



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 20530

**PEREZ-BRIZO, ARACELI
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**DHS/ICE Office of Chief Counsel - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014**

Name: SAENZ-LEDESMA, FERNANDO

A 024-938-852

Date of this notice: 6/13/2014

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:
Malphrus, Garry D.
Mullane, Hugh G.
Liebowitz, Ellen C**

**TranC
Userteam: Docket**

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Falls Church, Virginia 20530

File: A024 938 852 – Los Angeles, CA

Date: JUN 13 2014

In re: FERNANDO SAENZ-LEDESMA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Araceli S. Perez-Brizo, Esquire

ON BEHALF OF DHS: Elena Kusky
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Continuance; adjustment of status

The respondent appeals from the Immigration Judge's decision dated September 4, 2012, denying his request for continuance, and denying his application for adjustment of status under section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255. The appeal will be sustained in part, and the record remanded to the Immigration Court for additional proceedings.

We review for clear error the findings of fact made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii). As the respondent's application was filed after May 11, 2005, it is governed by the provisions of the REAL ID Act. *Matter of Almanza*, 24 I&N Dec. 771 (BIA 2009).

The record reflects that the Immigration Judge denied the respondent's renewed request for a brief continuance to obtain and review the contents of his entire Alien file ("A-file") in an attempt to establish that he had been admitted as a temporary resident and was eligible for adjustment of status (Tr. at 118-30; Respondent's Brief at 10-15). *Dent v. Holder*, 627 F.3d 365 (9th Cir. 2010). At the prior hearing on July 3, 2012, the respondent and DHS had agreed to work together to secure the necessary confidentiality waivers to permit the review of the respondent's A-file (Tr. at 92-98, 104-07). However, at the final hearing it was revealed that the respondent had not received the documents and that the attorneys had not secured the necessary waiver. As this point, DHS counsel indicated that her work schedule had impeded her ability to coordinate with the respondent on the issue (Tr. at 117-21).

Upon our de novo review, and considering the totality of the circumstances in this matter, we conclude that the respondent demonstrated good cause for the requested continuance. 8 C.F.R. §§ 1003.1(d)(3)(ii), 1003.29. The A-file appears to be significant for the respondent's ability to substantiate his assertions as to his admission. Thus, we will remand this matter to enable the

parties to further develop the record, including the opportunity for the respondent to obtain his A-file, subject to any confidentiality issues as to specific documents or any other privilege claims. Our decision to remand this matter should not be read to indicate a position as to the ultimate resolution of the respondent's applications for relief. *Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996). Given this result, we need not reach any other issues raised on appeal. We do point out, however, that the respondent correctly notes that the Immigration Judge's decision incorrectly states the respondent conceded removability (I.J. at 2; Respondent's Brief at 4-5). On remand the Immigration Judge should clarify her findings on removability.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings in accordance 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
LOS ANGELES, CALIFORNIA

File: A024-938-852

September 4, 2012

In the Matter of

FERNANDO SAENZ-LEDESMA

RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended - as an alien present in the United States not having been admitted or paroled.

APPLICATIONS: Adjustment of status pursuant to Section 245.

ON BEHALF OF RESPONDENT: ARACELI PEREZ-RIZO

ON BEHALF OF DHS: ELENA KUSKY

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

The respondent is a male native and citizen of Mexico. The Department of Homeland Security has brought these removal proceedings against the respondent pursuant to the authority contained within Immigration and Nationality Act. The proceedings were commenced with the filing of the Notice to Appear with the Immigration Court. See Exhibit No. 1.

On July 30, 2007, Exhibit No. 1 was taken into the record before Immigration Judge Rose Peters. At that time, apparently, the admissions were not done. I took it over on November 14, 2007. At that time, the respondent admitted the allegations and the charge of removal. At a later date when it became evident that the respondent's application was going to be adjustment of status, he claimed that he came in as a temporary resident and withdrew and denied the allegations. Well, anyway, those are related to the allegations.

Exhibit No. 1-A is the I-261, which was served by the Government on August 22, 2011. That was taken into the record on August 22, 2011. Respondent was then charged with allegation five on or about May 4, 1988, he was admitted as a temporary resident under the Legalization Program, and, six, on November 3rd, 1990, the status of temporary residence expired. The respondent admitted the allegations and then admitted the new charge of 237(a)(1)(B) of the Immigration and Nationality Act, as amended, as an alien present in the United States in violation of law. However, the Government withdrew that particular allegation on May 17, 2012 and withdrew the whole thing. Withdrew allegation five and six and withdrew the charge and the allegations of the I-261, hereby withdrawn, and continues with the allegations on the NTA. So the charge remains 212(a)(6)(A)(i) of the Immigration and Nationality Act, as an alien present in the United States not having been admitted or

paroled.

On the basis the respondent has admitted alienage that he is a native and citizen of Mexico, it is incumbent upon the respondent to show time, place and manner of entry. I find that based upon the documentation in the file that the respondent has submitted that he has not shown that he made a legal entry. He has given a very poor copy of a front side without his picture with the date of his file number with a fingerprint to show that that is proof that he had a temporary resident card. However, I do not find that that rises to the level of proving the burden of proof that it shows that he had a temporary resident card.

The Government has presented a document, which is Exhibit No. 4, which is a redacted notice of intent to deny, which is dated August 4, 1992. It does not show the reason. It does not show anything. It simply says notice of a decision with December 24, 1992 in the application for benefits of temporary resident was and is hereby denied. Based upon the fact that the respondent has a number of court documents in the file for his adjustment of status showing that in 1990, he was under the influence. He had an unlicensed driver. He had another driving under the influence in 1990. He had another driving under the influence. Based upon the fact that in order to get your temporary resident, you could not have I believe two misdemeanors or three. The California Department of Justice for 2007 shows that the respondent had in 1982 a receipt of stolen property, a

felony. In 1978, a vehicle misdemeanor drunk driving. In 1983, deportation proceedings and the two other drunk driving convictions. It appears that the respondent may not have been statutorily eligible for that particular document.

But more than that, I find that the respondent has failed in his burden of proof to show that he is statutorily eligible for the relief requested, that of adjustment of status. I make this on jurisdictional grounds only. Because the respondent has not come forward other than with a very poor copy of a back of what appears to be what he believes to be the temporary resident card, but it does not show that it is a temporary resident card. It has a thumb print on it and that is it. It does not have his picture. It does not show that it is a temporary resident. It does not even say that. I, therefore, find that he has not shown the burden of proof.

And although there were objections to the Government's evidence on the redacted information, the redacted information I do give some weight to to the sense that it counterbalances what the respondent has shown as far as what he believes that he did have a temporary resident. So, therefore, it is the same name. It is the same A number and it shows that he was not given a temporary resident card. So based upon that and based upon the respondent's failure to provide any further documentation to show that he did have a temporary resident card, I find that he has failed to meet his burden that this Court can then do his

adjustment of status for statutory grounds, because unless he made a legal entry, I have no jurisdiction to adjust his status. I, therefore, deny the adjustment of status on statutory grounds only. I make no decision on whether or not he can get it on discretionary grounds because it is a statutory denial.

ORDER

IT IS HEREBY ORDERED that the respondent's application for adjustment of status is denied. The respondent is ordered removed, therefore, to Mexico on the charge as contained in the Notice to Appear.

DOROTHY DUNKEL-BRADLEY
Immigration Judge

//s//

Immigration Judge DOROTHY DUNKEL-BRADLEY

bradleyd on December 12, 2012 at 3:48 PM GMT

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CERTIFICATE PAGE

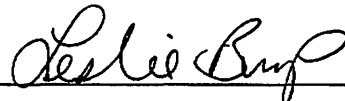
I hereby certify that the attached proceeding before JUDGE
DOROTHY DUNKEL-BRADLEY, in the matter of:

FERNANDO SAENZ-LEDESMA

A024-938-852

LOS ANGELES, CALIFORNIA

is an accurate, verbatim transcript of the recording as provided
by the Executive Office for Immigration Review and that this is
the original transcript thereof for the file of the Executive
Office for Immigration Review.



LESLIE BUMP (Transcriber)

FREE STATE REPORTING, Inc.

NOVEMBER 19, 2012

(Completion Date)