U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

SUAREZ MARQUEZ, WILLIAM
A208-920-275
STEWART DETENTION CENTER
146 CCA ROAD, P.O. BOX 248
LUMPKIN, GA 31815

DHS/ICE Office of Chief Counsel - SDC
146 CCA Road, P.O. Box 248
Lumpkin, GA 31815

Name: SUAREZ MARQUEZ, WILLIAM **A 208-920-275**

Date of this notice: 7/7/2016

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:
Grant, Edward R.
Adkins-Blanch, Charles K.
O'Leary, Brian M.

Userteam: Docket

File: A208 920 275 – Lumpkin, GA

Date: JUL – 7 2016

In re: WILLIAM SUAREZ MARQUEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Blake Doughty
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

APPLICATION: Termination of proceedings

The Department of Homeland Security ("DHS") appeals the decision of the Immigration Judge, dated March 14, 2016, terminating these removal proceedings. The record will be remanded.

We review Immigration Judges' findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent is a native and citizen of Venezuela (I.J. at 2; Tr. at 8). On January 14, 2016, the respondent presented himself for admission into the United States (I.J. at 2; Tr. at 8). At the time, he was in possession of a facially valid B1/B2 nonimmigrant visa (I.J. at 2; Exh. 4). The DHS declined to admit the respondent into this country and, subsequently, cancelled the respondent's visa. In turn, it commenced these proceedings to remove the respondent from the United States, charging that he was inadmissible as an alien who, at the time of his application, was an intending immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other entry document. Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(7)(A)(i)(I).

We recognize that, at the time of his application of admission, the respondent possessed a facially valid B1/B2 nonimmigrant visa. However, in his decision, the Immigration Judge did not address the pertinent issue of whether the respondent has established that he is clearly and beyond doubt entitled to be admitted into the United States as a B1/B2 nonimmigrant. *See* section 240(c)(2)(A) of the Act, 8 U.S.C. § 1229a(c)(2)(A); 8 C.F.R. § 1240.8(b). In particular, in order to be admitted to the United States as a B1/B2 nonimmigrant alien, the respondent must establish, among other things, that he has a residence in a foreign country which he has no intention of abandoning and is visiting this country temporarily for business or temporarily for

pleasure. *See* section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B); 22 C.F.R. § 41.31(b); *Matter of Healy & Goodchild*, 17 I&N Dec. 22, 26 (BIA 1979) (holding that the visitor for pleasure nonimmigrant category was not intended to be a "catch-all" classification available to all who wish to come to the United States temporarily for whatever purpose). The term "temporary" as used in section 101(a)(15)(B) of the Acts does not contemplate a potentially limitless visit to the United States. *Matter of Lawrence*, 15 I&N Dec. 418, 418 (BIA 1975). Moreover, a B1/B2 nonimmigrant may not engage in any employment. 8 C.F.R. § 214.1(e). As such, adequate financial arrangements must be made to enable the respondent to carry out the purpose of his visit to and departure from the United States. 22 C.F.R. § 41.31(a).

Considering the circumstances set forth above, we will remand the record to the Immigration Judge in order to examine the respondent regarding his proposed entry into the United States. If, upon remand, the respondent is able to demonstrate that he should be admitted to the United States as a B1 or B2 nonimmigrant and is not otherwise inadmissible, it may be appropriate for the Immigration Judge to permit the respondent to enter the United States. *See*, *e.g.*, *Matter of Opferkuch*, 17 I&N Dec. 158, 159-60 (BIA 1979) (ordering that an alien, whose sole purpose in coming to this country would be to gather pertinent information for a company in which he is not an officer or principal, be permitted to enter the United States for such periods of time, and under such conditions, as the District Director may impose). However, if the respondent is unable to establish he is clearly and beyond doubt entitled to be admitted into the United States as a B1/B2 nonimmigrant, he is presumed to be an immigrant. *See* section 214(b) of the Act, 8 U.S.C. § 1184(b). As the respondent does not claim that he holds any other type of entry document, he would, in turn, be inadmissible as charged. *See Matter of Neil*, 15 I&N Dec. 331 (BIA 1975) (sustaining a charge of excludability under former section 212(a)(20) of the Act where the alien, who possesses a visitors' visa was impermissibly extending his engineering practice into the United States); *Matter of G-*, 6 I&N Dec. 255, 258 (BIA 1954) (holding that, where an alien did not qualify as a bona fide nonimmigrant and is not entitled to the status of a temporary visitor for business, he must be regarded as falling within the immigrant category and, therefore, is inadmissible because he was not in possession of a valid unexpired immigrant visa or other suitable document).

For the reasons set forth above, the record will be remanded to the Immigration Judge for further consideration of the charge of inadmissibility and further action as the Immigration Judge deems appropriate. The following order is entered.

ORDER: These removal proceedings are reinstated and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and the entry of a new decision.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LUMPKIN, GEORGIA

File: A208-920-275 March 14, 2016

In the Matter of

WILLIAM SUAREZ-MARQUEZ	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGE: Section 212(a)(7)(A)(i)(I) - not in possession of documentation.

APPLICATION: None.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: BLAKE DOUGHTY, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

EXHIBITS:

1, Notice to Appear.

2, copy of respondent's visa (1 page).

3, Form I-213.

4, documents supporting respondent.

WITNESSES:

None.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Exhibit 1 was served on respondent on February 9, 2016. On March 1, 2016, respondent admitted allegations 1 through 3 in Exhibit 1, but denied allegation 4. Respondent stated that he had a valid visa on the day he asked to enter the United States.

I continued the case at the Government's request until March 14, 2016, so that the Government could present additional evidence regarding the respondent's entry into the United States.

The Government introduced Exhibits 2 and 3. The respondent introduced Exhibit 4.

Exhibit 3 and Exhibit 4 show that respondent had a valid visa allowing entry into the United States, but that respondent's visa was cancelled on January 16, 2016. The Department indicated that respondent's visa was cancelled because he had violated the terms of his visa because he worked in the United States.

Because respondent admitted, as he was charged, to have applied for admission to the United States at the San Ysidro, California, port of entry on January 14, 2016, and further because Exhibit 2 shows that the visa was not cancelled until two days later on January 16, 2016, I was unable to sustain allegation 4 or the charge in Exhibit 1.

Accordingly, I have entered the following order:

ORDER

Respondent's proceedings are terminated.

A written order reflected the above decision will be provided separately and made part of the record.

Please see the next page for electronic signature

DAN TRIMBLE
Immigration Judge

//s//

Immigration Judge DAN TRIMBLE

trimbled on May 9, 2016 at 11:36 AM GMT