



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

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**DHS/ICE Office of Chief Counsel - DAL  
125 E. John Carpenter Fwy, Ste. 500  
Irving, TX 75062-2324**

**Name: RODRIGUEZ-GUTIERREZ, MAR...**

**A 204-502-251**

**Date of this notice: 12/8/2015**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Grant, Edward R.

USCIS  
User team: Docket

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Falls Church, Virginia 22041

**RODRIGUEZ-GUTIERREZ, MARCO  
ANTONIO  
A204-502-251  
C/O DAVID L MOSS JUSTICE CTR  
300 N. DENVER AVE  
TULSA, OK 74103**

**DHS/ICE Office of Chief Counsel - DAL  
125 E. John Carpenter Fwy, Ste. 500  
Irving, TX 75062-2324**

**Name: RODRIGUEZ-GUTIERREZ, MAR...      A 204-502-251**

**Date of this notice: 12/8/2015**

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Grant, Edward R.

03/01/2016  
User team: Donna Carr

Immigrant & Refugee Appellate Center, LLC | [www.irac.net](http://www.irac.net)

Falls Church, Virginia 22041

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File: A204 502 251 – Dallas, TX<sup>1</sup>

Date: DEC - 8 2015

In re: MARCO ANTONIO RODRIGUEZ-GUTIERREZ

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Jonathan Earthman, Esquire

APPLICATION: Remand

The respondent appeals from an Immigration Judge's August 4, 2015, decision ordering him removed from the United States to Mexico. During the pendency of the appeal the respondent filed a motion to remand. The Department of Homeland Security ("DHS") has not filed a brief on appeal. 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).

The respondent's removability under section 237(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(B), is not contested. I.J. at 3. However, the respondent requests a remand for further evaluation of his potential eligibility for relief. In support of the request for remand, the respondent cites to passages in the transcript which relate to the question of whether the respondent effectively communicated with the Immigration Judge. The respondent asserts he believed he was represented by counsel, but counsel was not present, either in the Immigration Court or at the tele-conference site in Tulsa, Oklahoma. Affidavits from the respondent and the respondent's mother, detailing the respondent's confusion and resulting difficulties in communicating with the Immigration Judge, have been submitted as well.

Considering the totality of the circumstances presented in this matter, we conclude that is it appropriate to remand the record to the Immigration Judge to provide the respondent with a renewed opportunity to meaningfully exercise the privilege of legal representation (at no expense to the Government) in these removal proceedings and a renewed opportunity to apply for relief from removal. *See* section 292 of the Act, 8 U.S.C. § 1362. At the present time, we express no opinion regarding the ultimate outcome of these proceedings. The following order is entered.

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

  
\_\_\_\_\_  
FOR THE BOARD

<sup>1</sup> The Immigration Judge conducted these proceedings at Dallas, Texas; the respondent appeared by tele-conference from Tulsa, Oklahoma. *See* section 240(b)(2)(A)(iii) of the Act.

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

File: A204-502-251

August 4, 2015

In the Matter of

MARCO ANTONIO RODRIGUEZ-GUTIERREZ )  
RESPONDENT )

IN REMOVAL PROCEEDINGS

CHARGES: Section 237(a)(1)(B) of the Immigration and Nationality Act (the Act) - in that after admission as a non-immigrant under Section 101(a)(15) of the Act you have remained in the United States for a longer time than permitted in violation of this Act or any other law of the United States.

APPLICATIONS: None

ON BEHALF OF RESPONDENT: PRO SE  
PRO SE  
C/O Tulsa County Jail  
300 North Denver Avenue  
Tulsa, Oklahoma 74103  
Subject Id# 353320857  
Fins# 1145177929

ON BEHALF OF DHS: HEATHER GRAHAM, Esquire  
Assistant Chief Counsel  
Dallas, Texas

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent is a native and citizen of Mexico. He was admitted to the

United States at San Diego, California on or about October 10, 1997 as a non-immigrant with authorization to remain in the United States for a temporary period not to exceed six months. He remained in the United States beyond six months without authorization from the Immigration and Naturalization Service or its successor, the Department of Homeland Security. Consequently the Department of Homeland Security (hereafter referred to as the Government) charged the respondent with removal pursuant to Section 237(a)(1)(B) of the Immigration and Nationality Act (the Act) as admitted in that after admission as a non-immigrant under Section 101(a)(15) of the Act he has remained in the United States for a longer time than permitted in violation of this Act or any other law of the United States. Exhibit 1.

On July 28, 2015 before Immigration Judge Michael Baird the respondent acknowledged he received the Notice to Appear and it was placed in the record as Exhibit 1. On July 28, 2015 the respondent informed Judge Baird that he was represented by an attorney by the name of Steven Hall. Mr. Hall failed to appear for this hearing. Nonetheless, Judge Baird continued the respondent's case until today, August 4, 2015, to allow the respondent to seek counsel and for counsel to appear.

At today's hearing on August 4, 2015 the respondent appeared pro se by video. The respondent indicated that he was represented by a person by the name of Steve Hall and that Steve Hall had made a request for telephonic hearing. The Court informed the respondent that it had not received any documents such as an E-28 indicating that Mr. Hall represents him in any proceedings. In addition, the Court had not received any request for a telephonic hearing from Mr. Hall or any other attorney. In addition, the Court has not received any documentation from any attorney who claims to represent the respondent such as an E-28 or any motion requesting telephonic in this case. The Court also asked the Government Attorney whether or not they had any

notification that the respondent was represented by Mr. Hall or any attorney.

Government Counsel indicated that they had no documentation indicating that respondent was represented by Mr. Hall or any attorney in this case.

The Court finds respondent has been given sufficient enough time to have representation or Mr. Hall to be present to represent him and the Court proceeded with the respondent's case and respondent spoke for himself.

Respondent testified that he is a native and citizen of Mexico, that he was admitted to the United States at San Diego, California on or about October 10, 1997 as a visitor, that he had authorization to remain in the United States for a temporary period not to exceed six months. Respondent testified that he remained in the United States beyond six months without authorization from the Immigration Service or the United States Government. Based on respondent's statements to the Court and his admissions to the factual allegation the Court found that the respondent's removal had been established by clear and convincing evidence pursuant to Section 237(a)(1)(B) of the Act in that he has remained in the United States for a longer time than permitted. In case removal became necessary respondent designated Mexico.

The Court asked several questions to determine whether the respondent would be eligible for any relief from removal. Respondent indicated that he is not married and that he does not have any children. Respondent further testified that his parents are in the United States but they are in the United States illegally. He also testified that he presently does not have the funds to depart the United States voluntarily.

Based on the respondent's statements to the Court the Court determined that respondent was not eligible for any relief from removal. Specifically the Court found that respondent cannot establish he is eligible for cancellation of removal for certain

non-permanent residents even though he has been in the United States since 1997 because he has no qualifying relatives. That is the respondent does not have a spouse or children that are either citizens of the United States or permanent residents. He indicated that his parents are in the United States illegally.

Based on respondent's statements to the Court the Court determined again that there is no relief available for the respondent. Accordingly the following order shall enter.

ORDER

IT IS HEREBY ORDERED that respondent should be deported from the United States to Mexico based on the charge contained in the Notice to Appear.

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DEITRICH H. SIMS  
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE DEITRICH H. SIMS,  
in the matter of:

MARCO ANTONIO RODRIGUEZ-GUTIERREZ

A204-502-251

DALLAS, TEXAS

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



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EMILY JOAN AUSTIN (Transcriber)

DEPOSITION SERVICES, Inc.-2

September 24, 2015

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(Completion Date)