

VOLUNTARY DEPARTURE

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Voluntary Departure

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(With special thanks to Robert J. Barrett for use of his materials)

New Immigration Judge Training

Falls Church, Virginia

Voluntary Departure

- WHAT IS IT AND WHY IS IT IMPORTANT?
 - Voluntary Departure is a privilege granted to a respondent which allows the respondent to depart the United States, voluntarily, at the person's own expense without a formal order of removal.
 - It is important as a statutory form of relief which has become very complicated given the changes in the law.
 - ADVISALS! (Both Statutory and Regulatory)

Voluntary Departure

- By DHS prior to initiation of section 240 removal proceedings.
- By the Court at the initial stages (Pre-conclusion VR).
- By the Court at the conclusion of the removal hearing (Post Conclusion).
- Not withdrawal of an application for admission— 8 C.F.R. 1235.4

Voluntary Departure Granted by DHS.

8 CFR 240.25

- May be granted by an authorized DHS officer, on Form I-210, for not more than 120 days total and subject to “any conditions” the Department considers necessary. 8 CFR 240.25(b).
- Denial cannot be appealed. 8 CFR 240.25(e).
- Is subject to revocation by written decision. 8 CFR 240.25(f).
- Failure to depart within the time authorized results in the imposition of penalties set out in Sec. 240B(d) INA. 8 CFR 240.25(b). These include a fine of \$1000 to \$5000 and the loss of eligibility for adjustment of status, cancellation of removal or voluntary departure for at least 10 years. Note that these penalties apply although the Department’s grant of voluntary departure may have been processed entirely by correspondence without any personal appearance.

Respondents Not Eligible for Voluntary Departure

- an "arriving alien" Sec. 240B(a)(4), but such aliens may be allowed as a matter of discretion to withdraw the request for admission and depart even after placed in removal proceedings. Sec. 235(a)(4) INA.
- an alien who has been granted voluntary departure in the past after being found inadmissible under Section 212(a)(6)(A) INA [in the U.S. without admission or parole]. Sec. 240B(c) INA.
- an alien who is deportable under Sec. 237(a)(4)(B) INA [engaged in terrorist activity]. Sec. 240B(a)(1) INA.
- an alien who is deportable under Section 237(a)(2)(A)(iii) [convicted of an aggravated felony]. Sec. 240B(a)(1) INA. Under the statutory language, the alien must be deportable for the aggravated felony conviction. By regulation the Attorney General has extended *this restriction to cover any alien who has been convicted of an aggravated felony, without regard to whether the alien is deportable for the conviction.* 8 CFR 1240.26(b)(1)(i)(E) and 1240.26(c)(1)(iii). Statutory authority for this extension appears to be Sec. 240B(e) INA.

Comparison of Voluntary Departures

Preconclusion Voluntary Departure	Post Conclusion Voluntary Departure
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Must request
before the
Master
Calendar

May request at
anytime before
conclusion

Concede
removability

Need not
concede
removability

No other
relief and
waive appeal
of all issues.

Need not waive
appeal but
cannot appeal
time granted.

Comparison of Voluntary Departures

(continued)

Preconclusion Voluntary Departure	Post Conclusion Voluntary Departure
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No minimum
presence
required

1-year
physical
presence.

More can
qualify (see
bars above)

GMC for 5
years

120 days +
no bond
required.

60 days +
\$500 min
bond.

The Pros and Cons of Voluntary Departure for Respondents

Pros

- Future Immigration (Unlawful presence bars?).
- DHS less likely to detain.
- May diminish potential for criminal penalties if respondent returns illegally.
- Respondent can now "give it up."
- Could be very difficult for Respondent to understand.

Cons

- If respondent unlikely to have chance to return why take it?
- Fines for failing to depart.
- Impact of unlawful presence under sections 212(a)(9)(B) and (C) of the Act.
- Could be very difficult for Respondent to understand

Voluntary Departure for the Detained Respondent or the Juvenile

What is the Immigration Judge to do? (Under Safeguards)

- Noncontested detained group hearings.
(Pre and Postconclusion VR).
- Merits Hearings (Postconclusion VR).
- Juvenile is eligible for relief under section 240B at “no cost to the child.” (Section 235(a)(5)(B) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub.L.No. 110-457 (December 23, 2008))

Final Thoughts

- Key Cases: *Matter of Arguelles-Campos*, 22 I&N Dec. 811 (BIA 1999); *Matter of Cordova*, 22 I&N Dec. 966 (BIA 1999); *Matter of Ocampo-Ugalde*, 22 I&N Dec. 1301 BIA 2000).
- See *Your Course Materials for More Specific Guidance*.
- *Necessary Advisals and the New Advisal Requirement*.
- *Once thought to be a straight-forward form of relief is now very complicated.*