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 22041

DIXON, ODANE CARLTON
A 045-881-695
4250 FEDERAL DRIVE
BATAVIA, NY 14020

DHS/ICE Office of Chief Counsel - BTV
130 Delaware Avenue, Room 203
Buffalo, NY 14202

Name: DIXON, ODANE CARLTON **A045-881-695**

Date of this notice: 3/20/2012

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:
Kendall-Clark, Molly

File: A045 881 695 - Batavia, NY Date: MAR 20 2012

In re: ODANE CARLTON DIXON

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Michael G. Dreher
Assistant Chief Counsel

The respondent, a native and citizen of Jamaica who was born on May 4, 1989, and admitted to the United States as a lawful permanent resident on July 11, 1997, appeals the decision of the Immigration Judge, dated December 19, 2011, ordering his removal from this country. We will dismiss the respondent's appeal.

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)(i), (ii).

We affirm the Immigration Judge's decision. Even though the respondent was born in Jamaica, he believes that he may have a claim to United States citizenship on a derivative basis.[1] A person who claims derivative United States citizenship has the burden to establish it. *See Matter of Leyva*, 16 I&N Dec. 118, 119 (BIA 1977). While we recognize that there are numerous laws which govern derivative United States citizenship claims, all of the derivative citizenship laws which potentially affect the respondent's claims require that the alien have (or had) at least one parent who is (or was) a citizen of the United States in order for the derivative citizenship claim to be recognized. *See* sections 320, 322 of the Immigration and Nationality Act, 8 U.S.C. § 1431, 1433; *see also* section 101(c) of the Act, 8 U.S.C. § 1101(c); former section 321 of the Act (as in effect prior to the effective date of the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000)); *Colaianni v. INS*, 490 F.3d 185 (2d Cir. 2007); *Smart v. Ashcroft*, 401 F.3d 119 (2d Cir. 2005); *Matter of Guzman-Gomez*, 24 I&N Dec. 824 (BIA 2009);*Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153(BIA 2001).

Most applicable to the respondent's current situation, section 320(a) of the Act, would potentially allow for the respondent to be recognized as a citizen of the United States if, between February 27, 2001 (the effective date of the Child Citizenship Act of 2000), and May 4, 2007 (the respondent's 18th birthday), he was residing in the United States in the legal and physical custody

[1] Aside from the respondent's arguments concerning derivative citizenship issues, the respondent raises no other issues on appeal. In particular, he does not dispute that, absent a showing that he is a citizen of the United States, he is subject to removal from the United States as a result of his criminal history. The respondent does not allege eligibility for any form of relief from removal.

of an United States citizen parent pursuant to a lawful admission for permanent residence. Pursuant to section 320(b) of the Act, section 320(a) of the Act, is applicable to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1) of the Act.

The respondent contends that he previously resided in the United States with his grandmother and that when "she filed for [him] she was already an American citizen." However, such claims are insufficient to bring forth a viable claim to United States citizenship as the respondent does not claim that either of his parents were citizens of the United States or that his grandmother ever adopted him. *See* 8 C.F.R. § 320.1 ("adopted means adopted pursuant to a full, final, and complete adoption"). As such, the respondent has not met burden of establishing a derivative citizenship claim.

We recognize that the respondent believes that he should have been afforded additional time to obtain evidence in support of his claims. However, it is not clear what evidence he seeks to obtain. Much less, he does not allege that evidence exists which would indicate that he was adopted by his grandmother. Mere evidence that the respondent's grandmother had "custody" of the respondent is not sufficient to establish that the respondent's grandmother adopted the respondent. Upon consideration of the respondent's claims, we conclude that the respondent has not demonstrated that the Immigration Judge should have further continued these removal proceedings. *See* 8 C.F.R. §§ 1003.29, 1240.6; *Matter of Perez-Andrade*, 19 I&N Dec. 433 (BIA 1987); *Matter of Sibrun*, 18 I&N Dec. 354 (BIA 1983) (holding that a decision denying a motion for a continuance will not be reversed on appeal unless the alien establishes - by a full and specific articulation of the particular facts involved or evidence which he would have presented - that the denial caused him actual prejudice and harm, and materially affected the outcome of his case).

On appeal, the respondent has presented numerous documents, including a copy of his alleged grandmother's Jamaican birth certificate, a copy of her certificate of naturalization, a copy of her certificate of marriage, and copies of the respondent's permanent resident card, Social Security card, and Jamaican birth registration form. However, the Board does not consider evidence first provided on appeal. *See* 8 C.F.R. § 1003.1(d)(3)(iv). Additionally, we decline to remand these proceedings to the Immigration Judge to consider the evidence in the first instance as such evidence has not been shown to affect the outcome of this case. *See Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992). In particular, the evidence presented does not establish that the respondent potentially acquired United States citizenship on a derivative basis. Accordingly, we will not disturb the Immigration Judge's removal order in this case. The following order is entered.

ORDER: The respondent's appeal is dismissed.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BATAVIA, NEW YORK

File: A045-881-695 December 19, 2011

In the Matter of

ODANE CARLTON DIXON	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Immigration and Nationality Act Section 237(a)(2)(A)(iii) and that the respondent at any time after admission has been convicted of aggravated felony as defined in Section 101(a)(43)(F) of the Act, a crime of violence (as defined in Section 16 of Federal 18 United States Code, but not including a purely political offense) for which the term of imprisonment ordered is at least one year. INA Section 237(a)(2)(A)(iii) and that the respondent at any time after admission has been convicted of an aggravated felony as defined in Section 101(a)(43)(G) of the Act, a law relating to a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment ordered is at least one year.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: MICHAEL DREHER

ORAL DECISION OF THE IMMIGRATION JUDGE

I. STATEMENT OF FACTS

The respondent in this case is a 22-year-old male, native and citizen of the country of Jamaica. Jurisdiction with this Court vested by way of a Notice to Appear dated June 6, 2011, whereby the Department of Homeland Security charged the respondent with removability from the United States pursuant to the afore-referenced charges of removal.

The respondent appeared before this Court for master calendar hearing on October 27, 2011, whereby the contents of the Notice to Appear were fully explained to the respondent as were his rights in these removal proceedings. The respondent asked for time to obtain an attorney. The matter was reset to a master calendar hearing for November 9, 2011.

On November 9, 2011, the respondent appeared before this Court without counsel and indicated to the Court he was still trying to obtain an attorney to represent him. The matter was reset to another master calendar hearing for November 23, 2011. On November 23, 2011, the respondent again appeared before the Court. He was without counsel at that time. The respondent was given a final continuance to try to obtain an attorney and the matter was reset to December 5, 2011. The Court advised the respondent the case must go forward next time whether the respondent was able to obtain counsel or not and in that the respondent had been given three adjournments to try to

obtain representation.

On December 5, 2011, a master calendar hearing was conducted. The respondent did not have counsel and was required to answer to the charges contained in the Notice to Appear. Respondent admitted all of the factual allegations contained in the Notice to Appear. Specifically, the respondent admitted, 1) he is not a citizen or national of the United States. The respondent admitted 2) that he is a native and citizen of Jamaica. The respondent admitted to the Court that he was admitted to the United States at New York, New York, on or about July 11, 1997, as a lawful permanent resident. Respondent admitted factual allegation 5, in that he was convicted of the crime of attempted robbery in the second degree in violation of Section 110-160.10(1) of the New York State Penal Law pursuant to a conviction entered on or about January 21, 2011, in the Supreme Court state of New York, county of Kings. When queried by the Court, the respondent indicated that he never filed an appeal of that criminal conviction.

In answer to factual allegation 5, the respondent admitted that for the crime, he was sentenced to a term of imprisonment of at least one year. The respondent indicated that he was sentenced to a term of imprisonment of three years and that he, in fact, served 27 months of incarceration for that offense. The respondent conceded his removability as charged as an alien convicted of an aggravated felony, crime of violence.

The respondent also conceded the charge of removability as an alien convicted of an aggravated felony theft offense.

Based on the respondent's admissions to the factual allegations contained in the Notice to Appear as well as the respondent's admissions and concessions of the charge of removability, as well as this Court's review of the Government's documentary evidence of record found at Group Exhibit 2, the Court does find that removability in this case has been established by evidence that is clear and convincing.

The Court notes that the respondent's conviction for attempted robbery in the second degree in this Court's legal opinion is categorically a crime of violence in that the respondent's offense under Section 160.10(1) of the New York State Penal Law requires that the respondent be found guilty of robbery in the second degree when he forcibly steals property and when he is aided by another person actually present. The Court finds that categorically, the respondent's conviction constitutes a crime of violence as defined in Title 18 United States Code Section 16(b) in that the offense is a felony that by its nature, involves a substantial risk of physical force against the person or property of another, may be used in the course of committing the offense.

As noted, the respondent was sentenced to three years of imprisonment for that offense and therefore, the Court finds that the respondent's offense clearly qualifies as an aggravated

felony crime of violence as defined in INA Section 101(a)(43)(F). The Court also finds that the respondent's conviction for attempted robbery in the second degree also constitutes a theft offense under the aggravated felony definition found at Section 101(a)(43)(G) for which the respondent was sentenced to a term of imprisonment of over one year. Therefore, removability in this case has been established by evidence that is clear and convincing.

The respondent did not advance any applications for relief from removal in this case. The respondent was admitted to the United States as a lawful permanent resident when he was approximately 8 years old. The respondent indicated to the Court that his parents never naturalized as United States citizens and the respondent was given a continuance to try to explore as to whether his grandmother had ever become a United States citizen or whether the grandmother had ever adopted the respondent.

On today's date, December 5, 2011, the respondent reported that he was not able to obtain any evidence to demonstrate those facts and the Court finds that because the ~~respondent~~ Government has established alienage in this case, the burden shifts to the respondent to demonstrate that he has a claim to United States citizenship and that he has not done so on this record. Therefore, the Court finds it appropriate to proceed with these removal proceedings. It appears that the respondent

does not have a claim to derivative citizenship.

The respondent indicated that he does not have a fear of being persecuted or harmed if returned to Jamaica, the country that he designated for removability. The Court notes that by virtue of the respondent's aggravated felony conviction, he is statutorily ineligible for cancellation of removal as a lawful permanent resident. Therefore, the following orders shall enter:

ORDER

IT IS ORDERED the respondent is ordered removed to the country of Jamaica on the charges contained in the Notice to Appear.

STEVEN J. CONNELLY
United States Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE STEVEN J. CONNELLY, in the matter of:

ODANE CARLTON DIXON

A045-881-695

BATAVIA, NEW YORK

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.

Jessica L. Pineda

JESSICA L. PINEDA (Transcriber)

DEPOSITION SERVICES, Inc.

FEBRUARY 3, 2012

(Completion Date)