

Convicted Robbery Conspirator can be Removed Despite No Robbery Conviction

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The Board of Immigration Appeals (BIA) held, in *Matter of Richardson* (2010), a lawful permanent resident, who was convicted of conspiracy to commit robbery, can be removed from the United States despite not being convicted of the actual robbery.

Orlando Richardson, a citizen of Jamaica, had been a lawful permanent resident in the United States since 1988. On February 10, 2004, Richardson was convicted in New Jersey of conspiracy to commit robbery and was sentenced to seven years in prison. However, Richardson was never charged with robbery. As a result of his conspiracy conviction, an immigration judge ordered his removal/deportation from the country as an alien convicted of an aggravated felony under sections 101(a)(43)(G) and (U) of the Immigration and Nationality Act. Section 101(a)(43) lists certain offenses considered aggravated felonies, which, if committed, are grounds for removal from the country. Subsection (G) makes a theft offense, with imprisonment of at least one year, an aggravated felony. Under subsection (U), an attempt or conspiracy to commit any of the listed offenses is also an aggravated felony.

Richardson claimed he could not be removed from the country under section 101(a)(43) because he was convicted only of conspiracy, not the underlying crime of robbery. Despite not having been convicted of the robbery, the BIA concluded Richardson could be removed from the country as an alien convicted of an aggravated felony under section 101(a)(43)(U). Specifically, the BIA found the federal statute at issue is not limited to conspiracies requiring the commission of an overt act in furtherance of the conspiracy. In other words, the fact Richardson conspired to commit a robbery, even though he may not have actually committed the robbery, is sufficient grounds for removal from the country under subsection (U).

In reaching its decision, the BIA relied on two Supreme Court cases, *Whitfield v. United States* and *United States v. Shabani*. In both cases, the Supreme Court concluded the conspiracy provisions did not require an overt act in furtherance of the conspiracy in order to be guilty of conspiracy. In support of its decisions, the Court noted, in enacting the statutory conspiracy provisions, Congress did not include a requirement that a conspirator commit any act in furtherance of the conspiracy despite an older general federal conspiracy statute that explicitly made the overt act a requirement. As such, the Court concluded, Congress must not have intended to require any such act in order to be guilty of conspiracy. The BIA concluded the same is true for “conspiracy” under section 101(a)(43)(U).

Although Richardson could be removed under section 101(a)(43)(U), the BIA concluded he could not be removed under section 101(a)(43)(G) because Richardson was convicted only of conspiracy, not robbery, which is not a theft offense under that section.