



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 20530

**Rivera, Juan J., Jr.
Law Office of Manuel E. Solis
PO Box 230529
Houston, TX 77223**

**DHS/ICE Office of Chief Counsel - CHI
525 West Van Buren Street
Chicago, IL 60607**

Name: BERBER CASTRO, HOMERO

A 200-140-768

Date of this notice: 11/10/2014

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:
Guendelsberger, John

USCIS Case Number: A200-140-768
User team: Docket

For more unpublished BIA decisions, visit www.irac.net/unpublished

Handwritten signature

Falls Church, Virginia 20530

File: A200 140 768 – Chicago, IL

Date: **NOV 10 2014**

In re: HOMERO BERBER-CASTRO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Juan J. Rivera, Jr., Esquire

ON BEHALF OF DHS: William Padish
Assistant Chief Counsel

APPLICATION: Voluntary departure

The respondent, a native and citizen of Mexico, has appealed the Immigration Judge's October 17, 2012, decision to the extent that the Immigration Judge denied the application for voluntary departure in discretion pursuant to section 240B of the Immigration and Nationality Act, 8 U.S.C. § 1229c. The record will be remanded to the Immigration Judge.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). The Board reviews questions of law, discretion, and judgment – and all other issues in appeals from decisions of Immigration Judges – de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

In the instant case, the respondent has a 2009 conviction for driving under the influence, possession of open alcohol, and driving with an expired license, and a 2010 conviction for aggravated driving under the influence and driving with a suspended or revoked license. The respondent has other arrests that did not lead to convictions. The Immigration Judge did not think that the respondent would comply with a voluntary departure order and did not believe that the respondent merited the relief (I.J. at 5-6).

We acknowledge the Immigration Judge's reasoning. We also note that the respondent is married to a United States citizen, has seven United States citizen children, and hopes to adjust his status through consular processing. In addition, we note that it has now been almost 5 years since the respondent's more recent conviction. Under these circumstances, we find it appropriate to remand the record for the Immigration Judge to determine the respondent's current eligibility for voluntary departure, with particular focus on the status of any visa petition filed on his behalf and the status of the respondent's criminal history – or lack thereof – in the 3 years since the Immigration Judge's decision. On remand, the parties may submit additional evidence.

A200 140 768

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD

Immigrant & Refugee Appellate Center | www.irac.net

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
CHICAGO, ILLINOIS

File: A200-140-768

October 17, 2012

In the Matter of

HOMERO BERBER CASTRO)	
)	IN REMOVAL PROCEEDINGS
RESPONDENT)	

CHARGE: Removability; 212(a)(6)(A)(i) of the Immigration
 and Nationality Act, as amended - alien present
 in the United States without being admitted or
 paroled.

APPLICATIONS:

ON BEHALF OF RESPONDENT: JUAN RIVERA

ON BEHALF OF DHS: WILLIAM C. PADISH

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a citizen and native of Mexico. He claims he entered the United States on or about 1995. He was issued a Notice to Appear dated June 27, 2011. At a Master Calendar hearing held on September 12, 2012, the respondent appeared with counsel and admitted all allegations and charges

~~contended~~conceded in the Notice to Appear. The Court has found

that the respondent is removable by clear and convincing evidence.

See INA Section 240(c)(1)(A).

The respondent has designated Mexico as the country of removal. The respondent has requested as his only form of relief, pre-conclusion voluntary departure.

VOLUNTARY DEPARTURE

Respondent has requested the privilege of voluntarily departing the United States without expense to the Government in lieu of removal under Section 240B(a) of the Act. To qualify for voluntary departure, the respondent must show that he concedes removability and waives appeal of all issues; he has not been convicted of an aggravated felony; he is not deportable for security reasons; he is not an arriving alien for whom removal proceedings under INA Section 240 are or will be initiated; and he has not been granted voluntary departure since April 1, 1997. In addition, respondent must show that he is willing and has the means to depart immediately and that he deserves the relief as a matter of discretion.

Discretionary consideration of the application for voluntary departure involves a weighing of factors, including the alien's prior Immigration history, the length of his residence in the United States, and the extent of his family business and societal ties in the United States. Matter of Gamboa 14 I&N Dec. 244 (BIA 1972).

FINDINGS AND ANALYSIS

The respondent alleges that he entered the United States in 1995. He is married to a United States citizen and has seven United States citizen children in the United States. The respondent has requested voluntary departure. In order to consular process through his United States citizen spouse, the Court is not aware that his spouse has petitioned for him or has evidence that she has and that there is an approved I-130 petition.

The respondent has also submitted his criminal chart and the court dispositions. The respondent was arrested by Warrenville Police Department for driving under the influence of alcohol. He was convicted on August 13, 2009. He was sentenced to supervision. Also on that date, he was also charged with transportation of possession of open alcohol by the driver. He was also found guilty and was assessed fines and court costs. He has an additional charge on that date for driving with a license expired for more than one year. He was given a conditional discharge and convicted for the crime. He was also arrested for resisting or obstructing a police officer on August 13, 2009. This was *nolle prosequi*.

On May 14, 2010, the respondent was charged with a DUI for 1st or 2nd offense by the Woodbridge Police Department. This case was *nolle prosequi*. On January 6, 2010, he was also charged with a DUI by the Woodbridge Police Department for his

1st or 2nd offense. This was *nolle prosequi*. He was also charged with endangering the health or life of a child. This was *nolle prosequi*. Driving with license suspended, *nolle prosequi*; improper lane usage, in turning lane, *nolle prosequi*; transportation of possession of open alcohol by driver, *nolle prosequi*. All in the same date, and failure to secure a child over the age of 8 and under the age of 16 with a safety belt, was *nolle prosequi*.

However, the state attorney charged him with aggravated DUI, 2nd violation, and also he had a child passenger. The Court found the respondent guilty. He was sentenced to the Department of Corrections for a period of 36 months where he served a period of 15 months at the Department of Corrections, and he is currently still on parole and has another nine months to complete ~~that~~ it. Also, he was charged with driving while license suspended, revoked on a DUI. He was found guilty and was sentenced to the Department of Corrections. He was also arrested by the Warrenville Police Department for domestic battery on October 20, 2009. The case was *nolle prosequi*.

The Court will deny the respondent's request for pre-conclusion voluntary departure. It is a matter of discretion. The Court does not feel with his extensive criminal record and time spent in the Department of Corrections, as well as his ties to the United States, that the respondent will comply with this order. Nor does the Court believe that he merits the privilege

of voluntary departure. Therefore, the Court, as a matter of discretion, will deny the voluntary departure.

ORDER

It is hereby ORDERED that the respondent's application for voluntary departure under Section 240B(a) be denied.

It is further ORDERED that the respondent be removed to Mexico on the charges in the Notice to Appear.

Please see the next page for electronic signature

VIRGINIA PEREZ-GUZMAN
Immigration Judge

//s//

Immigration Judge VIRGINIA PEREZ-GUZMAN

perezv on February 6, 2013 at 1:58 PM GMT