



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

**SALAZAR HERRERA, ABNER
A200-191-590
C/O DHS-SPC
8915 MONTANA AVE
EL PASO, TX 79925**

**DHS/ICE Office of Chief Counsel - ELP
1545 Hawkins Blvd.
El Paso, TX 79925**

Name: SALAZAR HERRERA, ABNER

A 200-191-590

Date of this notice: 10/21/2013

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:
Kendall-Clark, Molly

schuckec
User team: Docket

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SCA

Falls Church, Virginia 20530

File: A200 191 590 – El Paso, TX

Date:

OCT 21 2013

In re: ABNER SALAZAR-HERRERA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Brittany Butterfield
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; voluntary departure

The respondent has filed a timely appeal from the Immigration Judge's order denying the respondent's application for voluntary departure and ordering the respondent removed to El Salvador.¹ The Department of Homeland Security has filed a motion to dismiss the appeal. For the following reasons, the record in this matter will be remanded.

We review the Immigration Judge's findings of fact for clear error. Questions of law, discretion and judgment, and all other issues are reviewed de novo. See 8 C.F.R. § 1003.1(d)(3)(i), (ii).

This Board has explained that because we have limited fact-finding ability on appeal, the Immigration Judges must include in their decisions clear and complete findings of fact. See *Matter of S-H*, 23 I&N Dec. 462 (BIA 2002). The record before us does not include a complete separate decision from the Immigration Judge setting forth his reasoning for denying voluntary departure. We note that the respondent was detained and unrepresented at his last hearing, and there is no record of his having been advised, before that hearing, of the possibility of applying for voluntary departure. At the hearing, the respondent inquired about voluntary departure and stated that he could ask relatives for the funds necessary to qualify (Tr. at 51-52). After the respondent was asked about his passport and stated that he did not have a passport, there was no inquiry as to whether he could obtain a passport (Tr. at 52). The Immigration Judge told the respondent that he was not eligible for voluntary departure because he could not leave the United States within 15 days (Tr. at 52). However, the Immigration Judge did not explain why the

¹ The respondent was asked by the Immigration Judge whether he wished to appeal and he said "no." However, there was no explanation that the respondent's answer was an irrevocable waiver of his appeal rights. See *Matter of Rodriguez-Diaz*, 22 I&N Dec. 1320 (BIA 2000). Accordingly, we find that the respondent did not knowingly waive his right to appeal.

inability to leave within 15 days of the date of the hearing disqualified the respondent from receiving voluntary departure. The Immigration Judge did not address the possibility of a continuance.

Because the Immigration Judge did not issue a complete separate decision in this matter, we will remand the record to the Immigration Court for further action. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999); *see also Matter of S-H-*, *supra* (stating that a decision must accurately, clearly, and completely summarize the findings of fact supported by the record and must also reflect the Immigration Judge's analysis of the applicable statutes, regulations, and legal precedents, and clearly set forth the Immigration Judge's legal conclusions).

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

IMMIGRATION COURT
8915 MONTANA AVENUE
EL PASO, TX 79925

In the Matter of

Case No.: A200-191-590

SALAZAR HERRERA, ABNER
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 6/5/13.
This memorandum is solely for the convenience of the parties. If the
proceedings should be appealed or reopened, the oral decision will become
the official opinion in the case.

- [] The respondent was ordered removed from the United States to
or in the alternative to .
[X] Respondent's application for voluntary departure was denied and
respondent was ordered removed to ~~or in the~~ EL SALVADOR
~~alternative to~~ .
[] Respondent's application for voluntary departure was granted until
upon posting a bond in the amount of \$ _____
with an alternate order of removal to .

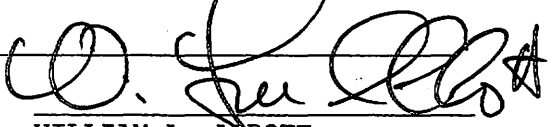
Respondent's application for:

- [] Asylum was () granted () denied () withdrawn.
[] Withholding of removal was () granted () denied () withdrawn.
[] A Waiver under Section _____ was () granted () denied () withdrawn.
[] Cancellation of removal under section 240A(a) was () granted () denied
() withdrawn.

Respondent's application for:

- [] Cancellation under section 240A(b)(1) was () granted () denied
() withdrawn. If granted, it is ordered that the respondent be issued
all appropriate documents necessary to give effect to this order.
[] Cancellation under section 240A(b)(2) was () granted () denied
() withdrawn. If granted it is ordered that the respondent be issued
all appropriated documents necessary to give effect to this order.
[] Adjustment of Status under Section _____ was () granted () denied
() withdrawn. If granted it is ordered that the respondent be issued
all appropriated documents necessary to give effect to this order.
[] Respondent's application of () withholding of removal () deferral of
removal under Article III of the Convention Against Torture was
() granted () denied () withdrawn.
[] Respondent's status was rescinded under section 246.
[] Respondent is admitted to the United States as a _____ until _____.
[] As a condition of admission, respondent is to post a \$ _____ bond.
[] Respondent knowingly filed a frivolous asylum application after proper
notice.
[] Respondent was advised of the limitation on discretionary relief for
failure to appear as ordered in the Immigration Judge's oral decision.
[] Proceedings were terminated.
[] Other: _____

Date: Jun 5, 2013


WILLIAM L. ABBOTT
Immigration Judge

Appeal: Waived/Reserved Appeal Due By: