

Pick a Type	Practice Pointers
Title	Matter of Velasquez-Rios, 27 I&N Dec. 470 (BIA Oct. 4, 2018) (A200 154 815 – LOS) [Summary and Practice Pointers]
Circuit/Board	BIA
Topic	Crimmigration--Definition of "Conviction"; Other
Body	<p>On October 4, 2018, the Board of Immigration Appeals (Board) issued <i>Matter of Velasquez-Rios</i>, 27 I&N Dec. 470 (BIA 2018), holding that the amendment to section 18.5 of the California Penal Code (CPC), which retroactively lowered the maximum possible sentence that could have been imposed for an alien's state offense from 365 days to 364 days, does not affect the applicability of INA § 237(a)(2)(A)(i) (II) to a past conviction for a crime involving moral turpitude (CIMT) "for which a sentence of one year or longer may be imposed."</p> <p>On July 22, 2003, the respondent, a Mexican national who had entered the United States without inspection, was convicted of possession of a forged instrument in violation of CPC § 475(a) and was sentenced to 12 days of incarceration. 27 I&N Dec. at 470. At the time of the conviction, the maximum possible sentence for the respondent's offense was 365 days. <i>Id.</i> at 471. Accordingly, the Immigration Judge (IJ) found the respondent ineligible for cancellation of removal pursuant to INA § 240A(b)(1)(C) as an alien convicted of an "offense under" INA § 237(a)(2)(A)(i) and ordered his removal. <i>Id.</i> at 470, 471. During the respondent's subsequent appeal to the Board, the California Legislature enacted CPC § 18.5, but because the statute became effective after the respondent's conviction and had no explicit retroactive effect, the Board dismissed the appeal. <i>Id.</i> at 471. The respondent filed a petition for review (PFR) with the U.S. Court of Appeals for the Ninth Circuit, and during the pendency of that PFR, the California Legislature amended CPC § 18.5 to give it retroactive effect. <i>Id.</i> The court remanded proceedings back to the Board to consider the impact of this amendment. <i>Id.</i></p> <p>The Board noted that the respondent's forgery offense is clearly a CIMT because it necessarily involved fraudulent intent. <i>See id.</i> at 471-72. As such, the only issue on appeal was whether, in light of the amendment to CPC § 18.5, the offense remained a crime "for which a sentence of one year or longer may be imposed" within the meaning of INA § 237(a)(2)(A)(i)(II). 27 I&N Dec. at 472. The Board determined</p>

that, given the plain meaning of the statutory language "may be imposed," the amendment to CPC § 18.5 did not change the "backward-looking inquiry" of the maximum possible sentence that an alien could have received at the time of a past conviction. *See id.* at 472-73. Finding support in federal court precedent for the use of federal law, rather than state law, to determine the immigration consequences of the respondent's conviction, *see id.* at 473-474, the Board chose to remain consistent with its "long-standing practice" of examining the statute and applicable penalty in existence when the conviction was entered, *see id.* at 473 & n.3.

In this specific case, although the respondent was sentenced to only 12 days in jail, the maximum possible sentence at the time of his conviction was 365 days, so that, under the Board's reasoning, his offense remained one "for which a sentence of one year or longer may be imposed" under INA § 237(a)(2)(A)(i)(II). 27 I&N Dec. at 474.

The opinion can be found [here](#).

Practice Pointers

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