



**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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595 Ala Moana Boulevard  
Honolulu, HI 96813-4999**

**Name: GUERPO, LEONARDO ESTABIL...      A 019-849-187**

**Date of this notice: 4/20/2016**

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:  
Kendall-Clark, Molly

019-849-187  
User team: Docket

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**U.S. Department of Justice**  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

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File: A019 849 187 – Honolulu, HI

Date: APR 20 2016

In re: LEONARDO ESTABILLO GUERPO a.k.a. Leonardo Guerpo a.k.a. Leo Guerpo

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Carmen DiAmore-Siah, Esquire

ORDER:

This Board has been advised that the respondent in the instant case is deceased.  
Accordingly, proceedings are terminated.

  
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FOR THE BOARD

Immigrant & Refugee Appellate Center, LLC | www.irac.net

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
HONOLULU, HAWAII

File: A019-849-187

December 29, 2015

In the Matter of

LEONARDO ESTABILLO GUERPO

RESPONDENT

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)  
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IN REMOVAL PROCEEDINGS

CHARGES: Section 237(a)(2)(B)(i) Immigration and Nationality Act - alien  
convicted of controlled substance violation.

APPLICATIONS:

ON BEHALF OF RESPONDENT: CARMEN DIAMORE-SIAH

ON BEHALF OF DHS: CHANDU LATEY, Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 63-year-old native and citizen of the Philippines. He was admitted to the United States at Honolulu on February 15, 1970 as a P2-2 lawful permanent resident. The record reflects that on October 18, 1996, the former Immigration and Naturalization Service denied the approval of respondent's application for naturalization. Exhibit 2.

Respondent was placed in deportation proceedings with the filing of an Order to Show Cause with the Immigration Court at San Diego on February 12, 1990.

Respondent filed for the former Section 212(c) waiver of inadmissibility, which he needed because of a December 1988 conviction for the offense of *promoting drugs in the third degree*.<sup>1</sup>

These proceedings were commenced with the filing of a Notice to Appear with the Immigration Court at Honolulu on November 21, 2017. See Exhibit 1. The respondent, with the assistance of counsel, admitted all the allegations, except to say that he believes he is a United States citizen and not a citizen of the Philippines. Respondent contested the charge. A number of hearings were conducted, and eventually respondent indicated, through counsel, that he had no objection to Exhibit 2.

Based upon the conviction record in Criminal 14-1-224K, this Court found that, based upon count one, the respondent was removable as charged. Respondent pled guilty to promoting a dangerous drug in the third degree in violation of Section 712-1243(1) Hawaii Revised Statutes, as amended, and he was granted a deferral period of four years with a number of conditions which had to be complied with. See Exhibit 2, pages 44-48.

Essentially, the respondent did not dispute that he was removable as charged. On March 30, 2015, respondent late filed, shortly before an individual hearing, "Respondent's Motion to Terminate Removal Proceedings." Exhibit 5. The basis for the motion to terminate was that respondent says that he served in the U.S. Army and Air Force National Guard during the Vietnam War, and therefore he was qualified to naturalize based upon his honorable service during a time of U.S. hostility. Exhibit 5, p. 3. This Court issued an Interim Order on March 30, 2015 indicating that it would like the parties to discuss the naturalization issue and retrieve the N file which had been created

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<sup>1</sup> That case related to a conviction under Section 712-1249 Hawaii Revised Statutes for the offense of "promoting a detrimental drug in the third degree."

in 1996. The Court additionally had received from storage the Record of Deportation Proceedings from 1999, which the Court wished to review and make available for the parties if they wished to review it.

Thereafter, respondent filed a request for prosecutorial discretion with the Department of Homeland Security. See Exhibit 7. The Department of Homeland Security indicated that prosecutorial discretion is denied. The Court set this out for further briefing. On May 15, 2015, the Department of Homeland Security filed a legal brief arguing that respondent has no relief from removal and has not established that he is a United States citizen. See Exhibit 8.<sup>2</sup>

By decision dated May 18, 2015, this Court issued a written decision and order denying the motion to terminate. Exhibit 9. On May 29, 2015, respondent filed a motion to continue or administratively close. The DHS did not respond to the motion. This Judge found that there was good cause for the motion and did administratively close the case for USCIS to adjudicate a pending N-400. Exhibit 10.

On December 9, 2015, the Department filed a Motion to Recalendar Removal Proceedings. Exhibit 11. The Department explained that respondent did not appear for an interview, and attached the "Notice of Administratively Closed Application" dated December 7, 2015. In that notice, the Field Office Director indicated that the office had not received any communication from respondent and referenced supporting documentation being missing.

Since the Court had recalendared the proceedings, it also gave the parties notice of an individual hearing to be conducted on December 29, 2015. Exhibit 11. On December 22, 2015, respondent filed a "Second Motion to Continue or Administratively

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<sup>2</sup> Previously respondent indicated that he was not a refugee fearing persecution in the Philippines.

Close." Exhibit 12. The Court indicated that the motion would be denied, but that respondent could file a motion to appear by telephone if he is medically unfit to fly to Honolulu from Hawaii Island. Exhibit 12.

On December 29, 2015, the respondent appeared with his counsel at the Immigration Court in Honolulu. The parties indicated they had no objections to any of the exhibits, and therefore Exhibits 1 through and including 12 were received. Respondent made an oral request for more time, or a continuance. The Department did not agree. The Department indicated that it still would not agree to prosecutorial discretion.

An Immigration Judge may grant a continuance for good cause. 8 C.F.R. Sections 1003.29, 1240.6; Matter of Hashmi, 24 I&N Dec. 785 (BIA 2009). In this case, the Court actually administratively closed the case so that respondent could pursue a new naturalization application with USCIS. Previously continuances had been granted. During the individual hearing this Judge inquired with the Department of Homeland Security attorney as to whether there was any new information regarding the naturalization request. The attorney with the A file indicated that there was none that she was aware of. Counsel for the respondent articulated reasons related to her own schedule and the respondent's medical condition. It does not appear that there is good cause to continue the matter or to administratively close it again since the respondent had the opportunity to provide his information to USCIS and failed to do so. See Exhibit 11.

Turning back to the claim that respondent is eligible for naturalization, it is important to note that DHS has proven a presumption of respondent's alienage by his foreign birth and the manner in which he immigrated to the United States. See Exhibit 2. The respondent, after he was granted a Section 212(c) waiver of inadmissibility on

July 11, 1990, had many years to pursue naturalization if this was something that he wanted. He failed to do so. The burden of going forward with the evidence has shifted to the respondent who claims citizenship. Apparently he has not provided evidence to CIS, and he certainly has not provided it to the Immigration Court. There has been a lot of time for respondent to get his evidence filed and respondent has been assisted by experienced immigration counsel. The Court finds the respondent has not established that he is a United States citizen, or that further time should be granted for him to pursue an application.

The Court, in making this determination, is mindful of respondent's medical evidence. See Exhibit 12. However, respondent's cardiovascular history does not prevent him from traveling from Hawaii Island to Oahu for hearings in Honolulu. He has appeared several times in this courtroom, and does not seem to be under any particular distress.

There is no other application before the Court, and respondent has also waived voluntary departure. Accordingly, the following orders shall be entered:

ORDER

IT IS HEREBY ORDERED that the respondent be removed from the United States to the Philippines on the charge contained in the Notice to Appear.

**Please see the next page for electronic**

**signature**

DAYNA BEAMER  
Immigration Judge

//s//

Immigration Judge DAYNA BEAMER

beamerd on March 14, 2016 at 6:23 PM GMT