance offense other than a single offense involving personal possession of 30 grams or less of marijuana.

APPLICATIONS: Motion to terminate and cancellation of removal for certain lawful permanent resident aliens.

ON BEHALF OF RESPONDENT:	ON BEHALF OF DHS:
Mr. Hugo Larios Law Offices of Hugo Larios Tempe, AZ	Robert C. Bartlamay Assistant Chief Counsel

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

The respondent in these proceedings is a 27-year-old male, native and citizen of Jamaica. The United States Department of Homeland Security brought these removal proceedings against the respondent under the authority of the Immigration and Nationality Act. Proceedings were commenced with the filing of a Notice to Appear with the Immigration Court. *See* Exhibit 1 herein.

REMOVABILITY

The Notice to Appear alleged that the respondent (1) was not a citizen or national of the United States of America; (2) that he was a native of Jamaica and a citizen of Jamaica; (3) that he was admitted to the United States at New York, New York on or about the 18th of October, 1995 as a lawful permanent resident; (4) that he was convicted of the crime of criminal possession of a controlled substance in the fourth degree, specifically cocaine, in violation of Section 220.09 of the New York State Penal Law on or about the 14th of December, 2005. Based upon those facts and allegations, the Department of Homeland Security charged that the respondent was removable under the provisions of Section 237(a)(2)(A)(iii) for having been convicted of an aggravated felony as defined in Section 101(a)(43)(B) of the Act for that offense relating to illicit trafficking in a con-

trolled substance as described in the Controlled Substances Act, as well as the charge of removability under Section 237(a)(2)(B)(i) of the Act, at any time after admission conviction of violating any law or regulation of a State or the United States relating to a controlled substance other than a single offense involving possession for one's own use of 30 grams or less of marijuana.

At a prior session of the Court, the respondent, through counsel, denied the factual allegation, attempting to show derivative citizenship. He admitted factual allegation 2, admitted factual allegation 3, denied factual allegation 4. At that time, the Department of Homeland Security withdrew the aggravated felony charge under Section 237(a)(2)(A)(iii), leaving as the only viable charge 237(a)(2)(B)(i), conviction of a controlled substance violation other than a single offense involving possession for one's own use of 30 grams or less of marijuana.

Exhibit 1-A in this record of proceedings is an I-261. It was filed by the Department of Homeland Security on the 30th of August, 2007, at what would have been a merit hearing on respondent's application for cancellation. It alleged that the respondent was, on the 9th of August, 2002, convicted of the crime of maintaining a dwelling for keeping a controlled substance, specifically cocaine and marijuana, in violation of Title 16, Section 4755(a)(5) of the Delaware Code of 1974, as amended.

The respondent, on today's date, admitted factual allegation 5. The respondent designated Jamaica as the country of removal should removal become necessary, expressing no fear of torture or persecution if his removal to Jamaica became necessary.

In addition to the previously mentioned documentary exhibits, Exhibit 2 in these proceedings is a Motion to Terminate these proceedings based on citizenship. That motion was denied by the Court, and the Court did find factual allegation 1. Exhibit 3 herein, is the Department's response to the Motion to Terminate. Exhibit 4 are the Department submitted documents which include an I-213, as well as a conviction document for the additionally alleged conviction under New York Law, as well as a copy of the New York criminal statute. Exhibit 5 for identification is a copy of an interim BIA decision *In re Pagan*. It related to the respondent's citizenship claim. Exhibit 6 is the respondent's EOIR 42-A, his application for cancellation. Exhibit 7 are further Government documents, including a visa and a copy of the respondent's criminal history. Exhibit 8 herein are additional supporting documents for the respondent's application for cancellation of removal. Exhibit 9 is a copy of the Delaware conviction. Exhibit 9-A is a copy of the statute that the respondent was convicted under. The conviction documents also include the criminal indictment by a grand jury. Exhibit 9 are those conviction documents; 9-A is the statutory extract. As I said, the Department lodged that charge at what would have been a merit hearing on the respondent's application for cancellation of removal, which has previously been mentioned as Exhibit 6.

The matter was set over. The respondent pled today. The parties briefed. The Department's brief is found as Exhibit 10. The respondent's brief at Exhibit 11. What is in question is whether or not the respondent's conviction, as contained on the Notice to Appear, stops the seven years as is required under Section 240A(a) of the Act.

The Court has concluded, after examining all the facts and relevant evidence in this case, that conviction under Delaware Law does in fact constitute a conviction that would subject the respondent to removability under Section 237(a)(2)(B)(i) of the Act. The Court commends respondent's counsel, Mr. Larios, for a novel argument.

Mr. Larios argues that the statute is divisible and that the respondent, in all likelihood, could have been convicted for possession of less than 30 grams of marijuana. It is an argument that would succeed but for the fact that the respondent's conviction involved marijuana and cocaine. The 30-gram marijuana exception, oft referred to under Immigration Law as the Lennon (phonetic sp.) exception, applies only to marijuana. It does not apply to any other drugs, and the respondent was convicted of keeping a dwelling for cocaine as well; the conviction documents indicating conjunctive language, cocaine and marijuana.

Nonetheless, despite the fact that he raises a good argument and has provided the Court a good, sound brief, the Court finds that conviction which the respondent admitted to in Exhibit 1-A would have subjected the respondent to removability at that time under 237(a)(2)(B)(i) of the Act, and therefore will cut off his seven years. Since that is the case, the respondent is not statutorily eligible for the requested relief, and the Court will at this time pretermit his application for cancellation of removal under Section 240A(a) of the Act.

The respondent is not eligible for any other forms of relief, nor has he expressed a fear of return to Jamaica, therefore the following Order shall be entered.

ORDER

IT IS HEREBY ORDERED that the respondent's application for cancellation of removal be and hereby is denied.

IT IS FURTHER ORDERED that the respondent be removed from the United States to Jamaica on the charge sustained against him.

/s/ JOHN W. DAVIS
JOHN W. DAVIS
United States Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE JOHN W. DAVIS, in the matter of:

DAMIEN ANTONIO SAWYERS

A 44 852 478

Eloy, Arizona

is an accurate, verbatim transcript of the cassette tape as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/ ALICE M. SMITH
ALICE M. SMITH, TRANSCRIBER

Free State Reporting, Inc.
1378 Cape St. Claire Road
Annapolis, Maryland 21401
(301) 261-1902

November 6, 2007
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies that a Sony BEC/T-147, 4-channel transcriber or equivalent, as described in Section C, paragraph C.3.3.2 of the contract, was used to transcribe the Record of Proceeding shown in the above paragraph.

APPENDIX E

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.

* * * * *