

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

508

File: A72 677 777 - San Francisco

Date:

In re: FERNANDO FONSECA-CISNEROS

INDEX

DEC - 3 1996

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Hanna C. Leung, Esquire  
Leung & Molyneux  
7080 Mission Street  
Daly City, California 94014

ON BEHALF OF SERVICE: Paul K. Nishiie  
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)]  
Entered without inspection

APPLICATION: Voluntary departure

ORDER:

PER CURIAM. The respondent has appealed the November 20, 1995, decision of an Immigration Judge denying his request for voluntary departure in the exercise of discretion. To resolve any issues of timeliness, we have taken this case on certification pursuant to 8 C.F.R. § 3.1(c). The decision of the Immigration Judge is affirmed.

In determining that the respondent does not merit a grant of voluntary departure in the exercise of discretion, the Immigration Judge found that the circumstances surrounding the respondent's attempt to obtain immigration benefits, in this case work authorization, constitute substantial derogatory information for which there are not sufficient offsetting equities. The respondent states on appeal that he believed the woman who helped him with an asylum application was an attorney, that he was young and spoke no English at the time, and that he conceded at the hearing that he became suspicious of the validity of the application after receiving the denial notification from the Immigration and Naturalization Service. Moreover, the respondent cites Matter of Martinez, A28 537 780 (BIA February 4, 1994), for the proposition that the mere possession of a fraudulent document, such as the Form I-94 which the respondent testified he did not use as proof of work authorization, cannot be the basis for a denial of voluntary departure. The respondent states that in Matter of Martinez, the Board granted voluntary departure in the exercise of discretion despite the alien's intentional use of a fraudulent alien registration receipt card and social security card to procure employment.

We agree with the Immigration Judge, for reasons stated in his decision, that the respondent does not merit voluntary departure in the exercise of discretion. Regarding the respondent's reliance on Matter of Martinez, we first point out that only decisions designated for publication by the Board serve as precedents in other proceedings involving the same issue, or issues. See 8 C.F.R. § 3.1(g); Matter of Arthur, 20 I&N Dec. 475, 479 (BIA 1992); Matter of Ruis, 18 I&N Dec. 320, 321 fn.1 (BIA 1982). Secondly, Matter of Martinez did not involve the same issue as the instant case. In that case, we reversed the Immigration Judge's ruling that the alien was ineligible for voluntary departure for failure to demonstrate good moral character because we found that false statements which appear in an application are not false "testimony" within the meaning of section 101(f)(6) of the Act, 8 U.S.C. § 1101(f)(6). We then granted the respondent's request for voluntary departure after pointing out that the Service had not contested the Immigration Judge's finding that, statutory eligibility aside, the alien merited voluntary departure as a matter of discretion.

Finally, the Immigration Judge did not deny the respondent's request for voluntary departure due to his "mere possession of a fraudulent document." The Immigration Judge found that a favorable exercise of discretion was not warranted due to the totality of the circumstances surrounding the respondent's attempt to obtain work authorization. The Immigration Judge found that the respondent either knew or should have known that the procedure outlined by the immigration practitioner was fraudulent from its inception when he was asked to sign an asylum application in blank with the understanding that it would be filled in for him and submitted to the Service, and he was certainly aware of the bogus nature of the asylum application at the time of his October 1993 interview when he allowed an interpreter provided by his immigration practitioner to provide the answers to questions asked of him by the asylum officer. The respondent conceded that he knew something was not quite right at the time of the interview (Tr. at 78) and later when he received notice from the Service that his asylum application had been denied (Tr. at 81-82). <sup>1/</sup> Nevertheless, although the respondent never received work authorization, he used a document given to him by the immigration practitioner to secure a job and to attend a business college in December 1993. We agree with the Immigration Judge's conclusion that the totality of circumstances surrounding the respondent's

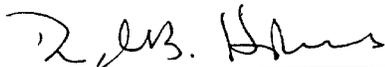
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<sup>1/</sup> On November 9, 1993, the Service issued to the respondent a notice of intent to deny his asylum application and a denial of his application for employment authorization (Exhs. 9 and 11). The respondent's application for asylum was denied by the Service on March 29, 1994 (Exh. 10).

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attempt to obtain immigration benefits constitute a negative discretionary factor which is not outweighed by the equities of the respondent's 4 years of residence in this country, his two lawful permanent resident brothers, and his college performance.

Accordingly, the decision of the Immigration Judge is affirmed.



FOR THE BOARD