



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: MARROQUIN-DIMAS, GODOFRE... A 098-793-008

Date of this notice: 12/10/2014

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:
Miller, Neil P.

Userteam: Docket

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587

Falls Church, Virginia 20530

File: A098 793 008 – West Valley City, UT

Date:

DEC 10 2014

In re: GODOFREDO MARROQUIN-DIMAS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: S. Austin Johnson, Esquire

ON BEHALF OF DHS: P. Michael Truman
Assistant Chief Counsel

The respondent, who is a native and citizen of El Salvador, appeals from an Immigration Judge's September 2, 2014, decision. The Department of Homeland Security (the DHS) has filed a request for summary affirmance of the Immigration Judge's decision. We do not find that summary affirmance would be appropriate in this case. The Immigration Judge's decision will be vacated, and the case remanded to the Immigration Court for further proceedings.

On appeal, the respondent, now represented by counsel, asserts inter alia, that the Immigration Judge violated his due process rights by ordering the respondent removed without letting him file an application for asylum.

Considering the entirety of circumstances presented in this case, we conclude that it is appropriate to remand the record to the Immigration Judge in order to provide the respondent with an explicit opportunity to file an Application for Asylum and for Withholding of Removal (Form I-589) and to take any other action that he deems appropriate. The record reflects that in response to the Immigration Judge's question: "Sir, do you fear persecution in El Salvador because of your race, religion, nationality, political opinion or membership in a particular social group?" the respondent, pro se at the hearing, indicated "Not all of that. No, just because of the gangs." (Tr. at 16). The Immigration Judge should have further inquired into the respondent's claimed fear before concluding the respondent was ineligible for relief from removal. *Matter of C-B-*, 25 I&N Dec. 888 (BIA 2012); *see also Matter of E-F-H-L-*, 26 I&N Dec. 319 (BIA 2014). At the present time, we express no opinion regarding the ultimate outcome of these proceedings. *See Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996). The following order is entered.

ORDER: The Immigration Judge's decision of September 2, 2014, is vacated, and the record is remanded to the Immigration Court for further proceedings consistent with this opinion and for the entry of a new decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
WEST VALLEY CITY, UTAH

File: A098-793-008

September 2, 2014

In the Matter of

GODOFREDO MARROQUIN-DIMAS)	
)	IN REMOVAL PROCEEDINGS
RESPONDENT)	

CHARGES: Section 212(a)(7)(A)(i)(I) of the Act.

APPLICATIONS:

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: P. MICHAEL TRUMAN

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 33-year-old married male, native and citizen of El Salvador. The Department of Homeland Security issued a Notice to Appear dated August 11, 2014 alleging that the respondent entered the United States at or near Hidalgo, Texas on July 18, 2014 without admission or parole after inspection by an Immigration officer. Homeland Security also alleged that the respondent did not possess or present a valid immigrant visa, re-entry permit, border crossing identification card or other valid entry document and charged the respondent with removability under Section 212(a)(7)(A)(i)(I) of the Act. See Exhibit 1 in the record of proceedings.

On September 2, 2014, the Immigration Court advised the respondent of the nature of these proceedings and of his rights, including his rights to counsel, presentation of evidence and his appellate rights. The respondent understood the nature of these proceedings and his rights. He elected to exercise his right to represent himself.

The Immigration Judge then ensured that the respondent had received a copy of the Notice to Appear. The Judge read all of the allegations to the respondent, as well as the charge. He understood them. He admitted the allegations and conceded the charge. Therefore, the charge was sustained.

Respondent declined to designate a country of removability and El Salvador was directed. The Immigration Judge then asked questions of the respondent in the Judge's search for an avenue of relief from removal.

Respondent testified that he is 33 years old. He is married. His spouse is in the State of Maryland. She does not have Immigration status in the United States. She has been inside the United States for almost eight years. Respondent has three children. His oldest who is now age 10 was born in El Salvador. That child does not have Immigration status in the United States. The other two children who are ages 7 and 5 were born inside the United States. Neither of the respondent's parents is in the United States and neither has or had Immigration status in the United States. The respondent does not have any U.S. citizen siblings and no one has filed a petition or application for any type of U.S. Immigration benefit for the respondent.

The respondent testified that he first entered the United States at the end of 2004 or the beginning of 2005. He saw an Immigration Judge in 2013 and was granted voluntary departure. Respondent then departed the United States in October of 2013 and stayed outside the United States until his return in July of this year (2014).

Respondent testified that he did not fear persecution on account of race, religion, nationality, political opinion or membership in a particular social group, although he did fear the gangs in El Salvador. He did not fear that he would be tortured in El Salvador at the instigation of a public official or with the consent or acquiescence of a public official.

The Immigration Judge determined that adjustment of status for permanent residency under Section 245 of the Act was not available. The respondent was not admitted to the United States. There are no petitioners who have or who could sponsor the respondent for permanent residency. The Court also considered cancellation of removal under Section 240A(b) of the Act because the respondent has two children who are citizens of the United States because they were born inside the United States. To qualify for cancellation of removal, the respondent must establish that he has been continuously physically present in the United States for at least 10 years. The respondent cannot meet that burden of proof because he was outside the United States from October 2013 to July 2014. Additionally, he was placed into removal proceedings and granted voluntary departure in the past by an Immigration Judge. This would have also broken the respondent's continuous physical presence.

The respondent fears crime in El Salvador. He fears the gangs. However, he did also testify that he did not fear persecution in El Salvador on account of race, religion, nationality, political opinion or membership in a particular social group. Fear of gangs does not fall within one of the five enumerated grounds required for asylum or withholding of removal and the Court found that those forms of relief from removal did not apply. Similarly, the respondent testified that he did not fear that he would be tortured in El Salvador at the instigation of a public official or with the consent or acquiescence of a public official. Therefore, Convention Against Torture protection

did not apply.

The Court was unable to grant or consider voluntary departure. The respondent was already granted voluntary departure by another Immigration Judge last year after that Judge sustained a charge of removability under Section 212(a)(6)(A)(i). Therefore, the Immigration and Nationality Act precludes voluntary departure at this time.

ORDERS

IT IS HEREBY ORDERED that the respondent be removed from the United States to El Salvador on the charge contained in the Notice to Appear.

Please see the next page for electronic

signature

DAVID C. ANDERSON
Immigration Judge

//s//

Immigration Judge DAVID C. ANDERSON

andersda on October 28, 2014 at 12:32 PM GMT