

**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 LINDA I. SPENCER-WALTERS, Immigration Judge

Date: July 23, 2009

Place: Eloy, Arizona

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

Official Interpreter:

Language:

Appearances:

For the Department of  
Homeland Security:

Alec J. Niziolek

For the Respondent:

Pro se

1 (DAR CD)

2 JUDGE FOR THE RECORD

3 On the record. Today is Thursday, July 23, 2009, Eloy  
4 Immigration Court. Immigration Judge Linda I. Spencer-Walters  
5 presiding in continued removal proceeding in the case of Richard  
6 Steven Riess, A 88 664 582. Respondent is present. Appearing  
7 on the Department of Homeland Security today is Mr. Alec  
8 Niziolek. These proceedings are being conducted in the English  
9 language.

10 JUDGE TO MR. RIESS

11 Q. Good afternoon -- I'm sorry -- good morning, sir.  
12 Please state your name.

13 A. Richard Riess.

14 Q. You speak and understand English?

15 A. Yes, I do.

16 Q. You have an attorney today?

17 A. No.

18 Q. You need some time to get an attorney?

19 A. No.

20 Q. Excuse me. Do you wish to speak for yourself?

21 A. I do.

22 JUDGE TO MR. RIESS

23 Thank you.

24 JUDGE TO MR. RIESS AND MR. NIZIOLEK

25 We had marked up to, I believe, Exhibit No. 25 the last

1 time we were here. Subsequent to that, the Court has received  
2 some additional documents which the Court will continue to mark  
3 at this time. Exhibit No. 26 will be the respondent's  
4 documentation that the Court received June 24th, 2009. Twenty-  
5 seven will -- let's see -- on June, June 30th the Government  
6 submitted to the Court some documents and they say they  
7 forwarded this package to you. I hold up my package for you to  
8 see.

9 MR. RIESS TO JUDGE

10 Yes.

11 JUDGE TO MR. RIESS

12 Q. Did you receive that, sir?

13 A. Yes, I did.

14 JUDGE TO MR. RIESS AND MR. NIZIOLEK

15 The Government's documents dated June 30th, 2009, is  
16 Exhibit 27. Twenty-eight is the respondent's request for  
17 information. Twenty-nine is respondent's briefing opposition to  
18 the Department's proposed exhibits. Exhibit 30 will be the  
19 submission received from the respondent dated July 14th, 2009.  
20 Thirty-one are additional documents received from the respondent  
21 dated July 14th, 2009. Exhibit No. 32 is the respondent's  
22 motion to terminate removal proceedings, and Exhibit 33 are  
23 additional documents received from the respondent dated  
24 July 20th, 2009. On July 22nd, 2009, respondent submitted to  
25 the Court a motion for change of venue. Government receive

1 that?

2 MR. NIZIOLEK TO JUDGE

3 We did, Your Honor.

4 JUDGE TO MR. RIESS AND MR. NIZIOLEK

5 Thirty-four. And, lastly, the Court received additional  
6 documents from the respondent dated July 22nd, again 2009. This  
7 will be 35. All right, these are all the documents I have in my  
8 file at this time.

9 JUDGE TO MR. RIESS

10 Q. Do you have any new documents today?

11 A. Not yet.

12 JUDGE TO MR. NIZIOLEK

13 Any additional documents from the Government?

14 MR. NIZIOLEK TO JUDGE

15 No additional documents from the Government, Your Honor.

16 JUDGE TO MR. NIZIOLEK

17 Mr. Niziolek, let me hear from you as to this case.  
18 There's a -- what is it -- a motion to, a motion to terminate, a  
19 motion for change of venue, and an opposition to the  
20 documentation submitted by the Government. As to the motion to  
21 terminate, has the Government had the opportunity to review and  
22 respond to it?

23 MR. NIZIOLEK TO JUDGE

24 Your Honor, we have reviewed the -- first off, Your Honor,  
25 the motion to terminate we want to take as a denial of the 261

1 because we filed a 261 that's marked as Exhibit 1A --

2 JUDGE TO MR. NIZIOLEK

3 Yes.

4 MR. NIZIOLEK TO JUDGE

5 And respondent, apparently in the motion to terminate, is  
6 contesting that because I don't believe we've actually taken  
7 pleadings on the 261.

8 JUDGE TO MR. NIZIOLEK

9 No, we have not, on Exhibit 1A, no, but I believe the  
10 respondent is denying the allegations. We'll address that  
11 shortly.

12 MR. NIZIOLEK TO JUDGE

13 Your Honor, on our end, as to allegations 1 and 2, we've  
14 done this to death, Your Honor. We've put in the passport,  
15 we've proved up the alienage, Your Honor, and we can't determine  
16 when the respondent came in or if he came in legally. So,  
17 therefore, it's appropriate to charge that we don't know his  
18 entry date. Let him prove his lawful valid entry through any  
19 means possible -- passport stamps. He says he doesn't get  
20 issued an I-94. There's got to be some way for him to come up  
21 with when he entered, what he entered -- what he -- how he did  
22 this. We haven't been provided the evidence, and the burden is  
23 on him, Your Honor. The Act is quite clear about that.

24 JUDGE TO MR. NIZIOLEK

25 Okay. So that's one issue. The Government responded to --

1 I haven't seen it -- response to the change of venue?

2 MR. NIZIOLEK TO JUDGE

3 Your Honor, we just got that.

4 JUDGE TO MR. NIZIOLEK

5 I think this just came in, yes.

6 MR. NIZIOLEK TO JUDGE

7 I believe that's on -- that was dated --

8 JUDGE TO MR. NIZIOLEK

9 That just came in --

10 MR. NIZIOLEK TO JUDGE

11 -- the 22nd.

12 JUDGE TO MR. NIZIOLEK

13 -- yesterday, yes.

14 MR. NIZIOLEK TO JUDGE

15 However, Your Honor, I have, I have read respondent's  
16 argument. Congress has been very clear. He makes it based  
17 primarily on constitutional grounds. The Court is not in a  
18 position to review anything on constitutional grounds. It's  
19 really -- even the BIA is, is foreclosed from doing that. It's  
20 only the circuit courts, and his issues seem primarily with CCA.  
21 This is not a forum that can resolve those issues. Lastly, Your  
22 Honor, it's a COV essentially to -- if I read it correctly,  
23 anywhere but here. There's no specific place; it just says to  
24 be changed to some other facility. Your Honor, I'm not familiar  
25 with an open-ended COV. I think it needs to be specific and,

1       furthermore, Matter of Rahman, the Government can house the  
2       person wherever it's convenient for the Government.

3       JUDGE TO MR. NIZIOLEK

4             Okay.

5       JUDGE TO MR. RIESS AND MR. NIZIOLEK

6             Let's go to the Notice to -- I-261 because I don't think  
7       we've taken pleadings as to that additional charge. I think I  
8       know where you're going with it, but I think I formally need to  
9       take pleadings to it. The Government has changed factual  
10      allegations 3 and 4, and now they say that you entered this  
11      country; they're not sure where you came in or when --

12      MR. RIESS TO JUDGE

13             Yes.

14      JUDGE TO MR. RIESS

15             -- and they say at that time you came in illegally. Those  
16      are the two new allegations brought against you, and then  
17      there's -- they've withdrawn the overstay charge, and the new  
18      charge is under Section 212(a)(6)(A)(i) stating that you're  
19      present in this country without being admitted or paroled.  
20      That's what the -- that's the essence of the I-261. As to --  
21      let's go through the allegations, the new allegations 3 and 4.  
22      The Government says you entered the United States at an unknown  
23      place and on an unknown date. Admit or deny?

24             A. Can I, can I ask for some clarification on that  
25      because from their perspective indeed it would be an unknown

1 place or unknown time (indiscernible).

2 Q. They say they are not sure where you came in or when.

3 A. Well, that's, that's correct in the sense that they're  
4 not sure, but --

5 Q. Did you come in legally or illegally? The Government  
6 is saying you were not then admitted or paroled after inspection  
7 by an Immigration officer. In other words, they're saying you  
8 came in illegally.

9 A. That I do.

10 Q. You deny that one?

11 A. I deny that

12 Q. All right, I'll put a denial to 3 and 4 and a denial  
13 to, of course, the charge because the charge goes directly to  
14 factual allegation no. 4. Now I've received all your documents.  
15 Now as to the -- pretty much the only charge, which is this  
16 212(a)(6)(A) charge, which they're saying you're here illegally,  
17 what documentation do you have to show that you came in legally?

18 A. At this point, none. Unfortunately, I have nothing at  
19 this point.

20 Q. Okay. Are --

21 A. I've been in custody for almost two years.

22 Q. -- you working on getting some documentation to show  
23 how you came into this country?

24 A. No.

25 Q. Okay. Now the burden of proof pretty much is on



1       you --

2           A.     Mm-hmm.

3           Q.     -- for you to show me how you came because the  
4       Government is saying you came in illegally, and you're saying  
5       no, you did not come in illegally. So if you have any way to  
6       show me that you did come in legally, I would appreciate it, and  
7       I would consider it to determine if the Government is wrong.

8           A.     Mm-hmm.

9           Q.     You understand?

10          A.     I understand, yes.

11          Q.     Okay. So what are you working on getting?

12          A.     I don't know how I could possibly go about getting the  
13       documentation to show that I entered the country legally since I  
14       have nothing anymore.

15          Q.     Okay.

16          A.     I, I have no material possessions, I have no  
17       documentation, I have nothing. I've been in custody for almost  
18       two years.

19          Q.     What, what family members do you have outside?

20          A.     None. Me and my son and my wife.

21          Q.     Okay. Are you -- where is your, where is your wife  
22       and your son?

23          A.     In Los Angeles.

24          Q.     Okay. Are you in contact with her?

25          A.     Yes.

1           Q.    Can she get any documentation for you?  Have you tried  
2   to Contact her to see if she can get you proof or documentation  
3   to establish that you came in legally?

4           A.    We haven't really discussed specifically that topic,  
5   no.

6           Q.    Okay.  Are you thinking of doing it?

7           A.    Documentation to show that I entered the country  
8   legally?  No.

9           Q.    So you're not -- you don't want to prove -- so how do  
10   you intend to establish it?

11          A.    I can't really comment on that at this point yet.

12          Q.    Well, this is the time, this is the place.  We're here  
13   now.  Let's not waste any further time.  How do you intend to do  
14   it?

15          A.    I don't intend to produce documentation to show that I  
16   entered the country.

17          Q.    Okay.

18          A.    I don't believe it's possible for me to produce  
19   documentation to show that I've entered the country at any  
20   point.

21          Q.    All right.  So let me understand you correctly just so  
22   I write this down right.  You say you do not intend to produce  
23   any documentation to show you entered legally, correct?

24          A.    No, no.  I don't intend because I don't believe it's  
25   possible to produce any documentation to show that I've ever

1 entered the country, whether legally or illegally.

2 Q. You need documentation to show that you ever entered.

3 A. Right.

4 Q. That you're even here.

5 A. No, I am here; there's no question about that.

6 Q. So there's no -- you don't want to show how you came?

7 A. It's not that I don't want to show how I came. There  
8 is no documentation that exists that would demonstrate that I  
9 have entered the country.

10 Q. Okay.

11 A. In other words, no, I can't -- yeah, that, that's all  
12 I can say at this point about that.

13 JUDGE TO MR. RIESS

14 All right, okay. I think I get a gist of what you're  
15 trying to say.

16 JUDGE TO MR. RIESS AND MR. NIZIOLEK

17 I think this case just needs to be set over for a decision.  
18 Mr. Niziolek, let me hear from you.

19 MR. NIZIOLEK TO JUDGE

20 I agree, Your Honor. I believe everything's in evidence.  
21 I believe we've got the pleadings. Respondent has expressed his  
22 stance. I'm not going to characterize it in any way, shape or  
23 form because it's his own word that he's not going to try to  
24 obtain these documents. So I think we have everything here,  
25 Your Honor. We'd set it over for a decision. I would ask that

1 the evidentiary portion be -- of this case be closed.

2 JUDGE TO MR. NIZIOLEK

3 Yes. At this point, I'm going to close the evidentiary  
4 portion of these proceedings. The Court's decision will be  
5 based on all documentation marked and admitted from Exhibit 1 to  
6 the very last exhibit that this Court just marked as Exhibit 35.

7 JUDGE TO MR. RIESS

8 Q. You don't have any new documents for me today, do you?

9 A. Not yet, no.

10 Q. Are you intending to get any new documents?

11 A. I was, but if they're not going to be relevant, then  
12 I'll (indiscernible).

13 Q. I'm not at this point saying what relevance there will  
14 be or not because I don't know. At this point, I intend to  
15 close the evidentiary portion and basically just make my  
16 decision on everything that's here. Are you intending to get  
17 new documents, though? That's what I want to know because I  
18 need to put a cutoff date. I just can't keep receiving  
19 documents up to the last time; I have to cut it off up to a  
20 certain point and make my decision based upon everything I have.

21 A. No, that's fine.

22 Q. Okay. So you're stopping at this point as to the  
23 documentation?

24 A. Yes, but I would like to reiterate just so that it's  
25 perfectly clear it's not that I don't intend or don't want to

1 provide documentation to show that I've entered the country,  
2 it's that, as I've said, the documentation does not exist.  
3 There is no documentation to show that I've ever entered the  
4 United States.

5 Q. No documentation exists.

6 A. As, as I had stated previously, if the allegation that  
7 I'm a Canadian citizen is true and I entered at the Canadian  
8 border, there was no I-94 issued, there was no record of me  
9 entering because it's very common when Canadians enter at the  
10 border that they're just waved through.

11 JUDGE TO MR. RIESS

12 Very well. Okay.

13 JUDGE TO COURTROOM CLERK

14 Betty, I need an hour.

15 JUDGE TO MR. RIESS AND MR. NIZIOLEK

16 I'll set this case over for a decision.

17 MR. RIESS TO JUDGE

18 Okay.

19 JUDGE TO MR. RIESS AND MR. NIZIOLEK

20 And I said evidentiary -- the documentary evidence runs  
21 from Exhibit 1 through Exhibit No. 35. All right.

22 COURTROOM CLERK TO JUDGE

23 August 26th at one o'clock?

24 JUDGE TO MR. RIESS AND MR. NIZIOLEK

25 August 26, 2009, at 1:00 p.m. for my decision as to the

1 charge of inadmissibility at this point. Let's talk -- before  
2 we do that as to -- before we go off the record, if removal were  
3 to be or inadmissibility -- the charge of inadmissibility were  
4 to be sustained, what relief is the respondent eligible to seek?  
5 Have you talked about that or is that --

6 MR. NIZIOLEK TO JUDGE

7 We've examined it, Your Honor. It's a little up in the  
8 air. We did submit a conviction docket, but respondent has  
9 appealed that conviction, so it's not final for Immigration  
10 purposes.

11 JUDGE TO MR. NIZIOLEK

12 Okay. All right.

13 MR. NIZIOLEK TO JUDGE

14 So it, it depends on what happens with that, and I believe  
15 -- I checked PACER yesterday, Your Honor, and it said that --

16 JUDGE TO MR. NIZIOLEK

17 They haven't ruled on it.

18 MR. NIZIOLEK TO JUDGE

19 -- they just did a briefing -- they did a briefing  
20 extension to I don't know what date.

21 JUDGE TO MR. NIZIOLEK

22 Okay.

23 MR. NIZIOLEK TO JUDGE

24 So it's -- if that comes down, Your Honor, it's going to be  
25 a bar to most forms of relief.

1 JUDGE TO MR. NIZIOLEK

2 Okay.

3 JUDGE TO MR. RIESS

4 Q. So what year -- I don't even know if this question is  
5 appropriate seeing that you said there's no documentation to  
6 show that you ever entered. How many years have you been in  
7 this country? Is that even safe to even ask? And I'll tell you  
8 why I ask.

9 A. Mm-hmm.

10 Q. In order for me to determine if you're eligible for  
11 the 10-year pardon, I need to know that you've been here for at  
12 least 10 years.

13 A. Right.

14 Q. So can you answer that question?

15 A. I can't answer that at this time, I'm sorry.

16 Q. Okay. All right. So I can't determine if you're  
17 eligible for any forms of relief at this time.

18 A. (Indiscernible).

19 Q. Your wife -- you said you have a wife and a son,  
20 right?

21 A. Yes, I do.

22 Q. Can you close what status, if any, she has?

23 A. Oh, sure. They're both citizens.

24 Q. Okay. All right. So your wife is a USC. Can you  
25 disclose if she's ever filed any documentation for you?

1 A. No, she has not.

2 Q. Okay. When did you get married? Can you disclose  
3 that?

4 A. 2000 and -- oh, 2000, August 2000.

5 JUDGE TO MR. RIESS

6 In 2000, okay.

7 JUDGE FOR THE RECORD

8 Married in 2000. Okay. Respondent can't disclose if --  
9 all right.

10 JUDGE TO MR. RIESS AND MR. NIZIOLEK

11 Anything else from either side?

12 MR. RIESS TO JUDGE

13 Yes.

14 JUDGE TO MR. RIESS

15 Q. Yes, sir?

16 A. I would like to also reiterate that I don't oppose  
17 being deported at all. I'm not adverse to it. I've never once  
18 fought to be able to stay in America in the last three years  
19 that I've been going through this whole proceeding. I have  
20 requested almost every time when I've come into the Immigration  
21 Court to either be granted voluntary departure or to be ordered  
22 removed.

23 JUDGE TO MR. RIESS

24 Okay. So we'll consider all of that also.

25 JUDGE TO MR. NIZIOLEK



1           Has the Government thought of voluntary departure?

2           MR. NIZIOLEK TO JUDGE

3           We have considered voluntary departure, Your Honor --

4           JUDGE TO MR. NIZIOLEK

5           And?

6           MR. NIZIOLEK TO JUDGE

7           -- and we would be opposed.

8           JUDGE TO MR. NIZIOLEK

9           Okay.

10          JUDGE TO MR. RIESS

11          Q.    So the Government is in opposition to you being  
12          granted voluntary departure. So my decision will consist of not  
13          only the ruling as to the charge of inadmissibility, but I'll  
14          also address if there's any possibility of you remaining in this  
15          country, and we'll talk about voluntary departure in the  
16          alternative. Your parents. Before we go off the record, can  
17          you disclose if either one of your parents are United States  
18          citizens?

19          A.    I cannot discuss that this time either.

20          Q.    Okay. Very well. Anything else from you at this  
21          time?

22          A.    No.

23          JUDGE TO MR. RIESS

24          All right. Follow the officer's instructions. We're off  
25          the record.

1 MR. RIESS TO JUDGE

2 Thank you.

3 JUDGE TO MR. RIESS

4 You're welcome.

5 HEARING CONTINUED

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