



**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

**Baxter, Dustin Reed  
Kuck Immigration Partners LLC  
8010 Roswell Road, Suite 300  
Atlanta, GA 30350**

**DHS/ICE Office of Chief Counsel - ATL  
180 Spring Street, Suite 332  
Atlanta, GA 30303**

**Name: FLORES ARAGON, NICOLAS**

**A 205-789-923**

**Date of this notice: 5/26/2015**

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.

Userteam: Docket

For more unpublished BIA decisions, visit  
[www.iraac.net/unpublished/index/](http://www.iraac.net/unpublished/index/)

Falls Church, Virginia 20530

---

File: A205 789 923 – Atlanta, GA

Date:

In re: NICOLAS FLORES-ARAGON

**MAY 26 2015**

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Dustin R. Baxter, Esquire

ON BEHALF OF DHS: Sirce E. Owen  
Assistant Chief Counsel


APPLICATION: Continuance

The respondent has appealed the November 7, 2013, decision of the Immigration Judge denying a continuance. While the appeal was pending, the respondent submitted evidence that the Department of Homeland Security (“DHS”) has, in its exercise of prosecutorial discretion, approved the respondent’s application for Consideration of Deferred Action for Childhood Arrivals. We will deem the submission of the new evidence to be a motion to administratively close proceedings. The DHS has not responded to the submitted evidence. Under these circumstances, the motion will be granted, and the proceedings administratively closed.

If either party to this case wishes to reinstate the proceedings, a written request to reinstate the proceedings may be made to the Board. The Board will take no further action in the case unless a request is received from one of the parties. The request must be submitted directly to the Clerk’s Office, without fee, but with certification of service on the opposing party.

Accordingly, the following order will be entered.

ORDER: The proceedings before the Board of Immigration Appeals in this case are administratively closed.

  
\_\_\_\_\_  
FOR THE BOARD

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

File: A205-789-923

November 7, 2013

In the Matter of

NICHOLAS FLORES ARAGON

RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES: 212(a)(6)(A)(i).

APPLICATIONS: Continuance.

ON BEHALF OF RESPONDENT: REBECCA ROJAS

ON BEHALF OF DHS: SIRCE ELLIOTT OWEN

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is an adult male, native and citizen of Mexico, who was placed in removal proceedings with the filing of a Notice to Appear with the Court, charging removability pursuant to the provisions of 212(a)(6)(A)(i) of the INA. Respondent initially appeared in Immigration Court on February 11, 2013, represented by counsel. Continuances have been granted to March 19, 2013, September 19, 2013, and to today's date, November 7, 2013. Respondent filed a motion for change of venue from Stewart Detention Facility when he was released (Exhibit 2). Within the four corners of that motion he admitted the factual allegations of the Notice to Appear, and

conceded removability. Therefore, removability has been established by clear and convincing evidence. There are essentially two forms of relief requested. First is a continuance for adjudication of a DACA (Deferred Action Childhood Arrival) application. The Court previously continued the case one time for adjudication of the DACA, and notified both parties that further continuances would not be favorably viewed. Pursuant to the regulations, the Court may grant a continuance for good cause shown. In this case, the Court finds that good cause has not been shown for a continuance either for adjudication of DACA or for a yet to be filed request for prosecutorial discretion. Regarding the continuance for the purpose of waiting for U.S. Citizenship Immigration Services to adjudicate an application for deferred action for a childhood arrival, the Court would note one continuance was previously given for this purpose. However, a DACA application is separate and apart from the respondent's removal proceedings, and even a final order of removal does not prevent the respondent from seeking deferred action. Furthermore, should it become necessary, a request for a stay of removal pending consideration of an application for relief that is before USCIS can be addressed to the Department of Homeland Security. See 8 C.F.R. 241.6(a) and 1241.6(a). Therefore the Court does not find good cause for a continuance for adjudication of the DACA application.

Respondent appears in court today through counsel, and requests a continuance to file a request for prosecutorial discretion. The Government opposes a further continuance. This case is currently at its fourth setting. There have been three continuances. While this is a new counsel today, counsel is in the same firm that has been representing respondent the entire time. No explanation adequate for the Court was given as to why a request for prosecutorial discretion has not previously been filed. The sole explanation was they were waiting, hoping for a favorable adjudication of the

DACA application. It does appear that it is a continuance for delay purposes only. Should respondent want prosecutorial discretion, he could have filed it nine months ago when he was initially placed in removal proceedings. To wait until the last minute to request a continuance for the filing of such does not seem appropriate to the Court. The Court would further note that even in the event of a final order, the respondent can still go to ERO and request deferred action. Therefore the request for a continuance to file an 11th hour request for prosecutorial discretion is denied.

There was no request for voluntary departure. The Court specifically asked for other relief, and counsel indicated there was no application or desire to apply for voluntary departure.

Based on thorough evaluation of the entire record, the Court enters the following orders.

**ORDER**

IT IS ORDERED the respondent be removed from the United States to Mexico on the charge contained in the Notice to Appear.

**Please see the next page for electronic**

**signature**

J. DAN PELLETIER  
Immigration Judge

//s//

Immigration Judge J. DAN PELLETIER

pelletij on March 10, 2014 at 7:12 PM GMT

Immigrant & Refugee Appellate Center, LLC | [www.irac.net](http://www.irac.net)