

8.5 Immigration Effect of Motion for Appropriate Relief

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A conviction vacated on the basis of a procedural or legal defect will eliminate the conviction for immigration purposes. *See Matter of Rodriguez-Ruiz*, 22 I&N Dec.1378 (BIA 2000). The immigration court may look to see if the vacating court had subject matter jurisdiction to vacate the judgment, but it may not look beyond the order to determine if such relief was proper under North Carolina law. *Id.* A conviction is not eliminated for immigration purposes, however, if it was vacated for reasons “solely related to rehabilitation or immigration hardships. . . .” *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003)), *rev’d on other grounds*, 465 F.3d 263 (6th Cir. 2006); *cf. Yanez-Popp v. I.N.S.*, 998 F.2d 231, 235 (4th Cir.1993) (“[U]nless a conviction is vacated on its merits, a revoked state conviction is still a ‘conviction’ for federal immigration purposes.”).

Thus, a conviction vacated through an MAR based on the grounds of ineffective assistance, involuntariness of a guilty plea, or other constitutional or statutory violations will be accorded full faith and credit by immigration authorities and eliminate the conviction for immigration purposes. However, even though an MAR is used to correct legal error, an order of relief that refers primarily to the petitioner’s equities or immigration hardships might not be honored and may not eliminate the conviction for immigration purposes. The record of the proceedings—the motion papers, hearing, and order—should therefore reflect the legal errors justifying relief and should refer to immigration issues only as necessary to explain those errors (for example, prior counsel was ineffective for misadvising the petitioner about the possibility of removal and, but for counsel’s deficient performance, the petitioner would not have pled guilty). If the MAR is by consent of the prosecutor (*see* G.S. 15A-1420(e) (“[n]othing in this section shall prevent the parties to the action from entering into an agreement for appropriate relief”), the record and judge’s order granting the MAR should still reflect the legal errors justifying relief.