U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: ESPINOZA-RAMIREZ, JULIAN U... **A 058-623-622**

Date of this notice: 3/20/2018

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Creppy, Michael J.
Mullane, Hugh G.
Liebowitz, Ellen C

Userteam: Docket

File: A058 623 622 – El Paso, TX Date: MAR 20 2018

In re: Julian Ulises ESPINOZA-RAMIREZ a.k.a. Julian U Espinoza-Ramirez

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jason Sage Montclare, Esquire

ON BEHALF OF DHS: Adrian Paredes
Assistant Chief Counsel

APPLICATION: Reinstatement of proceedings

The Department of Homeland Security ("DHS") has filed a timely appeal of an Immigration Judge's order entered on August 25, 2017, terminating removal proceedings. The appeal will be dismissed.

The DHS charged the respondent, a native and citizen of Mexico and lawful permanent resident, with removal under section 237(a)(1)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(E)(i), on the basis of his May 9, 2017, conviction for alien smuggling under 8 U.S.C. § 1325(a)(1) and 18 U.S.C. § 2 (Exhs. 1-2). The Immigration Judge held that the DHS had not sustained its burden of proving that the respondent is removable under section 237(a)(1)(E)(i) of the Act because the respondent did not engage in alien smuggling "prior to the date of entry, at the time of any entry, or within five years of the date of any entry" (Tr. at 89).[1] In this regard, the Immigration Judge held that the respondent did not make an "entry" in 2013 because as a lawful permanent resident, the respondent was not seeking "admission" after his departure from the United States (Tr. at 88-89). Therefore, the Immigration Judge terminated the proceedings because the respondent had not engaged in alien smuggling "within 5 years of the date of any entry" (Tr. at 89-90).

The DHS argues that the use of the words "any entry" in section 237(a)(1)(E)(i) means any entry within the commonly-understood meaning of that term, and not an "admission," a separate and distinct legal concept created by section 301(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-575 ("IIRIRA"). *See generally Matter of Collado-Munoz*, 21 I&N Dec. 1061, 1063-64 (BIA 1998) (discussing how IIRIRA amended section 101(a)(13) of the Act by supplanting the definition for "entry" with definitions for "admission" and "admitted" and creating a new statutory scheme that

[1] The Immigration Judge did not prepare a separate oral or written decision in this matter setting out the reasons for the decision entered on August 25, 2017. *Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). However, we can discern the basis of the Immigration Judge's decision from the transcript (Tr. at 87-94). We remind the Immigration Judge that in the future he should issue a separate oral or written decision, or the Board may have to remand for the issuance of such a decision. *See Matter of A-P-*.

specifies a general rule that lawful permanent residents are not regarded as seeking admission). After IIRIRA, in most instances, the definition of "admission" or "admitted" controls and not entry. However, section 237(a)(E)(i) intentionally uses the term entry and not admission or admitted.

Absent clear congressional intent to define the term "entry" by its commonly understood meaning, we apply the longstanding pre-IIRIRA definition of "entry," along with its judicial developments, in analyzing the meaning of the term "entry" in section 237(a)(1)(E)(i) of the Act. Although section 101(a)(13)(A) of the Act was amended by IIRIRA to define the term "admission," we discern no intent by Congress to alter the definition of "entry" that had developed pre-IIRIRA. In this regard, in *Rosenberg v. Fleuti*, 374 U.S. 449, 461 (1963), the Supreme Court held that a lawful permanent resident who makes an "innocent, casual, and brief" trip across an international border does not intend to make a "departure" within the meaning of former section 101(a)(13) of the Act. Under the "*Fleuti* doctrine," therefore, a lawful permanent resident is not considered to be an alien seeking "entry" to the United States if his departure from the Unites States is innocent, brief, and casual. *Id.* We hold that absent any indication of a contrary intention the same judicially developed definition of "entry" applies in ascertaining the meaning of the term "entry" in section 237(a)(1)(E)(i) of the Act.

Accordingly, the respondent, who departed the United States as a lawful permanent resident, cannot have made an entry if his departure was "innocent, casual, and brief" within the meaning of *Rosenberg v. Fleuti*. DHS does not dispute that respondent's departure was innocent, casual, and brief, and so respondent has not made an entry that would trigger section 237(a)(E)(i)'s five year clock. While the respondent has engaged in alien smuggling, he has not done so in the relevant time period prescribed in section 237(a)(1)(E)(i). Therefore, as the DHS did not establish the removal charge by clear and convincing evidence, we affirm the Immigration Judge's decision to terminate the proceedings. The following order will be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

IMMIGRATION COURT
8915 MONTANA AVENUE
EL PASO, TX 79925

In the Matter of

Case No.: A058-623-622

ESPINOZA-RAMIREZ, JULIAN ULISES
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 8/25/2017
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to or in the alternative to .
[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to .
[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of $ _____ with an alternate order of removal to .

Respondent's application for:

[ ] Asylum was ( )granted ( )denied( )withdrawn.
[ ] Withholding of removal was ( )granted ( )denied ( )withdrawn.
[ ] A Waiver under Section _____ was ( )granted ( )denied ( )withdrawn.
[ ] Cancellation of removal under section 240A(a) was ( )granted ( )denied ( )withdrawn.

Respondent's application for:

[ ] Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Cancellation under section 240A(b) (2) was ( )granted ( )denied ( )withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
[ ] Adjustment of Status under Section ____ was ( )granted ( )denied ( )withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
[ ] Respondent's application of ( ) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.
[ ] Respondent's status was rescinded under section 246.
[ ] Respondent is admitted to the United States as a _____ until _____.
[ ] As a condition of admission, respondent is to post a $ _____ bond.
[ ] Respondent knowingly filed a frivolous asylum application after proper notice.
[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
[X] Proceedings were terminated.
[ ] Other: _____

Date: Aug 25, 2017

W. Lee Abbott

WILLIAM L. ABBOTT
Immigration Judge

Appeal: Waived/Reserved Appeal Due By: 9/25/17

By DHS