

Falls Church, Virginia 22041

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File: A27 819 377 - Cleveland

Date:

DEC 27 2005

In re: KOEUN YOU

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Charleston C. K. Wang, Esquire

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ON BEHALF OF DHS: Victoria A. Christian  
Deputy 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

APPLICATION: Termination

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The Department of Homeland Security (DHS) appeals the Immigration Judge's decision, dated August 22, 2005, terminating removal proceedings against the respondent. The appeal will be dismissed.

The DHS charged the respondent with being removable as an alien convicted of an aggravated felony as defined under section 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(F). Specifically, the DHS asserted that the respondent's convictions on August 4, 2003, for aggravated vehicular homicide in violation of Ohio Revised Code Annotated § 2903.06(A), and two counts of vehicular assault in violation of Ohio Revised Code Annotated § 2903.08(A)(2) and sentence of 2 years incarceration constituted crimes of violence as defined under 18 U.S.C. § 16. In response, the respondent moved to terminate proceedings arguing that the convictions did not constitute crimes of violence and, thus, the respondent was not removable as an alien convicted of an aggravated felony under section 237(a)(2)(A)(iii) of the Act. Thereafter, the Immigration Judge found that the respondent's convictions did not constitute crimes of violence and he terminated removal proceedings. As a result, the DHS filed a timely appeal arguing that the Immigration Judge's decision is erroneous and that proceedings should be reinstated.

The respondent was convicted of three separate offenses in violation of Ohio Revised Code Annotated §§ 2903.06(A) and 2903.08(A)(2). The respondent's conviction under section 2903.06(A) is for aggravated vehicular homicide and it is a divisible statute. The statute is divided into separate sections requiring no *mens rea*, a negligent *mens rea*, or a reckless *mens rea* in order to establish culpability.