



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041*

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26 Federal Plaza, Room 1130
New York, NY 10278**

Name: FILPO DE VASQUEZ, ALTAGRACIA CARMEN

A300-317-878

Date of this notice: 11/15/2011

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

Falls Church, Virginia 22041

File: A300 317 878 - New York, NY

Date: NOV 15 2011

In re: ALTAGRACIA DEL CARMEN FILPO DE VASQUEZ a.k.a.
Altagracia Del Carmen Filpo Filpo

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jennifer J. Rodriguez, Esquire

ON BEHALF OF DHS: Francisco Prieto
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

Sec. 212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] -
Fraud or willful misrepresentation of a material fact


The Department of Homeland Security ("DHS") appeals the decision of the Immigration Judge dated April 28, 2010, terminating these removal proceedings. The record will be remanded.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

We are not persuaded that the Immigration Judge's decision to decline to find that the respondent is removable as charged in the Notice to Appear should be disturbed. The respondent, a native and citizen of the Dominican Republic, testified that she entered the United States at John F. Kennedy International Airport and was permitted to enter the United States after presenting travel documents to an immigration officer. This testimony supports a finding that she is an alien who has been admitted to the United States, and, therefore, subject to removal on the grounds of removability set forth in section 237 of the Immigration and Nationality Act, 8 U.S.C. § 1227, as opposed to the grounds inadmissibility set forth in section 212 of the Act, 8 U.S.C. § 1182. *See Matter of Quilantán*, 25 I&N Dec. 285 (BIA 2010). The DHS's arguments on appeal do not persuade us that the Immigration Judge's decision to credit the respondent's testimony as credible is clearly erroneous. *See* section 240(c)(4)(C) of the Act, 8 U.S.C. § 1229a(c)(4)(C) (stating that, in the absence of an explicit credibility determination, a witness shall have a rebuttable presumption of credibility on appeal). As such, we affirm the Immigration Judge's decision to not find the respondent removable as charged.

Nonetheless, the respondent appears to be an alien who is present in the United States in violation of the immigration laws of this country. Accordingly, we deem it appropriate to remand this matter to the Immigration Judge to provide the DHS the opportunity to lodge additionally factual allegations and charges of deportability under section 237 of the Act. *See* 8 C.F.R. §§ 1003.30, 1240.10(e). If removability is established, the Immigration Judge should determine if the respondent is eligible for any form of relief from removal. Accordingly, the following order is entered.

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



FOR THE BOARD

IMMIGRATION COURT
26 FEDERAL PLZ 12TH FL., RM1237
NEW YORK, NY 10278

In the Matter of

Case No.: A300-317-878

FILPO DE VELASQUEZ, ALTAGRACIA DEL CARME

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Apr 28, 2010
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- [] The respondent was ordered removed from the United States to or in the alternative to .
- [] Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to .
- [] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ _____ with an alternate order of removal to .

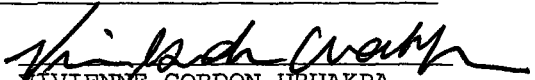
Respondent's application for:

- [] Asylum was () granted () denied () withdrawn.
- [] Withholding of removal was () granted () denied () withdrawn.
- [] A Waiver under Section _____ was () granted () denied () withdrawn.
- [] Cancellation of removal under section 240A(a) was () granted () denied () withdrawn.

Respondent's application for:

- [] Cancellation under section 240A(b)(1) was () granted () denied () withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- [] Cancellation under section 240A(b)(2) was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- [] Adjustment of Status under Section _____ was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- [] Respondent's application of () withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied () withdrawn.
- [] Respondent's status was rescinded under section 246.
- [] Respondent is admitted to the United States as a _____ until _____.
- [] As a condition of admission, respondent is to post a \$ _____ bond.
- [] Respondent knowingly filed a frivolous asylum application after proper notice.
- [] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- [X] Proceedings were terminated.
- [] Other:

Date: Apr 28, 2010


VIVIENNE GORDON-URUAKPA
Immigration Judge

Appeal Waived/Reserved Appeal Due By:

by
R

by
DHS

May 28, 2010