



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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180 Ted Turner Dr., SW, Ste 332
Atlanta, GA 30303**

Name: QUERIAPA TOMAS, ADAN

A 205-232-307

Date of this notice: 2/3/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Creppy, Michael J.

Userteam: Docket

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**QUERIAPA TOMAS, ADAN
A205-232-307
IRWIN COUNTY DETENTION CENTER
132 COTTON DRIVE
OCILLA, GA 31774**

**DHS/ICE Office of Chief Counsel - ATL
180 Ted Turner Dr., SW, Ste 332
Atlanta, GA 30303**

Name: QUERIAPA TOMAS, ADAN

A 205-232-307

Date of this notice: 2/3/2017

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Creppy, Michael J.

User team:

Falls Church, Virginia 22041

File: A205 232 307 - Atlanta, GA

Date: FEB - 3 2017

In re: ADAN QUERIAPA TOMAS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kazuma Sonoda, Esquire

APPLICATION: Voluntary departure

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's August 29, 2016, decision denying his request for voluntary departure. The Department of Homeland Security has not responded to the appeal. The record will be remanded to the Immigration Judge for further proceedings or further action consistent with this decision.

We review for clear error the findings of fact, including any determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge issued only a summary decision in the instant case. However, an Immigration Judge is required to issue a separate written or oral decision setting forth the relevant findings of fact and legal analysis underlying his or her decision, unless "inadmissibility or deportability is determined on the pleadings pursuant to [8 C.F.R.] § 1240.10(b) and the respondent does not make an application under [8 C.F.R.] § 1240.11, the alien is statutorily ineligible for relief, or *the respondent applies for voluntary departure only and the [I]mmigration [J]udge grants the application.*" 8 C.F.R. § 1240.12(b) (emphasis added); *see also Matter of A-P-*, 22 I&N Dec. 468, 477 (BIA 1999) (stating that the Immigration Judge is "responsible for the substantive completeness of the decision"). As the Immigration Judge denied the respondent's request for voluntary departure, a separate oral or written decision is necessary to provide the respondent a reasonable opportunity to challenge the denial, and to allow the Board to conduct meaningful appellate review of the Immigration Judge's decision. *See Matter of A-P-*, *supra*; *see also Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002) (emphasizing the need for Immigration Judges to include in their decisions clear and complete findings and analysis that are in compliance with controlling law, in view of this Board's inability to conduct fact-finding on appeal).

We note that the Immigration Judge's August 29, 2016, summary decision does not indicate whether the denial related to a request for pre-hearing or post-hearing voluntary departure. *See* sections 240B(a), (b) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229c(a), (b). Nor does the Immigration Judge's order reveal whether the denial was based on grounds of statutory eligibility, or based on a determination that the respondent does not merit voluntary departure as a matter of discretion. Most importantly, the order does not contain any findings of fact, or the requisite legal analysis supporting the denial of the requested benefit such that the Board may properly review the Immigration Judge's decision on appeal.

In view of the foregoing, we will remand the record so that the Immigration Judge may conduct further proceedings, or take further action as necessary, and issue a separate written or oral decision which contains thorough fact-finding and legal analysis.¹ Accordingly, the following order shall be entered.

ORDER: The record is remanded to the Immigration Judge for further action or proceedings consistent with the foregoing opinion and for the entry of a new decision.


FOR THE BOARD

Immigrant & Refugee Appellate Center, LLC | www.irac.net

¹ If, as the respondent asserts on appeal, the requested benefit was denied as a matter of discretion, the Immigration Judge should weigh the respondent's equities against the negative factors in his case, consistent with *Matter of Arguelles*, 22 I&N Dec. 811 (BIA 1999) (citing *Matter of Gamboa*, 14 I&N Dec. 244 (BIA 1972)).

IMMIGRATION COURT
180 TED TURNER DR SW, STE. 241
ATLANTA, GA 30303

In the Matter of

Case No.: A205-232-307

QUERIAPA TOMAS, ADAN
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 8/24/16
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- ☐ The respondent was ordered removed from the United States to or in the alternative to .
- ☒ Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to . MEXICO
- ☐ Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ _____ with an alternate order of removal to .

Respondent's application for:

- ☐ Asylum was () granted () denied () withdrawn.
- ☐ Withholding of removal was () granted () denied () withdrawn.
- ☐ A Waiver under Section _____ was () granted () denied () withdrawn.
- ☐ Cancellation of removal under section 240A(a) was () granted () denied () withdrawn.

Respondent's application for:

- ☒ Cancellation under section 240A(b)(1) was () granted () denied () withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Cancellation under section 240A(b)(2) was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- ☐ Adjustment of Status under Section _____ was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- ☐ Respondent's application of () withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied () withdrawn.
- ☐ Respondent's status was rescinded under section 246.
- ☐ Respondent is admitted to the United States as a _____ until _____.
- ☐ As a condition of admission, respondent is to post a \$ _____ bond.
- ☐ Respondent knowingly filed a frivolous asylum application after proper notice.
- ☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- ☐ Proceedings were terminated.
- ☐ Other: _____

Date: Aug 29, 2016

William A. Cassidy
WILLIAM A. CASSIDY
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

9/28/16