U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: HERNANDEZ-XOQUI, MIGUEL A... **A 205-526-157**

Date of this notice: 2/26/2016

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:
Wendtland, Linda S.
Pauley, Roger
Greer, Anne J.

Userteam: Docket

File: A205 526 157 – Philadelphia, PA

Date: FEB 26 2016

In re: MIGUEL A. HERNANDEZ-XOQUI

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sandra Greene, Esquire

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

APPLICATION: Termination

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's July 24, 2014, decision denying the respondent's motion to suppress, granting his application for voluntary departure, and alternatively ordering him removed from the United States to Mexico. The record will be remanded for further proceedings consistent with this decision.

The respondent filed a motion to suppress evidence and to terminate proceedings with the Immigration Judge, arguing that the Department of Homeland Security's evidence was obtained in violation of the Fourth Amendment to the U.S. Constitution and federal regulations. The respondent's motion was supported by his declaration. The respondent was approached by Immigration and Customs Enforcement agents just outside his multi-building apartment complex on or about October 18, 2012.

At the September 10, 2013, removal hearing, the Immigration Judge concluded that the respondent did not establish a prima facie case for suppression of evidence arising from and related to his October 18, 2012, arrest (Tr. at 48-49, 52). The Immigration Judge relied on the contents of the Form I-213 to find that the respondent is a Mexican national who is present in the United States without having been admitted or paroled. He found the respondent inadmissible as charged (Tr. at 49-50, 52). The Immigration Judge granted the respondent's application for voluntary departure.

The respondent asserts on appeal that the Immigration Judge did not issue a separate decision adjudicating the respondent's motion to suppress and consequently his decision is insufficient for administrative review. *See* Respondent's Brief at 19, 24-25. The respondent is correct. The Immigration Judge's July 24, 2014, decision incorporates by reference his September 10, 2013, decision denying the respondent's motion to suppress and terminate (I.J. at 2-3). However, the September 10, 2013, decision is contained in the hearing transcript, not in a separate decision. Additionally, at that hearing the Immigration Judge was considering motions to suppress filed by three different respondents in three different cases (Tr. at 14-48). For example, the discussion transcribed in pages 39-48 of the transcript does not relate to this respondent.

The Immigration Judge's evaluation of the evidence and legal analysis is cursory and precludes us from meaningfully reviewing the merits of his determination. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999) (an oral decision must summarize the relevant facts, reflect the Immigration Judge's analysis of the applicable statutes, regulations, and legal precedents, and clearly set forth the Immigration Judge's legal conclusion). Accordingly, the record will be remanded to allow the Immigration Judge to issue a separate decision addressing the respondent's motion to suppress and terminate.

The Immigration Judge should address the specific arguments raised in the respondent's motion to suppress evidence and terminate proceedings, and provide adequate reasons for his decision. *Matter of S-H-,* 23 I&N Dec. 462 (BIA 2002) (stating that because the Board's fact finding ability on appeal is limited, it is important for Immigration Judges to include in their decisions clear and complete findings of fact that are supported by the record and are in compliance with controlling law). Accordingly, the following order is entered.

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

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
PHILADELPHIA, PENNSYLVANIA

File: A205-526-157 July 24, 2014

In the Matter of

MIGUEL ANGEL HERNANDEZ-XOQUI	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Violation of INA 212(a)(6)(A)(i)

APPLICATIONS: Motion to suppress

ON BEHALF OF RESPONDENT: ANDREW MAHON, ESQUIRE
126 EAST CHESTNUT STREET
LANCASTER, PENNSYLVANIA 17602

ON BEHALF OF DHS: KAREN FOX, ESQUIRE
OFFICE OF CHIEF COUNSEL
NIX FEDERAL BUILDING
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PHILADELPHIA, PENNSYLVANIA 19107

ORAL DECISION OF THE IMMIGRATION JUDGE

Introduction and Jurisdictional Statement

On October 24, 2012 the Department of Homeland Security filed a Notice to Appear against the above-named respondent. The filing of his charge document

commenced proceedings and vested jurisdiction with this Court. The Notice to Appear has been admitted into evidence as Exhibit 1.

Analysis

At a master calendar hearing the respondent denied the charges in the Notice to Appear including the alienage of the respondent. The Department of Homeland Security filed an I-213 in which it established the alienage of respondent as being from Mexico. In response to that filing the respondent filed a motion to suppress the Form I-213 as the fruit of an unconstitutional search in violation of the Supreme Court's decision in Lopez-Mendoza permitting the suppression of evidence in Immigration Court where it is egregious or a product of widespread violations. Government responded opposing the motion to terminate by its filing on August 26, 2013. The respondent submitted additional documentation in support of his claim for suppression on August 7, 2013 and the Court heard the matter on September 10, 2013.

On September 10, 2013 the Court, after reviewing the documentation submitted by the parties, concluded that the respondent had not established a prima facie case for an evidentiary hearing on a motion to suppress pursuant to the Board's decision in Matter of Barcenas, 19 I&N Dec. 609 (BIA 1988). As a result of the Court's decision on that date, September 10, 2013, the Court examined the I-213, determined that the respondent was of Mexican alienage, thereby establishing his alienage in these proceedings, and then further concluded that the facts set forth in the I-213, a presumptively reliable document, did indeed establish the factual allegations in the Notice to Appear as well as the charge of removability pursuant to INA 212(a)(6)(A)(i). As a result the Court found the respondent, a 21-year-old native and citizen of Mexico, removable from the United States as charged.

The Court continued the matter for the respondent to determine what, if any, further relief might be available to him.

At a further master calendar hearing the respondent introduced evidence that he was married to an individual who has been granted status under deferred action for childhood arrival ("DACA"). The Court has determined that while the respondent does have a marriage to a person in that status, that that status in no way can provide the respondent with any further status in this country. As a result the Court is not in a position to continue the case any longer, nor is the Court in a position to give the respondent any further opportunity to establish a lawful basis to remain in the country. Respondent has asked for post-conclusion voluntary departure. The Court will grant respondent the 60 days post-conclusion voluntary departure, meaning the respondent must depart the United States by September 22, 2014. The Court in this decision incorporates by reference in totality the decision it rendered on September 10, 2013 when it denied the motion to suppress for failure to establish a prima facie case under Matter of Barcenas. As a result the Court will enter the following orders in this matter:

ORDERS

IT IS HEREBY ORDERED that the respondent's motion to suppress evidence in this case be and hereby is denied.

IT IS HEREBY ORDERED that the respondent be granted voluntary departure. The Court has determined that respondent is subject to the charges in the Notice to Appear and the respondent has made application solely for voluntary departure in lieu of removal.

IT IS HEREBY ORDERED that respondent be granted voluntary departure at the conclusion of these proceedings under Section 240B(b) of the Act in lieu of

removal without expense to the Government on or before September 22, 2014 or any extensions as may be granted by the Field Office Director of the Department of Homeland Security and under any other conditions the Field Office Director may direct.

IT IS FURTHER ORDERED that respondent post a voluntary departure bond in the amount of $500 with the Department of Homeland Security within five business days or by July 31, 2014.

IT IS FURTHER ORDERED that respondent provide to the Department of Homeland Security his passport or other travel documentation to assure sufficient lawful entry into the country to which the alien has departed within 60 days of this order or within any time extensions that may be granted by the Department of Homeland Security.

IT IS FURTHER ORDERED that if any of the above-ordered conditions are not met as required, or if respondent fails to depart as required, the above grant of post-conclusion voluntary departure shall be withdrawn without further notice or proceedings and the following order will be entered pursuant to 8 C.F.R. 1240.26(d) and shall become effective immediately: Respondent shall be removed to Mexico on the charges in the Notice to Appear.

Respondent is hereby advised that if he fails to voluntarily depart the United States within the time specified or within any extensions that may be granted by the Department of Homeland Security, respondent will be subject to the following penalties: (1) Respondent will be subject to a civil monetary penalty of not less than $1,000 nor more than $5,000; the Court has set a presumptive civil monetary penalty of $3,000. (2) Respondent will be ineligible for a period of 10 years to receive cancellation of removal, adjustment of status, registry, voluntary departure, or a change in non-immigrant status.

Respondent is further advised that if he appeals this decision to the Board of Immigration Appeals, within 30 days of filing such an appeal sufficient proof of having posted the voluntary departure bond must be filed with the Board. The Board will not reinstate voluntary departure period in its final order if respondent does not submit timely proof to the Board that voluntary departure bond has been posted.

Respondent is further advised that if he does not appeal this decision and instead files a motion to reopen or reconsider during the voluntary departure period, the period allowed for voluntary departure will not be stayed, tolled or extended. The grant of voluntary departure will be terminated automatically. The alternate of removal will take effect immediately and the above penalties for failure to depart voluntarily under Section 240B(d) of the Act will not apply.

Please see the next page for electronic signature

STEVEN A. MORLEY
Immigration Judge

//s//

Immigration Judge STEVEN A. MORLEY

morleys on December 22, 2014 at 9:50 PM GMT