

## Foreign fiancée faces deportation after accidental border crossing from Montana to Canada

By EVE BYRON Helena Independent Record | Posted: Wednesday, September 2, 2009 7:30 am

HELENA - A young woman from Argentina with a bad sense of direction could be deported after she mistakenly crossed the Canadian border while driving from Montana to California.

Estafania Menendez, 26, came to the United States in 2002, entering through Georgia with an admission document that said she could legally stay here for six months. However, she moved to California, where she's lived for the past seven years, and got a series of jobs, including her most recent stint as a bikini dancer at a gentlemen's club in Pasadena.

In all those jobs, she noted Tuesday during her testimony in U.S. District Court in Helena, Menendez was paid in cash so her illegal immigrant status wouldn't be revealed. She added, though, that she paid taxes on her earnings after obtaining a tax identification number from the Internal Revenue Service.

She married once, but it ended after three months. About a year ago, she met a young man from Missoula, and they fell in love.

Menendez said she drove from California to Montana recently to visit with the young man and his family, and to plan their wedding. On Aug. 12, after they said their goodbyes, she drove away, sobbing.

She headed north on Interstate 15, not realizing until she was at the Canadian border that she was going the wrong way.

"I'm bad with directions," Menendez said.

She explained her plight to the Canadian border agent, who told her to drive around a flagpole to turn around and re-enter the United States. But when she got there without a passport, birth certificate or any identification other than her international driver's license and her visa, the U.S. agent told her he wasn't going to let her enter the States because, not only did she not have the proper paperwork, she had lived here illegally for so long that she wouldn't be allowed to return for 10 years.

He gave her the option of returning to Canada, or being deported by the U.S.

Menendez testified that she was afraid of being alone in Canada and afraid of returning to an abusive father in Argentina, so she decided to try to stay in the United States. In light of that decision, the federal government commenced an expedited deportation effort.

In court Tuesday, her attorney, Shahid Haque-Hausrath, argued that simply driving around a flagpole in Canada to return to the U.S. doesn't legally mean that she left the U.S. He pointed to a 9th U.S. Circuit Court of Appeals case in which a man whose visa automatically renewed whenever he left the States tried a similar tactic. In that case, the court ruled that driving around the flagpole didn't constitute leaving the country, Haque-Hausrath argued.

He added that Canada didn't have any record of Menendez being admitted into the country.

He filed a petition to try to stop the expedited deportation, naming Eric Holder, the U.S. attorney general; Janet Napolitano, the secretary of Homeland Security; two immigration officials and a Toole County sheriff's deputy as respondents in the case. Haque-Hausrath instead wanted U.S. District Court Senior Judge Charles Lovell to force the government to go through the regular deportation effort, which can take more than a year.

While the judge granted the motion to hear the case, he clearly wasn't pleased with some of Haque-Hausrath's arguments. Lovell frequently overruled objections by Haque-Hausrath of questions posed to witnesses by U.S. Assistant Attorney Leif Johnson and of documents submitted as evidence.

Lovell noted that the jurisdiction of the court, given to him by Congress, placed limits on the questions before him and he admonished Haque-Hausrath to stay focused on what the court could and could not rule upon.

The judge said he only could determine whether Menendez was an alien; whether she was ordered removed from the States; and whether she could prove that she was lawfully admitted or was a permanent resident - questions Lovell asked Menendez directly.

She responded that she was not a legal resident, was an alien and was served with a removal order.

Lovell said he would take the case under advisement after the two-hour hearing, and denied a request by Haque-Hausrath to allow Menendez to post bond. She's been in custody at the Cascade County detention center since her arrest last month.

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