U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: HONG, SEUNG MIN **A072-971-915**
Riders: 072-971-916

Date of this notice: 4/30/2012

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:
Holmes, David B.

Files: A072 971 915 - San Francisco, CA
A072 971 916

Date: APR 30 2012

In re: SEUNG MIN HONG a.k.a. Seung Hong
JONG MI HONG a.k.a. Jong Mi Kim

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENTS: Devin T. Theriot-Orr, Esquire

ON BEHALF OF DHS: Grace H. Cheung
Assistant Chief Counsel

APPLICATION: Reopening; remand

This final administrative order in these proceedings was entered by the Board on June 27, 2006, when we dismissed the respondents' appeal. On March 15, 2012, the respondents filed a third motion to reopen with the Board, which is both untimely and number-barred. *See Matter of Oparah*, 23 I&N Dec. 1 (BIA 2000). The Department of Homeland Security ("DHS") opposes the motion, but requests a remand to amend the charges of removability. The respondent's motion to reopen will be granted, but the DHS's request for remand will be denied.

Initially, we find no basis to remand for the purpose of the DHS to amend the charges of removability. The issue of removability has already been litigated before the Immigration Judge, the Board, and the United States Court of Appeals for the Ninth Circuit. Moreover, the DHS has not submitted any new or previously unavailable evidence in support of their desire to amend the charges of removability nor have they explained the almost 6 year delay in bringing this to the Board's attention.

Turning to the respondents' motion to reopen to apply for adjustment of status. The respondents' do not allege that their motion falls within any of the exceptions to the time and numerical limitations on motions to reopen, but request that the Board exercise its sua sponte authority to reopen their proceedings so that they may apply for adjustment of status. While we have considered the DHS's opposition to the respondents' motion, given the totality of the circumstances presented in this case, the proceedings are reopened under the provisions of 8 C.F.R. § 1003.2(a), and the record will be remanded to the Immigration Judge to provide the respondents an opportunity to pursue applications for adjustment of status. Accordingly, the following orders will be entered.

ORDER: The DHS's motion to remand is denied.

FURTHER ORDER: The respondent's motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings not inconsistent with this order and entry of a new decision.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HOUSTON, TEXAS

File: A020-683-429 January 24, 2012

In the Matter of

DAVID M. ZAVALA	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Section 237(a)(2)(A) convicted of an aggravated felony.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: VICTOR P. LEHMAN

ORAL DECISION OF THE IMMIGRATION JUDGE

According to Form I-213, the respondent is a 45-year-old male, native and citizen of Mexico. He is in removal proceedings addressing the Notice to Appear ~~filing.~~ found at Exhibit 1, dated December 9, 2011. On the Notice to Appear he is charged with being subject to removal as stated above. The charge is that he has been convicted of an aggravated felony as that term is defined in Section 101(a)(43)(G) of the Act, relating to a

theft or burglary offense.

Respondent was first in court on January 9, 2012. He asked for and received time to find counsel to represent him. He was unable to find counsel to represent him when he returned to court on January 24 and he told the Court he was not going to have counsel represent him. Therefore, the Court required him to speak for himself. In speaking for himself, respondent admits that each of the allegations on the Notice to Appear are true. In particular, he admits that he is not a citizen of the United States. He was born in Mexico, is a citizen of Mexico. He adjusted his status to a lawful permanent resident in July of 1977 under Section 245 of the Act. Then in August of 2008 he was convicted in Parmer County, Texas, for burglary of habitation and sentenced to confinement for a period of five years.

The Court has also considered as evidence the information at Exhibit 2, the Form I-213, which establishes to the satisfaction of the Court that respondent is a permanent resident of the United States as of July 13, 1977. He was born in Mexico and neither his mother or father are nationals or citizens of the United States. Therefore, the Court finds that the respondent is not a citizen of the United States either.

We also have at Exhibit 2, a conviction record that describes respondent's conviction for burglary of habitation. There is an indictment as well, which reads that the respondent

in pertinent part did intentionally and knowingly enter a habitation without the effective consent of the owner of the habitation, intending to commit an assault against another individual.

Before that, there is an enhancement paragraph which shows the respondent was previously convicted of importing a quantity of marijuana by the United States District Court for the Western District of Texas on the 30th day of December 1993.

The Court is satisfied that in the posture of this case respondent cannot avail himself of relief from removal because he has been convicted of an aggravated felony. The Court further notes that prior to learning the respondent had been convicted of importing marijuana, the Court questioned respondent concerning his relatives in the United States and whether or not they are U.S. citizens. The respondent's parents are not U.S. citizens nor is he married to a U.S. citizen, nor does he have children over the age of 21 who are U.S. citizens. Respondent is deemed by the Court to be ineligible as a matter of fact for possible 212(h) waiver in conjunction with adjustment of status, if not as well ineligible as a matter of law.

But in any event, the Court finds that he is subject to removal by clear and convincing evidence and that there is no form of relief available to him because he told the Court that he does not fear for his life or freedom if returned to Mexico.

The respondent told the Court that he would like to reserve appeal, which came as a surprise to the Court. So the Court asked respondent, to ensure the Court had not overlooked something important, why he was appealing his decision and he told the Court that he thought that he was a U.S. citizen because his grandparents were U.S. citizens who raised him. The Court does not share his opinion.

And the following is the order of the Court.

ORDER

IT IS ORDERED the respondent be removed from the United States to Mexico on the charge sustained on the Notice to Appear, Exhibit 1.

JIMMIE LEE BENTON
United States Immigration Judge

CERTIFICATE PAGE

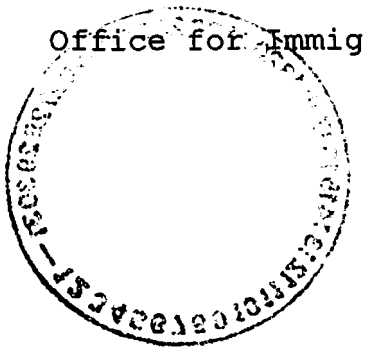
I hereby certify that the attached proceeding before JUDGE JIMMIE LEE BENTON, in the matter of:

DAVID M. ZAVALA

A020-683-429

HOUSTON, TEXAS

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.



Meghan M. Gourley

MEGHAN M. GOURLEY (Transcriber)

DEPOSITION SERVICES, Inc.

FEBRUARY 29, 2012

(Completion Date)