

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the 3rd day of February, two thousand twenty.

Present: GUIDO CALABRESI,
ROSEMARY S. POOLER,
SUSAN L. CARNEY,
Circuit Judges.

ALAA EL DIN SAYED OMAR AGINA,

Petitioner,

v.

18-692

WILLIAM P. BARR, UNITED STATES ATTORNEY GENERAL,

Respondent.

Appearing for Petitioner: Timothy W. Hoover (David A. Short, *on the brief*), Hodgson Russ LLP, Buffalo, N.Y.

Appearing for Respondent: Rebecca Hoffberg Phillips, Trial Attorney (Joseph H. Hunt, Assistant Attorney General; John S. Hogan, Assistant Director, *on the brief*), United States Department of Justice, Washington, DC.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the petition for review of a Board of Immigration Appeals decision be and it hereby is **DENIED**.

Petitioner Alaa El Din Sayed Omar Agina, a native and citizen of Egypt, seeks review of the February 21, 2018 decision of the Board of Immigration Appeals (“BIA”) affirming a September 11, 2017 decision of an Immigration Judge (“IJ”) ordering him removed to Egypt. *In re Alaa El Din Sayed Omar Agina*, No. A030 276 414 (B.I.A. Feb. 21, 2018), *aff’g* No. A030 276 414 (Immig. Ct. Napanoch Sept. 11, 2017). We assume the parties’ familiarity with the underlying facts, procedural history, and specification of issues for review.

We have reviewed both the IJ’s and BIA’s decisions “for the sake of completeness.” *Wangchuck v. Dep’t of Homeland Sec.*, 448 F.3d 524, 528 (2d Cir. 2006). Agina’s aggravated felony conviction limits our review to constitutional claims and questions of law, 8 U.S.C. § 1252(a)(2)(C), (D), which we review de novo, *Prus v. Holder*, 660 F.3d 144, 146 (2d Cir. 2011).

Agina first argues that the IJ overlooked evidence that the criminal records submitted to the agency to establish removability did not relate to him. *See Mendez v. Holder*, 566 F.3d 316, 323 (2d Cir. 2009) (holding that the agency commits an error of law if it “totally overlook[s]” or “seriously mischaracterize[s]” evidence). We note that the 2003 state court judgment referring to “Alan Agina,” App’x at 281, does not call into question Agina’s conviction because the 2005 resentencing for the same conviction gives the correct name, “Alaa Agina,” App’x at 282; the state court appellate decisions identify the defendant in the same criminal case as “Alaa Agina, Also Known as Alan Agina,” showing that the two names were used interchangeably, App’x at 304; and Agina admitted before the agency that the assault conviction and sentences were his, arguing only that the underlying allegations against him were false and the degree of assault incorrect.

Agina next argues that his conviction is not a crime of violence for purposes of the INA. Although the agency relied on the now-void definition of a crime of violence in 18 U.S.C. § 16(b), *see Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), we may determine in the first instance whether Agina’s conviction is also a crime of violence under the still-valid definition in § 16(a), *see Banegas Gomez v. Barr*, 922 F.3d 101, 107 (2d Cir. 2019). Agina’s challenges to this determination are foreclosed by our decision in *Singh v. Barr*, 939 F.3d 457, 461–64 (2d Cir. 2019), in which we held that New York Penal Law § 120.05(2) (Agina’s crime of conviction) is categorically an aggravated felony crime of violence as defined in 18 U.S.C. § 16(a).

For the foregoing reasons, the petition for review is DENIED.

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk