



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: MARTINEZ-FUENTES, EMERSON...**

**A 206-718-042**

**Date of this notice: 2/3/2016**

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:  
O'Leary, Brian M.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A206 718 042 - Arlington, Virginia

Date: FEB - 3 2016

In re: EMERSON ROBERTO MARTINEZ-FUENTES a.k.a. Emerson Martinez-Fuentes

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: George Ralph Adams, Esquire

ON BEHALF OF DHS: Karen Donoso Stevens  
Senior Attorney

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: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of El Salvador, has timely appealed from an Immigration Judge's November 4, 2015, decision, ordering his removal to El Salvador. The record will be remanded to the Immigration Court for further proceedings consistent with this opinion and the entry of a new decision.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, and the likelihood of future events, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015); *Matter of R-S-H-*, 23 I&N Dec. 629 (BIA 2003); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). The Board reviews questions of law, discretion, judgment, and all other issues in an appeal from an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent, on appeal, does not contest the Immigration Judge's findings that he is inadmissible and subject to removal as charged, and, as such, those findings are affirmed. Moreover, the Immigration Judge (I.J. at 2) found that even though the respondent expressed a fear of persecution or torture if returned to El Salvador, he did not file an application for asylum (Form I-589) within the 4-week time frame he had set. We acknowledge the regulations allow the Immigration Judge to consider the application abandoned. *See* 8 C.F.R. § 1003.31(c).

However, under the particular circumstances of this case, bolstered by the arguments and exhibits presented with the appeal (which would appear to lend further support for the respondent's claimed fear of persecution), we find it appropriate to remand the record to the Immigration Judge for further proceedings and the entry of a new decision. On remand, the Immigration Judge will provide the respondent with the opportunity to submit an application (Form I-589) and supporting documentation as to his claimed fear of persecution or torture, as well as to apply for any other form of relief or protection from removal to which he may be entitled.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with this opinion and the entry of a new decision.

  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
ARLINGTON, VIRGINIA

File: A206-718-042

November 4, 2015

In the Matter of

EMERSON ROBERTO MARTINEZ-FUENTES	)	IN REMOVAL PROCEEDINGS
	)	
RESPONDENT	)	

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: KAREN DONOSO STEVENS

ORAL DECISION OF THE IMMIGRATION JUDGE

At a Master Calendar hearing on October 14, 2015, the respondent admitted allegations 1, 2 and 4 in the Notice to Appear dated August 8, 2015. With respect to allegation 3, he claimed entry into the United States in 2007. Based on those admitted allegations and the I-213 submitted by the Government on the same date, I sustained

the charge of removability. That is, the respondent is present without having been admitted or paroled.

I took those pleadings after having provided several weeks for the respondent to seek and obtain a lawyer. But unfortunately he was unable to find a lawyer and, consequently, I proceeded with pleadings from him pro se.

After he pled on the NTA, I asked him whether he had any fear of return to El Salvador. He indicated he had a fear of return. Specifically, he said he feared the gangs. He said that returnees sometimes get shaken down for money or killed by gang members. I told him to fill out and fax me an application for relief, specifically a 589, prior to the next Master Calendar hearing and absent that I would order his removal. I gave him four weeks to do so.

At today's Master Calendar hearing the respondent confirmed he has not sent a 589 to the Court. He continued to express fear of return, this time citing the fact that he says he has been cooperating with U.S. law enforcement in a murder investigation. I note that there is some reference to that in the I-213 previously submitted by the Government. However, there is no indication to me that anyone in the Government, be it U.S. law enforcement or Immigration authorities, seeks to delay his removal as a result of that cooperation. Because the respondent has not followed through and filed an application for relief, there is no application pending for me to consider or on which to hold a Merits hearing.

#### ORDER

In the absence of any requested relief after two previous Master Calendar hearings, it is hereby ordered the respondent be removed from the United States to El Salvador on the charge contained in the Notice to Appear.

If the respondent is in fact providing assistance to U.S. law enforcement

authorities, it is the hope and expectation of the Court that this case will be reviewed accordingly by appropriate U.S. authorities prior to any execution of the removal order.

**Please see the next page for electronic**

**signature**

THOMAS G. SNOW  
Immigration Judge

//s//

Immigration Judge THOMAS G. SNOW

snowt on January 1, 2016 at 3:28 PM GMT