

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 STEVEN M. RUHLE, Immigration Judge

Date:

Place: Eloy, Arizona

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

Official Interpreter:

Language:

Appearances:

For the Department of
Homeland Security:

Jennifer M. Wiles

For the Respondent:

Pro se

1 (Tape 3)

2 JUDGE FOR THE RECORD

3 This is Immigration Judge Steve Ruhle at the Immigration
4 Court at the Federal Detention Center in Eloy, Arizona, in a
5 resumed individual hearing in the case of Richard Steven Riess,
6 A 88 664 582. He's appearing pro se today. The hearing is in
7 English. The Government is represented by its Assistant Chief
8 Counsel, Ms. Jennifer Wiles.

9 JUDGE TO MS. WILES

10 Ms. Wiles, what are we doing today?

11 MS. WILES TO JUDGE

12 Your Honor, I believe the case has been set over for -- to
13 prove the charges; specifically, the respondent's alienage.

14 JUDGE TO MS. WILES

15 All right. Is that what a copy of his passport is
16 purported to do?

17 MS. WILES TO JUDGE

18 Yes, Your Honor.

19 JUDGE TO MS. WILES

20 All right.

21 MS. WILES TO JUDGE

22 He was --

23 JUDGE TO MS. WILES

24 So --

25 MS. WILES TO JUDGE

1 He -- at a previous hearing, Mr. Riess had indicated to the
2 Court that he was born in the United States and was thus a
3 United States citizen.

4 JUDGE TO MS. WILES

5 I read that.

6 JUDGE TO MR. RIESS

7 Q. Mr. Riess, have you received the Government's exhibit?

8 A. I have.

9 Q. A copy of your passport. Do you have any objection to
10 me considering that?

11 A. I do.

12 Q. What is your objection to it?

13 A. I have not seen that document before.

14 Q. Well, they have a certificate of service saying they
15 gave it to you.

16 A. Oh, no, no. I'm sorry. What I mean is I received the
17 photocopy that you have there.

18 Q. You're saying that's not you?

19 A. Right.

20 Q. You're still denying to this point that you were born
21 in Canada?

22 A. Yes.

23 JUDGE TO MR. RIESS

24 Did you --

25 JUDGE TO MS. WILES

1 What other evidence do you have that this passport in fact
2 relates to respondent?

3 MS. WILES TO JUDGE

4 Your Honor, I do have the original passport here. We
5 obtained the passport from the Phoenix Police Department, and
6 they had obtained it from the vehicle that Mr. Riess was driving
7 when he was arrested by the Phoenix Police Department.

8 JUDGE TO MS. WILES

9 Have you contacted the Canadian Consulate?

10 MS. WILES TO JUDGE

11 Yes, we have, Your Honor, and they have verified that he is
12 in fact a United States -- or, excuse me, a Canadian citizen.
13 We have also contacted the Royal Canadian Mounted Police, who
14 verified that he was born in Canada and that his parents are
15 both Canadians.

16 JUDGE TO MS. WILES

17 How -- let me be more specific. How are they matching the
18 individual that's sitting in that chair to the individual that's
19 named and pictured in that passport?

20 MS. WILES TO JUDGE

21 I guess I don't understand what you're saying, Your Honor.
22 I'm sorry.

23 JUDGE TO MS. WILES

24 Have they -- have you compared his fingerprints to the
25 fingerprints they have on file for that individual?

1 MS. WILES TO JUDGE

2 No, we have not at this point, Your Honor. We have not had
3 a chance.

4 JUDGE TO MS. WILES

5 All right.

6 JUDGE FOR THE RECORD

7 Off the record to review the evidence for a minute.

8 (OFF THE RECORD)

9 (ON THE RECORD)

10 JUDGE FOR THE RECORD

11 Back on the record.

12 JUDGE TO MR. RIESS AND MS. WILES

13 Okay, I've looked at the documentary evidence.

14 JUDGE TO MR. RIESS

15 Sir, this passport looks exactly like you to me. However,
16 because you have denied that it is you, I'm going to give the
17 Government a continuance.

18 JUDGE TO MS. WILES

19 What I need from the Government, if you intend to prove
20 this case, Ms. Wiles, is a document comparing the respondent's
21 fingerprints or some other biometric information with the
22 individual depicted on the passport of which you have the
23 original copy of and, by the way, let me see the original copy,
24 would you.

25 JUDGE TO MR. RIESS AND MS. WILES

1 All right, the Court has examined the original passport.
2 The copy that the Court has that's marked as Exhibit 7 for
3 identification only appears to be an accurate representation of
4 the -- that original. Again, the Court is not an identification
5 expert, so you have an original passport, the Court has an
6 accurate copy of it, the respondent has a copy of that. He's
7 saying that's not him. So, again, what you need is some further
8 evidence in order to convince the Court. The Court will not
9 take -- even though this does appear to look exactly like the
10 respondent, you need other evidence to match the two. Do you
11 understand?

12 MS. WILES TO JUDGE

13 Not a problem, Your Honor.

14 JUDGE TO MS. WILES

15 All right.

16 JUDGE TO MR. RIESS

17 Q. What do you want to say, sir?

18 A. At, at this point nor at any point previous to this
19 have I been adverse to being ordered removed. In fact, I've
20 requested it a number of times. Well, if the Government wants
21 to send me to Canada, I have absolutely no problem with that. I
22 mean if the Canadian Government will accept me --

23 Q. Well, it's not that, it's not that simple, sir. If
24 you are saying you're not Canadian, why in the world would you
25 think Canada would accept you?

1 A. Well, that wasn't really an issue, but --

2 Q. You can designate Canada and I can order you removed
3 to Canada. However, again, it's not, it's not as simple as
4 we're deporting you to Canada. If you, if you're not a citizen
5 or national of Canada and if you are in fact a citizen of the
6 United States, as you've said in your past pleadings, I can't
7 deport you anywhere; you'll be a citizen here and, and entitled
8 to stay here.

9 A. Right, but at the same time, if that means that I'm
10 going to have to stay indefinitely in custody, I'd, I'd much
11 rather leave America and go to a foreign country.

12 Q. Well, again, sir, there, there, there is reason, based
13 on the evidence I've seen, to believe you are not a citizen.
14 However, you are saying you are. That means the burden shifts
15 back to the Government. They have a little bit higher of a
16 burden to show that you are, in fact, not a U. S. citizen. If
17 they do show that or produce more evidence, then the burden will
18 shift to you to show that you in fact are a U. S. citizen. I'm
19 not going to make any conclusions as to whether or not that will
20 happen. I don't what the Government if anything extra they'll
21 produce, don't know what you've got in your file. At any time,
22 of course, you are free to change your pleadings, and I'm not
23 suggesting you do that.

24 A. Mm-hmm.

25 Q. But realize the Government only has -- the Government

1 in the form of the Department of Homeland Security, Immigration
2 and Customs Enforcement; i.e., the Government who has placed you
3 here in front of me, only has jurisdiction over people who are
4 not U. S. citizens. However, they have enough evidence, based
5 on what I've seen, to believe that you are not a U. S. citizen
6 and to place you here. That doesn't mean automatically that I'm
7 going to take their word for it. I do not work for them. This
8 hearing -- they have a burden in this hearing; you may soon have
9 a burden in this hearing depending on what, if anything, they
10 produce next time. Again, at any time you're -- you, you can
11 change your pleadings, but realize, if you're a citizen of the
12 United States, they've got no business with you. That's --

13 A. I, I realize that. I've realized that right from the
14 beginning, and I was aware right from the beginning that being a
15 citizen, they had no jurisdiction to even arrest me without
16 proof of alienage, yet that didn't stop them. I mean, I've been
17 here seven months now, and this passport that they have, they
18 just came up with this a week or two ago. So for seven months
19 I've been here with absolutely no proof of alienage, and I'm,
20 I'm willing to, to change my plea at this point.

21 Q. Well, I mean, realize changing your plea means you
22 will be swearing under oath that you were in fact not born in
23 the United States. What that means is that under oath in a
24 prior proceeding you've committed perjury.

25 A. Right, I realize that, and that's obviously a problem.

1 Q. So, I mean, I'll leave it to you, sir. You, you, you
2 tell me what you want to do today. I've told you I've looked at
3 enough evidence to believe that the Government clearly has
4 grounds to hold you here to try to compile more evidence, that
5 they have clear grounds to believe you are not in fact a United
6 States citizen, born here. Therefore, they get the chance to --
7 reasonable opportunity to convince me further by matching your
8 biometrics, which is your fingerprints specifically, with the
9 individual depicted on that passport who you just told me wasn't
10 you.

11 A. Right.

12 Q. If you want, you can change your pleadings, admit
13 you're a native and citizen of Canada, request deportation. I'm
14 not telling you to do that or not do that.

15 A. Right.

16 Q. I'm just, I'm just telling you that is an, that is an
17 option. You tell me what you want to do given what I've told
18 you.

19 A. Well, can I, can I ask, For how long does the
20 Government have the right to detain a person --

21 Q. All right. Well --

22 A. -- to establish that somebody's an alien because
23 they've taken my fingerprints before.

24 Q. There is no set time.

25 A. Right.

1 Q. There is no set time. I mean, the, the, the
2 determination is one of reasonableness. From the day you have a
3 final order removing you somewhere, if that ever -- if that day
4 ever happens, as a general rule they have 90 days in which to
5 attempt your removal and generally 180 days to hold you trying
6 to remove you. That's considered presumptively reasonable as
7 held by the United States Supreme Court, but we're nowhere near
8 that stage of your case yet. We are in the evidentiary
9 gathering stage of your case. I don't know when my next
10 available will be. I suspect it's going to be July, but I'm
11 gong to check that momentarily. The bottom line is, like I
12 said, if they had no evidence, if they produced no evidence of
13 anything and they showed up empty-handed today, it'd be a
14 different result. They presented a passport that looks to a
15 reasonable person like it's you; you said otherwise. So,
16 therefore, I need to be convinced a little bit more than what
17 they've, they've shown now. I'm not a, I'm not an expert at
18 identification.

19 A. Understandably. But they've, they've indicated that
20 they haven't had the opportunity to compare the fingerprints,
21 but they've taken my fingerprints. They've had my fingerprints
22 for seven months. They claim that they've been in contact with
23 the Canadian Government. They claim that they were waiting for,
24 for, for confirmation from the Canadian Government on this
25 passport. That was three months ago. I mean --

1 Q. Well, what they told me is the -- I don't want to, I
2 don't want to mischaracterize what -- at least what Ms. Wiles
3 represented. What Ms. Wiles represented is they've looked at
4 your passport and they say it's you. Again, I don't have
5 anything in writing from them, I don't have anything in writing
6 from them saying that. So I'm not willing to take a
7 representation that, okay, the Government said it's you, You
8 know, I, I need something more than that. However, it's -- they
9 -- the test really in my -- as far as continuances go is has the
10 Government acted reasonably. In my opinion, they did act
11 reasonably. They, they got more evidence. They, they reached
12 out to, to the Canadian Government. They got answers from the
13 Canadian Government. Unfortunately, it's not good enough for me
14 because you have said no, that's not true. Therefore, I'm going
15 to require more from them if they're going, if they're going to
16 prove your case. That's the long and short of it.

17 JUDGE TO MR. RIESS AND MS. WILES

18 I will -- I'm going to go off the record at this time. I'm
19 going to give a reset date for this case and, again, either,
20 either party at either time, if you get the requested evidence,
21 there's no need -- the Government, there's no need to wait for
22 the next hearing date. Similarly, sir, if you decide you want
23 to change your pleadings, you don't have to wait till the next
24 hearing date; you can send me something in writing. I would
25 caution you, however, that I notice several things that you've

1 sent to the Court do not have certificate of service on it. By
2 regulation, the Government has to get served everything the
3 Court has or the Court cannot accept it.

4 MR. RIESS TO JUDGE

5 Yes.

6 MS. WILES TO JUDGE

7 Your Honor, if --

8 JUDGE TO MR. RIESS AND MS. WILES

9 Off --

10 MS. WILES TO JUDGE

11 -- I may just put one thing on the record. At the initial
12 interview with Mr. Riess -- and we're not using the submission
13 as, as evidence, but I would like to note for the record that
14 the initial interview, at the intake interview, Mr. Riess did
15 tell the 287D officer that he was a Canadian citizen. However,
16 the --

17 JUDGE TO MS. WILES

18 I know that's what you say.

19 MS. WILES TO JUDGE

20 -- however, the Government -- yes. The Government is not
21 using that admission as part of its evidence.

22 JUDGE TO MS. WILES

23 And if you want to have that individual here to testify
24 that he said that next time, that's fine.

25 MS. WILES TO JUDGE

1 Okay.

2 JUDGE TO MS. WILES

3 He's denied that.

4 MS. WILES TO JUDGE

5 Yes, Your Honor.

6 JUDGE TO MS. WILES

7 So, again, I read the piece of paper that says that's what

8 he said, but that's not good enough.

9 MS. WILES TO JUDGE

10 Yes, I understand.

11 JUDGE TO MS. WILES

12 He's saying, he's saying it's not. It's -- he didn't say

13 that, so feel free. I'm not doing the Government's case for

14 them. If you, you deem it appropriate to bring that -- produce

15 that individual next time, that's fine, sworn affidavit,

16 although, again, if he objects to the sworn affidavit and says

17 it's not true, cross-examination. Your witness has got to be

18 here.

19 MS. WILES TO JUDGE

20 Yes, Your Honor.

21 JUDGE TO MS. WILES

22 I'm not telling you what evidence to present; all's I'm

23 saying is although it looks like it's him in the passport,

24 that's not good enough.

25 MS. WILES TO JUDGE

1 Not a problem, Your Honor.

2 JUDGE TO MR. RIESS AND MS. WILES

3 Off the record momentarily.

4 (OFF THE RECORD)

5 (ON THE RECORD)

6 JUDGE FOR THE RECORD

7 Back on the record.

8 JUDGE TO MR. RIESS AND MS. WILES

9 This case will be reset and, Ms. Wiles, I am going to
10 conclude on my own without asking you that this is sufficiently
11 reasonable time for you to either -- for you to get additional
12 evidence matching Government Exhibit 7 for identification with
13 the respondent. The hearing will be reset till Tuesday,
14 July 15th, 2008, from ten o'clock in the morning till eleven
15 o'clock in the morning for that purpose. Again, if either side
16 wants to send me something before then, feel free. Sir?

17 MR. RIESS TO JUDGE

18 I did want to mention or clarify the statement previously
19 that the Phoenix Police had taken that passport from my
20 possession. In fact, it was taken from another person's car,
21 and it was being used as evidence in a completely unrelated
22 forgery case.

23 JUDGE TO MR. RIESS

24 Q. All right. Well, you've already said it doesn't
25 relate to you, so with that being the case, it really doesn't

1 matter where they got it from. It's either you or it's not. If
2 it's, if it's you, it's not going to matter where they got it.
3 If it's not, likewise it's not going to matter where they got
4 it.

5 A. Okay. I just wanted to clarify that it was never in
6 my possession.

7 JUDGE TO MR. RIESS

8 Okay.

9 JUDGE TO MR. RIESS AND MS. WILES

10 Anything else from either side today before adjourn?

11 MS. WILES TO JUDGE

12 Nothing further, Your Honor.

13 JUDGE TO MR. RIESS

14 Sir? All right, hearing is closed till that day.

15 HEARING CONTINUED