



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: FIGUEIREDO, CARLOS PEREIRA A 200-550-034

Date of this notice: 7/23/2014

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:
Adkins-Blanch, Charles K.
Hoffman, Sharon
Manuel, Elise

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Userteam: Docket

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Falls Church, Virginia 20530

File: A200 550 034 – Boston, MA

Date: JUL 23 2014

In re: CARLOS PEREIRA FIGUEIREDO a.k.a. Carlos Figueiredo

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robin N. Miller, Esquire

APPLICATION: Voluntary departure

The respondent has appealed from the Immigration Judge's decision dated May 14, 2013. The Immigration Judge denied the respondent's application for voluntary departure under section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b), in the exercise of discretion. The respondent's appeal will be sustained.

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

On appeal, the respondent argues that the Immigration Judge erred in denying his request for voluntary departure by failing to give sufficient consideration to respondent's positive equities, by misconstruing the respondent's criminal history, and by placing undue weight on respondent's criminal history. Specifically, the respondent argues that the Immigration Judge erroneously found that the respondent was convicted on four occasions for operating a motor vehicle without a license.

Even considering the facts as found by the Immigration Judge, we find that the respondent is deserving of a favorable exercise of discretion. Although there are negative factors in this matter, including a 2004 criminal conviction for evading arrest, arrests for operating a motor vehicle without a license and other traffic related violations, and a failure to pay taxes on earnings obtained through use of a false social security number, we find that the respondent's favorable factors outweigh the adverse factors of record. *See Matter of Lemhammad*, 20 I&N Dec. 316 (BIA 1991); *Matter of Gamboa*, 14 I&N Dec. 244, 248 (BIA 1972). The respondent has been present in the United States for 14 years, has been employed with the same employer for 13 years, has a 21-year old United States citizen stepson, and is active in his religious community (I.J. at 3). Under these circumstances, we find the respondent deserving of a favorable exercise of discretion. Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: In lieu of removal, and conditioned upon compliance with the provisions of the statute, the respondent is permitted to voluntarily depart from the United States, without expense to the Government, within 30 days from the date of this order, or any extension

A200 550 034.

beyond that time as may be granted by the Department of Homeland Security ("DHS"). *See* section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b); *see also* 8 C.F.R. §§ 1240.26(c), (f). In the event the respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.

FURTHER ORDER: The respondent must post a voluntary departure bond in the amount of \$500 with the DHS within 10 business days of the date of this order. If the bond is not posted within 10 business days, the order of voluntary departure is automatically vacated on the following business day, and the respondent is ordered removed to Brazil.

FURTHER ORDER: The respondent must provide to the DHS appropriate travel documentation, sufficient to assure lawful entry into the country to which the respondent is departing, within 30 days of this order or within any extension beyond that time as may be granted by the district director.

NOTICE: If the respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty as provided by the regulations and the statute and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. *See* section 240B(d) of the Act.

WARNING: If the respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply. *See* 8 C.F.R. § 1240.26(e)(1).

WARNING: If, prior to departing the United States, the respondent files any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the Act, 8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate order of removal shall immediately take effect. However, if the respondent files a petition for review and then departs the United States within 30 days of such filing, the respondent will not be deemed to have departed under an order of removal if the alien provides to the DHS such evidence of his or her departure that the Immigration and Customs Enforcement Field Office Director of the DHS may require and provides evidence DHS deems sufficient that he or she has remained outside of the United States. The penalties for failure to depart under section 240B(d) of the Act shall not apply to an alien who files a petition for review, notwithstanding any period of time that he or she remains in the United States while the petition for review is pending. *See* 8 C.F.R. § 1240.26(i).



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS

File: A200-550-034

May 14, 2013

In the Matter of

CARLOS PEREIRA FIGUEIREDO
RESPONDENT

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)
)
)

IN REMOVAL PROCEEDINGS

CHARGE: INA Section 212(a)(6)(A)(i), present in the United States without
being admitted or paroled.

APPLICATION: Voluntary departure.

ON BEHALF OF RESPONDENT: EDWARD HARWELL

ON BEHALF OF DHS: MARY KELLY

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a male native and citizen of Brazil who was issued a Notice to Appear on June 25th, 2012. In pleadings submitted through counsel, respondent concedes removability. I, therefore, conclude that removability has been established by clear and convincing evidence and the issue before the Court concerns the sole application for relief from removal.

STATEMENT OF THE FACT

The respondent was the only witness to testify in support of his voluntary

departure application and he testified as follows. He entered the United States in 2000. He has been employed at a restaurant called L'Espalier for the past 13 years. He has a 21-year-old stepson in the United States. He was arrested one time in 2004. He did have other contact with the police, four times he was charged with driving without a license. He paid fees for these driving without a license violations.

On cross examination, the respondent was asked further questions regarding his criminal history. He was asked if he was ever charged with resisting arrest and the respondent stated, no. Respondent was asked if he went to Chelsea District Court and was charged with resisting arrest. The respondent answered, yes, they accused me of that, but I had the opportunity to explain it. He stated that he did not know he was charged with resisting arrest. Respondent acknowledged that he paid a fine for resisting arrest. The respondent was asked why he stated he did not know he was charged with resisting arrest and he stated, "for me, I was never accused of that." He stated that he was arrested on this occasion because his window would not open and he had to open the door of his vehicle when the police officer stopped him. He stated that he did not do anything to resist an arrest, but acknowledged that he did not know the police officer. Respondent was asked about the allegations in the police report that was submitted in support of his application for voluntary departure. He was asked why the police report stated that the police officer asked him to turn off his ignition and the respondent stated, no, to the police officer. The respondent stated that he did not speak English at all when he was arrested in 2004.

Respondent acknowledged he was charged again with operating without a license in February of 2006, in June of 2007, and in January of 2012.

Respondent was asked if he paid taxes last year in the United States and he stated, no, not the last year. He acknowledged that he was working under a fake

Social Security number in the United States.

On redirect examination, the respondent testified that he was arrested and taken by force just the one time in 2004. He stated that his English was not good and he did not understand English.

The respondent was asked questions regarding the September of 2004 arrest by the undersigned. The respondent stated that he did not exit the vehicle as indicated in the police report and then hopped back in when the officer tried to put handcuffs on him. Rather, according to the respondent, the police officer opened the door, asked for documents, the respondent produced his documents and then the police officer handcuffed him.

STATEMENT OF THE LAW

To be eligible for voluntary departure, the respondent must show that he deserves the relief as a matter of discretion. A discretionary consideration of an 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 2007).

FINDINGS AND CONCLUSIONS OF THE COURT

In weighing the factors of this case, the Court finds that the respondent has positive factors. He has been employed by the same restaurant for 13 years. He has one family member in the United States he identified as tied to the United States, that is his 21-year-old stepson. In addition, the respondent submitted a letter from the pastor of his church, letters from his stepson and stepdaughter and a letter from a friend, all in support of his application for relief.

The negatives in the case include the respondent's September 2004 arrest

for driving without a license and resisting arrest. The Court certainly has questions regarding whether or not the respondent was truthful when he stated that he did not resist arrest, that he was only arrested because his English was not good, and the Court notes that his testimony about what happened on that day was not consistent with the rendition in the police report. However, even assuming the respondent was credible with respect to the September 2004 arrest, that is not the only time he violated the laws. The respondent was charged three other times with operating a motor vehicle without a license. In February of 2006, in June of 2007, and in January of 2012, thus, over a seven-and-a-half-year period, the respondent was charged and found guilty of operating a motor vehicle without a license four times.

It is clear to the Court that the respondent was not interested in following the laws of the United States over this lengthy period in which he was driving without a license. The other negative factors in this case are that the respondent is working with a false Social Security number, he presented no evidence that he has ever paid taxes in the United States on his income and acknowledged that he did not pay taxes the last year.

Balancing all of the factors in this case, the Court finds that the positive factors, including the respondent has a 21-year-old stepson in the United States, has been employed with the same restaurant for a lengthy period, has over 10 years of residence in the United States, balanced with the negatives, that the respondent has been working with a false Social Security number for 13 years, failed to pay taxes last year, and provided no evidence of paying taxes in prior years, and has been charged four times with operating with a suspended license over a seven-and-a-half-year period, as well as being charged and found responsible for resisting arrest, the Court finds that the positives in this case do not outweigh the negatives and the Court will deny

voluntary departure as a matter of discretion.

Based on the foregoing, the following order shall enter.

ORDER

ORDERED, the respondent's application for voluntary departure is hereby denied.

ORDERED, the respondent is hereby ordered removed from the United States to Brazil based on the charges in the Notice to Appear.

BRENDA O'MALLEY
Immigration Judge

CERTIFICATE PAGE

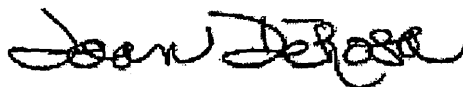
I hereby certify that the attached proceeding before JUDGE BRENDA
O'MALLEY, in the matter of:

CARLOS PEREIRA FIGUEIREDO

A200-550-034

BOSTON, MASSACHUSETTS

was held as herein appears, and that this is the original transcript thereof for the file of
the Executive Office for Immigration Review.



JOAN DEROSA (Transcriber)

DEPOSITION SERVICES, Inc.-2

JULY 25, 2013

(Completion Date)