FOREIGN CONVICTIONS BOILERPLATE

Foreign convictions are considered convictions for immigration purposes if the criminal conduct would be considered criminal in the United States legal system. See Matter of McNaughton, 16 I&N Dec. 569 (BIA 1978), reaffirmed in dicta by Matter of Eslamizar, 23 I&N Dec. 684, 689 (BIA 2004); Matter of Ramirez-Rivero, 18 I&N Dec. 135, 137 (BIA 1981) (holding a minor's conviction in Cuba as an adult was not considered a conviction for immigration purposes because in the United States, juvenile delinquency is not a crime); see also 22 C.F.R § 40.21(a)(1) (stating that in deciding whether a crime involves moral turpitude for purposes of visa eligibility "a Consular Officer must base a determination that a crime involves moral turpitude upon the *moral standards generally prevailing in the United States*") (emphasis added).

However, the Board noted in Matter of Eslamizar, that just because the foreign conduct itself must be recognized as criminal in the United States, this does not mean that a foreign conviction must necessarily "adhere to all the requirements of the United States Constitution applicable to criminal trials, including that relating to the requisite standard of proof." Matter of Eslamizar, 23 I&N Dec. at 688.

I. Legitimacy of Foreign Judgements and International Comity

Regardless, while the underlying conduct of a criminal conviction can be examined to ensure that the crime itself is also considered criminal in the United States legal system, an Immigration Court cannot examine the actual legitimacy of the foreign judgment under principles of international comity. As a result, "both administrative and judicial review of such matters must be confined to the official records of the original proceedings, most particularly, the court's ultimate judgment." Chiarmonte v. INS, 626 F.2d 1093, 1098 (2d Cir. 1980). In, Chiarmonte v. INS, the United States Second Circuit Court of Appeals ("Second Circuit") gave two reasons for this proposition (1) "[t]o hold otherwise would entail disrespect for the judgments of that sovereign, and thus undermine the principle of international comity" and (2) "such collateral attacks as a practical matter could not reasonably provide a fair forum for ascertaining the truth of the assertion. The proceedings would be conducted in a different court, in a different country, geographically and temporally far removed from the locus of the crime." Id.; see also Lennon v. INS, 527 F.2d 187, n. 16 (2d Cir. 1974) (stating that a foreign case should not be retried because it would "pose insurmountable obstacles . . . All we can consider is whether the statute permits the conviction of an individual who would be quite innocent under our system of criminal justice").

II. Foreign Pardons, Amnesties, and Expungements

A foreign pardon, amnesty, or expungement of a conviction does not erase an applicant's foreign conviction for purposes of evaluating relief under the INA. Marino v. INS, 537 F.2d 686 (2d Cir. 1976) (holding that foreign amnesties and foreign pardons do not remove disabilities resulting from a foreign conviction); United States ex rel. Palermo v. Smith, 17 F.2d 534, 535 (2d Cir. 1927) (holding an Italian pardon for murder does not wipe the conviction for purposes of immigration relief); Matter of G-, 5 I&N Dec. 129 (BIA 1953); Matter of F-yG-, 4 I&N Dec. 717

(BIA 1952). This is in contrast to presidential and gubernatorial domestic pardons issued in the United States, which generally have been recognized and given effect. Matter of Suh, 23 I&N Dec. 626 (BIA 2003); Matter of R-, 6 I&N Dec. 444 (BIA 1954); Matter of R-, 5 I&N Dec. 612 (BIA 1954).

III. Foreign Vacaturs

Unlike foreign pardons, a foreign vacatur of a conviction *may* wipe away a conviction for immigration purposes. A foreign conviction vacated due to "procedural or substantive infirmities" will not be valid for immigration purposes, but if a foreign court vacates an applicant's foreign conviction solely to avoid an immigration issue in the United States, the court's action does not erase the foreign conviction for immigration purposes. Matter of Pickering, 23 I&N Dec. 621 (BIA 2003), reversed on other grounds by Pickering v. Gonzales, 465 F.3d 263 (6th Cir. 2006); see also Murillo–Espinoza v. INS, 261 F.3d 771 (9th Cir. 2001); Herrera–Inirio v. INS, 208 F.3d 299 (1st Cir. 2000); Sandoval v. INS, 240 F.3d 577 (7th Cir. 2001). In Saleh v. Gonzales, the Second Circuit gave deference to the Board's decision in Matter of Pickering, but only addressed the holding in the context of a domestic California state conviction, holding that an applicant "remains convicted of a removal offense for federal immigration purposes when the predicate conviction is vacated simply to aid the alien in avoiding adverse immigration consequences and not because of any procedural or substantive defect in the original conviction." Saleh v. Gonzales, 495 F.3d 17, 25 (2d Cir. 2007).

IV. Sentencing Analysis for Foreign Convictions

When examining foreign convictions, a felony is an offense punishable by death or imprisonment for a term exceeding one year, while any other offense is a misdemeanor. Matter of De La Nues, 18 I&N Dec. 140 (BIA 1981). To determine sentencing for a foreign conviction, the original sentenced imposed by the foreign jurisdiction is not the measuring sentence, instead United States sentencing standards govern the determination of whether a foreign conviction is a felony or misdemeanor. See id. (citing Soetarto v. INS, 516 F.2d 778 (7th Cir. 1975)); Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974). For this purpose, the foreign conviction is examined "in light of the maximum punishment imposable for an equivalent crime according to the [United States] Code or, if there is no federal counterpart, a comparable offense in the District of Columbia Code. Matter of De La Nues, 18 I&N Dec. 140. In addition, whether a foreign conviction is considered a felony can be judged by examining Title 18 of the United States Code. Matter of Scarpulla, 15 I&N Dec. at 141.