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

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DHS/ICE - Office of Chief Counsel
10400 Rancho Road
Adelanto, CA 92301

Name: WHITE, GLENDON A

A 024-619-428

Date of this notice: 9/19/2013

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:
Liebowitz, Ellen C
Mullane, Hugh G.
Creppy, Michael J.

TranC
Userteam: Docket

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WHITE, GLENDON A
A024-619-428
C/O CUSTODIAL OFFICER
10400 RANCHO ROAD
ADELANTO, CA 92301

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10400 Rancho Road
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Name: WHITE, GLENDON A

A 024-619-428

Date of this notice: 9/19/2013

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:
Liebowitz, Ellen C
Mullane, Hugh G.
Creppy, Michael J.

TranC
Userteam: **Docket**

File: A024 619 428 - Los Angeles, CA Date: SEP 19 2013

In re: GLENDON A WHITE a.k.a. Glendon Anthony White a.k.a. John George Danvers a.k.a. Glenn White

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Michael J. Lichtenstein, Esquire

ON BEHALF OF DHS: Marty Ryan
Deputy Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

Lodged: 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)(2)(A)(i)(II) of the Act

APPLICATION: Reinstatement of removal proceedings; remand

The Department of Homeland Security ("DHS") has filed a timely appeal from the Immigration Judge's decision dated April 23, 2013, which determined that the DHS had not established the respondent's removability by clear and convincing evidence, and terminated these removal proceedings. The DHS has also filed a motion to remand, seeking to lodge additional allegations and an additional charge of removability against the respondent. The respondent, a native of Jamaica and citizen of Canada, has filed a cross-appeal challenging his continued detention. He has also filed a response brief in support of the Immigration Judge's decision. The respondent's request for a fee waiver is granted. *See* 8 C.F.R. § 1003.8(a)(3). His cross-appeal will be dismissed. The record will be remanded for further proceedings in light of the DHS's appeal and motion to remand.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the DHS contends that the Record of Sworn Statement (Form I-877) signed by the respondent (Exh. 2), standing alone, establishes that he is removable as charged by clear and convincing evidence. Before the Immigration Judge, the respondent testified that the Record of Sworn Statement was incomplete, as it did not reflect his most recent entry into the United States in December 2012. The Immigration Judge held that in light of the respondent's sworn testimony, the DHS was required to provide evidence regarding the preparation of the document,

and in particular relating to the completeness of the document. However, the Record of Sworn Statement, prepared in the regular course of the agency's business, is presumed to be reliable in the absence of indicia of unreliability. *See generally Matter of Ponce-Hernandez*, 22 I&N Dec. 784 (BIA 1999); *Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1998) (providing that documentary evidence is admissible if it is probative and its use is fundamentally fair); *see also Sanchez v. Holder*, 704 F.3d 1107 (9th Cir. 2012) (reiterating that a comparable government-prepared document, the Form I-213 (Record of Deportable/Inadmissible Alien), is inherently reliable absent any indication of coercion or inaccuracy, where the information reflected on the form was provided by the alien him or herself).

Apart from noting the respondent's testimony that such record was allegedly incomplete, the Immigration Judge did not explain whether the presumption of reliability was rebutted, or otherwise adequately explain her conclusion that the Record of Sworn Statement was insufficient to establish the respondent's removability (I.J. at 2-3). Consequently, we remand the record to the Immigration Judge for further factfinding and analysis in this regard. *See Matter of A-P-*, 22 I&N Dec. 468, 477 (BIA 1999) (stating that the Immigration Judge is "responsible for the substantive completeness of the decision").

The DHS has also submitted a motion requesting that we remand the proceedings to the Immigration Judge so that the DHS may lodge additional allegations and an additional charge against the respondent. The DHS has supported its motion to remand with a Form I-261 (Additional Charges of Inadmissibility/Deportability), as well as documentation relating to the respondent's removability based on the lodged charge. As a final order of removal has not yet been issued in the respondent's case, the DHS retains the authority to lodge additional charges against the respondent. *See* 8 C.F.R. §§ 1003.30 (providing that the DHS may lodge additional or substituted charges of removability in writing "[a]t any time during . . . removal proceedings"), 1240.10(e) (same); *see also, e.g., Bravo-Pedroza v. Gonzales*, 475 F.3d 1358 (9th Cir. 2007). On remand, the Immigration Judge shall read the lodged allegations and charge to the respondent and take the respondent's pleadings on the new allegations and charge. *See* 8 C.F.R. § 1003.30. In view of our decision to remand the record on the foregoing bases, we find it unnecessary to address the DHS's remaining appellate arguments.

In his cross-appeal, the respondent challenges his continued detention. However, we do not review custody determinations in the context of an appeal from a decision on the merits. *See, e.g., Matter of R-S-H-*, 23 I&N Dec. 629, 630 n.7 (BIA 2003). We therefore will dismiss the respondent's cross-appeal. Accordingly, the following orders will be entered.

ORDER: The respondent's cross-appeal is dismissed.

FURTHER 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
LOS ANGELES, CALIFORNIA

File: A024-619-428 April 23, 2013

In the Matter of

GLENDON A. WHITE	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Remain longer than permitted.

APPLICATIONS: Termination.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: CAROLYN THOMPKINS

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 57-year-old male who is a native of Jamaica and citizen of Canada. He was placed in removal proceedings by issuance of a Notice to Appear dated March 20, 2013, charging him with being removable from the United States because he remained longer than permitted. The Government alleges that the respondent was admitted as a visitor, a B-2 visitor with permission to remain for a temporary period not to exceed six months on June 1, 2009 and that he remained in the United States beyond six months without permission from the Government.

The respondent was advised of his right to counsel, declined to obtain

counsel, and instead chose to represent himself. He admitted allegations 1, 2, and 3, but denied allegation 4 and instead testified that he last entered the United States in December of 2012, that he did not remain longer than permitted because while he was here in 2009, he did not remain beyond the six months. He went back to Canada and then returned when family issues required that he return to the United States in December of 2012. The case was rescheduled for the Government to prepare.

At the resumed hearing, the Government presented their evidence of removability, consisting of a record of sworn statement at administrative proceedings, Immigration and Naturalization Service, Form I-877. This form shows that the statement was taken from the respondent prior to the last hearing on March 20, 2013 by an ICE Officer, R. Cavedo. The form states that she was taking his sworn statement regarding his entry without inspection into the United States. However, the statement itself indicates that he says that he entered by showing a passport to the Immigration Officer in June of 2009. The respondent contests the accuracy of this document. While he admits that he did enter the United States in June of 2009, he denies that that was his last entry. He denies that he told the officer that was his last entry and that the form is incomplete because he told her about his entry in December of 2012 and told her about his father being a U.S. citizen and that those items are not contained in the form. He does not deny that the rest of the information in the form is accurate but he does claim the form is incomplete. The Government declined the opportunity to present the officer or any other evidence regarding this statement or any other evidence of his removability.

The Government argues that they do not need to present the officer because the statement that the officer took is inherently reliable. However, there is no evidence regarding the circumstances under which the statement was taken, whether it

was tape recorded, whether this is a complete transcript of the entire question and answer that the respondent had with the officer, whether or not the officer prepared the statement as the questions and answers were given. No evidence or information was provided regarding the conditions under which the statement was provided. The Court would agree that the statement is inherently reliable. However, once the respondent challenges the accuracy of the document, then the Government has the burden to prove that the document is accurate and in this case is a complete transcript of the question and answer that occurred between the respondent and the ICE Officer. The Government has failed to do so. The document was, therefore, marked for identification purposes only; Exhibit 2.

The Government has not provided any other evidence of the respondent's removability and the Court finds that the Government has failed to establish by clear and convincing evidence that the respondent is removable as charged. Accordingly, the Court is terminating removal proceedings.

ORDER

IT IS ORDERED that respondent's removal proceedings be terminated.

ROSE PETERS
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE ROSE PETERS, in the matter of:

GLENDON A. WHITE

A024-619-428

LOS ANGELES, CALIFORNIA

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

KHALID ISMAIL (Transcriber)

DEPOSITION SERVICES, Inc.-2

May 15, 2013

(Completion Date)