

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
26 FEDERAL PLZ 12TH FL., RM1237  
NEW YORK, NY 10278

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MELVILLE, NY 11747

IN THE MATTER OF  
CLEMENTS, PAUL ARNOLD

FILE A 019-548-045

DATE: Jul 8, 2009

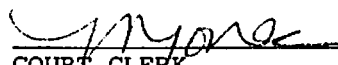
     UNABLE TO FORWARD - NO ADDRESS PROVIDED

     ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:  
BOARD OF IMMIGRATION APPEALS  
OFFICE OF THE CLERK  
P.O. BOX 8530  
FALLS CHURCH, VA 22041

     ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

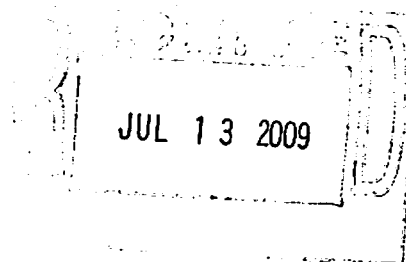
IMMIGRATION COURT  
26 FEDERAL PLZ 12TH FL., RM1237  
NEW YORK, NY 10278

  X   OTHER: Attached is the Judge's written decision and order.

  
\_\_\_\_\_  
COURT CLERK  
IMMIGRATION COURT

FF

CC: Media Powery, ESQ  
Assistant Chief Counsel



UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
NEW YORK, NY 10278

In the Matter of \_\_\_\_\_ x

CLEMENTS, Paul Arnold

IN REMOVAL PROCEEDINGS

A19-548-045  
Respondent.

\_\_\_\_\_ x

**CHARGE(S):** Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, an alien who has been convicted of any law relating to a controlled substance.

**APPLICATION(S):** Termination of Removal Proceedings

**ON BEHALF OF RESPONDENT:**

Michael Diraimondo, Esq.  
401 Broadhollow Road, Suite 302  
Melville, NY 11747

**ON BEHALF OF DHS:**

Meida Powery, Esq.  
Assistant Chief Counsel  
New York District

**WRITTEN DECISION AND ORDER OF THE IMMIGRATION JUDGE**

**Facts & Procedural History:**

The respondent is a 59 year old male, native and citizen of the United Kingdom. On January 16, 1973, the respondent was admitted to the United States as a lawful permanent resident. The respondent was convicted in the Municipal Court, Township of Sparta, New Jersey of the crime of Possession Marijuana/Hash under 50 grams in violation of New Jersey Criminal Code, 2c:35-10a(4) on March 11, 2002. As a result of this conviction, the respondent was placed in removal proceedings by the issuance of a Notice to Appear dated November 12, 2008 charging him with removability pursuant to §212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, ("INA") as an alien who has been convicted of any law relating to a controlled substance.

At a master calendar hearing held on November 24, 2008, the respondent admitted the factual allegations and conceded removability as charged. In lieu of removal, the respondent sought the relief of cancellation of removal for lawful permanent residents under INA §240A(a). On June 3, 2009, the respondent filed a motion to terminate removal proceedings asserting that the respondent's criminal conviction had been vacated. The Department did not submit an opposition.

On June 25, 2009, a master calendar hearing was held, and counsel for the respondent presented evidence demonstrating that the respondent's March 11, 2002 conviction was vacated due to a procedural or substantive defect in the underlying criminal proceedings. At that time, the Department requested additional time seeking to review the matter. The Court granted the Department's request. On July 6, 2009, the Department filed an opposition to the respondent's motion.

**Legal Analysis:**

If a court vacates an alien's conviction for reasons solely related to rehabilitation or immigration hardships, rather than on the basis of a procedural or substantive defect in the underlying criminal proceedings, the conviction is not eliminated for immigration purposes. See Matter of Pickering, 23 I&N Dec. 621 (BIA 2003).

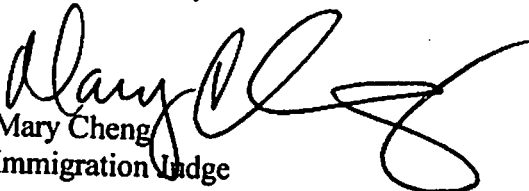
In the present case, the respondent has presented a copy of a the Petition for Post Conviction Relief filed with Sparta Municipal Court ("Petition"). The Petition seeks post conviction relief based on a substantive defect in the underlying criminal proceedings. The petition alleges ineffective assistance of counsel, because the respondent's prior criminal counsel appeared in the Sparta Municipal Court late, unprepared and unfamiliar with his criminal case. The Petition was granted on

April 20, 2009. (See Respondent's Motion Tab A). This Court is satisfied that the respondent's criminal conviction on March 11, 2002 was vacated for a substantive due process violation and not for reasons solely related to rehabilitation or immigration hardships . As such, the respondent's motion to terminate will be granted. Matter of Pickering, 23 I&N Dec. 621 (BIA 2003).

For the foregoing reasons, the following order will be entered:

**ORDER**

**IT IS ORDERED** that the respondent's motion to terminate is hereby **GRANTED**.

  
Mary Cheng  
Immigration Judge

Dated: July 8, 2009