[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12249
Non-Argument Calendar

D.C. Docket No. 0:15-cv-62105-WJZ

DIA LINDO,
a.k.a. Dia Grant,
a.k.a. Dia Bromfield,
a.k.a. Dia Grant-Bromfield,

Plaintiff-Appellant,

versus

SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY,
DIRECTOR, US CITIZENSHIP AND IMMIGRATION SERVICES,
LORI SCIALABBA,
Deputy Director, Office of the Chief Counsel USCIS,
U.S. ATTORNEY GENERAL,
LINDA SWACINA,
District Director USCIS, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(March 15, 2019)

Before MARTIN, ROSENBAUM, and NEWSOM, Circuit Judges.

PER CURIAM:

Dia Lindo filed a petition for review of the denial of her naturalization application in the district court. The government moved for summary judgment arguing that Lindo was barred from becoming a naturalized citizen because she had been convicted of two aggravated felonies, as defined by the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(43). The district court granted the government's motion. After careful review, we affirm.

I.

Lindo is a citizen of Jamaica and a legal permanent resident of the United States. She obtained permanent resident status in 1997. In April 2001, Lindo reported her Lexus car stolen and filed an insurance claim with State Farm Insurance Company. As a result, State Farm sent Lindo a check for $21,695.65, paid rental car expenses on Lindo's behalf, and paid off a lien on her Lexus. But in March 2002, the police discovered Lindo driving the same Lexus she reported stolen.

She was then arrested and charged with one count of grand theft in the second degree in violation of Fla. Stat. §§ 812.014(1)(a), (1)(b), and (2)(b) and one count of insurance fraud in the third degree in violation of Fla. Stat.

§ 817.234(1)(a)(1). She pled no contest to both charges, was sentenced to 15-months imprisonment, and ordered to pay $21,695.65 in restitution.

Lindo filed an application for naturalization in 2012. United States Citizenship and Immigration Services ("USCIS") denied her application in 2013, finding Lindo lacked the required good moral character to become a citizen in light of her two aggravated felony convictions. See 8 U.S.C. § 1427(a); 8 C.F.R. § 316.10(b)(1)(ii). Lindo filed an administrative appeal with USCIS. After a hearing, USCIS reaffirmed the denial of Lindo's naturalization. Lindo then filed a petition for review of the agency's decision under 8 U.S.C. § 1421(c) in the district court. Both Lindo and the government filed motions for summary judgment. The district court granted the government's motion, ruling that Lindo's convictions for grand theft and insurance fraud constituted aggravated felonies that barred her from becoming a naturalized citizen. Lindo timely filed this appeal.

II.

In naturalization proceedings, the applicant bears the burden of establishing his or her eligibility for citizenship by a preponderance of the evidence. 8 C.F.R. § 316.2(b). "We review de novo [a] district court's grant of summary judgment, 'considering the evidence and the inferences therefrom in the light most favorable to the nonmoving party." Mendoza v. Sec'y, Dep't of Homeland Sec., 851 F.3d 1348, 1352 (11th Cir. 2017) (per curiam). This is true even where, as here, the

nonmoving party bears the burden of proving his or her eligibility for citizenship by a preponderance of the evidence. Berenyi v. Dist. Dir., Immigration & Naturalization Serv., 385 U.S. 630, 636–37, 87 S. Ct. 666, 670–1 (1967); 8 C.F.R. § 316.2(b). If a "fair-minded jury could [not] return a verdict for the plaintiff on the evidence presented," summary judgment is appropriate as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 2512 (1986).

III.

The INA provides that no person shall be naturalized unless they are a person of good moral character. 8 U.S.C. § 1427(a). "No person shall be regarded as, or found to be, a person of good moral character who . . . at any time has been convicted of an aggravated felony." 8 U.S.C. § 1101(f)(8). The INA defines an "aggravated felony," in relevant part, as an offense that "involves fraud or deceit in which the loss to the victim or victims exceeds $10,000." 8 U.S.C. § 1101(a)(43)(M)(i).

Lindo argues her insurance fraud conviction does not "involve fraud or deceit," because the Florida statute under which she was convicted, Fla. Stat. § 817.234(1)(a)(1), also includes the mens rea element of "intent to injure." She also argues the $21,695.65 she was ordered to pay in restitution is not tied to her insurance fraud conviction because her civil restitution order listed both her grand theft and insurance fraud conviction charges. We address each argument in turn.

A.

We employ the categorical approach to determine whether Lindo's conviction under Fla. Stat. § 817.234(1)(a)(1) "involves fraud or deceit." See Cintron v. U.S. Att'y Gen., 882 F.3d 1380, 1383 (11th Cir. 2018); see also Moncrieffe v. Holder, 569 U.S. 184, 190, 133 S. Ct. 1678, 1684 (2013). "Under th[e] [categorical] approach we look . . . to whether the state statute defining the crime of conviction categorically fits within the generic federal definition of a corresponding aggravated felony." Moncrieffe, 569 U.S. at 190, 133 S. Ct. at 1684 (quotation marks omitted). "[A] state offense is a categorical match with a generic federal offense only if a conviction of the state offense necessarily involved facts equating to the generic federal offense." Id. (quotation marks and alterations adopted).

Lindo was convicted of insurance fraud under Fla. Stat. § 817.234(1)(a)(1), which provides:

> (1)(a) A person commits insurance fraud . . . if that person, with the intent to injure, defraud, or deceive any insurer:
>
> > 1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim;

Id. The Supreme Court has clarified the words "fraud" or "deceit" are not required to appear in the text of the statute of conviction. Kawashima v. Holder, 565 U.S.

478, 483–84, 132 S. Ct. 1166, 1172 (2012). Instead, 8 U.S.C. § 1101(a)(43)(M)(i) "refers more broadly to offenses that 'involve' fraud or deceit—meaning offenses with elements that necessarily entail fraudulent or deceitful conduct." Id. at 484, 132 S. Ct. at 1172 (alteration adopted). "Deceit" means an "act or process of deceiving (as by falsification, concealment, or cheating)." Id. (quoting Webster's Third New International Dictionary 584 (1993)).

We applied a similar line of reasoning in Walker v. United States Attorney General, 783 F.3d 1226 (11th Cir. 2015), where we analyzed whether a lawful permanent resident was removable for committing an aggravated felony as defined in 8 U.S.C. §§ 1101(a)(43)(M)(i). Id. at 1228. The lawful permanent resident was convicted under another Florida statute, Fla. Stat. § 831.02, which criminalized "utter[ing] and publish[ing] as true a false . . . instrument . . . knowing [it] to be false . . . with intent to injure or defraud." Id. (emphasis added) (quoting Fla. Stat. § 831.02). This Court concluded the statute met the definition of an offense that "involves fraud or deceit" because the statute "necessarily include[d] deceit." Id. In particular, this Court noted that "[w]hether done with intent to injure or intent to defraud, [the] violator must knowingly deceive—that is, he must state something is true that he knows is, in fact, false." Id.

Lindo's insurance fraud conviction under Fla. Stat. § 817.234(1)(a)(1) involves deceit despite including an "intent to injure" mens rea element. The

statute criminalizes "knowingly" making a statement that contains "any false, incomplete, or misleading information concerning any fact or thing material" to an insurance claim. Fla. Stat. § 817.234(1)(a)(1). Because the statute requires knowingly making a materially false or misleading statement in an insurance claim, it necessarily involves an act of deception.[1] See Kawashima, 565 U.S. at 483–84, 132 S. Ct. at 1172; Walker, 783 F.3d at 1228; see also *Deceit*, Black's Law Dictionary (10th ed. 2014) (defining "deceit" to include "[t]he act of intentionally leading someone to believe something that is not true" and "[a] false statement of fact made by a person knowingly . . . with the intent that someone else will act on it"). We therefore reject Lindo's argument that it does not.

B.

In addition to the fraud or deceit requirement, the INA requires an applicant's actions to have resulted in a loss of over $10,000 to the victim for the conviction to count as an aggravated felony. 8 U.S.C. § 1101(a)(43)(M)(i). To determine whether the loss to the victim exceeds $10,000, we employ a circumstance-specific approach. See Nijhawan v. Holder, 557 U.S. 29, 34, 36, 129

[1] As an aside, it is unclear whether the fraud or deceit must be material for the conviction to count as an aggravated felony under the INA. The Supreme Court emphasized in Kawashima that the statute at issue required "knowingly and willfully submitt[ing] a tax return that was false as to a material matter." 565 U.S. at 484, 132 S. Ct. at 1172 (emphasis added). But Walker did not address materiality. 783 F.3d at 1228. Because Lindo's conviction for insurance fraud necessarily involved a material deception, however, we need not decide today whether materiality is required.

S. Ct. 2294, 2298–9, 2300 (2009). In contrast to the categorical approach and its modified counterpart, which present legal questions, this approach asks us to consider the specific circumstances surrounding an offender's commission of fraud and deceit on a specific occasion to determine the loss amount. Id. at 40–43, 129 S. Ct. at 2302–03. We may go beyond the limited universe of Shepard documents[2] and consider the record from a person's conviction, including any restitution ordered, to make this determination. See id. at 41–43, 129 S. Ct. at 2302–03. The Supreme Court has also clarified that "the loss [amount] must be tied to the specific counts covered by the conviction." Id. at 42, 129 S. Ct. at 2303 (quotation marks omitted).

Lindo does not dispute she was ordered to pay $21,695.65 in restitution to State Farm. She was ordered to pay this money to State Farm through a restitution order, which was converted into a civil lien. Although the restitution order did not specify the conviction upon which the restitution was premised, the civil lien lists both Lindo's charges for grand theft and insurance fraud. Lindo argues because her civil lien lists both charges, the restitution amount is not clearly tied to her insurance fraud conviction.

Here, Lindo is applying for naturalization. As such, she bears the burden of showing by a preponderance of the evidence that the loss amount was not tied to

[2] Shepard v. United States, 544 U.S. 13, 125 S. Ct. 1254 (2005).

her insurance fraud conviction.[3] See 8 C.F.R. § 316.2(b). Lindo presents no evidence from which a reasonable factfinder could infer that her restitution order was tied to her grand theft charge instead of her insurance fraud conviction. See Anderson, 477 U.S. at 252, 106 S. Ct. at 2512. Even drawing all inferences in her favor, the amount of restitution ordered—$21,695.65—matches the exact amount of money Lindo fraudulently induced State Farm to pay her. She has not met her burden and, as a result, she cannot prevail on this basis. See id.; 8 C.F.R. § 316.2(b).

Lindo also argues that because State Farm recovered the Lexus, its loss amount was less than $10,000 dollars. We are not persuaded. As set out above, the restitution order delineated a restitution amount of $21,695.65. Whether State Farm recovered a car in Lindo's possession or received cash from her, she was still required to make State Farm whole as to the value of $21,695.65. Neither is her argument compelling that because State Farm recovered the car, it did not lose the "value of [the Lexus]." State Farm paid Lindo $21,695.65—money it fraudulently lost. The Lexus was simply a method of payment in this case to return the lost

[3] In contrast, the government bears the burden in removal proceedings of showing by clear and convincing evidence that the alien is removable. 8 U.S.C. § 1229a(c)(3)(A); see also Woodby v. INS, 385 U.S. 276, 277, 87 S. Ct. 483, 484 (1966).

value of $21,695.65, and its retrieval of the Lexus after the fact of conviction does not disturb the loss amount it incurred.

Lindo's conviction for insurance fraud thus meets the definition of an offense "involv[ing] fraud or deceit in which the loss to the victim or victims exceeds $10,000." 8 U.S.C. § 1101(a)(43)(M)(i). Her conviction under Fla. Stat. § 817.234(1)(a)(1) involved deceit as a matter of law and the loss to the victim was greater than $10,000. She is not therefore eligible to become a naturalized citizen.[4] See Nijhawan, 557 U.S. at 42–43, 129 S. Ct. at 2303–04; 8 U.S.C. §§ 1101(f)(8), 1427(a).

AFFIRMED.

[4] Because we may affirm on any basis in the record, we need not decide whether Lindo's grand theft conviction qualifies as an aggravated felony under the INA. Mink v. Smith & Nephew, Inc., 860 F.3d 1319, 1324 (11th Cir. 2017).