

MAR 14 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JOHAN LARA-RIVAS,  
  
Petitioner,  
  
v.  
  
MICHAEL B. MUKASEY, Attorney  
General,  
  
Respondent.

No. 04-75947

Agency No. A78-188-247

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted March 10, 2008  
San Francisco, California

Before: REINHARDT, NOONAN, and FISHER, Circuit Judges.

Petitioner, Johan Lara-Rivas, seeks review of the Board of Immigration Appeals' (BIA) summary affirmance of the Immigration Judge's (IJ) decision finding him removable and pretermining his application for adjustment of status on the basis that he made a false claim to U.S. citizenship in order to obtain a

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

California driver's license. *See* 8 U.S.C. § 1182(a)(6)(C)(ii). Lara-Rivas raises two due process challenges to the IJ's finding of removability. First, he argues that the facts alleged in the Notice to Appear (NTA), as amended by the Form I-261, were insufficient to support the false claim to U.S. citizenship charge that was added by the amendment and did not provide the requisite notice of the content of that charge. Second, he argues that, even if the Form I-261 was sufficient, the IJ erred by relying on evidence outside of the record of conviction to sustain that charge.

We conclude that any error was harmless. *See Kohli v. Gonzales*, 473 F.3d 1061, 1066-67 (9th Cir. 2007). Lara-Rivas conceded his removability under the original charge, i.e. being an alien present in the United States without being admitted or paroled. *See* 8 U.S.C. § 1182(a)(6)(A)(i). He sought relief from removal, however, in the form of adjustment of status. An alien bears the burden of proving his eligibility for adjustment of status. *See* 8 U.S.C. § 1229a(c)(2)(A); 8 C.F.R. § 1240.8(d). The evidence of Lara-Rivas's use of a false U.S. passport to obtain a California driver's license was properly admitted in support of the government's motion to pretermitt his adjustment application. *See, e.g., Salviejo-Fernandez v. Gonzales*, 455 F.3d 1063, 1066 (9th Cir. 2006). That evidence and, in particular, Lara-Rivas's own testimony, established his inadmissibility under 8 U.S.C. § 1182(a)(6)(C)(ii) (rendering inadmissible an alien who makes a false

claim to U.S. citizenship in order to obtain a benefit under federal or state law), a non-waivable bar to eligibility for adjustment of status. Lara-Rivas failed to rebut this contention both in his brief and at oral argument.

**DENIED.**