

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 24 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ISAAC CARDONA-HERNANDEZ,

No. 22-410

Petitioner,

Agency No. A043-281-809

v.

MERRICK B. GARLAND, U.S. Attorney
General,

MEMORANDUM*

Respondent.

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 20, 2023**
San Francisco, California

Before: SCHROEDER, CALLAHAN and BUMATAY, Circuit Judges.

Isaac Cardona-Hernandez, a citizen of Guatemala, petitions for review of a decision by the Board of Immigration Appeals (BIA) affirming the Immigration Judge's (IJ) admission of criminal conviction records in removal proceedings and

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denying him relief from removal to Guatemala. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for review.

We review the BIA's determination of legal questions *de novo* but review the BIA's findings of fact for substantial evidence and will uphold them unless the evidence compels a contrary result. *Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014).

Cardona-Hernandez alleges that the conviction records submitted by the Department of Homeland Security (DHS) during his removal proceedings were not properly authenticated under 8 U.S.C. § 1229a(c)(3)(C) and therefore could not provide the basis for removal under 8 U.S.C. § 1227(a)(2)(A)(iii), based on a conviction of rape in violation of California Penal Code § 261(a)(2), an aggravated felony as defined by 8 U.S.C. § 1101(a)(43)(A). His argument is not persuasive.

Criminal conviction records “*may* be authenticated under INS regulations, or by ‘any procedure that comports with common law rules of evidence.’” *Sinotes-Cruz v. Gonzales*, 468 F.3d 1190, 1196 (9th Cir. 2006) (quoting *Iran v. I.N.S.*, 656 F.2d 469, 472 n.8 (9th Cir. 1981)). “Admissibility is generally warranted as long as there is ‘some sort of proof that the document is what it purports to be.’” *Padilla-Martinez*, 770 F.3d 825 at 833 (quoting *Sinotes-Cruz*, 468 F.3d at 1196).

The conviction records submitted by DHS contain sufficient indicia of reliability to be admissible as evidence in Cardona-Hernandez's removal

proceedings. First, the conviction records on their face give every indication of being official Los Angeles County Superior Court records, particularly the abstract of judgment. The abstract of judgment, which details Cardona-Hernandez's rape conviction and sentence, is embossed with a seal from the Los Angeles County Superior Court on the first page and is signed by a clerk of the court on each of the remaining pages. *See* 8 C.F.R. § 1003.41(a)(5); *Padilla-Martinez*, 770 F.3d at 833 (holding that a facsimile copy of a transcript of a state court change-of-plea proceeding had sufficient indicia of reliability on its face to establish admissibility, even absent authentication from an immigration official).

Second, a deportation officer from United States Immigration and Customs Enforcement certified in writing that he received the conviction records by facsimile from the state prison where Cardona-Hernandez was housed. The prison's facsimile cover sheet includes an employee's attestation that the documents are copies of Cardona-Hernandez's official records. It also lists the same California Department of Corrections and Rehabilitation and Criminal Identification and Information numbers as those reflected on the embossed abstract of judgment. *See Sinotes-Cruz*, 468 F.3d at 1196 (admitting faxed copies of conviction records that were certified by an immigration official and appeared to be state court records even though certification by a state official was lacking).

In sum, regardless of Cardona-Hernandez's other arguments, the abstract of judgment supported by the deportation officer's certification is admissible and sufficient to establish Cardona-Hernandez's conviction of an aggravated felony in his removal proceedings.

The petition is **DENIED**.