



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**DHS/ICE Office of Chief Counsel - ATL  
180 Spring Street, Suite 332  
Atlanta, GA 30303**

**Name: DELGADO-GARCIA, JULIO CES...      A 205-570-293**

**Date of this notice: 8/18/2015**

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:  
Grant, Edward R.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A205 570 293 – Atlanta, GA

Date: AUG 18 2015

In re: JULIO CESAR DELGADO-GARCIA a.k.a. Julio Cesar Delgado-Garcia

**CERTIFICATION**

**APPEAL**

**ON BEHALF OF RESPONDENT:** Anna Erwin, Esquire

**ON BEHALF OF DHS:** Morris I. Onyewuchi  
Assistant Chief Counsel

The respondent, a native and citizen of Mexico, has filed an appeal of the Immigration Judge's decision dated November 12, 2013. To resolve any issue regarding our jurisdiction over the instant appeal, we take the appeal on certification. 8 C.F.R. § 1003.1(c). The Department of Homeland Security (DHS) has filed an opposition to the appeal. The record will be remanded.

The Immigration Judge's memorandum of decision dated November 12, 2013, indicates that the respondent requested and was granted 120 days of voluntary departure under section 240B(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(a), and that he waived appeal. It appears that the Immigration Judge's decision was based on an off-the-record discussion with the respondent and two other respondents on the date of the final hearing. However, the transcript before us does not include any discussion regarding waiver of appeal by the respondent (Tr. at 18-22, 24-25). Nor does the record contain any written pleadings or similar documentary evidence showing that the respondent requested voluntary departure and knowingly and intelligently agreed to waive appeal. Therefore we are unable to ascertain that the respondent made a knowing and intelligent waiver of appeal. *See* 8 C.F.R. § 1240.26(b)(1)(i)(D); *see also Matter of Ocampo*, 22 I&N Dec. 1301 (BIA 2000) (holding that 120 days' voluntary departure may not be granted prior to the completion of removal proceedings without an express waiver of the right to appeal). As the record before us is silent on the issue of a knowing and intelligent waiver of the right to appeal by the respondent, we take the appeal on certification. *See Matter of Ocampo, supra*, at 1304-05.

On appeal, the respondent asserts that he requested a continuance at the November 12, 2013 hearing, because he needed more time to obtain counsel and discuss possible forms of relief from removal (Respondent's Appeal Brief; Respondent's Notice of Appeal). The Immigration Judge's decision dated November 12, 2013, does not discuss a continuance request. The respondent avers that the continuance denial occurred prior to the digital audio recorder being turned on by the Immigration Judge. He argues that he had shown good cause for a continuance (Respondent's Appeal Brief; Respondent's Notice of Appeal). Again, because the record before us does not contain the actual discussion or a summary of the off-the-record discussion regarding the respondent's request for a continuance, we are unable to properly review the respondent's claims on appeal.

Accordingly, the following order will be entered.

**ORDER:** The record is returned to the Immigration Judge for the preparation of a complete record and the issuance of a new decision.

  
\_\_\_\_\_  
**FOR THE BOARD**

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
180 SPRING ST., SW, SUITE 241  
ATLANTA, GA 30303

In the Matter of:  
DELGADO-GARCIA, JULIO CESAR

Case No.: A205-570-293

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.

It is HEREBY ORDERED that Respondent be GRANTED voluntary departure at the conclusion of proceedings under section 240B(b) of the Act, in lieu of removal, without expense to the Government, on or before March 12 2014 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 No Bond with the Department of Homeland Security within 5 business days, or by Requied.

It is FURTHER ORDERED:

[ ] that Respondent shall 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 \_\_\_\_\_

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 post-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 Mexico 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:

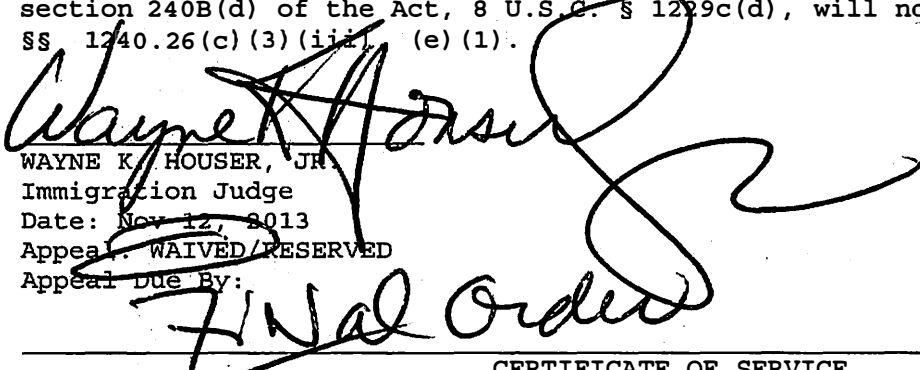
1. Respondent will be subject to a civil monetary penalty of not less than \$1,000 and not more than \$5,000. INA § 240B(d). The Court has set the presumptive civil monetary penalty amount of \$3,000 (or \_\_\_\_\_)

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 appeals this decision Respondent must provide to the Board of Immigration Appeals, within 30 days of filing an appeal, sufficient proof of having posted the voluntary departure bond. The Board will not reinstate the voluntary departure period in its final order if Respondent does not submit timely proof to the Board that the voluntary departure bond has been posted. 8 C.F.R. § 1240.26(c)(3)(ii).

Respondent is FURTHER ADVISED that if he or she does not appeal this decision and instead 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(c)(3)(iii), (e)(1).

  
WAYNE K. HOUSER, JR.  
Immigration Judge  
Date: Nov 12, 2013  
Appeal: WAIVED/RESERVED  
Appeal Due By:

*Final Order*

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL(M) PERSONAL SERVICE(P)  
TO: ☒ ALIEN ☐ ALIEN c/o Custodial Officer ☐ Alien's ATT/REP ☒ DHS  
DATE: 11/12/2013 BY: COURT STAFF  
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List  
☐ Other  
Form EOIR 6 - VC (Vol. Depart. - REMOVAL)