

U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

Matter of

File A 088 664 582

RICHARD STEVEN RIESS

Respondent

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In REMOVAL Proceedings

Transcript of Hearing

Before SEAN H. KEENAN, Immigration Judge

Date: February 6, 2008

Place: Eloy, Arizona

Transcribed by FREE STATE REPORTING, INC., at Annapolis, Maryland

Official Interpreter:

Language:

Appearances:

For the Department of
Homeland Security:

Jennifer I. Gaz

For the Respondent:

Pro se

1 JUDGE FOR THE RECORD

2 This is the Immigration Court at Eloy, Arizona, February 6,
3 2008. Immigration Judge Sean H. Keenan presiding in a continued
4 removal proceeding.

5 JUDGE TO MR. RIESS

6 Q. Good afternoon, sir. What is your name, please.

7 A. Richard Steven Riess.

8 JUDGE FOR THE RECORD

9 A 88 664 582. The respondent is present in court detained
10 by the Department of Homeland Security, appearing pro se. The
11 Government is represented by Assistant Chief Counsel, Ms.
12 Jennifer Gaz.

13 JUDGE TO MR. RIESS

14 Q. Do you have an attorney today?

15 A. No, sir.

16 Q. Do you waive and give up your right to an attorney for
17 today's hearing?

18 A. Yes.

19 JUDGE TO MR. RIESS

20 All right, the Government's motion to administratively
21 close your case is Exhibit 2. That was previous. And the
22 Government's motion to withdraw that is Exhibit 3, and your
23 motion to terminate, Exhibit 4. Now you had denied all the
24 allegations and the case was postponed for the issues of
25 removability and citizenship.

1 MS. GAZ TO JUDGE

2 Your Honor, at, at this time, the Government requests a
3 motion to continue. We realize that this is unusual to make a
4 motion such as this at a contested removal hearing. However, as
5 the declaration of the deportation officer states, there have
6 been numerous efforts made in order to establish respondent's
7 claims to U. S. birth. We -- the -- as it is stated in the
8 declaration, the deportation officer has searched San Bernardino
9 Vital Records for the birth certificate, which he was not able
10 to find. Also, we have been in contact with the Canadian
11 authorities, who have stated that respondent does have a -- was
12 born in Canada and does have a Canadian passport. Now
13 respondent refused to sign a document which we need in order to
14 -- for the Canadian authorities to, to release his information
15 to Immigration and Customs Enforcement and, therefore, it has
16 taken longer than expected to get a copy of his birth
17 certificate and his passport. There is just -- but, however,
18 the deportation officer, who is not here because he's currently
19 in the Philippines on another assignment, he has been in contact
20 with the Canadian authorities and expects to get the
21 documentation in a -- you know, forthcoming, hopefully soon.

22 JUDGE FOR THE RECORD

23 All right, prior to hearing from the respondent, the
24 declaration of Mr. Cordero (phonetic sp.) will be Exhibit 5 for
25 identification. Respondent will have an opportunity to review

1 that and raise any objections and the I-213, Exhibit 6 for
2 identification.

3 JUDGE TO MR. RIESS

4 Q. Do you have any documents you want to show me today,
5 sir? You've not required to, but do you have any documents?

6 A. No.

7 Q. All right. Well, you heard the Government's motion,
8 and do you have any objections to a continuance?

9 A. Yes, sir, I do. I mean, I certainly have no qualms
10 about the Government ordering me removed. Every time I've come
11 into court I've put up no resistance to the idea of being sent
12 to Canada or Mexico or --

13 Q. Well, you've denied -- I can't order you removed, sir,
14 if you're not subject to removal, if you're not an alien as
15 termed by the law. You say you were born in Massachusetts or
16 California. Excuse me.

17 A. California.

18 Q. And your mother was born in Massachusetts.

19 A. Yes,

20 JUDGE TO MR. RIESS

21 And the burden is on the Government to establish alienage,
22 and until they do that, the burden does not shift to you.

23 JUDGE TO MS. GAZ

24 Is that right, Ms. Gaz?

25 MS. GAZ TO JUDGE

1 That's our understanding, Your Honor.

2 JUDGE TO MR. RIESS

3 Q. And they say they have made good faith efforts and
4 have been in contact with the Canadian authorities and they say
5 orally that the Canadian authorities say you were born there,
6 and they want your case postponed one brief time to, to get
7 these documents. So it seems a reasonable request, that they
8 are making good faith efforts and that they have a good faith
9 basis to show that you are an alien notwithstanding, perhaps,
10 your belief you were born in the United States. You understand?

11 A. Yes, I do.

12 Q. All right, over your objection, nothing that you're
13 detained, you don't want to be detained, you've written a
14 letter, I'm going to grant their continuance based on the, the
15 things that they have related to the Court, the factors and the
16 fact that they are making considerable effort, as they should
17 be --

18 A. Mm-hmm.

19 Q. All right. All right, the Court calendar is very
20 booked up, but I have the date of April 25th at 9:00. We'll
21 double-book because I understand you don't want your case
22 postponed too far in advance, and that's -- the Court calendar
23 is out to June, but I'll double-book and overbook so that your
24 case will be heard as expeditiously as possible. Any questions?

25 A. Yes.

1 Q. Go ahead.

2 A. When we get to this next date now --

3 Q. Yes.

4 A. -- because we're already at four months that I've been
5 in custody on this --

6 Q. Yes.

7 A. -- so when we get to this next date when they still
8 don't have evidence of alienage, can we at that point then
9 assume that it's not going to happen?

10 Q. Well, I won't -- I can't rule on future events that
11 haven't occurred. I understand your point, and I'll take into
12 consideration that this was postponed over your objection --

13 A. Mm-hmm.

14 Q. -- and I'm not going to rule on a further continuance.
15 I can't do that. I'm not going to say it will never be
16 continued. You might want it continued; I don't know. Highly
17 unlikely, but I will certainly consider the amount of time given
18 to the Government, and I will weigh the evidence at that time.
19 I will weigh whether Mr. Cordero is here for your cross-
20 examination, whether the maker of the I-213 is present for
21 cross-examination, the maker of the document, Mr. Martin.

22 A. Mm-hmm.

23 Q. It could be envisioned that he'll have to be here to
24 testify, and so that will be up to the Government to put forth
25 their case.

1 A. You see, it's, it's just that I recall the last time
2 that I was in court here for the bond hearing back on
3 January 11th. It was stated on your part that if I don't have
4 further evidence of my U. S. citizenship by my next hearing that
5 you would have to rule in favor of the Government.

6 Q. Well, yours is an unusual case, and the bond hearing
7 is separate and apart by law, and whatever is said in bond is
8 separate; it's not on the record. That's by regulation. Now
9 ordinarily --

10 A. Could I perhaps -- I'm sorry; I don't mean to
11 interrupt, but --

12 Q. Go ahead.

13 A. -- could I perhaps just maybe denounce my U. S.
14 citizenship and let you deport me to Mexico or something?

15 Q. No. And you can't go to Mexico unless you have a
16 legal basis to go there. You need some lawful permanent
17 resident status.

18 A. The same with Canada.

19 Q. Correct. Well, the Government says you have some
20 status in Canada. Now, ordinarily, sometimes in these type of
21 citizenship cases foreign birth is not contested. It's not an
22 issue that the person was not born in a foreign country, they're
23 trying to derive citizenship based on their parents. Here it's
24 unusual to some extent that you claim birth in the United
25 States. So the burdens are different.

1 A. Mm-hmm.

2 Q. So you are not admitting, nor should you, that you
3 were born outside the United States, so the Government has to
4 establish alienage.

5 A. Right.

6 Q. And I don't have to rule on that today because they
7 are asking for one continuance, and I'm granting that. So
8 they're asking that the case be postponed. They're not ready to
9 go forward today to prove alienage, and case law has held that
10 if they want the I-213 perhaps to establish country of
11 citizenship Canada, it should be reasonable that they have the
12 maker of the document here --

13 A. Mm-hmm.

14 Q. -- to show where that maker of the document obtained
15 country of citizenship Canada: Was it through an interview, was
16 it through documents, was it through this, that, or the other
17 thing, and also Mr. Cordero's declaration. It could be presumed
18 that he should be here to be examined by you to make it fair for
19 you. So if the Government wants to introduce documents to show
20 that you're an alien, then the case law is clear that the maker
21 of the documents should be present so that you could question
22 them, cross-examine them. All right. And so at this point
23 removability has not been established, and if the Government was
24 going to go forward today and their motion for a continuance is
25 denied, then the ruling could be quite different. So at the

1 next hearing if the Government does not have the makers of the
2 documents present, then I will try to interpret the case law to
3 the best of my ability and make the appropriate ruling. All
4 right, sir?

5 A. Yes.

6 Q. If you continue to try to get your birth certificate,
7 that would clearly clarify the issue, if you can get it. I
8 understand you're trying, but perhaps you can.

9 A. I actually am putting no effort into it at all.

10 Q. Oh, I thought you were.

11 A. I, I never have been. I, I told that to Mr. Cordero
12 right from the beginning that I'm -- well, it's a matter of
13 opinion, I guess, and so it doesn't really belong in court,
14 but --

15 JUDGE TO MR. RIESS AND MS. GAZ

16 All right. So I'll rule on the evidence I have before me.
17 Any party that wants to submit further evidence, please do so in
18 accordance with local rules at least five days before the
19 hearing so I can read all the evidence.

20 JUDGE TO MS. GAZ

21 Anything further, Ms. Gaz?

22 MS. GAZ TO JUDGE

23 No.

24 JUDGE TO MR. RIESS

25 Sir?

1 MR. RIESS TO JUDGE

2 No.

3 JUDGE TO MR. RIESS AND MS. GAZ

4 Case adjourned.

5 HEARING CONTINUED