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Supreme Court to Address Deportation for Misdemeanor Drug Possession

The United States Supreme Court will hear a case on the constitutionality of removal and deportation of immigrants for repeat misdemeanor drug convictions.

The case is on appeal from the 5th Circuit Court of Appeals case of *Carachuri-Rosendo v. Holder*. The Carachuri case involved a permanent resident who was convicted first on misdemeanor possession of marijuana and subsequently for possession of a single tablet of Xanax. In both cases, Carachuri had pled to the charges serving a total of 30 days in jail. Carachuri then received notice of a removal for a controlled substance conviction. Carachuri applied for cancellation of removal which was denied by the immigration judge who found him ineligible for conviction on an aggravated felony.

The immigration court held that Carachuri-Rosendo was ineligible for cancellation of removal because the repeat conviction constituted an aggravated felony under the Immigration and Naturalization Act (INA). Under 8 U.S.C. § 1229b(a), the Attorney General may cancel removal of an alien who is inadmissible or deportable if the alien has resided in the United States continuously for at least seven years, has been a lawful permanent resident for five years, and has not been convicted of an aggravated felony.

The immigration judge found that Carachuri had been convicted of a drug trafficking crime making him ineligible for cancellation of removal. Carachuri appealed to the Board of Immigration Appeals (BIA). The BIA followed the reasoning of *United States v. Sanchez-Villalobos*, where it was held that a second state misdemeanor possession offense constitutes an aggravated felony if the offense could have been prosecuted as a felony under federal law.

The 5th Circuit Court of Appeals agreed with the BIA citing *Sanchez-Villalobos*. The court also relied on the holding in *Lopez v. Gonzalez* where the Supreme Court held that the federal classification of a conviction controls over state definitions. Under this approach, the court will look to the conduct proscribed by state law and compare that to the federal definitions. Under this approach, Carachuri's second offense could have been prosecuted as a felony under federal law and therefore constituted an aggravated felony under the INA making Carachuri ineligible for cancellation.

The Supreme Court will take up the matter of whether 2 state misdemeanor offenses can become aggravated felonies for purposes of removal and deportation. Hopefully, the Court will bring a halt to the extraordinarily harsh outcomes of these cases resulting in removal/deportation for relatively minor misdemeanor drug offenses.

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