



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*

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Long Beach,, CA 90807**

**DHS/ICE Office of Chief Counsel - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014**

Name: MENDOZA-CARRASCO, NICASIO

A095-725-537

Date of this notice: 9/8/2011

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:
Guendelsberger, John

Immigrant & Refugee Appellate Center | www.irac.net

PS

Falls Church, Virginia 22041

File: A095 725 537 - Los Angeles, CA

Date: SEP 08 2011

In re: NICASIO MENDOZA-CARRASCO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Patrick F. Valdez, Esquire¹

ON BEHALF OF DHS: Jailuk Parrino
Assistant Chief Counsel

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

The Department of Homeland Security ("DHS") has appealed the October 23, 2009, decision of the Immigration Judge terminating the respondent's removal proceedings. The respondent filed a brief opposing the appeal. The appeal will be dismissed.

The factual findings of the Immigration Judge are reviewed to determine whether they are "clearly erroneous." 8 C.F.R. § 1003.1(d)(3). All other issues in appeals from decisions of Immigration Judges, including legal and discretionary determinations and applications of law to fact, are reviewed *de novo*. *Id.*; see also *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

The respondent was in a vehicle accident with a DHS vehicle on June 15, 2005, at which time he was in lawful status, having been lawfully admitted pursuant to a border crossing card (I.J. at 2; Respondent's Motion to Terminate, Exhs. A, C). The respondent was also in lawful status when DHS filed the Notice to Appear ("NTA") on October 25, 2006, charging the respondent as present without being admitted or paroled (I.J. at 2; Exh. 1; Respondent's Motion to Terminate, Exh. B). The respondent, whose then-authorized period of stay extended through November 11, 2006, remained in the United States following that date after being instructed by DHS to remain in the country for the immigration proceedings (I.J. at 2; Tr. at 10-12; Respondent's Motion to Terminate, Exh. B). DHS argues on appeal that it should have been able to amend the NTA at the first hearing

¹ We advise attorney Valdez that 8 C.F.R. § 1003.102(t) requires attorneys to submit a "complete" Notice of Entry of Appearance (Form EOIR-27), which includes providing the full name of the court, to include the state, and marking the appropriate box pertaining to the existence or non-existence of any order restricting the practice of law.

on January 12, 2007, because the respondent by that time had overstayed his authorized period of admission.

The Immigration Judge correctly terminated proceedings. The respondent met his burden to prove that he was lawfully present in the United States pursuant to a prior admission. Sections 240(c)(2)(B), 291 of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(c)(2)(B), 1361; 8 C.F.R. § 1240.8(c); *see also Lopez-Chavez v. INS*, 259 F.3d 1176, 1181 (9th Cir. 2001); *Matter of Cervantes-Tortes*, 21 I&N Dec. 351, 354 (BIA 1996). Specifically, the respondent demonstrated that he was lawfully present in the United States on the date alleged in the NTA and on the date on which he was served with the NTA, which DHS conceded at the hearing below (I.J. at 3; Tr. at 10-11). The respondent demonstrated good faith compliance with immigration procedures at all times, including after being placed in removal proceedings. DHS did not meet its burden to demonstrate that the respondent was removable as charged in the NTA. 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
IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL.
LOS ANGELES, CA 90014

VALDEZ LAW FIRM
PATRICK F. VALDEZ, ESQ.
10305 HAWTHORNE BLVD
INGLEWOOD, CA 90304

IN THE MATTER OF
MENDOZA-CARRASCO, NICASIO

FILE A 095-725-537

DATE: Oct 27, 2009

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:
BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
P.O. BOX 8530
FALLS CHURCH, VA 22041

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL.
LOS ANGELES, CA 90014

X OTHER: See attached J's Decision


COURT CLERK
IMMIGRATION COURT

FF

CC: ASSISTANT CHIEF COUNSEL
606 S. OLIVE STREET 8TH FLOOR
LOS ANGELES, CA 90014

IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL.
LOS ANGELES, CA 90014

In the Matter of:
MENDOZA-CARRASCO, NICASIO

Case No.: A095-725-537

In DEPORTATION Proceedings

Respondent/Applicant

ORDER OF ADMINISTRATIVE RETURN/CERTIFICATION TO THE BOARD

This matter is hereby certified to the Board of Immigration Appeals for the following reason:

- () This case was remanded to the Immigration Court due to a problem with the hearing tapes, transcript, or oral decision.
The problem has been resolved in the manner stated below.
The case is hereby returned to the Board for adjudication of the previously filed appeal(s).
- () This case was remanded to the Immigration Court for consideration of new relief with instructions to certify or return the record to the Board if relief is denied.
Relief was denied for the reasons stated in the decision of the Immigration Judge dated ___/___/___.
The case is hereby returned to the Board for adjudication of the previously filed appeal(s).
- () The Board, not the Immigration Court, has jurisdiction over the motion to reopen/reconsider filed on ___/___/___ by the _____

ADDITIONAL EXPLANATION

The Board remanded the case back to the Court for issuance of a separate decision. A separate decision was prepared and served on the parties in writing.

Lori R. Bass

Immigration Judge
LORI BASS

- () Tapes Enclosed
(X) Written Decision of the Immigration Judge enclosed.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL ☒ (M) PERSONAL SERVICE (P)
TO: ☒ ALIEN ☐ ALIEN c/o Custodial Officer ☐ ALIEN's ATT/REP ☒ DHS
DATE: 3-23-2019 BY: COURT STAFF M. Morrow
Attachments: ☒ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other