

Falls Church, Virginia 22041

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Date:

APR 30 1992

In re: KONRADS KALEJS

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ivars Berzins, Esquire
484 West Montauk Highway
Babylon, New York 11702

ON BEHALF OF SERVICE: Neal M. Sher
Director, Office of Special Investigations

Bruce J. Einhorn
Deputy Director

Betty-Ellen Shave
Senior Trial Attorney

Ronnie L. Edelman
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ORAL ARGUMENT: September 21, 1989

CHARGE:

Order: Sec. 241(a)(1), I&N Act [8 U.S.C. § 1251(a)(1)] -
Excludable at entry under section 212(a)(19),
I&N Act [8 U.S.C. § 1182(a)(19)] - Procured visa
by fraud or willful misrepresentation of a
material fact

Sec. 241(a)(1), I&N Act [8 U.S.C. § 1251(a)(1)] -
Excludable at entry under section 212(a)(20),
I&N Act [8 U.S.C. § 1182(a)(20)] - No valid
immigrant visa

Sec. 241(a)(2), I&N Act [8 U.S.C. § 1251(a)(2)] -
In the United States in violation of section
212(a)(19), I&N Act [8 U.S.C. § 1182(a)(19)]

Sec. 241(a)(2), I&N Act [8 U.S.C. § 1251(a)(2)] -
In the United States in violation of section
212(a)(20), I&N Act [8 U.S.C. § 1182(a)(20)]

Sec. 241(a)(19), I&N Act [8 U.S.C. § 1251(a)(19)] -
Participation in Nazi persecution

APPLICATION: Termination of proceedings

OFFICE OF
SPECIAL INVESTIGATIONS

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RECORDED

In a decision dated November 1, 1988, the immigration judge found the respondent to be deportable as charged, determined that the respondent was ineligible for any relief from deportation, denied the respondent's motion to terminate the proceedings, and ordered the respondent's deportation to Australia. The respondent has appealed. The Board of Immigration Appeals heard oral argument in this case on September 21, 1989. The appeal will be dismissed.

The respondent is a 78-year-old native of Latvia and citizen of Australia. He was admitted to the United States as a lawful permanent resident on February 6, 1959. On March 18, 1988, the Government issued an amended Order to Show Cause (Gov. Exh. 15), served on the respondent by express mail on March 22, 1988, charging him with deportability under sections 241(a)(1), 241(a)(2), and 241(a)(19) of the Immigration and Nationality Act ("the Act"). 1/

In the amended Order to Show Cause, the Government alleged that the respondent belonged to a self-defense unit in Litene, Latvia, in June and July 1941, and that as a member of this unit he assisted or participated in the persecution of persons on the basis of their political opinions. The Government alleged also that on July 29 or 30, 1941, the respondent joined the "Arajs Kommando," a Kommando unit organized by Viktors Arajs in Riga, Latvia, which was subordinate to the German Security Police and "SD" ("Sicherheitsdienst"); 2/ the "Arajs Kommando," as provided in the Order to Show Cause, was responsible for the murder of thousands of Jewish men, women, and children near Riga from July 1941 to January 1942. The Government alleged further that the respondent served as a first lieutenant and company commander in the "Arajs Kommando," that during the period July 1941 to December 1944, the respondent served as commander of an "Arajs Kommando" guard unit in concentration camps in the "Ostland," and that during the same period the respondent had "assisted or participated in the shooting of civilians, including gypsies, and in the destruction of at least one village" (Gov. Exh. 15). The Government alleged too that the respondent willfully

1/ The Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, revised the grounds of deportation in the Act. See id. at section 602. The grounds of deportation which correspond to former sections 241(a)(1), 241(a)(2), and 241(a)(19) of the Act are sections 241(a)(1)(A), 241(a)(1)(B), and 241(a)(4)(D), respectively. The revisions, however, do "not apply to deportation proceedings for which notice has been provided to the alien before March 1, 1991." Id. at section 602(d).

2/ The Order to Show Cause also provides that the "SD" was a branch of the German Schutzstaffel ("SS").

misrepresented a material fact in his application for an immigrant visa when he stated in the application that he was a farm laborer in Latvia from 1941 to 1944.

On November 12, 1986, the immigration judge issued an order authorizing the Government to depose certain witnesses in Riga, Latvia, 3/ pursuant to 8 C.F.R. § 242.13(e). 4/ Deposition testimony was taken by the Government, and by respondent's counsel, in Riga, Latvia, in September 1987. 5/ The Government deposed seven witnesses in Riga, and respondent's counsel deposed six separate witnesses. Deportation hearings were held before the immigration judge in April, May, and August of 1988.

In his written decision dated November 1, 1988, the immigration judge ruled that the Soviet deposition testimony was "admissible as probative and not inherently untrustworthy" (i.j. dec. at 5). The immigration judge further concluded that the Government had established the respondent's deportability as charged in the amended Order to Show Cause. The respondent has raised three general arguments in his brief on appeal: he asserts that the immigration judge erred by admitting and giving weight to the deposition testimony that was taken in the Soviet Union; he contends that the immigration judge erred in finding the respondent to be deportable under section 241(a)(19) due to his "Arajs Kommando" activities; and he argues that the immigration judge erred in finding the respondent to be deportable because he had willfully misrepresented a material fact in order to procure an immigrant visa.

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- 3/ The respondent filed an interlocutory appeal of the immigration judge's order allowing the Riga depositions. The Board dismissed the appeal on March 19, 1987.
- 4/ The regulation which authorizes the deposition of witnesses in deportation proceedings was revised on January 29, 1987, before the Riga depositions were conducted. The regulation concerning depositions now appears at 8 C.F.R. § 3.33.
- 5/ While the instant appeal was pending, the Soviet Union recognized Latvia's independence. See, e.g., Soviets Recognize Baltic Independence, Ending 51-Year Occupation of 3 Nations, New York Times, September 7, 1991, at A1. The Soviet Union later transformed into the Commonwealth of Independent States. See, e.g., Ex-Soviet Republics Sign Charter, Washington Post, December 22, 1991, at A1. We take administrative notice of these changes in foreign governments. See Matter of Chen, Interim Decision 3104 (BIA 1989). When we refer to the "Soviet Union" in this decision, however, we will be discussing that nation as it existed when the proceedings in this case were held before the immigration judge.

Prior to addressing the respondent's arguments on appeal, we will summarize the testimony of the Government's expert witness, the significant documentary evidence offered against the respondent, and the respondent's testimony. 6/

THE GOVERNMENT'S EXPERT WITNESS

Dr. Raul Hilberg, a professor of political science at the University of Vermont, appeared to testify as the Government's expert witness in the instant proceedings. Dr. Hilberg stated at the hearing that he had studied the holocaust for approximately 40 years (Tr. at 72). He defined the "holocaust" as "the process culminating in the physical annihilation of the Jewish people in Europe between 1933 and 1945" (Tr. at 72). Dr. Hilberg is the author of The Destruction of the European Jews (Gov. Exh. 18). Dr. Hilberg testified that he has given testimony as an expert witness in a total of nine deportation and denaturalization cases (i.j. dec. at 5 n.1).

Dr. Hilberg provided the following testimony regarding the Nazi occupation of Latvia during World War II. He testified that the German Army entered the Baltic States on June 22, 1941, when Germany began its attack on the Soviet Union (Tr. at 96-97). He stated that the Government of Nazi Germany's policy with respect to Jews, Gypsies, and certain communists found in Latvia was to annihilate them (Tr. at 97, 129-30). The German mobile units which had the responsibility of carrying out this annihilation policy were known as "Einsatzgruppen" (Tr. at 97-98, 104, 107). Dr. Hilberg testified that the "Einsatzgruppen" would follow closely behind the advancing German Army, so that Jews and others could be killed before they became aware of the annihilation practice (Tr. at 105-06). The "Einsatzgruppen" were also deployed to combat Soviet partisans operating along the eastern front (Tr. at 105).

Dr. Hilberg testified further that "Einsatzgruppe A" was responsible for operations in Latvia (Tr. at 100, 106; Gov. Exh. 19). The commander of "Einsatzgruppe A" was originally the German General Stahlecker (Tr. at 106). Dr. Hilberg stated that the commander of "Einsatzgruppe A" was subordinate to Heydrich, and later Kaltenbrunner, of the Reich Main Security Office ("RSHA"), who in turn were subordinate to Himmler, the head of the "SS" (Tr. at 106-07; Gov. Exh. 19). Dr. Hilberg stated that

6/ We find that it is unnecessary to summarize the testimony of the Riga deposition witnesses (i.j. dec. at 9-22), as well as the testimony of the survivor witnesses from the Salaspils concentration camp (i.j. dec. at 7-9), because the immigration judge's decision contains comprehensive summaries of those testimonies.

General Stahlecker prepared reports, or "Ereignismeldungen," which were filed with the RSHA in Berlin, and in which Stahlecker described the activities of "Einsatzgruppe A" (Tr. at 117-23; Gov. Exhs. 20, 34).

According to Dr. Hilberg, "Einsatzgruppe A" was further divided into "Einsatzkommandos" and indigenous auxiliary forces; "Einsatzkommando 2," which had territorial authority over Latvia, arrived in Riga on July 1, 1941 (Tr. at 108-09, 128-29; Gov. Exhs. 19, 20). The leaders of "Einsatzkommando 2," in chronological order, were the Germans Batz, Strauch, and finally, Lange (Tr. at 110; Gov. Exh. 19). Under a parallel chain of command, the "SS" and police leader for Latvia was the German General Schroeder (Tr. at 111-12; Gov. Exh. 19). The German official who oversaw the formation of a ghetto for Jews in Riga and labor camps in the surrounding area was named Krause (Tr. at 113-15; Gov. Exh. 19).

Dr. Hilberg explained that the mission of "Einsatzkommando 2" in Latvia was to kill Jews and Gypsies, and to detain and sometimes kill political opponents such as communists (Tr. at 129-30). "Einsatzkommando 2" had only 170 members when it arrived in Riga, and there were approximately 70,000 Jews in Latvia at the beginning of the Nazi occupation (Tr. at 129-30, 220). Therefore, "Einsatzkommando 2" began in 1941 to utilize indigenous personnel in Latvia so that it could carry out its policy of annihilation there (Tr. at 130-31). One such indigenous unit that was formed was the "Arajs Kommando," named for its leader, Viktors Arajs (Tr. at 139). 7/ The "Arajs Kommando" was also known by the names "Latvian Security Division," "Latvian Auxiliary Security Police," and "Latvian Security Section" (Tr. at 136-37).

Dr. Hilberg testified that the "Arajs Kommando" was formed immediately after the German occupation of Latvia, during the first few days of July 1941 (Tr. at 138). Some of the members of the "Arajs Kommando" were former members of the Latvian Army, which had been incorporated into the Soviet Army following the Soviet occupation of Latvia in 1940; these former Latvian Army members were eager to desert the Soviet Army, and some seized the opportunity to join the "Arajs Kommando" (Tr. at 148-49).

Dr. Hilberg stated that the "Arajs Kommando" had 50 or 60 members when it was formed in July 1941; 100 members by August 1941; several hundred members by the end of 1941; and at least 700 members during the years 1942 and 1943 (Tr. at 158-59). After the "Arajs Kommando" had over 100 members, it was divided into companies (Tr. at 162-63). At least six such companies were

7/ Viktors Arajs was tried in West Germany for his war-time activities, and he was sentenced to life imprisonment in 1979 (Tr. at 139-40; Gov. Exh. 22). He died in prison in January 1988.

eventually formed between 1941 and 1944 (Tr. at 162-63; Gov. Exh. 19). The company commanders of the "Arajs Kommando" reported to Arajs, who, after December 1941, reported to Lange, the head of "Einsatzkommando 2" (Tr. at 164-65; Gov. Exh. 19).

Dr. Hilberg testified that he had vast experience in examining captured Nazi documents; he said he had examined thousands of these documents in his career (Tr. at 76-79). During the hearing, Dr. Hilberg was shown copies of documents in the Latvian and German languages which indicate that Konrads Kalejs joined the "Arajs Kommando" in late July 1941, that his rank was first lieutenant, and that he was a company commander in the "Arajs Kommando" (Tr. at 165-77, 305-07; Gov. Exhs. 23, 25, 45).

Dr. Hilberg also stated that the "Arajs Kommando" headquarters were located on "Herman Goering Strasse" in Riga; this street was known as "Valdemara Street" prior to the German occupation of Latvia (Tr. at 178-79; Gov. Exh. 23). The headquarters were moved to Krisjana Barons Street in 1942 because the "Arajs Kommando" had increased its membership (Tr. at 180; cf. Gov. Exh. 23--"Hermann Goering Str. 19," with Gov. Exh. 25--"Kr. Barons-Str. 99").

Dr. Hilberg testified that the "main task" of the "Arajs Kommando" between July 1941 and early 1942 was to round up civilians, guard them, and kill them (Tr. at 137, 227-28). At the hearing, Dr. Hilberg reviewed German documents indicating that as of August 10, 1941, "Einsatzkommando 2," acting with the assistance of the "Arajs Kommando" and other auxiliaries, had killed 29,000 civilians in Latvia and Lithuania; approximately 90 percent of these civilians were Jewish (Tr. at 189-90, 195; Gov. Exh. 27 at 3). Because the "Arajs Kommando" had only about 100 members in August 1941, Dr. Hilberg surmised that the number of "Arajs Kommando" members involved in the killings during this period "must have been close to 100 percent" (Tr. at 190-91).

Dr. Hilberg explained that when the Nazi Government in Berlin ordered the deportation of thousands of German Jews to Riga and other areas in the East, the "SS" leaders for Latvia decided to liquidate the ghetto in Riga to make room for the incoming Jews (Tr. at 202-07, 210-11; Gov. Exhs. 29-30). The influx of Jews also necessitated the construction of a concentration camp near Riga at Salaspils; the concentration camp opened there in December 1941 (Tr. at 206, 234). In order to liquidate the Riga ghetto, 27,800 Jews were shot in the woods near Riga in late November and early December 1941 (Tr. at 210-11, 217-18; Gov. Exhs. 32-33). Members of the "Arajs Kommando" were involved in the guarding and shooting of Jews in these mass executions in the woods outside Riga (Tr. at 221-22). "Arajs Kommando" members in groups of 30 to 40, or at most 50 to 60, also travelled by bus to other areas in Latvia in order to carry out mass executions of Jews (Tr. at 146-48, 226-27). By January 1942, only 4,000 Jews remained alive of the 70,000 Jews in Latvia when the Nazi occupation began;

"Einsatzkommando 2," with the assistance of the "Arajs Kommando," was responsible for more than half of these killings (Tr. at 219-20, 224-25; Gov. Exhs. 33-34).

Dr. Hilberg opined that if the respondent, as an "Arajs Kommando" officer, had been in Riga at the time of the liquidation of the ghetto in late 1941, he "as a matter of course" would have been involved in the liquidation (Tr. at 223-24, 368-70). Dr. Hilberg also opined that if the respondent was not in Riga during the liquidation operation, he "almost inevitabl[y]" would have been elsewhere in Latvia "doing essentially the same job" (Tr. at 227-28).

Dr. Hilberg testified further that as the "Arajs Kommando" grew larger in membership in 1942, it began to engage in operations against Soviet partisans and some Red Army soldiers in areas along the eastern front (Tr. at 145-46, 262-63). Members of the "Arajs Kommando" assisted the "Einsatzgruppe A" in seeking out and arresting communist party members in the area known as Loknja, which was approximately 250 miles east of Riga and under German control (Tr. at 262, 268-69). "Einsatzgruppe A" and its auxiliaries burned villages and their inhabitants in this region, and also executed Jews and Gypsies who were found in the area (Tr. at 269-70). Dr. Hilberg observed that although the Soviet partisans and soldiers whom the "Einsatzgruppe A" forces confronted at Loknja were armed, the German casualty reports referred to heavy losses on the side of the partisans, while there were few reports of casualties on the side of the "Einsatzgruppe A" forces (Tr. at 145-46, 272-73, 357-58).

At the hearing, Dr. Hilberg reviewed documents indicating that Konrads Kalejs served as a first lieutenant in the Loknja detachment of "Einsatzgruppe A" between February and April 1942, and that he participated in fighting at Nasva, Sanniki, and Rogova in February and March 1942 (Tr. at 261-64; Gov. Exhs. 25, 37). General Stahlecker was the commander of the "Einsatzgruppe A" forces during this period; Stahlecker was killed, however, in March 1942 in a battle against partisan forces along the eastern front (Tr. at 106, 283, 288-89). Dr. Hilberg was also shown an "Einsatzgruppe A" report dated March 16, 1942, which provided that 38 Jews and one Gypsy had been summarily executed in Loknja (Tr. at 266-67; Gov. Exh. 38).

Dr. Hilberg gave the following testimony concerning the concentration camp at Salaspils near Riga. When the camp opened in December 1941, there were approximately 1,000 Jewish inmates; these inmates worked on the construction of additional barracks at the camp (Tr. at 233-34; Gov. Exhs. 35, 36). There were 1,500 to 1,800 Jews at Salaspils between December 1941 and the Summer of 1942 (Tr. at 240). When the construction of the barracks was completed in the Summer of 1942, the Jews were returned to the Riga ghetto to make room for other types of inmates at Salaspils;

about eighteen barracks were built at the camp (Tr. at 234, 239). In the Spring of 1943, there were approximately 1,900 political and criminal prisoners at Salaspils, as well as smaller groups of inmates including deserters, partisans, and work-shy civilians; the total inmate population during this period was about 2,000 (Tr. at 241-42, 245, 338). The Salaspils concentration camp was closed in October 1944, when the Soviet Army arrived in Riga (Tr. at 245-46).

Dr. Hilberg stated that the camp at Salaspils had barbed-wire fences, guard towers--including a central watchtower, and search lights; the inmates were subjected to roll calls (Tr. at 235, 338-39). The prisoners were forced to work to the point of exhaustion, and were given "grossly inadequate" food rations; many died from overwork or starvation (Tr. at 235, 254-55). Inmates who tried to escape or who were too weak to work were shot (Tr. at 256-57). In one instance, two Jews who escaped from Salaspils were caught, returned to the camp, and then executed in front of the 1,000 remaining Jews there (Tr. at 233, 255; Gov. Exhs. 35-36). The Jews at the camp wore "striped prison garb" with a yellow star (Tr. at 241).

Dr. Hilberg testified that he had reviewed testimony from the trial of Viktors Arajs which placed the respondent at Salaspils during the Nazi occupation of Latvia (Tr. at 237, 242-43, 333-34). Dr. Hilberg stated that he had reviewed documents from the Arajs trial in which a witness named Artur Abols stated that the respondent was the company commander in charge of the guard forces at Salaspils in the Spring of 1943; Dr. Hilberg regarded Abols' statements concerning the respondent's presence at Salaspils to be persuasive because Abols' statements were made shortly after the war and because Abols would have had no reason to "ma[k]e up such a story" (Tr. at 237, 334, 336-37, 371-72). 8/

Dr. Hilberg testified further that the guards at Salaspils were "Arajs Kommando" members, and that the company commander had "supreme . . . authority" over the guards and inmates at the camp (Tr. at 237-38, 250-51). The company commander gave the guards at the camp their assignments (Tr. at 251, 347-48). The "Arajs Kommando" members guarded the perimeter of the camp and also escorted work details outside the camp (Tr. at 238-39, 248-49). The guards' treatment of the inmates at Salaspils "var[ied] from harsh to brutal" (Tr. at 250). "Arajs Kommando" members who were guards at Salaspils were involved in the shootings and executions there (Tr. at 257).

Dr. Hilberg testified that there were several work sites near Salaspils to which the guards escorted the inmates; these sites

8/ The record reflects that Artur Abols died on October 18, 1963 (Gov. Exh. 97A).

included a peat bog extraction area, one or two saw mills, and a railway yard (Tr. at 247). There was also a quarry several miles to the east of Salaspils at Sauriesi (Tr. at 247-48).

On cross-examination, Dr. Hilberg stated that he had not viewed the videotapes of the Soviet witnesses who were deposed in these proceedings (Tr. at 320). He testified that he could not state definitely that the respondent had participated in the mass executions of Jews in the woods outside Riga in late November and early December 1941 (Tr. at 370). Dr. Hilberg also stated that he had not seen any captured German documents which placed the respondent at Salaspils in any capacity (Tr. at 337).

SIGNIFICANT DOCUMENTARY EVIDENCE CONCERNING THE RESPONDENT

The most significant documentary evidence submitted by the Government which concerns the respondent in particular consists of the following: exhibits 23, 25, 44, 45, and 74 are certified copies of documents which the respondent has admitted that he submitted to officials at the University of Riga between the years 1941 and 1943. Exhibit 23 is dated November 28, 1941, is signed by V. Arajs, the chief of the Latvian Auxiliary Security Police, and provides that "First lieutenant Konrads Kalejs has been a member of the Latvian Auxiliary Security Police from 29 July, this year, to the present" (Gov. Exh. 23). Exhibit 25 is dated November 5, 1942, is signed by K. Ozols, the deputy chief of the Latvian Security Section, and provides that "First Lieutenant Konrads Kalejs born on 26 June 1913, has been in the service of the Latvian Security Section since 30 July 1941 and was at the Eastern front between 14 February 1942 and 27 April 1942" (Gov. Exh. 25). Exhibit 44 is dated September 28, 1942, is addressed to the rector of the University of Riga, contains a handwritten request to transfer "from the School of Engineering to the Economics Department of the School of Economics and Law," is signed by "First Lieutenant Kalejs," and bears the seal of Lt. Dibietis of the Security Detachment (Gov. Exh. 44). Exhibit 45 is dated "Riga, 15 May 1943," is addressed to the Registrar's Office of the University, is signed by K. Kalejs, and contains a handwritten message which provides: "I hereby inform you that I am in the service of the Commander of the Security Police and SD of Latvia - in the Latvian Security Section as a company commander" (Gov. Exh. 45). Exhibit 74 is dated November 25, 1941, is signed by the head of the auxiliary police of the City of Gulbene, and certifies that "First Lieutenant Konrads Kalejs, of the Fifth Infantry Regiment of Cesis of the former Army of Latvia actively took part in guerrilla activity from 29 June to 5 July 1941 in terrorizing and pursuing Communists" (Gov. Exh. 74).

Further significant documentary evidence concerning the respondent includes: exhibit 24, which is a certified copy of an officer's identification form dated September 18, 1940, reflecting

that Konrads Kalejs was promoted to First Lieutenant in the Latvian Army in 1939; exhibit 24 also reflects that a copy of the officer's identification form was prepared on November 22, 1941, and certified by Arajs, the chief of the Latvian Auxiliary Security Police, "for submission to educational institutions" (Gov. Exh. 24). Exhibit 37 is a certified copy of a document dated April 30, 1942, bearing an illegible signature from a captain of the Security Police and SD, "Einsatzgruppe A," Loknja Detachment, and certifying that First Lieutenant "Konrad Kalejs was in action from 18 February 1942 to 26 April 1942 with the Loknja Detachment and participated in the fighting in Nasswa [Nasva] on 22 February 1942, Saniki on 18 March 1942, and Rogowa [Rogova] on 25 March 1942" (Gov. Exh. 37). Exhibit 42 is a certified copy of excerpts from the April 10, 1942, edition of the Latvian magazine "Laikmets," which includes a photograph of First Lieutenant Konrads Kalejs and an account by him of the attack "far behind bolshevik lines" in which General Stahlecker led Latvian "SS" troops, but was fatally wounded (Gov. Exh. 42).

Each of the exhibits described above has an attached certification that the original of the document was preserved in the "Central State Historical Archive of the Latvian SSR," and the exhibits are otherwise certified in accordance with the requirements of 8 C.F.R. § 287.6. The Government also produced a forensic document analyst, Gideon Epstein, who was recognized by the immigration judge as an expert witness (Tr. at 596). Epstein testified that the signatures on exhibits 44 and 45, among others, were the same as the signatures on documents known to have been signed by the respondent (Tr. at 597-99, 649).

THE RESPONDENT'S TESTIMONY

At his deportation hearing, the respondent initially declined to testify on Fifth Amendment grounds (Tr. at 67-69); he ultimately waived his Fifth Amendment privilege, however, and gave testimony about his activities in Latvia during the Nazi occupation (Tr. at 1138-40). The respondent also testified under oath about his war-time activities on March 1, 1984, when he was deposed by Jeffrey Mausner in Tampa, Florida (Gov. Exh. 17). 9/

9/ The respondent objected at the hearing to the admissibility of the deposition taken by Mausner, for which the respondent appeared without counsel (Tr. at 65-66). The immigration judge found that the March 1, 1984 deposition "was not coercive or otherwise conducted in violation of the respondent's due process rights" (i.j. dec. at 22 n.3). The respondent has raised no argument on appeal concerning the admissibility of this deposition. See United States v. Kirsteins, 906 F.2d 919 (2d Cir. 1990).