
Hughes Hubbard & Reed

HHR Secures Jamaican Client's Release From Immigration Detention

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September 23, 2020 — Hughes Hubbard obtained release from federal immigration detention for a client after two years of appeals.

In early 2017, the client, a lawful permanent resident originally from Jamaica, pleaded guilty to criminal possession of a controlled substance and two weapon possession charges. While serving his two-year sentence, the Department of Homeland Security (DHS) placed the client in removal proceedings.

Although he was represented, his former attorney improperly conceded the client's removability and failed to file the client's application for relief from removal by the deadline established by the Immigration Court. As a result, the court ordered the client removed from the United States in August 2018.

After the client appealed the removal order to the Board of Immigration Appeals and subsequently to the U.S. Court of Appeals for the Second Circuit pro se, in December 2019, the Second Circuit appointed Vilia Hayes as pro bono counsel as part of the Second Circuit's Pro Bono Panel.

The Second Circuit identified three issues for appeal: whether the client's conviction on the basis of the drug charge, which was then under appeal, was sufficiently final for immigration purposes; whether the client waived his challenge to removability on the basis of the two gun charges because of a categorical mismatch in the definition of firearm under New York law and federal immigration law; and whether the failure of the client's prior attorney to file an application for relief from removal on the client's behalf barred the client from relief.

After the client's criminal appeal was remanded to the trial court for further proceedings, DHS and HHR agreed to remand the appeal of the removal order back to Board of Immigration Appeals to further brief the issue of prior counsel's ineffective assistance, in addition to those issues identified by the Second Circuit. HHR briefed the issues before the Board in April 2020.

On July 23, 2020, the Board issued its decision (a) remanding to the immigration judge on the issue of finality of the conviction related to the drug offense and eligibility for other relief from removal and (b) vacating the client's removal on the firearms offenses, as a categorical mismatch between federal and state law, in accordance with the Second Circuit's ruling in *Williams v. Barr*.

On Aug. 19, 2020, Elizabeth Beitler appeared on behalf of the client before the immigration judge and argued that the client had demonstrated that his conviction on the basis of the drug offense was not sufficiently final to ground the prior order of removal. The immigration judge agreed, overruling DHS's opposition, and terminating the proceedings. The client was released from detention later the same day.

In addition to Beitler and Hayes, the team included Dustin Smith, Anson Frelinghuysen, Christopher Whelan, Grace Ha and Maya Jacob.

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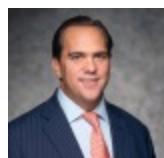
Vilia B. Hayes



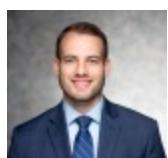
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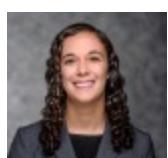
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