



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 20530

**GUTIERREZ-ZAVALA, MARCELINO
A206-077-351
EOY DETENTION CENTER
1705 E. HANNA ROAD
ELOY, AZ 85131**

**DHS/ICE Office of Chief Counsel - EAZ
P.O. Box 25158
Phoenix, AZ 85002**

Name: GUTIERREZ-ZAVALA, MARCELI... A 206-077-351

Date of this notice: 9/19/2014

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:
Guendelsberger, John

with name

Userteam: Docket

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Falls Church, Virginia 20530

File: A206 077 351 – Eloy, AZ

Date: SEP 19 2014

In re: MARCELINO GUTIERREZ-ZAVALA a.k.a. Marcelino Gutierrez-Savala a.k.a.
Marcelino Zavala-Gutierrez

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Voluntary departure

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's April 15, 2014, decision ordering his removal to Mexico pursuant to sections 212(a)(6)(A)(i) and 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(6)(A)(i), 1182(a)(2)(A)(i)(II). We review an Immigration Judge's 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).

On his Notice of Appeal (Form EOIR-26), the respondent states that "the Immigration Judge failed to meet [her] burden of proving he is removable." However, the respondent admitted that he is an alien present in the United States without being admitted or paroled; therefore, the respondent bears the burden of proving that he is "clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged." 8 C.F.R. § 1240.8(c); *see also* section 240(c)(2)(A) of the Act, 8 U.S.C. § 1229a(c)(2)(A). Moreover, the respondent previously admitted all of the factual allegations contained in the Notice to Appear, and conceded that he is removable as charged (I.J. at 1-2; Tr. at 9-11). *See Perez-Mejia v. Holder*, 663 F.3d 403, 414 (9th Cir. 2011) (holding that if at the pleading stage an alien, either individually or through counsel, makes admissions of fact or concedes removability, and the Immigration Judge accepts them, no further evidence concerning the issues of fact admitted or law conceded is necessary); 8 C.F.R. § 1240.10(c). Furthermore, the respondent has not presented any arguments or evidence on appeal regarding either charge of removability. In light of the foregoing, we affirm the Immigration Judge's decision regarding the respondent's removability.

On appeal, the respondent asserts that the Immigration Judge erred in not granting him voluntary departure. We note that at the April 10, 2014, hearing the respondent expressed his desire to pursue voluntary departure (Tr. at 16-17). However, in her decision the Immigration Judge states that she did not proceed with a voluntary departure hearing because the respondent indicated that he wished to reserve appeal (I.J. at 2-3). A respondent's desire to preserve his right to appeal does not preclude him from establishing eligibility for post-conclusion voluntary departure under section 240B(b) of the Act, 8 U.S.C. § 1229c(b). In light of the foregoing, we find it appropriate to remand proceedings in order for the Immigration Judge to clarify whether the respondent wishes to apply for post-conclusion voluntary departure under section 240B(b) of

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the Act, and to evaluate any application for such relief. Accordingly, the following order will be entered.

Accordingly, the following order will be entered.

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



FOR THE BOARD

Immigrant & Refugee Appellate Center | www.irac.net

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ELOY, ARIZONA

File: A206-077-351

April 15, 2014

In the Matter of

MARCELINO GUTIERREZ-ZAVALA

RESPONDENT

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)

IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, present in the United States without being admitted or paroled after inspection by an Immigration officer; Section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act, convicted of a controlled substance violation.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: DANIEL A. CRIMMINGS

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

The respondent is a single male, native and citizen of Mexico. The United States Department of Homeland Security brought these removal proceedings against the respondent under the Immigration and Nationality Act. Proceedings commenced with the filing of a Notice to Appear with the Immigration Court dated February 23, 2014.

See Exhibit 1.

At a master calendar hearing, respondent admitted the five factual

allegations as contained in the Notice to Appear, asserting that he last entered the United States approximately 14 years ago. He also conceded the two charges of inadmissibility as referenced above. Independent of respondent's admissions and concessions, the Government submitted conviction records contained in Exhibit 2. Based upon the Court's independent review of the conviction records as submitted by the Government, in addition to respondent's admissions and concessions, the Court sustained not only the factual allegations, but also the two charges of inadmissibility as referenced above.

Respondent designated Mexico as the country of removal, expressing no fear of return to that country. When questioned by the Court, respondent told the Court that he has three United States citizen children, and his father who is a lawful permanent resident. However, no one has ever filed any petition on the respondent's behalf and he also has not ever received any type of legal documents for the United States.

The Court found that based upon the respondent's conviction as alleged in factual allegation 5 and as supported by the conviction documents contained in Exhibit 2, that respondent was statutorily ineligible for cancellation of removal for certain nonpermanent residents. There is also no citizenship claim to be analyzed in this case. There did not appear to be any other form of relief that this respondent was eligible to seek before this Court.

Respondent request voluntary departure and the Government expressed their opposition to that request. The Court set this case until today, April 15, 2014, for the consideration of voluntary departure for the respondent. However, the respondent, at this continued master hearing, indicated to the Court that he wished to reserve appeal regarding the Court's finding that he was not eligible for any form of relief.

Accordingly, the Court did not proceed with a voluntary departure hearing.

Based upon the above, the Court sustains the factual allegations contained in the Notice to Appear and sustains the two charges of inadmissibility. The Court does not find any form of relief that this respondent is eligible to seek before this Court at this time. Accordingly, the following orders are entered.

ORDER

IT IS HEREBY ORDERED that the two charges of inadmissibility as referenced above are sustained.

IT IS HEREBY ORDERED that the respondent be removed from the United States to Mexico.

LINDA I. SPENCER-WALTERS
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE LINDA I. SPENCER-WALTERS, in the matter of:

MARCELINO GUTIERREZ-ZAVALA

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ELOY, ARIZONA

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

Maria Kimball

MARIA KIMBALL (Transcriber)

DEPOSITION SERVICES, Inc.-2

JULY 14, 2014

(Completion Date)