U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: RICHMOND, KEON

A097-519-056

Date of this notice: 3/13/2012

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:
Pauley, Roger

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26 Federal Plaza, Room 1130
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Name: RICHMOND, KEON **A097-519-056**

Date of this notice: 3/13/2012

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely.

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Pauley, Roger

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File: A097 519 056 - New York, NY

Date: MAR 13 2012

In re: KEON RICHMOND a.k.a. Kieon Richmond a.k.a. Keion Richmond a.k.a. Keion Richman

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Allison Rosenberg, Esquire

ON BEHALF OF DHS: L. Adriana Lopez
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony (as defined in section 101(a)(43)(F))
(not sustained)

APPLICATION: Suppression of evidence; adjustment of status

The respondent appeals from decision of the Immigration Judge dated February 23, 2011, denying his motion to suppress evidence, finding him removable from the United States, and denying his application for adjustment of status under section 245(a) of the Immigration and Nationality Act, 8 U.S.C. § 1255(a). The appeal will be dismissed.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof and issues of discretion, de novo. 8 C.F.R. § 1003.1(d)(3)(ii). The respondent's application for relief, which was filed after May 11, 2005, is governed by the amendments made to the Act by the REAL ID Act. *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

Upon de novo review, we affirm the Immigration Judge's denial of the respondent's motion to suppress evidence. We are unpersuaded by the respondent's contention that the statements he made to Department of Homeland Security (DHS) officers during interviews that took place while he was incarcerated pursuant to a criminal conviction, wherein he falsely claimed to be a United States citizen, should be excluded from evidence. The exclusionary rule does not generally apply in civil removal hearings. *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984); *Montero v. INS*, 124 F.3d 381 (2d Cir. 1997); *Matter of Sandoval*, 17 I&N Dec. 70 (BIA 1979). In this regard, the respondent's

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extensive reliance on cases arising in context of criminal prosecutions is misplaced. However, the exclusionary rule may apply if there are egregious violations of the Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained. *INS v. Lopez-Mendoza*, *supra*, at 1032, 1050-51 n.5; *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 235 (2d Cir. 2006) (holding that the exclusion of evidence is appropriate where (a) egregious violation that was fundamentally unfair occurred, or (b) the violation - regardless of its egregiousness or unfairness - undermined reliability of evidence in dispute). On appeal, the respondent does not specifically allege he has demonstrated an egregious violation of the Fourth Amendment or that any violation undermined the reliability of the evidence he seeks to dispute.[1]

The respondent's argument that he was not advised of his Miranda rights is without merit. Such warnings are not necessary for evidence to be admissible in civil immigration proceedings. *See INS v. Lopez-Mendoza*, *supra*, at 1039 (the absence of Miranda warnings does not render an otherwise voluntary statement by the respondent inadmissible in a deportation case); *United States v. Rodriguez*, 356 F.3d 254 (2d Cir. 2004) (holding that no Miranda warning was required when Immigration and Naturalization Service (INS) agent interviewed defendant while he was incarcerated on unrelated state charges, since information agent sought in connection with possible deportation proceedings did not become relevant to a criminal proceeding against defendant until his later illegal reentry); *United States v. Willoughby*, 860 F.2d 15, 23 (2d Cir. 1988) (holding in the context of a criminal case that though the defendant's incarceration was undeniably custody in the colloquial sense, the conversation at issue involved no additional coercion and so Miranda warnings were not required). Given that Miranda warnings are not required for a statement to be admissible in civil immigration proceedings, the respondent's argument that his statements should be suppressed because he was not given such warnings, which relies on cases arising in the criminal context, is without merit (Respondent's Br. at 14-15). Similarly, the respondent failed to prima facie demonstrate that his answers to the DHS's questions were involuntary or coerced. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 505 (BIA 1980).

Finally, we agree with the Immigration Judge that the respondent's argument that his statements should be suppressed because he was the victim of racial profiling lacks merit (I.J. at 15-17). We find no clear error in the Immigration Judge's finding that the respondent was interviewed by the DHS based on a referral from state prison authorities, rather than racial profiling (I.J. at 16). The mere fact that a DHS officer mentioned in a post-interview report that the respondent speaks with an accent is insufficient to establish that the DHS interview itself was the product of impermissible racial profiling. Moreover, even assuming arguendo that the DHS officer's statement in his report that the respondent spoke with an accent is inappropriate, we conclude that it was not an egregious violation of the Fourth Amendment or other liberties, and did not undermine the reliability

[1] The respondent does not meaningfully contend that he did not tell DHS officers he was a United States citizen or that the evidence memorializing those statements is false or flawed in some material way. Instead, he argues that all evidence of those statements should not be considered in these proceedings because they were obtained illegally. To the extent the respondent identifies minor errors in the testimony and procedures of the DHS officers, we conclude that these issues go to the weight to be given such evidence, not whether it is admissible (Respondent's Br. at 10-12).

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of the evidence in dispute. *INS v. Lopez-Mendoza*, *supra*, at 1032, 1050-51 n.5; *Almeida-Amaral v. Gonzales*, *supra*, at 235. In sum, we affirm the Immigration Judge's denial of the respondent's motion to suppress evidence.

Upon de novo review, we also affirm the Immigration Judge's conclusion that the respondent did not meet his burden of proof to establish he is not inadmissible under section 212(a)(6)(C)(ii)(I) of the Act for purposes of his application for adjustment of status. We emphasize that there is no dispute that the respondent falsely claimed to be a United States citizen. Thus, given that the respondent is seeking adjustment of status, he must show that this false statement was not made "for any purpose or benefit under [the] Act (including section 274A) or any Federal or State law."[2] *See* Section 245(a) of the Act (requiring, inter alia, that an alien be admissible to the United States in order to adjust status); 8 C.F.R. § 1240.8(d) (stating that "if the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the alien shall have the burden of proving by a preponderance of the evidence that such grounds do not apply."). In this regard, we conclude that the respondent's statement on appeal does not establish clear error in the Immigration Judge's finding that the respondent's testimony was not credible with respect to his claim that he had a good faith belief he was citizen of the United States when he told DHS officers that he was on at least two occasions (I.J. at 6-14).

In particular, we find no clear error in Immigration Judge's determination that it is not plausible that the respondent believed he was a United States citizen given that he was born in Trinidad and Tobago, resided there until he was 19 years old, and then traveled to the United States using a Trinidadian passport and a visa obtained at the United States consulate in Barbados (I.J. 10-11). Moreover, we find no clear error in the Immigration Judge's determination that the respondent's failure to corroborate his testimony undermines his credibility (I.J. at 10-11). *See Biao Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007) (per curiam); *Matter of J-Y-C-*, 24 I&N Dec. 260, 264-66 (BIA 2007). The respondent claims his mother told him he was a United States citizen his whole life and that she made all the arraignments for him to travel to the United States in 2001 and that this is the origin for his understanding that he was a United States citizen. However, despite the corroboration his mother may have been able provide, and her apparent ability to provide testimony

[2] Section 212(a)(6)(C)(ii)(I) of the Act does not require the person making the false claim to United States citizenship know the claim is false at the time it is made to trigger inadmissibility. Even a good faith false claim to United States citizenship will trigger inadmissability unless the false claim falls within the exception set forth in section 212(a)(6)(C)(ii)(II) of the Act. Here, it is undisputed that the respondent falsely claimed United States citizenship and that this claim does not fall within the exception. However, whether the respondent made the false claim "for any purpose or benefit under [the] Act (including section 274A) or any Federal or State law" hinges on whether he knew he was not a United States citizen and therefore intentionally made a false claim in order to avoid being placed into removal proceedings. *See* section 212(a)(6)(C)(ii)(I) of the Act. If the respondent genuinely believed he was a United States citizen, communicating that sentiment to DHS officers when queried as to his citizenship would have been a false claim to United States citizenship, because it was not accurate, but it would not have been made "for any purpose or benefit under the Act."

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or an affidavit, the respondent did not present any evidence whatsoever from his mother or adequately explain the reasons for not doing so (I.J. at 10).[3]

Finally, given our affirmance of the Immigration Judge's adverse credibility finding, we also conclude that the respondent has not met his burden of proof to show that he did not claim to be a United States citizen to avoid being placed in removal proceedings (I.J. at 4-5). Upon de novo review, we agree with the Immigration Judge that a false claim to United States citizenship made for the purpose of avoiding being placed into removal proceedings is made "for any purpose or benefit under the Act" and therefore renders the respondent inadmissible under section 212(a)(6)(C)(ii)(I). Moreover, inasmuch as the respondent is not eligible for a waiver of this ground of inadmissibility, the Immigration Judge correctly determined he is ineligible for adjustment of status. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

[3] Inasmuch as we conclude under our deferential standard of review that implausibility of the respondent's explanation of the basis for his belief that he is a United States citizen, and his failure to corroborate that claim with evidence from his mother, are a sufficient bases for the Immigration Judge's adverse credibility finding based on the totality of the circumstances, we decline to address the Immigration Judge's other bases for that finding. Even assuming *arguendo* that the remaining bases for the adverse credibility finding are erroneous, the respondent's statement on appeal does not convince us that the overall credibility assessment is clearly erroneous.

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