

U. S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Office of the Immigration Judge
2320 La Branch, Suite 2235
Houston, Texas 77004

December 16, 1987

Respondent's Attorney:

[REDACTED]

Government's Attorney:

[REDACTED]

Re: Mario Escobedo-Gonzalez

[REDACTED]

NOTICE

Attached is a copy of the Decision of the Immigration Court dated December 16, 1987. The decision is final unless Notice of Appeal, Form I-290A, is filed by December 29, 1987.

Elizabeth Brown

Elizabeth Brown
Court Clerk

Attachment.



At hearing, the respondent has claimed to be a United States citizen by virtue of birth in the United States. The burden of proof to establish that the respondent is an alien, as charged by the Order to Show Cause, lies with the Immigration and Naturalization Service ["INS"]. Woodby v. INS, 385 U.S. 276 (1966). The United States Supreme Court, in that decision, stated that:

No deportation may be entered unless it is found by clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true. (Emphasis added.)

To meet its burden of proof, government counsel offered several documents into the record. These include a package of documents attached to a certification issued by the Registrar of the Texas Department of Health, Bureau of Vital Statistics. (Exhibit 3.) They relate to an individual named Alejandra Hernandez VDA. De Martinez and are categorized as a "Midwife Case." Included is a typewritten three-page document entitled "DETAILS" which does not state therein who prepared the document. It states that the "SUBJECT" had:

been practicing midwifery in Brownsville, Texas, since about 1951, that for the past 2-1/2 years, she had registered children without actually having delivered them or having assisted the mother in their birth.

It states further that the subject:

surrendered and turned over to Investigator L. H. BUCHANAN eight pocket notebooks containing 342 entries.

Also attached to the Certification is a document entitled "INTERVIEW LOG," which is dated April 25, 1968, and appears to be signed by Alejandra Hernandez, before an immigration officer. The document is handwritten and poorly copied and is virtually illegible, however. Also attached is a document dated

October 24, 1985, on Texas Department of Health letterhead, entitled "ADDENDUM" which states that it has been attached to the "original current birth record of Mario Escobedo," and which states that "Alejandra (Aendro) Hernandez, midwife, has stated under oath that she did not attend this birth." Another document contained in this package is a partial list of names from numbers (71) through (84). This list does not state who created it, of what document it is a part of, or what the names therein relate to. At number (76) it has the name of the respondent, his date of birth, his address and his parents' names. Also attached in this document is a copy of a Texas Department of Health Certificate of Birth, dated February 4, 1968, setting forth the respondent's birth in Cameron County, Texas, in the city of Brownsville. The document contains the names Maria Amelia Gonzalez as the respondent's mother and Jesus Escobedo as the respondent's father. It is signed by an individual who identifies herself as a midwife and the signature appears to read Alejandra Hernandez. This record contains, furthermore, a document entitled "SUMMARY REPORT OF INVESTIGATION" containing the name Alejandra HERNANDEZ VDA de MARTINEZ, dated May 20, 1968, which states:

Investigation disclosed this SUBJECT to have falsely registered the births of Mexican citizen children as having occurred in Brownsville and Cameron County, Texas, for an undetermined period of time and on innumerable instances. For each registration she received a fee of \$15.00 from the Mexican citizen parents of the infant being registered.

On April 30, 1986, the SUBJECT was convicted in Cameron County, Criminal Court, Cause #16245, Violation of Texas Penal Code 781 of the misdemeanor for furnishing false information for birth certificates. A fine of \$50.00 probated placed on two years probation.

Government counsel has also offered into the record a document purporting to be a Mexican birth certificate for Martin Escobedo Gonzalez, providing February 15, 1968, as his date of birth and J. Jesus Escobedo and Amelia Gonzalez as his parents. The document states that the witnesses to the birth certificate were Enrique Sandoval, Vicente Rodriguez, and Doroteo Duran. (Exhibit 4.) 1/ Also submitted was a Form I-213, which states:

SUBJECT arrested by State Department Agents at the U.S. Passport Office, Houston, Texas, while attempting to secure a United States Passport, after he filed an application, Form DSP-66 with the DoS with substantiating birth certificate under his name & DOB. Presently, the DoS has the application package, and will submit copies of the documents filed by SUBJECT upon completion of their processing. That agency investigated the issuance of the Texas Birth Certificate under SUBJECT'S name and DOB from the South Texas area and ascertained that the midwife attendant issued a statement that she had not in fact attended SUBJECT'S birth.

(Exhibit 5.)

The last document offered by the government is the respondent's sworn statement, partially in English and partially in Spanish, 2/ which states, in part:

I was born in Mexico. Apozol, Zacatecas, Mexico. I do not remember the date because all of my life I have used this name. I

1/ The Mexican birth certificate was offered without a proper English translation, as required by the regulation at 52 Fed. Reg. 2936 (to be codified at 8 C.F.R. 3.31). INS counsel was granted leave of court to submit the translation after the hearing by the close of business on December 14, 1987. No submission was made by that deadline nor has any request for an extension been made. Despite the disregard by INS counsel of this court's direction, I have, to provide INS every possible consideration, considered the Mexican birth certificate without a translation to the extent that its contents were discussed in testimony at hearing.

2/ See n. 1.

wanted to obtain a passport because it was easier to pass to the United States and be able to see my family. I was born in Mexico. I do not remember the date. I did not think that I was born there. I do not remember the date of my birth there and I have to go see my mother.

(Exhibit 6.)

Other documentary evidence was submitted by the respondent, and includes a birth certificate in the name of Mario Escobedo giving his place of birth as Cameron County, Texas, which was issued by the Texas Department of Health, Bureau of Vital Statistics, on March 26, 1985. (Exhibit 7.) Exhibit 8 is a statement taken in Mexico, before a Mexican attorney, wherein both parents of the respondent, swore that they:

begot, a son who was named MARIO ESCOBEDO GONZALEZ, born on FEBRUARY FOURTH, NINETEEN HUNDRED AND SIXTY-EIGHT, in BROWNSVILLE, TEXAS, Rt. #2, Box 135.

This statement is dated March 10, 1987.

At hearing, oral testimony was also submitted. The respondent's mother, Amelia Gonzalez, testified regarding the place of her son's birth. She testified that she traveled from her home in Zacatecas, Mexico, to the hearing in Houston for the purpose of providing evidence regarding the place of the respondent's birth. She stated that she has eight children, six boys and two girls. The oldest is 26 and the youngest is 14. All were born in Mexico except Mario, who was born in Brownsville, Texas, in 1968. She stated that she and her husband decided that Mario would be born in the United States because they "wanted to arrange things here in order to come to live in the United States." She stated that at that time, it was possible for parents of

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a child born in the United States to legally immigrate to this country, but subsequently the law changed and that only parents of a child who had passed the age of majority were entitled to come to live in the United States.

The respondent's mother stated that in 1968 she and her husband traveled by bus from their home to Matamoros, Mexico, where they stayed for approximately one month before her son's birth. She stated that it took two days and one night to make the trip. When she began to have "symptoms," two days before the respondent's birth, she crossed the border into the United States. She stated that the arrangements for her to give birth in the United States were made through a friend named Aurora Roma, in Matamoros, who contacted a midwife named Alejandra Hernandez. She stated that she was provided with a border-crossing card containing a picture which looked similar to her and that she used this card to cross the border into the United States. She then took a bus to a private home which had been secured for her by the midwife who "took care of her." She stated that it was a small house containing two rooms and a little bathroom and that no one was living there at the time. She stayed there with her husband, Aurora, and the midwife, Alejandra Hernandez, who delivered the baby. The birth took place quickly, according to her testimony, and the respondent was born at 1:00 a.m. She stated that the midwife who attended her prepared the birth certificate and that her husband made the payment and handled the paperwork with the midwife. She remained in Brownsville for 22 days and then, as planned, returned to her home in Zacatecas with her husband, by bus. She stated that they had always planned to go back to Mexico after Mario's birth since her other children remained

at their home in Mexico where they were being cared for by her mother. She stated that they intended to "arrange the papers" later, but that the immigration "policy" changed in the interim. She added that she believes the midwife is now dead, as is Aurora. She also stated that she does not know anything about the midwife's conviction for falsifying birth certificates.

The respondent's mother speaks no English and stated that she has attended four years of school only. She stated that she is able to read and write "a little." She was asked about the Mexican birth certificate contained in Exhibit 4 and stated that she had never seen Exhibit 4 before these proceedings. She stated that she did not register the respondent in Mexico and had not been aware that he had been registered in Mexico prior to these proceedings. She stated that she believes that her mother-in-law was the one who registered the respondent in Mexico but that she had not realized this previously. She stated that she does not know why her mother-in-law registered the respondent in Mexico, and that she and her husband did not tell her mother-in-law to do so because they knew that her son was registered in the United States. She stated that there was a woman from Matamoros named Maria Jesus Ramirez, who traveled back to the ranch where the family lived in Zacatecas after the respondent's birth and she believes that Ramirez told her mother-in-law that the baby had been born. She stated that the family never had a copy of the Mexican birth certificate, but that they did have a copy of the United States birth certificate for the respondent.

The respondent's mother stated furthermore that the respondent had difficulties with secondary school officials in Mexico because he had been born in the United States. She stated that despite the difficulties, the family never used a Mexican birth certificate to straighten out the problems with the school. She added that she believes that back then, in 1968, no proof was required in order to obtain a Mexican birth certificate, but that the procedures have changed since then. She added that she does not know the two individuals whose names are contained in Exhibit 4 as witnesses, although she does know Doroteo Duran, her brother-in-law and the respondent's godfather. She stated that she did not ask Duran why his name was on the birth certificate.

The respondent also testified. He stated that prior to these proceedings he was not aware of the existence of any Mexican birth certificate and that the only birth certificate that he knew about was the United States one. He stated that he had always believed that he had been born in the United States and that in secondary school, he had been told that he would have to get permission from the American Consul in order to go to school in Mexico. He said that he was unable to get that permission because he did not have the money to go to Mexico City to obtain the permission. The respondent also discussed the admissions that he made in Exhibit 6. He stated that during his interviews with United States officials, he became very frustrated and frightened. He stated that at the time he was interviewed, he had been told that his mother was ill in Mexico and that he wanted to go see her. He stated that the interviewers told him that he was born in Mexico and if he did not

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tell the truth, he would be confined for a long time. He stated that because of his fright, he signed the statements which he knew to be untrue, because he feared being in custody and he wanted to be able to leave the United States and go back to Mexico to see his ill mother.

Other than the testimony of the respondent and his mother, no testimony of any government official was offered in this record.

Having considered the testimony of the respondent and his mother, I am easily able to conclude that both of them were extremely credible and completely and totally worthy of belief. Initially, with respect to the respondent's mother, Amelia Gonzalez, I observed her demeanor very closely and base my conclusion about her credibility on her demeanor. Her testimony was straight-forward, forthright, and articulate, particularly when considering that she is a woman from rural Mexico with a very limited education. Her testimony regarding the circumstances of the respondent's birth was clear, consistent, and she provided specific details regarding dates, hours, places, means of transportation, and persons, including the names of specific individuals. I have no doubt whatsoever that everything that she testified to in this court was completely accurate and true. I note, furthermore, that her testimony was quite logical, and that she accurately stated a change in the law of the United States whereby previously minor children were entitled to petition for their alien parents to obtain immigrant visas and that subsequently, the law changed and currently allows a petition only by a child over the age of 21. I note, in addition, that the respondent's mother had been ill, and despite

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this, she was willing to travel by plane, from a ranch in the interior of Mexico, to Houston, to give testimony regarding the circumstances of her son's birth. Her testimony was clear, logical, and consistent, and her demeanor convinced me that everything that she stated was completely true and correct.

I find, furthermore, that the testimony of the respondent, in this court, was likewise true and correct. I, again, base my conclusion on his demeanor while testifying and on the logic of his testimony. I am able to understand that a young man such as he is would have been frightened when interviewed repeatedly by Immigration and Department of State officials, particularly after having been told by them that he really had been born in Mexico, and that he was not born in the United States, and that his refusal to admit his birth in Mexico would result in his detention. I note that his testimony in court is consistent with the manner in which he made the admission contained in Exhibit 6, wherein he states that "I did not think that I was born there [Mexico]. I do not remember the date of my birth there and I have to go see my mother." Such statement, which indicates his confusion at that time, is consistent with the account he gave regarding the circumstances behind his interviews. I note, furthermore, that the officer who took his statement, as well as the officer who completed the Form I-213, are both located in Houston and no valid reason was provided for their failure to be present to testify to rebut the respondent's testimony.

In assessing the credibility of the respondent's mother's testimony that the respondent was born in Brownsville, Texas, I have also considered the fact of

the Mexican birth certificate. I find that the respondent's mother's testimony regarding her belief as to its creation is logical and worthy of belief. It is also significant that the respondent never used the Mexican birth certificate despite the fact that he had difficulty attending school in Mexico because of his birth in the United States. I have also considered the documents contained in Exhibit 3. While it does appear that the midwife who delivered the respondent was convicted of furnishing false information for birth certificates, it is not clear that the respondent's birth was one of those which she falsified. The documentary evidence contained in Exhibit 3 is of extremely poor quality. Much of it is handwritten and there is no indication contained therein as to who created the documents. While the "ADDENDUM" included in Exhibit 3 says that the midwife stated under oath that she did not attend the respondent's birth, her sworn statement has not been provided. Furthermore, the list containing the respondent's name does not provide its source or its purpose and is of no evidentiary value for those reasons. These documents are extremely sketchy, and probative of very little. While I might be able to conclude from reviewing Exhibit 3 that the documents prove that Alejandra Hernandez executed and filed some false birth certificates, the documents by no means prove that her report of the respondent's birth was false. Furthermore, no record of Hernandez' criminal conviction has been submitted, nor has any affidavit completed by her mentioning the respondent specifically been submitted. Furthermore, no transcript of testimony at her criminal trial has been submitted, nor is there any clear, credible evidence that the certificate she completed regarding the respondent's birth was, in fact, false.

Balanced against the very poor quality evidence contained in Exhibit 3 is the extremely clear, consistent, and credible evidence presented by the respondent's mother in her testimony. Clearly, the respondent's mother was present at his birth. Clearly, the respondent's mother knows where he was born. I conclude, therefore, without any doubt, that the respondent's mother's testimony that he was born in Brownsville, Texas, was true and correct.

The burden on the government in this case is to establish alienage by clear, convincing, and unequivocal evidence. In this case, not only has the evidence failed, pursuant to the clear, convincing, and unequivocal standard, to establish alienage, but the evidence presented, consisting of the credible testimony of Amelia Gonzalez regarding the birth of her son, establishes that the respondent is a citizen of the United States by virtue of birth in the United States, by clear, convincing, and unequivocal evidence. I have no doubt, whatsoever, as to the respondent's birth in the United States. It is not the burden of the respondent to establish that he was born in the United States, but he has done so in this case by clear, convincing, and completely unequivocal evidence. I conclude, therefore, that since the evidence in this case establishes, without doubt, that the respondent was born in Brownsville, Texas, in the United States, that he is a citizen of the United States by birth, and that these proceedings must and should be terminated.

IT IS THEREFORE ORDERED that these proceedings are **TERMINATED** since the respondent is a United States citizen.

Date 12-16-20 AILA Doc. No. 20012409. (Posted 1/24/20)

Stephanie Marks
Stephanie Marks