



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 20530

**MONGE, RONY VLADIMIR
A205-503-682
GLADES COUNTY DETENTION CENTER
P.O. BOX 39
MOOREHAVEN, FL 33471**

**DHS/ICE Office of Chief Counsel - KRO
18201 SW 12th St.
Miami, FL 33194**

Name: MONGE, RONY VLADIMIR

A 205-503-682

Date of this notice: 10/3/2013

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:
Mullane, Hugh G.
Pauley, Roger
Cole, Patricia A.

schuckec
Userteam: Docket

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AS

Falls Church, Virginia 22041

File: A205 503 682 – Miami, FL

Date:

OCT 3 2013

In re: RONY VLADIMIR MONGE

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Margarita I. Cimadevilla
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)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
Immigrant - no valid immigrant visa or entry document

Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] -
Crime involving moral turpitude

APPLICATION: Remand

The respondent, a native and citizen of El Salvador, has appealed the Immigration Judge's decision dated May 14, 2013, which ordered him removed from the United States. The Department of Homeland Security ("DHS") has argued that the Immigration Judge's decision should be affirmed.¹ The record will be remanded to the Immigration Court for further proceedings.

We review findings of fact, including the Immigration Judge's determination of credibility, under a clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The issue before us on appeal is whether the respondent was accorded his due process right to a full and fair hearing. *See Ibrahim v. INS*, 821 F.2d 1547, 1550 (11th Cir. 1987). As best that can be surmised from the respondent's pro se filing, he appears to argue, inter alia, that he was not on notice that his first hearing was also his final hearing, that he was not given enough time to represent himself and comprehend his circumstances, including his ties in the United

¹ We note that the record before us does not indicate that the respondent waived his right to appeal, as suggested by the DHS in its brief (DHS's Br. at 2 n2; *see* Tr. at 8).

Cite as: Rony Vladimir Monge, A205 503 682 (BIA Oct. 3, 2013)

States and his fear of returning to El Salvador, and that his convictions were based on “questionable infractions.”

Upon review of the record, we conclude that further proceedings in this case are appropriate in view of the specific circumstances of this case. During the respondent’s one and only immigration hearing on May 14, 2013, the respondent opted to represent himself, and admitted that he is residing in the United States as an immigrant without proper documents (Tr. at 2-3). When the Immigration Judge asked the respondent if there is any reason why he cannot return to El Salvador, the respondent indicated that he feared he will be killed by gangs (Tr. at 5-6). Although the Immigration Judge informed the respondent that he can make an application explaining his fear of returning to El Salvador, this statement was preceded and followed by the Immigration Judge’s suggestion to the respondent that the hearing was “not the proper forum” to address his fear and that his claim was probably not sufficient enough, to which the respondent responded with, “Well, if not, then just deport me” (Tr. at 6).

The transcript shows that inquiry into the respondent’s expressed fear was cursory and minimal. There is also a concern that the Immigration Judge’s comments may have had an unintended effect of dissuading the respondent from submitting an application for relief from removal based on his fear of returning to El Salvador, in contravention of the regulations in 8 C.F.R. § 1240.11(c)(1). Accordingly, to ensure that the respondent has a reasonable opportunity to present evidence on his behalf, we will remand the record to the Immigration Court for further proceedings. The following order shall be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings.



FOR THE BOARD

IMMIGRATION COURT
18201 S.W. 12TH ST
MIAMI, FL 33194

In the Matter of

Case No.: A205-503-682

MONGE, RONY VLADIMIR
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on May 14, 2013.
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 El Salvador
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.
[] Proceedings were terminated.

Other:

Date: May 14, 2013

John Opactuch
Immigration Judge

Appeal: Waived/Reserved Appeal Due By: