

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Eloy, Arizona

File No.: A 088 664 582

August 26, 2009

In the Matter of)
)
RICHARD STEVEN RIESS) IN REMOVAL PROCEEDINGS
)
Respondent)

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and
Nationality Act - present without being admitted
or paroled after inspection by an Immigration
officer

APPLICATIONS: Motion to terminate, motion for change of venue

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

Pro se

Alec Niziolek
Assistant Chief Counsel

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

The United States Department of Homeland Security has
brought these removal proceedings against the respondent under
the authority of the Immigration and Nationality Act.

Proceedings were commenced with the filing of a Notice to Appear
with the Immigration Court. See 8 C.F.R. 1003.14(a) and also
Exhibit No. 1.

On June 22, 2009, the Department of Homeland Security filed
an additional charge of inadmissibility/deportability, I-261,
against the respondent. See Exhibit 1A. In these documents, the

Department of Homeland Security has alleged that respondent is not a citizen or national of the United States, but he is a native and citizen of Canada, who entered the United States at an unknown place on an unknown date, without being admitted or paroled after inspection by an Immigration officer. Respondent is charged as being inadmissible as referenced above.

Respondent has denied all of the allegations and the single charge of inadmissibility. He has also requested that venue be changed to an unspecified location. See Exhibit 34, and for the proceedings to be terminated. See Exhibit 32.

Respondent and the Government have submitted documentary evidence as it relates to the charge of removability, marked and admitted as evidence labeled from Exhibit 1 through Exhibit 49. At the last Master Calendar hearing, the Court also questioned the respondent.

STATEMENT OF THE LAW

The Department of Homeland Security must prove by clear and convincing evidence that the respondent is an alien. Once alienage has been established, the respondent must prove by clear and convincing evidence that he is lawfully present in the United States pursuant to a prior admission. See Section 240C(2)(B). See also 8 C.F.R. Section 1240.8(c).

To meet this requirement, the respondent must generally

prove the time, place, date and manner of his entry into the United States.

Regarding the change of venue motion, the Board of Immigration Appeals has determined that in deciding a change of venue request, the Immigration Judge must change venue only for good cause after balancing the factors relevant to the venue issue. See Matter of Rahman, 20 I&N Dec. 480 (BIA 1992).

The factors include administrative convenience, expeditious treatment of the case, location of witnesses, cost of transporting witnesses or evidence to a new location, and pursuant to regulations, the provision of the address where the respondent could be reached. See Rahman at 482.

FINDINGS AND ANALYSIS

The Department of Homeland Security has submitted a Record of Deportable/Inadmissible Alien, I-261, as Exhibit No. 8, a copy of a Canadian passport bearing the name of Richard Riess, Exhibit 9, indicating that respondent was born in Sudbury, Canada, on November 24, 1973.

They have also submitted a sworn declaration from a deportation officer with Canada Border Services Agency, who verified with the Ontario, Canada, Vital Statistics, the biographical information of the respondent: specifically, that respondent was born on November 24, 1973, in Sudbury, Canada to Steve John Riess and Penny Susan Peppin.

The officer also verified from the Canadian passport that

the copy of the passport contained in Exhibit No. 7 was issued by them, to a Richard Riess, born November 24, 1973, in Sudbury, Canada. See Exhibit 13, tab B.

Based upon the documentation submitted by the Department of Homeland Security, this Court finds that it has proven by clear and convincing evidence that the respondent was born in Sudbury, Canada, and therefore, has established that respondent is an alien.

The burden now shifts to the respondent to prove by clear and convincing evidence that he is lawfully present in the United States pursuant to a prior admission. This Court has reviewed all of respondent's documentary evidence and also taken into consideration his statements made in court.

None of the documents submitted by the respondent establish that he is lawfully present in the United States. Respondent had stated to the Court that he has no proof of lawful entry as no documentation exists to show that he ever entered the United States. According to the respondent, he was never issued an I-94.

After careful review of respondent's case and consideration of the totality of the evidence, this Court cannot find that respondent has met his burden to prove the time, place, date and manner of his entry into the United States. In essence, respondent has failed to establish that he is lawfully present in the United States pursuant to a prior admission.

Therefore, this Court must find that respondent is inadmissible as charged, and will sustain the above-referenced charge. Respondent's motion to terminate is therefore denied.

Regarding respondent's motion to change venue, respondent requests that venue be changed in his case to another location due to what respondent has described as violations of his constitutional rights regarding the practice and observance of his religion, the lack of protection of his constitutional rights, to name a few.

Respondent has submitted several submissions to this Court in that respect, which are all a part of this record. Upon review of respondent's motion, this Court first of all states that it lacks the authority to rule on constitutional issues. See Matter of Patel, 19 I&N Dec. 774 (BIA 1988), Matter of Valdovinos, 18 I&N Dec. 343 (BIA 1982), Matter of Bogart, 15 I&N Dec. 552 (BIA 1975, 1976): A.G. 1976, Matter of Chery and Hasan, 59 I&N Dec. 380 (BIA 1975), Matter of Santana, 13 I&N Dec. 362 (BIA 1969), Matter of L-, 4 I&N Dec. 556 (BIA 1951).

In addition, respondent has failed to specify the location that he would want venue to be changed to, and this Court does not find that good cause had been established for these proceedings to be transferred to another location.

Based on the above, the motion for change of venue is therefore denied.

This Court has attempted to consider respondent for possible

relief. Respondent admitted that he is married to a United States citizen and has been so married since the year 2000, but that no petition has been filed on his behalf. The Court could not determine if respondent qualified for cancellation of removal under Section 240A(b) of the Act as he stated to the Court that he could not disclose to this Court whether he has been present in the United States for at least 10 years.

The Court also could not properly consider whether respondent has a viable citizenship claim, as the respondent stated to the Court that he could not disclose to this Court if his parents were United States citizens.

Based upon the above, this Court finds that as no petition has been filed on the respondent's behalf, the respondent does not appear to be eligible for the relief of adjustment of status before this Court at this time.

In addition, based upon the statements made to the respondent or lack thereof, this Court cannot determine at this time whether or not respondent is eligible for cancellation of removal or whether he has a viable citizenship claim.

The Court has also considered respondent for voluntary departure. However, based upon respondent's refusal or reluctance to provide some facts about his case for this Court's consideration, this Court is not inclined to grant voluntary departure as a matter of discretion.

Accordingly the following orders are entered:

ORDER

IT IS HEREBY ORDERED that the charge of inadmissibility as referenced above is hereby sustained.

IT IS HEREBY ORDERED that respondent's motion to terminate is denied.

IT IS HEREBY ORDERED that respondent's motion for change of venue is denied.

IT IS HEREBY ORDERED that any request for voluntary departure in this case is hereby denied.

Respondent is ordered removed from the United States to Canada.

LINDA I. SPENCER-WALTERS
United States Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before
JUDGE LINDA I. SPENCER-WALTERS, in the matter Of:

RICHARD STEVEN RIESS

A 088 664 582

Eloy, Arizona

is an accurate, verbatim transcript of the recording as provided by
the Executive Office for Immigration Review and that this is the
original transcript thereof for the file of the Executive Office
for Immigration Review.

Mary Lou Leidig, Transcriber
Free State Reporting, Inc.

September 16, 2009
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies
that a Sony BEC/T-147, 4-channel transcriber or equivalent and/or
CD, as described in Section C, paragraph C.3.3.2 of the contract,
was used to transcribe the Record of Proceeding shown in the above
paragraph.