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

ZARZUELA, JENNSEY JOSUE
INMATE #: 24246-038/A# 044-821-167
INMATE HOUSING: CED
118 COUNTY RD., #206
HASKELL, TX 79521

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

Name: ZARZUELA, JENNSEY JOSUE **A044-821-167**

Date of this notice: 12/8/2011

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:
Adkins-Blanch, Charles K.

File: A044 821 167 - Big Spring, TX

Date: DEC 08 2011

In re: JENNSEY JOSUE ZARZUELA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Dawnita J. Grimes
Assistant Chief Counsel

This case was previously before the Board on April 5, 2011, when we (i) concluded that the respondent had not knowingly and intelligently waived appeal of the Immigration Judge's February 22, 2011, decision, and (ii) remanded the record for the Immigration Judge to prepare a full decision and to return the record to us for consideration of the respondent's appeal. The subsequent April 27, 2011, decision by the Immigration Judge ordered the removal of the respondent, a native and citizen of the Dominican Republic, after finding that he had not established United States citizenship. The record will be remanded.

To meet the requirements for derivative citizenship under former section 321(a) of the Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed by section 103(a), Title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), effective date Feb. 27, 2001), an individual must meet the following requirements:

> A child born outside of the United States of alien parents ... becomes a citizen of the United States upon fulfillment of the following conditions: (1) The naturalization of both parents; or (2) The naturalization of the surviving parent if one of the parents is deceased; or (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if (4) Such naturalization takes place while such child is under the age of eighteen years; and (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

Applying a de novo standard of review, we affirm the Immigration Judge's determination that the respondent had not established before the Immigration Judge that he acquired United States citizenship through adoption by his United States citizen grandfather. First, the respondent had not

demonstrated that he was adopted. The chief evidence on which the respondent relied, a January 8, 2009, sworn statement by his parents (Exh. 3), refers to a grant of "guardianship and custody" in June 1993, and not to an adoption. Second, the respondent had not submitted evidence showing that the conditions listed at any of sub-sections (1), (2), or (3) of former section 321(a) of the Act, as outlined above, apply to him and have been met. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 164 (BIA 2001).

On appeal, however, the respondent has submitted a document that he claims establishes his adoption by his biological grandfather on April 25, 1993.[1] We deem the appeal to be a motion to remand, which we will grant in order to permit the Immigration Judge to consider the new evidence – and any related evidence the respondent can present on remand – and its effect on the respondent's claim. *See Matter of Grijalva*, 21 I&N Dec. 27, 37 (BIA 1995); 8 C.F.R. § 1003.1(d)(3)(iv).[2]

Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceedings.

FOR THE BOARD

[1] The document appears to relate to adoption proceedings by both Santos Martinez and Mercedes De la Cruz Martinez.

[2] On remand the Immigration Judge must conduct fact-finding regarding the claimed adoption and the conditions listed in former section 321(a) of the Act.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1100 COMMERCE ST., ROOM 404
DALLAS, TX 75242

ZARZUELA, JENNSEY JOSUE
ROLLING PLAINS DETENTION CTR
118 COUNTY RD., #206
HASKELL, TX 79521

IN THE MATTER OF FILE A 044-821-167 DATE: Apr 27, 2011
ZARZUELA, JENNSEY JOSUE
24246-038

__ UNABLE TO FORWARD - NO ADDRESS PROVIDED

_X_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
P.O. BOX 8530
FALLS CHURCH, VA 22041

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
1100 COMMERCE ST., ROOM 404
DALLAS, TX 75242

__ OTHER: _____

_____

COURT CLERK
IMMIGRATION COURT FF

CC: GRIMES, DAWNITA
125 E. HWY 114, STE 500
IRVING, TX, 75062

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

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
JENNSEY JOSUE ZARAZUELA	)	**File No.:** A 044 821 167
	)	
	)	
Respondent	)	
	)	

On Behalf of Respondent
Respondent, *pro se*

On Behalf of the Department
Dawnita Wilson Grimes, Esq.
Assistant Chief Counsel
DHS/ICE/Litigation Unit
125 E. John Carpenter Fwy., Suite 500
Irving, TX 75062-2324

DECISION AND ORDER OF THE IMMIGRATION JUDGE

This matter was again before this Court following a remand from the Board of Immigration Appeals dated April 5, 2011. The BIA remanded the case to give the Respondent a meaningful opportunity to discuss his right to appeal the Court's Order of Removal dated February 22, 2011. When the full record of proceedings was returned to the Court, the Immigration Judge noticed that in all of the prior proceedings, Respondent had never been given an opportunity to express whether or not he feared to return to the Dominican Republic, his country of nativity and citizenship[1]. Respondent returned to the Court on April 19, 2011. At that hearing, Respondent was specifically asked if he feared return to the Dominican Republic. Respondent, at that time, indicated that he had no fear of returning to his home country. At that point, the Court's order of February 22, 2011 (which ordered Respondent removed to the Dominican Republic) was reinstated for the reasons set forth below[2].

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[1] Removability had previously been established in extensive proceedings before the original Immigration Judge who initially heard the case, but the transcript does not reflect whether Respondent had been specifically asked whether or not he feared return to his native country. After that Immigration Judge retired, the present IJ was assigned to complete this matter.

[2] If Respondent had expressed a fear of return, the Court would have allowed him to seek relief under Deferral of Removal. (See discussion below).

Respondent is a native and citizen of the Dominican Republic. The present proceedings commenced when the Department of Homeland Security (hereinafter "DHS") issued a Notice to Appear dated February 24, 2008. The Notice was served on Respondent the next day [Exhibit 1]. In the Notice to Appear, DHS alleged that Respondent was subject to removal as a consequence of his conviction in the United States District Court for the District of Massachusetts on May 6, 2004 for the offenses of Conspiracy to Possess MDMA with Intent to Distribute, in violation of Title 21 U.S.C. Section 846; Possession of MDMA with Intent to Distribute in violation of Title 21 U.S.C. Section 841(a)(1) and Aiding and Abetting in violation of Title 18 U.S.C. Section 2. For these offenses, Respondent was sentenced to 97 months imprisonment.

At a Master Calendar conducted on September 17, 2008 before the original Immigration Judge assigned to the case, Respondent denied factual allegation 1 in the Notice to Appear, claiming that he became a U.S. Citizen when his U.S.C. grandparents adopted him. He admitted that he was a native and citizen of the Dominican Republic (Allegation 2), but denied that he was admitted in 2002 as a Lawful Permanent Resident (Allegation 3)[3]. Respondent admitted the conviction set forth above and the penalty he received for same (Allegations 4 and 5).

DHS submitted documents relating to Respondent's conviction [Exhibit 2], and removability was eventually established by clear and convincing evidence. The Dominican Republic was eventually designated as the country of removal, and as noted above, Respondent expressed no fear of returning there. Because Respondent's conviction for a drug trafficking-related offense made him ineligible for cancellation of removal under Section 240A(a) of the Act, and because the drug trafficking-related offense, as a "particularly serious crime" barred relief under asylum [Section 208(a)], withholding of removal under the Act [Section 241(b)(3)], or withholding of removal under the United Nations Convention Against Torture, the only relief available to Respondent, had he expressed a fear of return, would have been under the United Nations Convention Against Torture's deferral of removal provisions[4]. As noted above, however, Respondent expressed no fear of return to the Dominican Republic, so that avenue of relief was foreclosed, as well.

As can be seen from the Record of Proceedings, Respondent repeatedly claimed that his biological parents (apparently natives and citizens of the Dominican Republic[5]) had allowed Respondent's maternal grandparents to adopt him in the Dominican Republic. This, according to respondent, gave him the right to be considered a citizen of this country as a derivative of his grandparents, and, therefore, not subject to removal. Respondent was given numerous opportunities to submit documents in support of his claim, but the only documents Respondent could ever produce was certified copies of a document dated January 9, 2009 from the Dominican Republic, consisting of a sworn statement by Respondent's parents that they granted *"guardianship and custody"* of Respondent to his grandparents in 1993. The document further claims that the original Notary who

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[3] Respondent claimed he entered as a legal resident in 1984.

[4] The conviction likewise barred voluntary departure.

[5] No evidence was ever submitted that Respondent's parents had any legal status in the United States.

prepared the 1993 document was now deceased, and that the original document was lost [Exhibit 3].

Respondent also filed a Form N-600 with U.S. Citizenship and Immigration Services, claiming derivative citizenship pursuant to Section 321 of the Act. In support of his application, respondent submitted the sworn statement referenced above [Exhibit 3]. By letter dated April 20, 2010, U.S.C.I.S. denied Respondent's application, noting that his parents had no claims to citizenship, and that the sworn statement was insufficient proof that he had been adopted by his grandparents in 1993.

Even after the denial of the N-600, Respondent continued to claim that he could produce the documents to show his grandparents had in fact adopted him in 1993. Given the difficulty Respondent had in obtaining the documents due to his continued detention, the Court granted Respondent several additional continuances to attempt to procure the claimed adoption documents.

On February 22, 2011, the Court finally concluded that Respondent could not produce the documents at issue, and ordered Respondent removed to the Dominican Republic, based on the charges contained in the Notice to Appear. As late as the hearing on April 19, 2011 (after the Board's remand), Respondent continued to claim that he could produce the documents at issue[6]. As of the date of this written decision, the Court has not received any further communication from Respondent.

Respondent was not able to prove that he was legally adopted by his grandparents, and could not, therefore, show that he was entitled to claim derivative citizenship under Section 321 of the Act Given the nature of Respondent's conviction and his lack of fear of returning to the Dominican Republic, the Court has no choice other than to order Respondent's removal to his home country. Accordingly, the following Orders are entered:

[6] At the April 19, 2011 hearing, Respondent stated that his wife was traveling to the Dominican Republic in a further attempt to retrieve the documents.

ORDER

IT IS ORDERED that Respondent's claim to derivative citizenship pursuant to Section 321 of the Act be and is hereby DENIED, because Respondent can not produce sufficient proof that he is entitled to claim derivative citizenship through his grandparents.

IT IS FURTHER ORDERED that Respondent, having previously been found subject to removal by clear and convincing evidence, and in the absence of any relief, be and is hereby ordered from the United States to the Dominican Republic, based on the charges contained in the Notice to Appear.

Dallas, Texas, this 27th day of April, 2011.

James A. Nugent
Immigration Judge