



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 22041

**Wojnar, Nicoleta D., Esq.
Law Office of Nicoleta D. Wojnar
1370 Ontario Street, Suite 1314
Cleveland, OH 44113**

**DHS/ICE Office of Chief Counsel - CLE
1240 E. 9th St., Room 585
Cleveland, OH 44199**

Name: AGUIRRE-BARRON, MIGUEL AN... A 201-217-294

Date of this notice: 11/29/2012

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.

lucasd
Userteam: Docket

Immigrant & Refugee Appellate Center | www.irac.net

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Falls Church, Virginia 22041

File: A201 217 294 - Cleveland, OH

Date:

NOV. 29 2012

In re: MIGUEL ANGEL AGUIRRE-BARRON

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Nicoleta D. Wojnar, Esquire

ON BEHALF OF DHS: Bruce D. Imbacuan
Assistant Chief Counsel

In an oral decision dated October 12, 2011, an Immigration Judge found the respondent removable as charged, as inadmissible as present without being admitted or paroled under section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i); pretermitted his application for voluntary departure under section 240B of the Act, 8 U.S.C. § 1229c; and ordered him removed from the United States to Mexico. The respondent appealed from that decision. The record will be remanded.

Concerning voluntary departure, the Immigration Judge determined that the respondent did not establish statutory eligibility for that relief because he did not demonstrate that he had a valid passport or other travel document. The record reflects that, at the hearing on October 12, 2011, the Immigration Judge asked the pro se respondent if he had a passport, birth certificate, or other document that would allow him to enter Mexico. The respondent answered, "I have them back in Mexico." *See* Tr. at 5. When the Immigration Judge inquired if the respondent could pay his transportation expenses to Mexico, the respondent testified that his cousins would provide him transportation. *See* Tr. at 6. When the Immigration Judge asked if he had any fear of returning to Mexico, the respondent testified, "No," and he designated that country as the one to which he wished to be removed. *See* I.J. at 2; Tr. at 5.

With his appeal, the respondent, who is now represented by counsel, has provided copies of his Mexican driver's license and voter's card, and he states that his passport has been mailed to him from Mexico by his wife.

We find that a remand is warranted, under the circumstances of this case. On remand, the Immigration Judge is to reevaluate the respondent's eligibility for voluntary departure. Initially, the Immigration Judge should determine whether the respondent now has the necessary passport or alternate travel document and whether he meets the other statutory eligibility requirements,

pursuant to the criteria set forth in section 240B(b)(1) of the Act. If the respondent demonstrates statutory eligibility for voluntary departure, the Immigration Judge should consider whether relief is warranted in the exercise of discretion. In making the discretionary determination, the Immigration Judge is to weigh all of the appropriate relevant factors, including any positive factors regarding length of residence, family ties, community ties, property ownership, and employment history, balanced against any adverse factors regarding negative immigration history and criminal background. See *Matter of Thomas*, 21 I&N Dec. 20, 25-26 (BIA 1995); *Matter of Lemhammad*, 20 I&N Dec. 316, 325-326 (BIA 1991). Both the respondent and the Department of Homeland Security ("DHS") may present any and all available evidence that is relevant to the respondent's statutory and discretionary eligibility for voluntary departure. Finally, the respondent may apply for any form of removal relief for which he can demonstrate eligibility.¹

Accordingly, the record will be remanded.

ORDER: The record is remanded.


FOR THE BOARD

¹ To the extent that the respondent seeks humanitarian relief to enable him to remain in the United States, this Board and the Immigration Judges have limited jurisdiction and can grant only those forms of relief from removal that are expressly authorized by Congress. See *Matter of Medina*, 19 I&N Dec. 734 (BIA 1988). We have no power to grant equitable remedies or to confer general humanitarian relief on aliens. If the respondent wishes to obtain relief on humanitarian grounds, he must pursue such relief with the DHS. Any request for relief in the favorable exercise of prosecutorial discretion also must be made to the DHS.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Cleveland, Ohio

File No.: A 201 217 294

October 12, 2011

In the Matter of)
MIGUEL ANGEL AGUIRRE-BARRON) IN REMOVAL PROCEEDINGS
Respondent)

CHARGE: Section 2112(a)(6)(A)(i) of the Immigration and Nationality Act, as amended - you are an alien present in the United States without being admitted or paroled or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT:

Pro se

ON BEHALF OF DHS:

Bruce D. Imbacuan, Esquire
Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 25-year-old male born October 5, 1986, according to the Form I-213, which is marked as Exhibit 2 in this matter. The respondent is a native and citizen of Mexico. The respondent was issued a Notice to Appear on May 19, 2011. It was personally served on him on that date.

At a Master Calendar conducted October 12, 2011, the

respondent appeared without counsel. A sworn Spanish-language interpreter was present in Court. The respondent acknowledged receipt of a copy of the Notice to Appear and was furnished with a copy of the free legal service providers list. The respondent declined the opportunity to obtain counsel prior to the Court proceeding further, whereupon the Court inquired as to the truth of the factual allegations in the Notice to Appear.

The respondent admitted factual allegations 1 and 2 and informed the Court that he first attempted to enter the United States illegally in March of 2009. He was apprehended by the Border Patrol and returned to Mexico. He next entered the United States illegally in March of 2011 across the Texas/Mexico border. He did not have a visa. He was not admitted or paroled after inspection by an Immigration officer.

The Court finds, therefore, by clear and convincing evidence that the respondent is an alien present in the United States without being admitted or paroled. He is, therefore, inadmissible as charged and, consequently, is removable. The respondent designated Mexico as the country for removal.

The respondent informed the Court that he had no fear of returning to Mexico. However, the respondent has no passport or other travel document. While the respondent can obtain money for travel, as he lacks a travel document, he is statutorily ineligible for a grant of voluntary departure.


As the respondent has been found removable by clear and

convincing evidence and as the respondent is ineligible for any form of relief from removal, including voluntary departure, the Court will make the following order:

ORDER

IT IS HEREBY ORDERED that the respondent be removed from the United States to Mexico.

October 12, 2011



D. WILLIAM EVANS, JR.
United States Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before
JUDGE D. WILLIAM EVANS, JR., in the matter of:

MIGUEL ANGEL AGUIRRE-BARRON

A 201 217 294

Cleveland, Ohio

is an accurate, verbatim transcript of the recording as provided by
the Executive Office for Immigration Review and that this is the
original transcript thereof for the file of the Executive Office
for Immigration Review.


Kristen J. Bellotti, Transcriber
Free State Reporting, Inc.

December 1, 2011
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies
that a Sony BEC/T-147, 4-channel transcriber or equivalent, and/or
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