U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: PAREDES-AVILA, SANDRA ELIZ... **A 088-139-120**

Date of this notice: 3/24/2014

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:
Grant, Edward R.

williame
Userteam: Docket

File: A088 139 120 – Bloomington, MN

Date: MAR 24 2014

In re: SANDRA ELIZABETH PAREDES-AVILA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mary E. Baquero, Esquire

ON BEHALF OF DHS: Thomas S. Madison
Assistant Chief Counsel

APPLICATION: Removability

The respondent has appealed the Immigration Judge's March 5, 2012, decision. Subsequent to the decision of the Immigration Judge, a final rule was published that allows certain immediate relatives of United States citizens to request provisional unlawful presence waivers prior to departing from the United States for consular processing of their immigrant visa applications. *See* 8 C.F.R. § 212.7(e) (2014); *see also Provisional Unlawful Presence Waivers*, 78 Fed. Reg. 536 (Jan. 3, 2013). The record reflects that the respondent is the beneficiary of an approved visa petition filed by her United States citizen spouse. Given the circumstances of this case, we find that a remand is warranted so that the parties can address whether the respondent is likely to qualify for a provisional unlawful presence waiver and, if so, whether administrative closure would be appropriate.[1]

Accordingly, the following order shall be entered:

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

FOR THE BOARD

[1] We note that on June 15, 2012, the Secretary of the Department of Homeland Security (DHS) announced that certain young people, who are low law enforcement priorities, will be eligible for deferred action. The respondent may be eligible to seek deferred action. Information regarding DHS' Consideration of Deferred Action for Childhood Arrivals may be obtained on-line (www.uscis.gov or www.ice.gov) or by phone on USCIS hotline at 1-800-375-5283 or ICE hotline at 1-888-351-4024.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BLOOMINGTON, MINNESOTA

File: A088-139-120 March 5, 2012

In the Matter of

SANDRA ELIZABETH PAREDES-AVILA	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGE: Section 212(a)(6)(A)(i) - present without admission or parole after inspection by an Immigration officer.

APPLICATION: Voluntary departure.

ON BEHALF OF RESPONDENT: MARY BAQUERO

ON BEHALF OF DHS: LAURA TROSEN

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a citizen of Ecuador who was placed in removal proceedings on July 21, 2010 by the filing with the Immigration Court of the Notice to Appear, Exhibit 1. She was charged with being subject to removal under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act). This charge was based upon allegations that the respondent

arrived in the United States at an unknown location on an unknown date without being admitted or paroled after inspection by an Immigration officer.

At a hearing held on March 7, 2011 the respondent acknowledged receipt of the Notice to Appear and admitted the four factual allegations contained therein as well as conceded the charge of removal. The respondent, through counsel, admitted at that hearing that she would be seeking voluntary departure at the next hearing because an I-130 was to filed by a United States citizen spouse. The respondent did indicate in the hearing on March 7, 2011 in connection with her pleadings that her entry took place in July of 2001. The proceedings were rescheduled to August 1, 2011 for voluntary departure.

Between the first and second hearing the Court received documents from the respondent, Exhibit 3, reflecting that an I-130 had been approved on May 20, 2011 and a 485 adjustment of status application had been tendered. On July 25, 2011, also prior to the second hearing in this case, the Court received a motion from the respondent to change pleadings indicating that she was claiming to have entered the United States through the Miami airport as a minor using the passport of another child in another name, Exhibit 4, page 3. The hearing that was scheduled for August 1, 2001 because, although the Court had granted counsel permission to appear telephonically, no phone number had been provided to the Court

to contact counsel. The case was then subsequently reset to February 27, 2012. The Court received documents from the respondent on February 15, 2012 requesting that an individual hearing be set to consider the respondent's application for adjustment of status, Exhibit 5. The Government opposed that request, Exhibit 6, and the Court denied the request.

Essentially, this case involves a respondent who at her initial master calendar hearing with counsel admitted and conceded the allegations and the charge contained in the Notice to Appear which state that she entered without inspection. At the time the pleadings were taken on March 7, 2011 the respondent and counsel were in possession of the Form I-213, Exhibit 2, which had been tendered at an earlier hearing. Respondent subsequently wanted to change her pleadings because she wants to be eligible to apply for adjustment of status, which requires admission or parole after inspection. The respondent points to the I-213 as some evidence that she initially claimed that she entered with some type of document. See Exhibit 2, page 2. The Court notes that the Form I-213 indicates the respondent claimed to have last entered on an unknown date in July of 2001 at Miami, Florida but did not know what immigration document she possessed to enter the United States, and subsequent record checks did not reveal any documents relating to an entry by the respondent at that time. Subsequently, in her later pleadings the respondent indicates

she used a passport in another name and requested the opportunity to change her pleadings to deny the factual allegations and the charge relating to entry without inspection.

The Court declined to permit the respondent to change her pleadings in this case. First of all, the respondent herself and counsel were aware of any prior claims by the respondent to have entered with some sort of immigration document. They had this information prior to any pleadings being taken in this case and yet the respondent admitted unlawful presence in the United States.

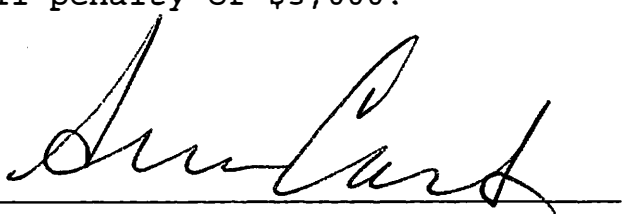
The documents from the Government initially indicate that the respondent claimed to have entered with documents but she did not know what kind they were and then subsequently she ~~not~~ identified notorios the documents but the name that was used when she entered as a juvenile.

The Court notes that at the time the pleadings were taken on March 7, 2011 the respondent had already married a United States citizen and was being assisted by counsel in the filing of the various documents related to that marriage and the immigration procedures associated with that.

The Court finds insufficient basis to allow the respondent to change the pleadings in light of the clear indications at earlier hearings that she was admitting and conceded the allegations and the charge and simply wanted one continuance for purposes of voluntary departure. The Court was

not required to grant such a continuance but chose to do so in the exercise of discretion. Then, suddenly, the respondent's arguments changed to a request for adjustment of status. The Court finds insufficient reason to change course at this point in the case. The respondent has offered no documents other than her own self-serving statement that she was, in fact, admitted and inspected when she entered the United States and the Court will not take any further action related to the request for adjustment of status.

The respondent is eligible for voluntary departure, the Court will grant 60 days voluntary departure upon the posting of a departure bond of $1,000 within five business days of this decision. The respondent must depart the United States on or before May 4, 2012, otherwise the privilege of voluntary departure will be automatically withdrawn without notice and proceedings and an order will be entered immediately that she be deported to Ecuador. She would further then be barred for the next years from applying for voluntary departure, cancellation of removal, and adjustment or change of her immigration status and she would be subject to a civil penalty of $3,000.



SUSAN E. CASTRO
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE SUSAN E. CASTRO, in the matter of:

SANDRA ELIZABETH PAREDES-AVILA

A088-139-120

BLOOMINGTON, MINNESOTA

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.

Karen Seeholzer

KAREN SEEHOLZER (Transcriber)

DEPOSITION SERVICES, Inc.

April 17, 2012

(Completion Date)