



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041

**LOZANO-FERNANDEZ, JUVENAL
A204-774-031
DHS/ICE/GEO
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Name: LOZANO-FERNANDEZ, JUVENAL A 204-774-031

Date of this notice: 8/23/2018

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Grant, Edward R.

Userteam: Docket

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Falls Church, Virginia 22041

File: A204-774-031 – Aurora, CO

Date: **AUG 23 2018**

In re: Juvenal LOZANO-FERNANDEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Voluntary departure

In a summary order dated April 24, 2018, an Immigration Judge granted the respondent voluntary departure pursuant to section 240B(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(a). The respondent has filed a timely appeal. The record does not contain a response from the Department of Homeland Security (DHS). The record will be remanded to the Immigration Judge for further proceedings consistent with this order.

To obtain voluntary departure under section 240B(a) of the Act, an alien must waive appeal of all issues. 8 C.F.R. § 1240.26(b)(1)(i)(D); *see also Matter of Ocampo*, 22 I&N Dec. 1301, 1303 (BIA 2000). We do not have jurisdiction over the decision of an Immigration Judge once the parties waive their right to appeal. *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1320, 1322 (BIA 2000). A waiver of the right to appeal, however, must be knowingly and intelligently made. *Matter of Putino*, 23 I&N Dec. 74, 76 (BIA 2001); *Matter of Rodriguez-Ruiz*, 22 I&N Dec. at 1322.

In this case, the respondent appeared pro se before the Immigration Judge during his proceedings, including his hearing on April 24, 2018. The respondent indicated that he wanted to pursue voluntary departure (Tr. at 12, 15). The Immigration Judge, however, did not explain the difference between pre-conclusion voluntary departure under section 240B(a) of the Act and post-conclusion voluntary departure under section 240B(b) of the Act. The Immigration Judge also did not remind the respondent of his right to appeal or ask the respondent if he waived this right (IJ at 15-18).¹ *See Matter of Ocampo*, 22 I&N Dec. at 1304-1305 (stating that, in cases involving pre-conclusion voluntary departure, the record must clearly establish that right to appeal was actually and not merely constructively waived by the alien); *see also* section 240(c)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(5) (stating that, if an Immigration Judge orders an alien removed, the Immigration Judge “shall inform the alien of the right to appeal that decision”).


Because the record does not establish that the respondent explicitly waived his right to appeal, the respondent’s appeal is properly before us. Further, the Immigration Judge lacked authority to grant the respondent pre-conclusion voluntary departure. *Matter of Ocampo*, 22 I&N Dec. at 1305; 8 C.F.R. § 1240.26(b)(1)(i) (listing requirements that must be met to obtain pre-conclusion voluntary departure). The Immigration Judge’s grant of relief therefore is invalid. Given the

¹ The Immigration Judge advised the respondent of his right to appeal on April 11, 2018, during his initial, group hearing (Tr. at 3-4).

• A204-774-031

significance of this procedural defect, the respondent's apparent eligibility for voluntary departure, and the other issues he has raised on appeal, we remand the record to the Immigration Judge for further proceedings regarding the respondent's eligibility for relief from removal. *See Matter of Ocampo*, 22 I&N Dec. at 1305.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this order and for the entry of a new decision.



FOR THE BOARD