

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 12-10183  
Non-Argument Calendar

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Agency No. A074-897-651

PEDRO MORENO ROJO,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

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Petition for Review of a Decision of the  
Board of Immigration Appeals

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(December 5, 2012)

Before CARNES, WILSON and ANDERSON, Circuit Judges.

PER CURIAM:

Pedro Moreno Rojo, a native and citizen of Mexico, seeks review of the Board of Immigration Appeal's ("BIA") order denying Rojo's motion to terminate removal proceedings. On appeal, Rojo argues that his conviction for distribution of Alprazolam was not an aggravated felony because Alprazolam is not listed as a controlled substance in 21 U.S.C. § 812.

We review de novo whether a prior conviction qualifies as an aggravated felony. Accardo v. U.S. Att'y Gen., 634 F.3d 1333, 1335 (11th Cir. 2011).

"Any alien who is convicted of an aggravated felony at any time after admission is deportable." 8 U.S.C. § 1227(a)(2)(A)(iii). An "aggravated felony" includes "illicit trafficking in a controlled substance (as defined in section 802 of Title 21)." Id. § 1101(a)(43)(B) (emphasis added).

In turn, 21 U.S.C. § 802 defines "controlled substance" as "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter." 21 U.S.C. § 802(6). Those five schedules of controlled substances are listed at 21 U.S.C. § 812.

Importantly, section 812 explicitly instructs that its lists of controlled substances should be updated and republished annually. The "[r]evised schedules are published in the Code of Federal Regulations, Part 1308 of Title 21, Food and

Drugs.” Id. § 812 n.1. In other words, the definition of “controlled substance” in 21 U.S.C. § 802 incorporates the revised schedules as published in 21 C.F.R. § 1308.

Alprazolam is not listed in any of the five original schedules found in 21 U.S.C. § 812. However, it is listed in 21 C.F.R. § 1308.14(c)—and accordingly has been incorporated into § 802.

We agree with the BIA that Rojo’s conviction for distribution of Alprazolam is an aggravated felony because Alprazolam is a “controlled substance . . . as defined in section 802 of Title 21.”

PETITION DENIED.