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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEONARDO TAPIA-FELIX, Petitioner, v. MATTHEW G. WHITAKER, Acting Attorney General, Respondent.	No. 14-73994 Agency No. A027-530-663 MEMORANDUM*

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

Argued and Submitted October 11, 2018
Resubmitted September 17, 2020**

LEONARDO TAPIA-FELIX, Petitioner-Appellant, v. WILLIAM P. BARR, Attorney General, Respondent-Appellee.	No. 19-16045 D.C. No. 2:15-cv-01464-SPL

Appeal from the United States District Court

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** Appeal case 14-73994 is resubmitted to the panel assigned to appeal case 19-16045.

for the District of Arizona
Steven Paul Logan, District Judge, Presiding

Argued and Submitted July 7, 2020
Seattle, Washington

Before: FERNANDEZ and NGUYEN, Circuit Judges, and BOULWARE, [***] District Judge.

Leonardo Tapia-Felix previously petitioned for review of the Board of Immigration Appeals' decision upholding his final order of removal from the United States. We stayed that matter and transferred Tapia-Felix's claim that he is a United States citizen by birth to the district court for *de novo* review.[1] Tapia-Felix then appealed the district court's adverse ruling on his citizenship claim, and we vacated and remanded in light of two evidentiary errors. On remand, the district court again ruled against Tapia-Felix on his citizenship claim, and Tapia-Felix now appeals that ruling.[2] We have jurisdiction under 8 U.S.C. § 1252 and 28 U.S.C. § 1291, and we affirm the district court and deny the petition for review.

1. As in his previous appeal, Tapia-Felix challenges the district court's credibility determinations for witnesses who testified during the proceedings

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[***] The Honorable Richard F. Boulware II, United States District Judge for the District of Nevada, sitting by designation.

[1] We recall the mandate in Tapia-Felix's petition for review, No. 14-73994, because we never issued a decision on the underlying merits of that petition.

[2] We treat this appeal as merged with Tapia-Felix's petition for review in No. 14-73994. *See Anderson v. Holder*, 673 F.3d 1089, 1094 (9th Cir. 2012).

below. We accord substantial deference to a district court's assessments of credibility, particularly because "only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said." *Anderson v. Bessemer City*, 470 U.S. 564, 575 (1985). We previously concluded that the court's credibility determinations were not clearly erroneous, and we now reaffirm that conclusion. *See Tapia-Felix v. Sessions*, 755 F. App'x 602, 604 (9th Cir. 2018). Although the district court was free to revisit those determinations on remand, we did not require it do so. *Id.* Therefore, we do not disturb the court's credibility findings.

2. Tapia-Felix argues that the district court defied our mandate by reweighing the full body of evidence, as opposed to narrowing its focus to the two pieces of evidence at the core of our decision and holding all else equal. But contrary to Tapia-Felix's suggestion, the scope of our mandate was not so constrained. *See id.* (remanding "for the district court to reevaluate whether the government has carried its burden of showing by clear and convincing evidence that Tapia-Felix was born in Mexico"). Accordingly, the district court did not err by holistically reassessing the record on remand. *See United States v. Kellington*, 217 F.3d 1084, 1092 (9th Cir. 2000) ("According to the rule of mandate, although lower courts are obliged to execute the terms of a mandate, they are free as to 'anything not foreclosed by the mandate' . . . ." (quoting *Herrington v. County of*

Sonoma, 12 F.3d 901, 904 (9th Cir. 1993))).

3. Tapia-Felix further contends that the district court improperly discounted the testimony of expert witness Gretchen Kuhner. We previously held that the district court abused its discretion in excluding Kuhner's testimony. *Tapia-Felix*, 755 F. App'x at 604. However, we did not require the court to assign her opinion any particular weight, and that question is independent of admissibility. Therefore, the district court did not violate our mandate when it found that Kuhner's testimony "has limited value in this case."

We likewise find no clear error in the district court's determination to assign little weight to Kuhner's testimony. Although Kuhner's testimony illuminated broad trends of migration in transnational families, it did not necessarily speak to the idiosyncrasies of Tapia-Felix's circumstances. For example, Kuhner's testimony focused on the practice of Mexican parents of U.S.-born children "reregister[ing]" their children's births in Mexico—but Tapia-Felix's Mexican registration of birth was an *initial* registration rather than a *re*-registration. In fact, his birth was not registered in the United States until nearly two decades after the Mexican registration, and the district court acted well within its considerable discretion in finding that distinction material. Because we view Tapia-Felix's narrative as distinguishable from the heart of Kuhner's testimony, we are not "left with the definite and firm conviction that a mistake has been committed."

Mondaca-Vega v. Lynch, 808 F.3d 413, 426 (9th Cir. 2015) (en banc) (quoting *Anderson*, 470 U.S. at 573).

4. Finally, Tapia-Felix argues that the district court disregarded the mandate by failing to credit the parties' stipulation to his baptism in the United States during the year of his birth and committed clear error in its related factual analysis. Although we find some merit in his concern about the district court's discussion of his baptism, we nevertheless affirm because we conclude that any such error was harmless.

In Tapia-Felix's previous appeal, we held that the district court improperly rejected the parties' factual stipulation without notice or a reasonable opportunity for the parties to respond. *Tapia-Felix*, 755 F. App'x at 604. On remand, the district court reconsidered the stipulation in light of our ruling and expressly "accept[ed]" it. Although the district court proceeded to attack the reliability of Tapia-Felix's baptismal *certificate*, the parties' stipulation did not encompass that document.[3] Accordingly, we conclude that the district court complied with our mandate.

We do, however, find error in the district court's factual assessment of the effect of the stipulation. As noted, the court accepted the parties' stipulation to the

[3] Notably, the baptismal certificate attested to both Tapia-Felix's place of baptism and his place of birth, so the content of the certificate is not wholly coextensive with the stipulation.

fact that Tapia-Felix was baptized on December 17, 1972, in Los Angeles, California. But the court then found that, absent the baptismal certificate it had discredited, "there is no other persuasive evidence of record that shows [Tapia-Felix] was present in the United States in 1972." We read that statement as logically inconsistent with the stipulation, which provided conclusive support for the fact that Tapia-Felix *was* present in the United States in 1972, approximately six months after his birth.

We next assess whether the error was harmless, because "[w]e do not reverse a trial court's erroneous finding unless it 'affect[s] the substantial rights of the parties.'" *Phoenix Eng'g & Supply Inc. v. Universal Elec. Co.*, 104 F.3d 1137, 1142 (9th Cir. 1997) (quoting 28 U.S.C. § 2111). The government presented strong evidence that Tapia-Felix was born in Mexico, including a Mexican birth registration issued close to the date of his birth, a Mexican national registration card, corroborative documents from his immigration A-file, and a statement on his daughter's citizenship application in which his nationality is listed as Mexican. Although Tapia-Felix also furnished a California delayed registration of birth, that registration was issued almost two decades after his birth—and only after he started having problems with U.S. immigration officials. Moreover, the district court found that the key witnesses who testified in Tapia-Felix's favor either lacked credibility or offered otherwise-unhelpful testimony, so they do not provide

a meaningful counterweight to the government's evidence. So too, Tapia-Felix's narrative—that he was born in the United States and then taken by his parents to Mexico to be registered there, with the goal of obtaining dual citizenship—is inconsistent with his parents' failure to pursue Mexican registration for his sister, who was born in the United States the following year. Nor is it consistent with his parents' decision not to contemporaneously register his birth in the United States.

Against this backdrop, we cannot say that the district court's error in weighing the stipulated fact of Tapia-Felix's baptism caused him prejudice. Tapia-Felix's baptism in the United States approximately six months after his birth is not inconsistent with a Mexican birthplace and his undisputedly transnational childhood. The district court specifically noted the lack of any persuasive *documentary* evidence that would undermine the compelling strength of the government's evidence. Therefore, the error in the district court's analysis as to the stipulation is harmless.

DECISION AFFIRMED, AND PETITION DENIED.