

**FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JAIME LOPEZ-CHAVEZ,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 99-70251

INS No.
A71-813-002

OPINION

9458

COUNSEL

Gary H. Manulkin, Manulkin, Glaser & Bennett, Fountain Valley, California and Peter Schey, Center for Human Rights

The form showed the following information:

Q. -- or printing? All right.

A. It's all my writing.

ER 87, lin t87, 0Fxs atswwpsj -On cross-examination, there was the follow3 colloquy:c 0 T* riting.

NAME: LOPEZ-CHAVEZ, Jaime

PLACE OF BIRTH: NOCHIXTLAN, MEXICO

[By counsel for Lopez-Chavez:]

Q. Did any of the information on the 424 come from any of the records at the Orange County Sheriff's Department?

A. No.

Q. Did you review a booking log or a booking record in -- in the respondent's case.

A. The -- Each -- Each individual coming to us as I recall had a computerized form from the county in -- in every -- I remember seeing that. And if the -- the alien himself had it, we would look at it and give it back to him.

Q. What sort of information was contained on this computerized -- this computer printout?

A. It had a name on there and I -- I don't -- don't know what other information it may have had but I recall that they did have a name -- name on the form.

process was cJuly 2nd, ll that t't know

noteI -- I doga I -- -- any of the informazed -- this compuhat they did948 TD -0d948 Tn to I -- notes Tw (mig

PLACE, DATE & TIME AM
OF ENTRY: 1-5-90 near SYS PM5

DATE, PLACE & TIME
QUESTIONED: 7/2/92/OCJ 6

TIME & PLACE ARRESTED: 7/2/92

APPREHENDING OFFICER: Miera

The IJ ruled that the form had established Lopez-Chavez's alienage and that therefore, the burden shifted to Lopez-Chavez to demonstrate a legal time, place and manner of entry into the United States. Because Lopez-Chavez offered no evidence of lawful entry, the IJ found him deportable but granted Lopez-Chavez's request for voluntary departure.

On appeal, the BIA held that: (1) the certified WR-424 was properly admitted because Miera testified as the maker that it was an official document completed in the routine performance of his duties and contained information provided to him by Jaime Lopez-Chavez, (2) the identity of the names of respondent and the person described in the form was sufficient to prove that the form pertained to him, in the absence of evidence to the contrary; and (3) the WR-424, along with the agent's testimony, shifted the burden to the alien to show legal time, place and manner of entry.

III. Discussion

Lopez-Chavez argues that the WR-424 and the testimony of the INS agent in this case did not establish deportability by clear and convincing evidence. The INS had the

Miera began his testimony by stating that he did not recognize Lopez-Chavez, and that he had no specific recollection

Lopez-Chavez's attorney, Niels Frenzen, showed Miera the WR-424, and pointed out where it stated that Lopez-Chavez's

Miera interviewed ten people for five minutes each on the day he interviewed Lopez-Chavez. The WR-424 is not intended to be used when individuals are arrested by the police on non-immigration remuse-arges. Its purpose424 tothe

size of an index card, and does not have spaces for an INS agent to explain, for example, whether an individual is a legal permanent resident, even if he or she entered without inspection. Also unlike an I-213, the WR-424 does not require a signature from its preparer attesting to its veracity and accuracy.

Moreover, as explained above, the WR-424 is not intended to be used when individuals are arrested by the police on non-immigration related charges. Even though the WR-424 is ill suited for any purpose other than interviewing suspected aliens who are arrested "in the field," the INS instructs its agents to use the WR-424 for "many, many purposes," and not simply -- as in the case of the I-213 -- to create a record of a deportable alien. Given the manner in which the INS employs the WR-424, it cannot be said that the form fits into a scheme of "normal recordkeeping requirements." Cf. Espinoza, at 310 (holding that admission of I-213 is "fundamentally fair" when it is completed in accordance with "normal recordkeeping requirements").

A final point is worth making. Our court has held that an I-213 can be used by the INS to meet its burden of proving