U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

RIESS, RICHARD STEVEN
A#088-664-582
ICE, 1705 E. HANNA RD.
ELOY, AZ 85231

U.S. DHS-Trial Attorney Unit/EAZ
P.O. Box 25158
Phoenix, AZ 85002

Name: RIESS, RICHARD STEVEN **A088-664-582**

Date of this notice: 12/17/2009

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Pauley, Roger

File: A088 664 582 - Eloy, AZ Date: DEC 17 2009

In re: RICHARD STEVEN RIESS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Dominique J. Honea
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law (withdrawn)

Lodged: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Termination

The respondent appeals from an Immigration Judge's decision dated August 26, 2009, finding the respondent removable as charged and ordering the respondent removed from the United States. The respondent's appeal will be dismissed.[1]

The respondent on appeal contends that the Immigration Judge erred in finding that the Department of Homeland Security ("DHS") sustained its burden of proving the respondent's alienage by clear and convincing evidence. The respondent further asserts that, even if the DHS sustained its burden of proving alienage, the Immigration Judge erred in finding the respondent removable as charged under section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i). We disagree. *See* 8 C.F.R. § 1003.1(d)(3)(ii) (stating that the Board reviews questions of law *de novo*).

As the Immigration Judge noted, the DHS presented a Record of Deportable/Inadmissible Alien, (Form I-213), which indicates that the respondent's name is Richard Steven Riess, born on November 24, 1973, in Sudburry, Ontario, Canada (Exh. 8). The DHS also submitted a copy of a Canadian passport bearing the name of Richard Riess, born on November 24, 1973, in Sudburry, Canada (Exh. 9). In addition, the DHS submitted the sworn declaration of a deportation

[1] The respondent's appellate fee waiver request is granted. *See* 8 C.F.R. § 1003.8(a)(3)(2009).

officer with the Canada Border Services Agency (Exh. 13 at Tab B). The officer attested that he verified with the Ontario, Canada, Vital Statistics, that a Richard Reiss was born in Sudburry, Ontario, Canada, on November 24, 1973 (Exh. 13 at Tab B). The officer also declared that he verified that a Canadian passport was issued to a Richard Riess, born in Sudburry, Ontario, Canada, on November 24, 1973, which is consistent with the information submitted by the DHS relating to the copy of the Canadian passport contained in the record (Exhs. 7, 9).

The respondent on appeal raises various challenges to the legality of the above described evidence asserting essentially that it cannot properly be used to establish his alienage. However, while each piece of evidence may alone be insufficient, collectively such evidence sufficiently establishes that the respondent is one Richard Riess, born on November 24, 1973, in Sudburry, Ontario, Canada. Significantly, the respondent does not dispute either that his name is Richard Riess or that he was born on November 24, 1973. Therefore, on this record, we decline to set aside the Immigration Judge's decision finding that the DHS sustained its burden of proving the respondent's alienage by clear and convincing evidence.

We further find no reason to disturb the Immigration Judge's decision finding that the respondent has failed to establish by clear and convincing evidence that he is lawfully in the United States pursuant to a prior admission. *See* 8 C.F.R. § 1240.8(c). As the Immigration Judge noted, the respondent has presented no evidence demonstrating the time, place, and manner of entry into this country. Indeed, the respondent on appeal does not assert that he is present in this country pursuant to a lawful admission. Instead, he claims that he is a citizen, but has provided absolutely no proof to support such a claim. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 164 (BIA 2001) (noting that evidence of a foreign birth gives rise to a rebuttable presumption of alienage). Moreover, contrary to the respondent's assertion on appeal, that the respondent may have been exempt from receiving a visa or an I-94, does not excuse an unlawful entry or relieve the respondent from the requirement that he provide clear and convincing evidence that he is lawfully in the United States pursuant to a prior admission for purposes of proving that he is not inadmissible as charged.

Finally, we find no due process violation or prejudice. The record reveals that the respondent received a full and fair hearing on the merits of his claim. He was provided the opportunity to present, examine, and object to evidence that affected his claim. Significantly, we do not find the respondent's disagreement with the outcome of the Immigration Judge's decision sufficient to demonstrate that the Immigration Judge improperly evaluated or disregarded the facts and evidence presented. Although the respondent alleges error, he has not articulated or identified prejudice stemming from such error. More importantly, the respondent has failed to demonstrate that the outcome of his case would have been different had the hearing been conducted in any other manner. Accordingly, the appeal will be dismissed.

ORDER: The respondent's appeal is dismissed.

FOR THE BOARD