

High Court Urged To Review Convicted Resident's Deportation

By **Kevin Penton**

Law360, New York (November 13, 2017, 9:50 PM EST) -- A Dominican man who is a lawful permanent resident of the U.S. has urged the U.S. Supreme Court to review his bid to cancel a removal order after he tried to re-enter the country after a brief vacation with a record of prior convictions for drug offenses.

Hoxquelin Gomez Heredia said the Second Circuit erred in July when it **upheld** the Board of Immigration Appeals decisions that deemed him inadmissible to the U.S. and barred him from seeking to cancel his removal, as he was a lawfully admitted permanent resident who stayed in an admitted status throughout his first seven years in the U.S., and the offenses he committed did not expose him to inadmissibility or deportability, according to his Oct. 25 petition for certiorari.

Gomez Heredia's 2010 conviction under New York law for criminal possession of cocaine with intent to sell was an aggravated felony under the Immigration and Nationality Act, but a New York court later vacated the conviction, according to the petition. Gomez Heredia subsequently pled guilty to possession of a narcotic substance of one half ounce or more, which isn't an aggravated felony, he told the high court.

His other conviction, for possessing a small amount of marijuana in 1999, did not make him potentially inadmissible because he had already been admitted, and did not render him potentially deportable because the charge was not a deportable offense, Gomez Heredia argued.

He also asserted that the BIA and the Second Circuit erred in determining that he wasn't eligible for cancellation of removal because the 1999 offense triggered the so-called "stop-time rule," preventing him from accruing the seven years.

"It simply makes no sense to 'back date' the time for triggering the stop-time rule to a time when the commission of the offense held no potential immigration consequences due to the fundamental nature of the noncitizen's admission status," the petition reads.

While the 1999 conviction did potentially leave Gomez Heredia inadmissible when he sought to re-enter the U.S. in 2015 after the vacation, the stop-time rule was not triggered because he had already been in the U.S. for seven continuous years, according to the petition.

Counsel for the parties could not be reached for comment on Monday.

Gomez is represented by Steven E. Hoffman, Raymond G. Lahoud, William C. Menard and Kelly Watkins of Norris McLaughlin & Marcus PA.

The federal government is represented by Solicitor General Noel Francisco.

The case is Gomez Heredia v. Sessions, case number 17-661, in the U.S. Supreme Court.

--Additional reporting by Kelly Knaub. Editing by Marygrace Murphy.

