



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 22041*

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Atlanta, GA 30303**

Name: OCHOA, RAUL MALDONALDO

A028-892-793

Date of this notice: 6/30/2011

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:
Guendelsberger, John

Immigrant & Refugee Appellate Center | www.irac.net

Falls Church, Virginia 22041

File: A028 892 793 - Atlanta, GA

Date: **JUN 30 2011**

In re: RAUL MALDONALDO OCHOA a.k.a. Gallegos a.k.a. Raul Ochoa-Mendoza

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Carol Pelton, Esquire

ON BEHALF OF DHS: Sirce Elliott
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. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under
section 212(a)(6)(C)(i) of the Act [8 U.S.C. § 1182(a)(6)(C)(i)] -
Fraud or willful misrepresentation of material fact ¹

APPLICATION: Continuance; voluntary departure

The respondent, a native and citizen of Mexico, timely appeals the Immigration Judge's February 17, 2009, decision denying the respondent's request for a continuance and for voluntary departure under section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b), and ordering the respondent removed from the United States. The Department of Homeland Security has filed an opposition to the appeal. The record will be remanded for further proceedings.

On appeal the respondent argues that the record does not support the Immigration Judge's decision and that proceedings were conducted in a manner that deprived the respondent of a fair hearing.² For the reasons discussed below, we find that a remand is warranted.

¹ The Department of Homeland Security withdrew this charge (I.J. at 2; Tr. at 17).

² The record before us does not contain a transcript for the hearing conducted on August 7, 2008.

At the October 14, 2008, Master Calendar hearing, the respondent was initially identified by the wrong A number (Tr. at 1).³ As the hearing continued there was a lengthy conversation with an unidentified person and it appears that the hearing may have been conducted relying on the file of a different alien (Tr. at 7-14). Ultimately, the Immigration Judge's decision denying voluntary departure was based, in part, on a finding that the respondent illegally entered the United States on four different occasions, but the record does not contain evidence of or admission by the respondent of four illegal entries (I.J. at 2, 4; Tr. at 21-22).

At the February 17, 2009, hearing, the DHS attorney agreed to withdraw the charge under section 237(a)(1)(A) of the Act with regard to the respondent's alleged inadmissibility pursuant to section 212(a)(6)(C)(i), but entered into evidence various documents suggesting that in 1998 Raul Ochoa-Mendoza was convicted of an attempted illegal entry by false and misleading representation (I.J. at 2; Tr. at 17). *See* Exh. 2. We are troubled by the Immigration Judge's reliance on the 1998 conviction documents given his refusal to permit the respondent additional time to prepare an argument and a response on the matter (I.J. at 1-3; Tr. at 18-19, 22-23). Additionally, this conviction appears to have prompted the Immigration Judge's characterization of the respondent's immigration history as "dreary" and "sordid" (I.J. at 4-5). These comments are inappropriately derogatory in the context of this case.

Finally, the Immigration Judge denied voluntary departure based on adverse factors without balancing against them the respondent's equities, including his marriage to a United States citizen and family ties to the United States. For these reasons, the record will be remanded to the Immigration Judge for further proceedings.

ORDER: The record is remanded to the Immigration Judge for further proceedings, including the preparation of a complete record of proceedings adequate for appellate review.



FOR THE BOARD

³ The appeal also came to us originally under a wrong A number. By interim order dated June 26, 2009, the Board granted a motion by the Department of Homeland Security to correct the respondent's alien number from A 029 892 793 to A 028 892 793.



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MEMORANDUM TO THE FILE

Name: RAUL MALDONALDO OCHOA Date: 07/05/11

A # 028-892-793

PLEASE NOTE:

- ☐ The Immigration Judge's decision in this case is complete; however, it is paginated incorrectly.
- ☐ The Immigration Judge's / DD Visa's decision in this case is missing page ____.
- ☐ The type of proceedings indicated on the Immigration Judge's decision should read "Removal Proceedings."
- ☒ The "A" number is incorrect on the Immigration Judge's decision. The correct "A" number is: # 028-892-793.
- ☐ The name of the Immigration Judge's decision is incorrect. The correct name is: _____.
- ☐ The date of the Immigration Judge's decision is incorrect. The correct date is: _____.

Nancy A. Abbott, Acting Team Leader
Program Staff, Transcription Unit

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Atlanta Georgia

File No.: A 029 892 793

February 17, 2009

In the Matter of)
)
RAUL MALDONALDO OCHOA) IN REMOVAL PROCEEDINGS
)
Respondent)

CHARGE: Section 212(a)(6)(A)(i).

APPLICATIONS: Continuance and voluntary departure.

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

Carol Pelton

Kirsey Elliott

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent was placed in removal proceedings with the filing of a Notice to Appear with the Court on March 5, 2008, charging removability pursuant to 212(a)(6)(A)(i) and 237(a)(1)(A) of the INA. Respondent appeared at a Master Calendar represented by counsel on August 7, 2008, admitted the factual allegations, conceded removability, and requested relief in the form of voluntary departure. The Government objected to proceeding in that they did not have their file. The Court granted a continuance based on the Government's request.

A second Master was held on today's date, at which respondent amended his written pleadings to deny factual

allegation number 6 and deny both charges of removability.

Respondent denied the charges of removability as he was charged under both 212 and 237 of the Act. The Government withdrew the 237(a)(1)(A) charge. Respondent requested a continuance to respond to the 212(a)(6)(A)(i) charge. The Court denied that as that charge had been lodged for approximately one year and at one time had been admitted. There is no surprise to the respondent to the 212(a)(6)(A)(i) charge.

Given the admission to factual allegations numbers 1 through 5, the burden shifted, under Section 291 of the INA, to the respondent to establish date, manner, and method of last entry. Counsel for respondent had no documents to establish that he has, in fact, been inspected, admitted, or paroled into the United States. Under oath, the respondent testified he has entered the United States illegally on four different occasions. In 1998, he attempted to enter the United States by falsely claiming to be a United States citizen (Exhibit 2). He also admitted this under oath. Therefore, the Court would find that factual allegation number 6 has been sustained. Given the burden is on the respondent to establish that he has been inspected, admitted or paroled into the United States, the Court would find that he has failed to meet his burden, and would, therefore, sustain the 212(a)(6)(A)(i) charge.

As far as relief, the respondent requested a further continuance to further research whether he was eligible for

relief, indicating that they believed he had been living in the United States in excess of ten years and had a qualifying relative or relatives. It is appropriate to note that when he appeared in court with counsel in August of 2008, he testified he entered the United States in 2001. No mention was made of any prior entries. Given the conviction in the United States District Court and his testimony that he was returned to Texas, the Court would deny any continuance to "research" relief. Respondent cannot make a prima facie showing of eligibility for relief. The Court will not grant a continuance for that purpose.

In the alternative, he has requested the privilege of voluntary departure. At the close of proceedings, voluntary departure may be granted if an individual meets certain requirements. Given the fact that the respondent has requested relief other than voluntary departure, he would be placed under the conclusion of proceedings voluntary departure. At this point in time, the alien bears the burden to establish both that he is eligible for relief and that he merits a favorable exercise of discretion. Matter of Gamboa, 14 I&N Dec. 244 (BIA 1972); Matter of Arguelles, 22 I&N Dec. 811 (BIA 1999). To establish eligibility, the alien must prove that he has been physically present in the United States for at least one year immediately preceding service of the Notice to Appear; is and has been a person of good moral character for at least five years immediately preceding his application of voluntary departure; is

not removable under 237(A) (2) (aggravated felony) or 237(A) (4) (security and related grounds); and has established by clear and convincing evidence that he has the means to depart the United States and intends to do so. The alien must be in possession of a valid travel document. 8 C.F.R. 1240.26(c) (2). He also must post a voluntary departure bond in an amount necessary to insure that he will depart. The amount of the voluntary departure bond must be at least \$500, and has to be posted within five business days of the voluntary departure order.

Even if an individual meets the statutory and regulatory requirements, he must still demonstrate that a favorable exercise of discretion is warranted. The Court is entitled to weigh relevant adverse and positive factors, including the alien's prior Immigration history; criminal history, if any; length of residence in the United States; and extent of family businesses and societal ties in the United States. Given the respondent's dreary history of violating Immigration laws and his absolute and total disrespect for those laws, the Court is not inclined to favorably allow him to benefit from those same laws that he has been so flagrantly violating repeatedly in the past. His own testimony establishes that he entered the United States on at least four different occasions. Of notable concern to the Court is that he was convicted in 1998 for attempting illegal entry by false and misleading misrepresentation. Both the related documents and his testimony showed that he falsely claimed to be

a United States citizen and attempted to enter on December 23, 1998. Given his sordid history of violating Immigration laws, the Court would not favorably exercise discretion and grant voluntary departure in this case. The respondent will be ordered removed from the United States to Mexico.

Based on a third evaluation of the entire record, the Court enters the following orders:

ORDER

IT IS ORDERED that respondent's application for a continuance is denied.

IT IS FURTHER ORDERED that respondent's application for voluntary departure is denied.

IT IS FURTHER ORDERED the respondent shall be removed from the United States to Mexico on the charge contained in the Notice to Appear.


J. DAN PELLETIER, SR.
Immigration Judge

CERTIFICATE PAGE


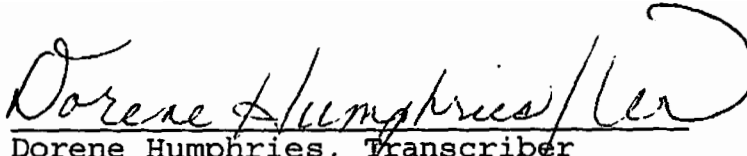
I hereby certify that the attached proceeding before
JUDGE J. DAN PELLETIER, SR., in the matter of:

RAUL MALDONALDO OCHOA

A 029 892 793

Atlanta, Georgia

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.



Dorene Humphries, Transcriber
Free State Reporting, Inc.

April 16, 2009
(completion date)

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