U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: JIMENEZ-CRUZ, SANDRA

A 095-748-769

Date of this notice: 4/3/2014

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:
Mullane, Hugh G.

Lulseges
Userteam: Docket

File: A095 748 769 – Los Angeles, CA Date: APR - 3 2014

In re: SANDRA JIMENEZ-CRUZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John Ayala, Esquire

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: Termination; suppression

The respondent, a native and citizen of Guatemala, has appealed the Immigration Judge's decisions dated June 26, 2012, and February 27, 2013. In her June 26, 2012, decision, the Immigration Judge denied the respondent's motion to terminate the removal proceedings and motion to suppress evidence. In her February 27, 2013, decision, the Immigration Judge ordered the respondent removed from the United States to Guatemala. The Department of Homeland Security (the "DHS") did not file a response brief. The respondent's appeal will be dismissed.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

This matter arises from a February 7, 2008, factory search by agents of U.S. Immigration and Customs Enforcement ("ICE") pursuant to a search warrant and a separate arrest warrant for eight individuals (Exh. 3, Tabs J-K).[1] During this search, the respondent was detained, arrested, and, based upon answers elicited by ICE agents, served with a Notice to Appear and placed into removal proceedings (Exhs. 1-2). The respondent moved to terminate the removal proceedings based upon violations of the regulations set forth at 8 C.F.R. §§ 287.8(b) and (c), and, alternatively, to suppress the DHS's evidence (a Record of Deportable/Inadmissible Alien (Form I-213) and five US-VISIT printouts) based on violations of the Fourth Amendment (Exhs. 2, 4). The Immigration Judge issued a written decision, dated June 26, 2012, denying the motion. On February 27, 2013, the Immigration Judge incorporated by reference her June 26, 2012, decision, determined the respondent did not submit evidence to support her burden of

[1] The respondent was not one of the individuals for whom an arrest warrant was obtained.

proof to show she is a United States citizen, and ordered the respondent removed from the United States to Guatemala.

The Immigration Judge properly determined that, even assuming the ICE agents violated the government regulations, she could use the evidence contained in the US-VISIT printouts to ascertain that the DHS met its burden to establish the respondent's alienage (I.J. at 3-4). *See INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984) (the body or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred); *see also U.S. v. Del Toro Gudino*, 376 F.3d 997, 1001 (9th Cir. 2004) (reaffirming that "[i]dentity evidence is inherently different from other kinds of evidence," and refusing to suppress the defendant's identity even if it was obtained as a result of an egregious constitutional violation); *U.S. v. Guzman–Bruno*, 27 F.3d 420, 422 (9th Cir. 1994) (affirming the district court's conclusion that neither the defendant's "identity nor the records of his previous convictions and deportations could be suppressed as a result of the illegal arrest"); *accord U.S. v. Roque-Villanueva*, 175 F.3d 345, 346 (5th Cir. 1999) (affirming the district court and refusing to suppress evidence of identity obtained in an illegal traffic stop, concluding that "[e]ven if the [d]efendant was illegally stopped, neither his identity nor his INS file are suppressible"). In that regard, the Immigration Judge properly concluded that the respondent's fingerprints were obtained during a routine booking procedure for the purpose of establishing the respondent's identity[2] (I.J. at 3-4; Exhs. 3 at ¶¶ 25-27, 4; DHS's Subm. dated 11/30/11 at 5). *See Ortiz-Hernandez*, 427 F.3d 567, 577 (9th Cir. 2005) (a second set of fingerprints taken after the defendant was indicted was admissible because it was taken to establish identity rather than for an investigative purpose); *see also U.S. v. Garcia-Beltran*, 389 F.3d 864, 865-868 (9th Cir. 2004) (fingerprint evidence obtained as the result of an alien's illegal arrest did not have to be suppressed if the alien's fingerprints were taken merely for the purpose of identification rather than to connect an individual to criminal activity). Specifically, the evidence provides that the individuals arrested were transported to a downtown building, searched, interviewed about health conditions, photographed, and fingerprinted; the Immigration Judge properly concluded that, since each individual was required to undergo the same fingerprinting process upon arrest, the fingerprints were obtained as part of a routine booking procedure designed to ascertain the identities of the individuals in the government's custody (I.J. at 3; Exh 3, ¶¶ 25-27). The DHS was then able to obtain the US-VISIT printouts by matching the fingerprints obtained during the booking procedure to the printouts. Since the US-VISIT printouts were obtained through the use of fingerprint identity evidence, we affirm the Immigration Judge's determination that she was permitted to refer to them to establish evidence of the respondent's alienage (I.J. at 3-4; Exh. 4).

Respondent contends that the proceedings must be terminated because ICE allegedly violated the regulations set forth at 8 C.F.R. §§ 287.3(a), (c), and 287.8(b), (c) (Resp.'s Br. at 11-14, 23-28). For the following reasons, we disagree with the respondent's claim. First, the applicable DHS regulations expressly provide that they "do not, are not intended to, shall not be construed

[2] We agree with the respondent that the US-VISIT printouts are not "independent evidence" of the respondent's alienage because they could not have been obtained without the fingerprints captured during the respondent's arrest; however, for the reasons stated herein, it does not alter the outcome of the respondent's case (Resp.'s Br. at 30-35).

to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal." 8 C.F.R. § 287.12; *see also Navarro-Chalan v. Ashcroft*, 359 F.3d 19, 23 (1st Cir. 2004) (citing 8 C.F.R. § 287.11 (1995) and the current version at 8 C.F.R. § 287.12 to explain that even if DHS regulations were applicable in the alien's matter and were in fact violated, the regulations by its own express terms do not confer any individual rights that may be enforced in any matter). Thus, these regulations are not enforceable by the respondent to seek termination of proceedings.[3] Further, even when a regulatory violation occurs, termination of proceedings is not the proper remedy. *See generally Arias v. Rogers*, 676 F.2d 1139, 1143 (7th Cir. 1982) ("To give a person who has been illegally arrested total immunity from either criminal punishment or deportation is an excessive sanction for the illegal arrest.").

We now turn to the Fourth and Fifth Amendment suppression issue raised by the respondent on appeal (Resp.'s Br. at 15-22, 28-35). We note that the Immigration Judge did not determine the legality of the respondent's February 7, 2008, arrest (I.J. at 3-4).[4] However, even assuming the respondent's arrest was illegal under the Fourth Amendment and that the manner of arresting and interrogating the respondent was so egregious as to violate fundamental fairness under the Fifth Amendment, it would not alter the outcome of the present case because the fingerprints, which established the respondent's identity, were properly obtained and matched to the US-VISIT printouts, which established the respondent's alienage (Resp.'s Br. at 15-22, 30-35; I.J. at 3-4). *See Lopez-Mendoza, supra*, at 1039-40 (finding that the Fourth Amendment exclusionary rule is generally inapplicable to immigration proceedings except where egregious violations occur and, regardless of the egregiousness of the illegal search or seizure, the identity of a person is *never* suppressible (emphasis added)); *see also U.S. v. Del Toro Gudino*, *supra*, at 1001 (the Supreme Court's reliance on cases with facts of this egregious nature indicate that when it said the body or identity of a defendant is "never" suppressible, it meant "never"); *see also Matter of Sandoval*, 17 I&N Dec. 70, 76-83 (BIA 1979). Contrary to the respondent's appellate assertion, the Ninth Circuit's holding in *U.S. v. Garcia-Beltran, supra*, does not lead to a contrary conclusion (Resp.'s Br. at 30-35). *Id.* at 865-868 (fingerprint evidence obtained as the result of an alien's illegal arrest did not have to be suppressed if the alien's fingerprints were taken merely for the purpose of identification rather than to connect an individual to criminal activity). Based on the foregoing, we conclude that the Immigration Judge properly admitted the US-VISIT printouts into the record.

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[3] For the same reason, these regulations are not enforceable to suppress evidence. 8 C.F.R. § 287.12; *see generally U.S. v. Guzman-Padilla*, 573 F.3d 865, 890 (9th Cir. 2009) ("the government's violation of its own rules does not provide a basis for the suppression of evidence in a criminal action"); *see also U.S. v. Ani*, 138 F.3d 390, 392 (9th Cir. 1998) ("Absent a constitutional violation or a congressionally created remedy, violation of an agency regulation does not require suppression of the evidence.").

[4] The Immigration Judge further did not engage in fact finding below regarding the circumstances surrounding the respondent's arrest (I.J. at 3-4). *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002) (Board has limited fact-finding ability on appeal); 8 C.F.R. § 1003.1(d)(3)(i).

Moreover, the Immigration Judge properly determined that the US-VISIT printouts established the respondent's Guatemalan alienage; hence, the burden shifted to the respondent to prove that she was a United States citizen (I.J. at 4). Since the respondent was unable to do so, the Immigration Judge properly ordered her removed to Guatemala.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

File: A095-748-769 February 27, 2013

In the Matter of

SANDRA JIMENEZ-CRUZ	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act - an alien present in the United States without being admitted or paroled.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: JOHN AYALA

ON BEHALF OF DHS: CARRIE A. LAW

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a female, native and citizen of Guatemala, who was issued a Notice to Appear on February 11, 2008. See Exhibit 1. That document was served on her on that same date of February 11, 2008. At a previous master calendar hearing, the respondent denied the allegations and the charge of removability.

The Court issued a decision regarding contested removability, and found that alienage was established by the Government. Burden then shifted to the respondent to show that she is a United States citizen. She has not come forth with

evidence and has none to submit regarding that issue. At today's hearing, the Court sustained all four allegations and the charge of removability. Respondent declined to designate a country for removal and the Government designated Guatemala. The Court designates Guatemala as well.

The Court hereby incorporates by reference the written decision that was handed out on June 26, 2012.

The respondent was interested in seeking a U visa and has been trying to do that. However, it requires that she obtain a certificate from the police, which is known as police certification. At this point in time the police department is not giving the respondent a police certification. It is based upon an incident with her daughter. The respondent was required to take classes, and apparently she has custody of the daughter at this time; however, the police certification is not forthcoming and it is speculative as to whether the police department will issue a certification. Under Ahmed v. Holder, 569 F.3d 1009 (9th Cir. 2009); and Karapetyan v. Mukasey, 543 F.3d 1118, 1129 (9th Cir. 2008); and Baires v. INS, 856 F.2d 89, 92-93 (9th Cir. 1988), the Court finds that a continuance at this point would not be for good cause. Had the police department issued a certification, the Court would be more than willing to wait for adjudication of a U visa; however, it appears that the police department is unwilling to issue the certificate for the respondent and the issue of whether they will issue one in the future is speculative.

The Court finds that under the factors listed under Karapetyan v. Mukasey, specifically, the inconvenience to the Court, and the time that the respondent has already been on the docket, and given the speculative nature of whether or not the police department will issue an underlying police certificate, the Court finds that a continuance is not warranted, it is not for good cause. Therefore, the Court is denying

the motion for a continuance.

The respondent seeks no applications for relief, and chooses instead to receive the removal order. The Court will therefore issue that order.

ORDER

IT IS HEREBY ORDERED that the respondent be removed to Guatemala as charged in the Notice to Appear.

If the respondent fails to appear pursuant to a final order of removal at the time and place ordered by the Department of Homeland Security other than because of exceptional circumstances beyond her control, such as a serious illness to the respondent or death of an immediate relative, but nothing less serious, the respondent will become ineligible for certain forms of relief for a period of 10 years from the date that the respondent was scheduled to appear for removal, such as voluntary departure, cancellation of removal, change or adjustment of status.

Please see the next page for electronic signature

LORI R. BASS
Immigration Judge

//s//

Immigration Judge LORI R. BASS

bassl on July 31, 2013 at 8:07 PM GMT