

Form I-213 - Summary of Cases

BIA CASES

A. Foundational Cases Relating to the Presumption of Reliability

Matter of Mejia, 16 I&N Dec. 6 (BIA 1976) - In the absence of any proof that the Form I-213 contains information which is incorrect or which was obtained by coercion or force, this form is inherently trustworthy and would be admissible even in court as an exception to the hearsay rule as a public record and report.

- The circumstances of the respondent's arrest and detention were not relevant to its admissibility.

Matter of Barcenas, 19 I&N Dec. 609 (BIA 1988) - absent any evidence that a Form I-213 contains information that is incorrect or was obtained by coercion or duress, it is inherently trustworthy and admissible as evidence to prove alienage or deportability.

- the officer who prepared the form testified concerning its contents
- form reflects that it was completed based on admissions made by the respondent
- respondent did not testify and no suggestion made by the attorney that the form was erroneous or the result of coercion or duress

B. Cases Relating to Juveniles

Matter of Ponce-Hernandez, 22 I&N Dec. 784 (BIA 1999) - I-213 was admitted. The fact that the respondent was a minor (15 years old) did not change result - no reason to think his age impeded an accurate exchange of basic biographical information. Factors the Court noted:

- nothing facially deficient about it that would render it inadmissible
- information on the form was detailed
- source of the information: nothing indicates that the information came from anyone other than the respondent
- because the respondent did not appear at his hearing, he waived his opportunity to claim that it contains information which was incorrect or obtained by coercion or duress
- fact that form lacked information regarding how it was completed was not ideal but okay

Matter of Gomez-Gomez, 23 I&N Dec. 522 (BIA 2002) - I-213 was admitted, no indicia of error or reason to doubt source of information (8 year old child's accompanying adult).

- form clearly indicates that source of information was an adult who was in the company of the child and who claimed to be her father - thus special concerns about the reliability of information obtained from a minor do not apply
- form also indicates circumstances of apprehension
- no valid cause to discredit the information obtained from the adult - a generally known motive of aliens to fabricate parental relationships in these situations cannot be considered, when as here, there is no evidence suggesting such a circumstance existed
- alien did not appear, thus made no claim that information was obtained through coercion or duress

Matter of Rosa Mejia-Andino, 23 I&N Dec. 533 (BIA 2002) - I-213 was not admitted. Improper service of the NTA on person identified as the respondent's uncle on the I-213. Should have served parents, not the uncle. Concurring opinion reaches the issue of I-213 authentication:

- Because the respondent was only seven years old when apprehended, special care should be taken to explain the source and reliability of the information in the I-213.
- source: not clear where the information came from
- distinguishes Ponce-Hernandez and Gomez-Gomez

NINTH CIRCUIT CASES

[***Note: You may cite to unpublished cases issued after January 1, 2007, pursuant to amended Federal Rule of Appellate Procedure 32.1]

A. Published

1. Full weight:

Trias-Hernandez v. INS, 528 F.2d 366, 369 (9th Cir. 1975) - a Form I-213 is probative on the issue of entry, and its admission is fair absent evidence of coercion or that the statements are not those of the petitioner.

Espinoza v. INS, 45 F.3d 308, 311 (9th Cir. 1995) - I-213 admitted.

- I-213 was certified by the INS district director, satisfying Iran. No need for an accompanying affidavit or testimony of the preparer. Appears to have been prepared in accordance with normal record-keeping requirements - signed and dated by the officer who completed it
- indicia of unreliability on the form itself: contains two types of handwriting, does not indicate who filled it out and when, but no evidence that it contains any material errors.
- source: the information on an I-213 could not be presumed true when the source of that information was neither a government official nor the subject of the report, or where there was evidence of unreliability
- regarding cross-examination of officer: an automatic right to cross-examine the preparers of such documents would place an unwarranted burden on the INS. However, if the petitioner produces probative evidence that contradicts anything material on the I-213, then the "factfinder would be hard put to find the I-213 clear and convincing evidence of alien status without the government's producing evidence to show the reliability of the information on the I-213."

Lopez-Chavez v. INS., 259 F.3d 1176, 1178 (9th Cir. 2001) - Although the WR-424 is smaller than the I-213, it contains the same information that we held to be critical in *Espinoza* and is prepared in essentially the same way. A properly authenticated WR-424 is admissible in a deportation hearing to prove its contents.

2. Limited or no weight:

Iran v. INS, 656 F.2d 469, 472 (9th Cir. 1981) - immigration forms can be authenticated through "some recognized procedure," such as those required by INS regulations or the Federal Rules. In this case, the government "failed to introduce any proof of authenticity or any proof from which the immigration judge could infer that the form was a true document."

Murphy v. INS, 54 F.3d 605, 610-11 (9th Cir. 1995) - the I-213 merited little, if any, weight where petitioner disputed the information on the form and source of the information was in doubt

- disputed information on the form: place of birth, names of parents, use of aliases
- source of information was an INS informant with apparently ulterior motives to make statements against the respondent
- unexplained cross-outs and handwritten additions to the form, not initialed
- no testifying witness subject to cross-examination to verify the source of the information and its recording

Hernandez-Guadarrama v. Ashcroft, 394 F.3d 674, 680 (9th Cir. 2005) - I-213 given no evidentiary weight because it has no independent value.

- The I-213 referred to the statement of the petitioner's wife (which the court had decided it could not consider) and thus provides no additional evidence.

B. Unpublished

You v. Mukasey, 2007 WL 4386211 (9th Cir. Dec. 13, 2007) - "Although the Form I-213 was not authenticated by Special Agent Brown at the hearing, the government made Brown available for questioning. Petitioner declined to pursue this opportunity. Petitioner's argument that this evidence was not fairly admitted is further hobbled by his failure to object to its admittance. The IJ and BIA did not violate Petitioner's due process rights by considering these documents."

Chavez-Gonzalez v. Gonzales, 210 F.App'x. 666 (9th Cir. 2006). - "Petitioner has not established the requisite prejudice to sustain his due process claims. Because Chavez-Gonzalez conceded during his testimony that he made the statements memorialized in the Form I-213, cross-examining the officer who prepared the document would not "potentially ... affect[] the outcome of the proceedings. See *Zolotukhin v. Gonzales*, 417 F.3d 1073, 1077 (9th Cir. 2005) (internal quotation marks and emphasis omitted)."

Robles v. Ashcroft, 94 Fed.Appx. 618 (9th Cir. 2004) - "There was no effort made to authenticate the I-213, so it may have been inadmissible had a proper objection been raised. See *Espinoza v. INS*, 45 F.3d 308, 309-10 (9th Cir. 1995) (holding that immigration forms must be authenticated). However, Rosas Robles did not object to the lack of authentication of that document. At the hearing, she objected "only because [the I-213] does not have any relevant information on this case" (emphasis added). See *Merrick v. Farmers Ins. Group*, 892 F.2d 1434, 1440 (9th Cir. 1990) (holding that objection on grounds of relevance does not preserve an objection for lack of authentication); *United States v. McGregor*, 529 F.2d 928, 929 n. 3 (9th Cir.1976) (same). Since Rosas Robles did not argue, to the IJ or the BIA, that the I-213 was improperly authenticated, she has waived that argument before us. *Taniguchi v. Schultz*, 303 F.3d 950, 955 (9th Cir. 2002)."

Janjac v. INS, 46 F.3d 1142 (9th Cir. Jan. 10, 1995) - "The Janjacs repeat the problems that they identified at their deportation hearing: that different officers could not have completed forms with identical language, that the wrong name of Ansly Janjac's mother is shown, that his gender is not indicated, and that the ages are incompatible with those of a mother and son. These alleged errors are immaterial. The forms were probative on the material issues of the Janjacs' alienage and method of entry. Because the Janjacs have offered no evidence that they are not Haitian citizens who entered the country legally, admission of the forms was fair. The Janjacs also contend that the immigration judge should not have deported Ansly Janjac based on his Form I-213 because he is a minor and was not represented or accompanied during the form's preparation. However, as the BIA pointed out, the record contains no evidence that supports Ansly's claim that he was unaccompanied during his

interview. Thus, the BIA did not err in refusing to question the reliability of Ansly's Form I-213 on this basis. Because the Form I-213's were admissible and the Janjacs failed to submit any contradictory evidence of alienage or means of entry, the INS met its burden of demonstrating by clear and convincing evidence that they were deportable."

Lopez v. INS, 45 F.3d 436 (9th Cir. Dec. 28, 1994) - "Lopez's sole contention with regard to the I-213's authenticity is that the INS failed to show that she provided the information on the form. However, Castillo testified that he obtained the information in the I-213 from Lopez and inserted it himself. He was present and subject to cross-examination. In any event, Lopez's argument relates to the weight of the document, not its admissibility."