



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**Langer, Steven Franklin, Esq.
Langer Law, PLC
600 N Walker Ave., Ste 220
Oklahoma City, OK 73102**

**DHS/ICE Office of Chief Counsel - DAL
125 E. John Carpenter Fwy, Ste. 500
Irving, TX 75062-2324**

Name: VASQUEZ-GODINEZ, YOSELIN ... A 206-767-922

Date of this notice: 9/10/2015

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:
O'Leary, Brian M.

USCIS
User team: Docket

**For more unpublished BIA decisions, visit
www.irac.net/unpublished/index/**

STX

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A206 767 922 – Dallas, TX

Date:

SEP 10 2015

In re: YOSELIN EDITH VASQUEZ-GODINEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Steven Franklin Langer, Esquire

APPLCIATION: Continuance; remand

The respondent, a native and citizen of Guatemala, appeals the decision of the Immigration Judge, dated May 4, 2015. The record will be remanded.

The Immigration Judge's written decision grants a voluntary departure period of 45 days with an alternate order of removal, and notes that the respondent waived her appeal rights. Upon review, we conclude that appeal rights were not properly waived, for the following reasons. The Immigration Judge denied a requested continuance. Tr. at 16. When the alternate relief of voluntary departure was discussed, the Immigration Judge initially stated that 120 days voluntary departure was not possible for a *pre-conclusion* grant, but instantly corrected that statement. Tr. at 17. Soon after that colloquy, the Immigration Judge and counsel for respondent discussed the appropriate length of voluntary departure. Tr. at 17-18. Subsequently, the Immigration Judge indicated that no decision would be made that day, but did not state that the forthcoming written order might include a voluntary departure period shorter than the period requested. Tr. at 18. As the respondent, and respondent's counsel, were not told of the possibility of the significant denial of most of the requested days (75 out of 120) in the voluntary departure period, and as that denial was made in a written decision after the hearing, we conclude that any statement waiving appeal was not a "knowing" waiver. A fair reading of the transcript leads to a conclusion that any waiver of appeal was conditionally based on a grant of 120 days voluntary departure. Tr. at 16-18. It is reasonable to infer that a grant of a lesser period of time may have been declined, in favor of preserving appeal rights with respect to the denial of a continuance. Thus, we conclude that the waiver of appeal, as articulated at the hearing, is not effective for purposes of depriving the Board of jurisdiction. Furthermore, upon considering the aforementioned circumstances, we conclude that remand is appropriate, either for a grant of the requested *pre-conclusion* voluntary departure period, which would require a new waiver of appeal, or for further proceedings on the contested issue of a continuance.

ORDER: The record is remanded for further proceedings and entry of a new order.


FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

Langer Law, PLC
Langer, Steven Franklin
600 N Walker Ave, Ste 220
Oklahoma City, OK 73102

IN THE MATTER OF
VASQUEZ-GODINEZ, YOSELIN EDITH

FILE A 206-767-922

DATE: May 6, 2015

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 20530

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

X OTHER: SEE ATTACHED ORDER OF THE IMMIGRATION JUDGE DATED 05/04/2015

BHL
COURT CLERK
IMMIGRATION COURT

FF

CC: ALLUMS, JOHN L.
125 E. HWY 114, STE 500
IRVING, TX, 75062

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

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1100 COMMERCE ST., SUITE 1060
DALLAS, TX 75242

In the Matter of:
VASQUEZ-GODINEZ, YOSELIN EDITH

Case No.: A206-767-922

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon the basis of Respondent's admissions, I have determined that Respondent is subject to removal on the charge(s) in the Notice to Appear. Respondent has made application solely for voluntary departure in lieu of removal and has waived appeal of all issues.

It is HEREBY ORDERED that Respondent be GRANTED pre-conclusion voluntary departure under section 240B(a) of the Act, in lieu of removal, without expense to the Government, on or before 6-18-15, or any extensions as may be granted by the Field Office Director, Department of Homeland Security, and under any other conditions the Field Office Director may direct.

It is FURTHER ORDERED:

[] that Respondent post a voluntary departure bond in the amount of _____ with the Department of Homeland Security on or before _____;

[] that Respondent provide to the Department of Homeland Security his or her passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing within 60 days of this order, or within any time extensions that may be granted by the Department of Homeland Security; and/or

☒ Other Non opposition by DHS on the record

It is FURTHER ORDERED that if any of the above ordered conditions are not met as required or if Respondent fails to depart as required, the above grant of pre-conclusion voluntary departure shall be withdrawn without further notice or proceedings and the following order, entered pursuant to 8 C.F.R. § 1240.26(d), shall become immediately effective: Respondent shall be removed to GUATEMALA on the charge(s) in the Notice to Appear, and in the alternative to _____.


Respondent is HEREBY ADVISED that if he or she fails to voluntarily depart the United States within the time specified, or within any extensions that may be granted by the Department of Homeland Security, Respondent will be subject to the following penalties:

1. Respondent will be subject to a civil monetary penalty of not less than \$1,000 and not more than \$5,000. INA § 240B(d). The Court has set the

presumptive civil monetary penalty amount of \$3,000 (or _____ instead of the presumptive amount). 8 C.F.R. § 1240.26(j).

2. Respondent will be ineligible, for a period of 10 years, to receive cancellation of removal, adjustment of status, registry, voluntary departure, or a change in nonimmigrant status. INA § 240B(d).

Respondent is FURTHER ADVISED that if he or she files a motion to reopen or reconsider during the voluntary departure period, the period allowed for voluntary departure will not be stayed, tolled, or extended, the grant of voluntary departure will be terminated automatically, the alternate order of removal will take effect immediately, and the above penalties for failure to depart voluntarily under section 240B(d) of the Act, 8 U.S.C. § 1229c(d), will not apply. 8 C.F.R. §§ 1240.26(b)(3)(iii), (e)(1).


R. WAYNE KIMBALL

Immigration Judge

Date: May 4, 2015

Appeal: NO APPEAL

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE(P)

TO: [] ALIEN [] ALIEN c/o Custodial Officer [M] Alien's ATT/REP [M] DHS

DATE: 05/04/2015 BY: COURT STAFF BHL

Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List

[] Other _____

Form EOIR 6 - VB (Vol. Depart. - REMOVAL)
