

MATTER OF WINKENS

In Deportation Proceedings

A-11953287

Decided by Board September 9, 1975

Respondent gained lawful permanent resident status through his parents upon admission to the United States in 1959 when he was 4 years of age. In 1968, when he was 14 years of age, his parents abandoned their residence in this country and returned to Germany, taking him with them. The abandonment of their permanent resident status is imputed to respondent, who was subject to their custody and control. Hence, he cannot be considered a lawful permanent resident returning from a temporary visit abroad upon his return to this country on December 19, 1972; at that time he made an "entry" within the meaning of section 101(a)(13) of the Immigration and Nationality Act. [*Matter of Bauer*, 10 I. & N. Dec. 304, distinguished.]

CHARGE:

Order: Act of 1952—Section 241(a)(2) [8 U.S.C. 1251(a)(2)]—Nonimmigrant visitor—remained longer.

ON BEHALF OF RESPONDENT:

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ON BEHALF OF SERVICE:

Paul C. Vincent
Appellate Trial Attorney

Bernard J. Hornbach
Trial Attorney

This is an appeal by the Trial Attorney, on behalf of the Immigration and Naturalization Service, from the immigration judge's order terminating proceedings. The appeal will be sustained, and the proceedings remanded for consideration of the respondent's application for adjustment of status pursuant to section 245 of the Act.

The respondent is a native and citizen of Germany, who was admitted to the United States as an immigrant on September 25, 1959, at which time he was 4 years of age. He remained in the United States with his parents until 1968, when they decided to move back to Germany and took him with them. At that time he was 14 years of age. He testified that he had not wanted to leave but that ". . .there was no way I could stay by myself" (Tr. p. 5). He returned to the United States, at the age of 18, on December 19, 1972, classified as a nonimmigrant visitor, authorized to remain until March 15, 1973. He has stayed thereafter and is charged with overstaying as a nonimmigrant.

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The immigration judge terminated the proceedings, in a decision dated October 24, 1974, in reliance upon our decision in *Matter of Bauer*, 10 I. & N. Dec. 304 (BIA 1963). *Matter of Bauer*, supra, does not govern this case. Unlike *Bauer's* parents, this respondent's parents did not retain their United States residence when they left this country in 1968. The abandonment of their lawful permanent resident status is imputed to the respondent, who was subject to their custody and control. He had gained lawful permanent resident status through them, and he lost it when they abandoned their residence and took him with them. The respondent made an "entry" when he arrived in the United States on December 19, 1972, and, although once lawfully admitted for permanent residence, he cannot be considered an alien lawfully admitted for permanent residence who is returning from a temporary visit abroad.

¹ **ORDER:** The appeal is sustained and the record remanded for further proceedings consistent with the above decision.

¹ Board member Irving A. Appleman abstained from consideration of this case.