affected the weight to be accorded the evidence, rather than its admissibility. 600 F.Supp. at 1262. The court relied on the deposition testimony, corroborated by documentary evidence, to resolve the issue of the defendant's identity in Kairys. Id.

Still other courts have gone beyond merely admitting Soviet deposition testimony and have placed considerable reliance on it. In United States v. Koziy, 540 F.Supp. 25 (S.D.Fla. 1982), aff'd, 728 F.2d 1314 (11th Cir. 1984), cert. denied, 469 U.S 835 (1984), deposition testimony was taken from witnesses in Poland and the Soviet Union who identified the defendant as a Ukrainian policeman during the Nazi occupation. Despite defense counsel's nonappearance at the depositions, which resulted in the deposition witnesses not being subjected to cross-examination, the court found the witnesses' photographic identification of the defendant to be "reliable when considering all of the circumstances." 540 F.Supp. at 31 n.13.

In United States v. Linnas, 527 F.Supp. 426 (E.D.N.Y. 1981), aff'd, 685 F.2d 427 (2d Cir. 1982), cert. denied, 459 U.S. 883 (1982), the district court judge admitted into evidence the deposition testimony of four Soviet witnesses who identified Linnas as the former chief of a concentration camp in Estonia. Defense counsel refused to attend the depositions and argued that all Soviet-source evidence should be excluded as unreliable. 527 F.Supp. at 433-34. In rejecting this contention, the court emphasized that Linnas had not demonstrated one instance in which fraudulent evidence had been submitted by the Soviet authorities to a western court. Id. The district court judge found the deposition witnesses to be credible, used the deposition testimony to corroborate the documentary evidence against the defendant, and entered an order revoking Linnas' United States citizenship.

In United States v. Osidach, 513 F.Supp. 51 (E.D.Pa. 1981), appeal dismissed on defendant's death, No. 81-1956 (3rd Cir., July 22, 1981), the court also relied on Soviet deposition testimony to support a denaturalization judgment. 14/ The defendant based his objection to the admission of the depositions on the presence of the Soviet procurator, the inadequacy of the

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14/ The respondent submits in his brief that the value of the Osidach decision as precedent is diminished because the defendant died before his appeal could be considered. Osidach's appeal would have been adjudicated by the Third Circuit, however, which suggested in United States v. Kungys, 793 F.2d at 520 n.2, that the reliability of Soviet deposition testimony should be assessed on a case-by-case basis. The district court judge in Osidach gave a thorough and well-reasoned explanation for his acceptance of the Soviet deposition testimony. United States v. Osidach, supra, at 89-90 n.22.

oath administered to the Soviet witnesses, and the translation offered by the Soviet-supplied interpreters. Id. at 89-90 n.22. The court, noting that the Soviet Union would not have allowed the depositions to take place without its procurator being present, ruled that "the procuring of videotaped deposition testimony of Soviet eyewitnesses outweigh[s] the concerns expressed by Osidach." Id. at 89 n.22. The court found too that there was no indication that Osidach had been prejudiced by the procurators' presence at the depositions, because their involvement in the depositions was "virtually nonexistent." Id. Concerning the argument that the deposition witnesses were not administered an adequate oath, the court found that "the deponents clearly understood that they were required to tell the truth." Id. at 90 n.22. The court opted to disregard the portions of the depositions where there was a dispute regarding the translation. Id. As a final "precautionary step," the court looked to independent, corroborative evidence prior to placing reliance on the Soviet deposition testimony. Id.

The precedent cases discussed above reflect that there is no per se rule of inadmissibility for Soviet deposition testimony in the federal courts. In view of the federal courts' decisions not to adopt an approach of categorical exclusion for Soviet deposition testimony, we see no reason to prejudge the deposition testimony in the instant case as inherently unreliable. There is no Board precedent, or federal precedent binding in this case, which holds that the use of Soviet deposition testimony is so fundamentally unfair that it deprives an alien of due process of law.

We find that the most prudent approach to this question of the reliability of Soviet deposition testimony is to examine carefully the particular circumstances surrounding the depositions before determining the weight to be given the deposition testimony. See United States v. Kungys, 793 F.2d at 520 n.2. As a part of this examination, all of the factors discussed in the above cases should be analyzed: evidence of Soviet political interest in a case; restrictions, if any, placed on cross-examination during the depositions; the availability of the deposition witnesses' prior statements; the degree of interference or impropriety on the part of the Soviet procurator during the depositions; the accuracy of the translation of the testimony of the deposition witnesses; the extent of corroborative evidence available to substantiate the deposition testimony; and any other factors which may be indicative of the reliability of the deposition testimony. After thorough consideration of the foregoing factors, as well as an evaluation of the testimony of the individual witnesses, an overall assessment of the reliability of the Soviet deposition testimony can then be made. With these considerations in mind, we turn to a review of the deposition testimony taken in the respondent's case.

B. Reliability of the Soviet Depositions in the Respondent's Case

As noted above, the immigration judge found the Soviet deposition testimony to be reliable. He summarized the testimony of the deposition witnesses, and stated that "[t]he weight accorded to the testimony of each deponent has been judged individually" (i.j. dec. at 5). After reviewing all of the factors surrounding the depositions, we find no error in the immigration judge's decision to accord weight to the testimony of the Soviet deponents.

The first of the foregoing factors which we will consider in assessing the reliability of the Soviet deposition testimony is the evidence of Soviet political interest in these proceedings. The respondent did not present witnesses at his hearing to testify on the issue of Soviet political interest in his case. Cf. United States v. Kungys, 571 F.Supp. at 1124-26. The respondent has summarized the testimony of such witnesses from prior proceedings, however, and he has cited articles and Soviet publications which, he contends, indicate that the Soviet Union had a strong state interest in depicting the respondent as a Nazi collaborator. Moreover, the respondent urges generally that the issue of Soviet-source evidence should be viewed in the context of the United States' distrust of Soviet policy during the Cold War Era. Respondent's brief at 9-10. While the possibility of, in the respondent's words, "Soviet treachery" cannot be overlooked or ignored, the fact remains that there is no indication in this record that the testimony of the deposition witnesses was fabricated, or that the documentary evidence concerning the respondent is fraudulent. Accordingly, we choose to scrutinize the evidence in the record concerning the respondent's deportability, rather than to presume that the evidence which has a Soviet source is unreliable.

The next factor which is an important indicator of the reliability of the Soviet deposition testimony is the opportunity that the respondent was given to cross-examine the Soviet witnesses. The record reflects that respondent's counsel was able to question the Government deposition witnesses on cross-examination about such matters as bias and improper motivation, prior interrogations conducted by the Soviet authorities, and any prejudicial materials that the witnesses may have read about the respondent in the post-war period. Respondent's counsel also was able to challenge the credibility of the Government deposition witnesses by questioning them on cross-examination.

The respondent asserts that the procurator interfered with his cross-examination in several instances. The respondent alleges that the procurator interfered with the respondent's cross-examination of Soms, Putnins, and Rozkalns, when the procurator informed these witnesses that they need not answer any

question that was damaging to their dignity. Respondent's brief at 25-26. The procurator informed the witnesses of this "dignity" privilege, however, when the subject of punishment for their own war-time activities arose. Soms, Putnins, and Rozkalns each ultimately stated that they had been punished for their war-time activities, and the procurator's mention of the "dignity" privilege did not meaningfully interrupt the witnesses' testimony about previous occasions in which they had been interrogated concerning Kalejs. The respondent also objects to the procurator's "instructing [Ennitis] not to answer a question pertaining to the conditions at Salaspils." Respondent's brief at 26. The procurator actually precluded Ennitis from contrasting conditions at Salaspils with conditions at the Soviet labor camp where Ennitis was later incarcerated; there was no restriction placed on respondent's counsel in questioning Ennitis about conditions particular to Salaspils.

The respondent has otherwise not identified any matters which he was precluded from raising while cross-examining the Government witnesses at the depositions. The scope of cross-examination of the Government witnesses appears to have been broader in the instant case than in cases where Soviet deposition testimony was rejected as unreliable in part because of restrictions on cross-examination. See United States v. Kungys, 571 F.Supp. at 1128-29; United States v. Kowalchuk, 571 F.Supp. at 80.

The respondent submits, however, that his right to cross-examine witnesses was infringed because not all of the prior protocols of the witnesses were produced. The record reflects that in his November 12, 1986, decision authorizing the Riga depositions, the immigration judge instructed the Government to make the prior written statements of the Government's proposed witnesses available to the respondent 60 days prior to the parties' departure to attend the depositions (Gov. Exh. 5A at 4). The record reflects further that on March 17, 1987, the Government issued to the respondent prior protocols of witnesses Soms, Strazds, Putnins, and Rozkalns (Gov. Exh. 8). The Government also provided the respondent, prior to the depositions, a copy of the judgment in Viktors Arajs' criminal case, which included summaries of the testimony of former "Arajs Kommando" members (Gov. Exhs. 8, 22). 15/ Prior protocols of Government deposition witnesses Bahsteins, Ennitis, and Pimanis were made available to the respondent at the Riga depositions. The Government asserts, and there is no indication in the record to the contrary, that it made available to the respondent all protocols which it received from the Soviet authorities. Government's brief at 34 n.26.

15/ All of the respondent's deposition witnesses, Jurgitis, Kalnins, Murnieks, Karklins, Elins, and Jansons, appear to have been witnesses as well at the Arajs trial. Gov. Exh. 22 at 48-50, 73-77.

The Government deposition witnesses indicated in their testimony that they had previously signed protocols, which were not produced at the depositions or thereafter, following interrogation sessions with the Soviet authorities. Some of the Government deposition witnesses indicated that Kalejs' name had been mentioned in these interrogation sessions (Soms, Strazds, Bahsteins, and Rozkalns), while others said that his name had not been mentioned (Ennitis and Pimanis). 16/ The respondent now argues that without the missing protocols, he could not fully exercise his right to cross-examine the witnesses. Respondent's brief at 32-35.

The respondent argues further that the prior protocols of the witnesses whom he requested to depose ought to have been produced. The respondent, however, had no right to the production of the prior protocols of his own deposition witnesses. 17/ These witnesses appeared solely at the request of the respondent, and we do not find that due process requires the production of prior statements made by witnesses the Government would not have called. We note too that there is no right to discovery in deportation proceedings, where the Federal Rules of Civil Procedure are inapplicable. 18/ Matter of Kulle, 19 I&N Dec. 318, 335 (BIA 1985), aff'd, Kulle v. INS, 825 F.2d 1188, 1194 (7th Cir. 1987), cert. denied, 484 U.S. 1042 (1988); Matter of Benitez, 19 I&N Dec. 173, 174 (BIA 1984); Matter of Magana, 17 I&N Dec. 111, 115 (BIA 1979). Concerning the Government deposition witnesses, the issue reduces to whether the absence of their prior protocols deprived the respondent of his right to cross-examine witnesses pursuant to section 242(b) of the Act, 8 U.S.C. § 1252(b), and 8 C.F.R. § 242.16(a).

We find that the nonproduction of the earlier protocols of the Government deposition witnesses did not result in an impermissible infringement on the respondent's right to cross-examine witnesses presented against him. There is no basis in the record to conclude that the earlier protocols now exist, or that, assuming they do exist, their production would have assisted the respondent

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16/ The remaining Government deposition witness, Putnins, testified that he had only been interrogated about Kalejs in 1985 (Gov. Exh. 84 CT at 54). Putnins' 1985 protocol was provided to the respondent prior to the Riga depositions (Gov. Exh. 8).

17/ The Government nevertheless turned over to the respondent the protocols of the respondent's witnesses which it had received from the Soviet authorities. See Government's brief at 33.

18/ Respondent's counsel conceded twice on the record that he did not have a discovery right to the prior protocols of the respondent's deposition witnesses (Gov. Exh. 88CT at 21; Gov. Exh. 91CT at 28).

in his cross-examination of the witnesses in any meaningful manner. Many of the Government deposition witnesses testified that they had been interrogated shortly after the war, or in the 1950s. If protocols from this period could be produced, the respondent clearly would have the opportunity to test the present recollections of the witnesses against their former statements, rendered at a time when their recall would have been sharper. However, to the extent that the Government deposition witnesses were able to recall their prior interrogations and written statements, their testimony was not clear as to whether the respondent was the specific subject of these interrogations. Thus, there is no firm indication that the contents of any earlier protocols would have aided the respondent's efforts to impeach the Government deposition witnesses.

Moreover, the Government gave the respondent many protocols and other materials, prior to the Riga depositions, to assist him in his cross-examination of the witnesses. The respondent does not claim that the Government withheld any protocols which may have been favorable to the respondent's defense.

We also find that there is a significant distinction between the instant case and United States v. Kungys, 571 F.Supp. at 1131, wherein the trial court judge expressed his concern that the only protocols provided to the defendant were those executed after the commencement of "the investigation being conducted by the OSI and the Soviet authorities." By contrast in this case, the respondent was provided with protocols made in 1975 by Strazds, arguably the Government's most important deposition witness; there is no information in the record which indicates that the Government had commenced an investigation against the respondent in the 1970s.

Finally, we emphasize again that the respondent had full opportunity to test the recollections of the Government deposition witnesses when he questioned them on cross-examination. We therefore conclude that the absence of earlier protocols did not violate the respondent's right to cross-examine witnesses. See Kulle v. INS, supra, at 1194 (in deportation proceedings, "the right to cross-examine is not unlimited"). We further conclude that the cross-examination procedure employed in this case does not require that the Soviet deposition testimony be regarded as unreliable.

The next factor which we will address as a means to the end of assessing the reliability of the Soviet deposition testimony is the Soviet procurator's conduct during the depositions. The respondent contends that the procurator "made no pretense of trying to be fair or impartial." Respondent's brief at 24. The respondent objects to the procedure in which the procurator questioned the deposition witnesses. The respondent also objects to the content of the questions which the procurator posed; the respondent asserts that the procurator framed his questions in such a way that the witnesses' responses were an inseparable mixture of hearsay and their own recollections.

The record reflects that the procurator did begin the depositions by questioning the witnesses himself. His examination of the witnesses, however, was of brief duration as compared to the parties' examination of the witnesses. Moreover, the parties were permitted to raise the same questions with the witnesses as the procurator had, in order to clarify the witnesses' answers. Where the witnesses' testimony was based on hearsay, the respondent had the opportunity to cross-examine the witnesses and attempt to identify the source of the witnesses' hearsay statements. Upon our review of the procurator's questioning of the deposition witnesses, we find that this procedure did not evince an impartiality against the respondent.

Despite the respondent's complaints about procurator interference, a review of the record reveals that there were instances during the depositions when the procurator actually helped the respondent's case. For example, during the deposition in which Strazds gave a non-responsive answer to a question from respondent's counsel about Arajs' physical characteristics, the procurator informed Strazds that Strazds should respond to the question regardless of whether Strazds thought it was a "silly question" (Gov. Exh. 83CT at 121). The record also reveals that during the Soms deposition, when Government counsel sought to remove the paper strip which concealed the names beneath the photographs on respondent's deposition exhibit nineteen, the procurator agreed with respondent's counsel that the paper strip ought not be removed (Gov. Exh. 81CT at 89-90).

As part of his argument regarding the procurator's conduct at the depositions, the respondent claims that "[i]t was painfully obvious" that Government deposition witness Putnins had been intimidated by the Soviet authorities. Respondent's brief at 26. Yet Putnins, during his deposition, disavowed a prior protocol in which he had stated that Kalejs was a company commander of a guard unit at Salaspils; Putnins stated at the deposition that he had no direct knowledge that Kalejs had been at Salaspils, but that he had heard this from his wife, the respondent's sister (Gov. Exh. 84CT at 51). Putnins' willingness, in the procurator's presence, to distance himself from a protocol incriminating the respondent is difficult to reconcile with the respondent's claim that Putnins had been intimidated. Cf. United States v. Kungys, 571 F.Supp. at 1131 ("The various witnesses would have had to have had extraordinary courage to disavow any statement contained in a protocol"). 19/ Based upon our review of the procurator's conduct at the depositions, we find that he did not interfere in such a manner so as to render the Soviet deposition testimony unreliable.

19/ During Bahsteins' deposition, Bahsteins similarly retreated from a prior protocol. While Bahsteins' protocol contained statements that Kalejs was among the first to join the "Arajs Kommando," and that Kalejs was on friendly terms with Arajs, Bahsteins informed the procurator that he had only heard these things from soldiers (Gov. Exh. 89CT at 47).

The next factor relating to the reliability of the Soviet deposition testimony is the accuracy of the translation provided. The videotapes of the depositions reveal that respondent's counsel, who is fluent in Latvian, questioned the deposition witnesses in their native language. Respondent's counsel accordingly was in a good position to note any inaccurate translation of the witnesses' testimony. In addition, the record reflects that the parties were given the opportunity to review the accuracy of the transcripts of the depositions, and to make corrections before the transcripts of the deposition testimony were admitted into evidence (Tr. at 1197-1201; Gov. brief at 35 n.27). Under these circumstances, the translation of the deposition witnesses' testimony appears to have been an entirely reliable process.

The next factor with regard to the issue of the reliability of the Soviet deposition testimony is the existence of corroborative evidence which substantiates the testimony of the deposition witnesses. We will discuss the corroborative evidence, which consists mainly of documentary evidence and the respondent's own testimony, in the following section regarding the respondent's deportability under section 241(a)(19). Although we have completed our analysis of the reliability factors enumerated above, we note that the respondent has several remaining arguments concerning the reliability of the Soviet deposition testimony.

The respondent argues that the Soviet witnesses should have come to the United States in order to present their testimony. In his decision authorizing the Riga depositions, the immigration judge found that the Soviet witnesses were not available to testify at the respondent's deportation hearing (Gov. Exh. 5A at 2). The respondent has specified on appeal six deposition witnesses whom he believes could have come to the United States, "but for Soviet chicanery." Respondent's brief at 17-18. The six witnesses whom the respondent mentions, Soms, Jurgitis, Putnins, Bahsteins, Jansons, and Rozkalns, all cited medical reasons as the basis for their unwillingness to travel to the United States. At the time that the Riga depositions were held, the ages of these witnesses ranged from a 63-year-old (Bahsteins) to a 75-year-old (Rozkalns). There is no indication in the record that the reasons offered by these witnesses for their inability to travel abroad were illegitimate. We note too that Putnins and Rozkalns specifically testified that they had been contacted by the Soviet authorities and asked whether they would be willing to go the United States to testify (Gov. Exh. 84CT at 54-55; Gov. Exh. 92CT at 66, respectively). We find no error in the immigration judge's finding that the Soviet witnesses were unavailable for the respondent's hearing. 20/

20/ As support for his argument about the availability of the witnesses, the respondent has proffered evidence of agreements between the Soviet Union and the nations of Canada and

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The respondent argues alternatively that if the witnesses had to be deposed in the Soviet Union, the depositions should have been held at a United States Consulate. As the Government emphasizes, however, the respondent did not make this request before the immigration judge. Government's brief at 62. 21/ The immigration judge accordingly did not address this issue in his November 12, 1986, order authorizing the depositions. A request regarding the location of depositions held abroad is obviously of little use after the depositions have taken place. As we stated in Matter of Garcia-Reyes, 19 I&N Dec. 830, 832 (BIA 1988), "objections . . . should be made on the record, or such objections will not be preserved for appeal." We find that the respondent waived his request that the depositions be held at a United States Consulate by not properly bringing this request to the attention of the immigration judge.

The respondent also submits that he was deprived of a fair hearing because his requests for archive and site visits were denied. Respondent's brief at 20-23. The record reflects that the immigration judge ordered the Government to pass on to the Soviets the respondent's request for an archives visit, but the immigration judge did not require that the Government relay the respondent's request that he be permitted to visit the sites where he is alleged to have been involved in atrocities (Gov. Exh. 5A at 4). The respondent's arguments concerning archive and site visits are based in part on the rules regarding discovery in the Federal Rules of Civil Procedure, which, as noted above, are inapplicable in deportation proceedings. Matter of Kulle, supra; Matter of Benitez, supra; Matter of Magana, supra. Moreover, even in cases where the Federal Rules of Civil Procedure do apply, the admissibility of Soviet evidence has not been conditioned on

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Australia. The respondent asserts that the governments of Canada and Australia reached agreements for handling war-crimes investigations with the Soviet Union which would have resulted in less Soviet intrusion in the proceedings. Respondent's brief at 17. The evidence of these other agreements, of course, affords the respondent no rights in the instant proceedings. Moreover, we note that it is not at all clear that proceedings conducted in accordance with the evidence of agreements which the respondent has proffered would result in any practical differences from the proceedings conducted here.

21/ In a reply brief, the respondent counters that this issue was raised with the immigration judge because the respondent, in his motion papers dated September 22, 1986, called to the attention of the immigration judge a federal court decision authorizing the taking of depositions at a United States Consulate. Respondent's brief dated 7-31-89, at 5. A review of the respondent's motion reveals, though, that he made no specific request in his pleadings that the depositions be held at a United States Consulate (Gov. Exh. 5A).