

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 22, 2010

Lyle W. Cayce
Clerk

No. 09-60912
Summary Calendar

NOE SALAZAR-RODRIGUEZ,

Petitioner

v.

ERIC H. HOLDER, JR., U.S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A034 656 055

Before REAVLEY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Mexican citizen Noe Salazar-Rodriguez petitions for review of the decision of the Board of Immigration Appeals (BIA) determining that he is ineligible for cancellation of removal pursuant to 8 U.S.C. § 1229b(a) because his 1996 Texas deferred adjudication conviction of possession of marijuana constituted an aggravated felony due to two prior convictions of possession of controlled substances.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Salazar-Rodriguez's 1996 deferred adjudication was not treated as a recidivist offense in state court. It therefore does not constitute an aggravated felony for purposes of federal immigration law. The 1996 conviction does not render him ineligible to be considered for cancellation of removal. *See Carachuri-Rosendo v. Holder*, 130 S. Ct. 2577, 2580, 2589 (2010). Salazar-Rodriguez's petition for review is GRANTED. The order of the BIA is VACATED and the case is REMANDED to allow Salazar-Rodriguez to pursue cancellation of removal in light of the Supreme Court's ruling in *Carachuri-Rosendo*.