



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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130 Delaware Avenue, Room 203  
Buffalo, NY 14202**

**Name: FIGUEROA, ANTONIO**

**A 094-495-476**

**Date of this notice: 2/5/2015**

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

Userteam: Docket

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*STH*

Falls Church, Virginia 20530

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File: A094 495 476 – Buffalo, NY

Date: FEB - 5 2015

In re: ANTONIO FIGUEROA

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Anne E. Doebler, Esquire

ON BEHALF OF DHS: Michele Henriques  
Assistant Chief Counsel

APPLICATION: Temporary Protected Status, Administrative closure

The respondent has appealed from the May 20, 2013, decision by the Immigration Judge denying his application for Temporary Protected Status and ordering him to be removed to El Salvador. The record will be administratively closed.

On appeal, the respondent has filed a motion to administratively close proceedings to pursue a I-601A Provisional Unlawful Presence Waiver under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, in light of the approved I-130 filed by his United States citizen spouse. The Department of Homeland Security (DHS) does not oppose the Board administratively closing proceedings in order to allow the respondent to pursue the provisional waiver. *See, e.g., Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012).

In view of these circumstances, proceedings will be administratively closed in order to allow the respondent the opportunity to pursue legalization under section 245A of the Immigration and Nationality Act, 8 U.S.C. § 1255a(a). In the event the DHS finds the respondent ineligible for the claimed status, the DHS may recommence proceedings by filing a motion to re-calendar.

ORDER: The proceedings are administratively closed.

FURTHER ORDER: Either party may recommence proceedings by filing a motion to re-calendar.

  
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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
BUFFALO, NEW YORK

File: A094-495-476

May 20, 2013

In the Matter of

ANTONIO FIGUEROA

RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: ANNE STOVER

ON BEHALF OF DHS: MICHELE HENRIQUES

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 32-year-old male native and citizen of El Salvador who has admitted the factual allegations set forth and contained in the Notice to Appear and has conceded removability. Based upon those admissions, removal has been established by clear, convincing and unequivocal evidence according to Woodby v. INS, 385 U.S. 276.

In fact, at page two of the Court's decision dated May 21, 2009, the Court specifically said that the respondent, before this Court, has conceded removability and renewed his application for Temporary Protective Status under Matter of Barrientos, 24

I&N Dec. 100 and proceeded to state that in addition to the respondent, this Court received testimony from four witnesses. Those witnesses, however, are not before the Court today. An opportunity was given to the respondent to have the witnesses testify before the Court. The Court has not even received an affidavit setting forth what that testimony may be given the fact that on the prior occasion, it was not transcribed and available for the Court or for the parties. Apparently there was some sort of technical difficulties. But, in any event, that is the testimony of two of the respondent's witnesses that the Court originally had quoted in its decision and that is the testimony of Daniel Figueroa and Jesus Maldonado. The testimony of the witness Daniel Figueroa was stated by the Court at page 5 and the testimony of Jesus Maldonado began at page 5 and went to the top of page 6 of the Court's decision. The Court, having examined the remainder of the decision and the Record of Proceedings herein, finds that even if they were not present then, and are certainly not present now, that would not lead the Court to arrive at any different conclusion. In fact, it is the respondent's burden to come forward under the REAL ID Act with all witnesses or other evidence in support of one's application for relief. And based upon the respondent's testimony today, apparently no effort was made to bring the witnesses into Court or to secure an affidavit. So with all due respect, the Court would indicate that he has failed in carrying his burden. And having done so, the Court says that even without that testimony, the Court would still arrive at the same conclusion as it did in the decision as set forth here and above and more particularly entered on May 21, 2009.

The respondent has continued to request post-conclusion voluntary departure and, accordingly, the Court again will renew its decision in terms of post-conclusion voluntary departure and further order that he be granted the privilege of voluntary departure for a period of 60 days if he posts the bond of \$500 in the next five business

days. Sixty days from today will be July 19, 2013. Five business days from today will be May 28, 2013. So the Court will hereby require that the respondent post the minimal bond of \$500 and do so on or before May 28, 2013, and must do so according to the rules pursuant to Title 8 C.F.R. 1240.26(c)(3)(i-iii). And that, again, must be posted with the Immigration and Customs Enforcement Field Office Director within five business days of the Court's order, which is today, granting him voluntary departure. The Court has further relied upon statements of counsel that he has assured the Court that the respondent is well aware of his responsibilities and counsel has undertaken the responsibility of making certain of that as well. However, the Court further orders that in the event that the respondent fails to depart from the United States within 60 days, he will automatically be ordered removed to El Salvador and may be subject to a civil penalty of \$5,000.

#### ORDER

Having said that, it is the order and judgment of the Court that the respondent's application for Temporary Protective Status be, and the same is, hereby denied, all as set forth in the May 21, 2009, order, which reincorporates by reference here and save and except the two witnesses that are not present to testify, that is Daniel Figueroa and Jesus Maldonado.

And further orders that the respondent shall be granted the privilege voluntary departure, again no later than 60 days from today, which is July 19, 2013, failing which, an immediate order of removal and deportation will be entered against him and of course again subject to the conditions the Court has set forth herein above.

**Please see the next page for electronic**

**signature**

PHILIP J. MONTANTE JR  
Immigration Judge

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//s//

Immigration Judge PHILIP J. MONTANTE JR

montanp on August 19, 2013 at 12:23 PM GMT