



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*

**DA SILVA-OLIVERA ALBINO, MERILANDE
A200-189-375
8915 MONTANA AVE
EL PASO, TX 79925**

**DHS/ICE Office of Chief Counsel - ELP
1545 Hawkins Blvd.
El Paso, TX 79925**

Name: DA SILVA-OLIVERA ALBINO, MERILANDE

A200-189-375

Date of this notice: 2/28/2012

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:
Kendall-Clark, Molly

For more unpublished BIA decisions, visit www.irac.net/unpublished

ms

Falls Church, Virginia 22041

File: A200 189 375 - El Paso, TX

Date:

FEB 28 2012

In re: MERILANDE DA SILVA-OLIVEIRA ALBINO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Jaime Diaz
Assistant Chief Counsel

APPLICATION: Remand

The respondent, a native and citizen of Brazil, has filed a timely appeal from the Immigration Judge's December 12, 2011, decision granting her pre-hearing voluntary departure with safeguards under section 240B(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(a); 8 C.F.R. § 1240.26(b). See Transcript of the Proceedings at 15. The respondent argues that she did not understand the proceedings because there was no translator present at her hearing. She further states that she wants to apply for asylum. The Department of Homeland Security opposes the appeal. The appeal will be sustained.


Pursuant to 8 C.F.R. § 1240.26(b)(1)(i), an Immigration Judge can only grant an alien voluntary departure before the conclusion of removal proceedings when certain conditions are met. One condition is that the alien must waive appeal of all issues. See 8 C.F.R. § 1240.26(b)(1)(i)(D). Following such a waiver, the Immigration Judge's decision becomes final and may be executed immediately. See 8 C.F.R. §§ 1003.3(a)(1), 1003.39, 1241.1(b). The Board lacks jurisdiction to review an Immigration Judge's decision if an alien has knowingly and intelligently waived her right to appeal. See *Kohwarien v. Holder*, 635 F.3d 174, 179 (5th Cir. 2011); *Matter of Rodriguez*, 22 I&N Dec. 1320, 1322 (BIA.2000); *Matter of Shih*, 20 I&N Dec. 697, 699 (BIA 1993).

Although an attorney represented the respondent at her removal hearing, upon review of the transcript of the proceedings, we note that the attorney informed the Immigration Judge that the respondent wanted to apply for asylum, that he had not "really been able to speak with (the respondent) about what that would entail," and that his communication with the respondent was "minimal." See Transcript of the Proceedings at 8. Although the Immigration Judge stated that a Portuguese interpreter was necessary, a translator was not present at the December 12, 2011, hearing. *Id.* at 1. Further, the transcript reveals that the entire hearing conducted on December 12, 2011, consisted of dialogue between the Immigration Judge and the attorney, with no explanation of the terms and conditions of pre-conclusion voluntary departure provided to the respondent, and no inquiry addressed to the respondent regarding the terms of voluntary departure, including the waiver of the appeal.

Under these circumstances, the appeal will be sustained, and the record remanded to the Immigration Judge for further proceedings. Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
United States Immigration Court
El Paso, Texas

A- 200 189 375

In the Matter of

In Removal Proceedings

MERILANDE DA SILVA - OLIVEIRA

Respondent

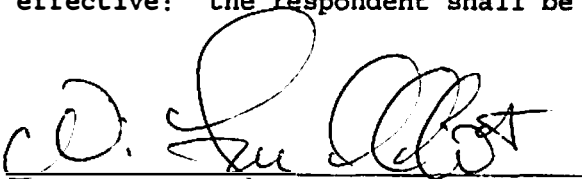
ORDER OF THE IMMIGRATION JUDGE RELATING TO VOLUNTARY DEPARTURE:

A master calendar hearing was held today. Respondent was found deportable/inadmissible as charged in the Notice to Appear.

Respondent has applied only for voluntary departure as relief from removal. After consideration of the evidence and testimony submitted, the Court will grant the respondent's application for voluntary departure under the following terms and circumstances:

1. Respondent will remain in the custody of the Department of Homeland Security until departure from the United States.
2. Respondent will provide to the Department of Homeland Security the necessary funds for DHS to purchase respondent's air transportation. Such funds to be paid no later than 12/28/2011.
3. Respondent will provide to the Department of Homeland Security his/her passport or other suitable travel document no later than 12/28/2011.

IT IS FURTHER ORDERED that if the respondent fails to depart as required or fails to comply with any other condition for voluntary departure imposed by this order or by law or regulation, the above order shall be withdrawn without further notice or proceedings and the following order shall become immediately effective: the respondent shall be removed to BRAZIL.



William Lee Abbott
United States Immigration Judge

Date: DEC 12 2011

Immigrant & Refugee Appellate Center | www.irac.net

You have been granted voluntary departure from the United States pursuant to section 240B of the Immigration and Nationality Act, as amended (the Act), and remaining in the United States beyond the authorized date will result in ineligibility for certain forms of relief under the Act (see Section A. below) for ten (10) years from the date of the scheduled departure. Your voluntary departure bond, if any, will also be breached. In addition, if you fail to voluntarily depart from the United States within the time period specified, you shall be subject to a civil penalty of \$3000, as provided under section 240B(d) (1) (A) of the Act..

A. THE FORMS OF RELIEF FROM REMOVAL FOR WHICH YOU WILL BECOME INELIGIBLE ARE:

4. Voluntary departure as provided in section 240B of the Immigration and Nationality Act, as amended;
5. Cancellation of removal as provided in section 240A of the Immigration and Nationality Act, as amended; and
6. Adjustment of status or change of status as provided in section 245, 248 or 249 of the Immigration and Nationality Act, as amended.

If you file a motion to reopen or reconsider during the period allowed for voluntary departure, the grant of voluntary departure will terminate automatically and the alternative order of removal will immediately take effect. See 8 C.F.R. sections 1240.26(b) (3) (iii) and 1240.26(e) (1).

Filing a motion to reopen or reconsider after the time for voluntary departure has expired, even if granted, will not in any way alter the period of time allowed for voluntary departure and does not vacate or vitiate the penalties for failure to depart, except as provided in section 240B(d) (2) of the Act. See 8 C.F.R. sections 1240.26(e) (2) and 1240.26(f).

This written notice was provided to the alien in English. Oral notice of the contents of this notice has been given to the alien in his/her native language, or in a language he/she understands by the Immigration Judge.

Immigration Judge: WJH or Court Clerk: _____

CERTIFICATE OF SERVICE

This document was served by: Mail (M) Personal Service (P)
To: [] Alien [] Alien c/o Custodial Officer [] Alien's
[] Atty/Rep [] DHS
Date: DEC 12 2011 By: Court Staff A

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