



**U.S. Department of Justice**

**Executive Office for Immigration Review**

*Board of Immigration Appeals  
Office of the Clerk*

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*5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 20530*

**Coshnear, Richard Lawrence  
VIDAS  
576 B Street  
Suite 1 C  
Santa Rosa, CA 95401**

**DHS/ICE Office of Chief Counsel - SFR  
P.O. Box 26449  
San Francisco, CA 94126-6449**

**Name: CHAN TAPIA, ANGEL RAFAEL**

**A 205-466-970**

**Date of this notice: 6/16/2015**

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:  
Holmes, David B.

11/1  
User team: Docket

**For more unpublished BIA decisions, visit  
[www.irac.net/unpublished/index/](http://www.irac.net/unpublished/index/)**

*SA*

Falls Church, Virginia 20530

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File: A205 466 970 – San Francisco, CA

Date: JUN 16 2015

In re: ANGEL RAFAEL CHAN TAPIA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Richard Coshnear, Esquire

APPLICATION: Voluntary departure

In a decision dated March 11, 2014, an Immigration Judge ordered the respondent removed to Mexico. The respondent has appealed from the Immigration Judge's decision. The respondent's appeal will be sustained, and the record will be remanded to the Immigration Judge for further proceedings consistent with this order.

We review the Immigration Judge's findings of fact for clear error, but we review questions of law, discretion and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(i); *see, e.g., Ridore v. Holder*, 696 F.3d 907, 915 (9th Cir. 2012) (discussing Board's scope of review).

The respondent is a native and citizen of Mexico. During a master calendar hearing before the Immigration Judge, he requested voluntary departure under section 240B(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(a). The Immigration Judge, however, found the respondent ineligible for this form of relief because the respondent stated that he did not know if he would return to the United States illegally (Tr. at 26, 28-29). On appeal, the respondent maintains that neither the statute nor the regulations governing pre-hearing voluntary departure require an alien to establish that he will not return to the United States illegally before he may qualify for that form of relief.

We find that the Immigration Judge's decision cannot be affirmed under controlling case law. Under very similar factual circumstances to those presented here, the United States Court of Appeals for the Ninth Circuit held that in deciding whether or not to grant voluntary departure, Immigration Judges are required to weigh both the "favorable and unfavorable factors" presented by the respondent. *Campos-Granillo v. INS*, 12 F.3d 849, 852 (9th Cir. 1993). Accordingly, the record will be remanded to the Immigration Judge for consideration of the respondent's application for voluntary departure after the parties have been provided the opportunity to present additional evidence and argument.

ORDER: The respondent's appeal is sustained, and the record is remanded to the Immigration Judge for further proceedings not inconsistent with this order.

A handwritten signature in black ink, appearing to read "J. Chan", is written above a horizontal line.

FOR THE BOARD

IMMIGRATION COURT  
120 MONTGOMERY ST., SUITE 800  
SAN FRANCISCO, CA 94104

In the Matter of

Case No.: A205-466-970

CHAN TAPIA, ANGEL RAFAEL  
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 11 March 2014.  
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 MEXICO or in the alternative to .
- [X] Respondent's application for voluntary departure was denied and respondent was ordered removed to MEXICO or in the alternative to .
- [ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ \_\_\_\_\_ with an alternate order of removal to MEXICO.
- 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: ~~Oct 15, 2013~~

11 March 2014

Robert Yeargin  
ROBERT YEARGIN  
Immigration Judge

Appeal: Waived/Reserved

Appeal Due By:

R

10 April 2014

RC  
JA

NAME:

Chen Tapia,  
Angel R

FILE A#

205 466 970

## LIMITATION ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR

- (X) You have been scheduled for a removal hearing, at the time and place set forth on the attached sheet. Failure to appear at this hearing, other than because of exceptional circumstances beyond your control\*\* will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for a period of ten (10) years after the date of entry of the final order of removal.
- ( ) You have been scheduled for an asylum hearing, at the time and place set forth on the attached notice. Failure to appear for this hearing, other than because of exceptional circumstances beyond your control\*\* will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for a period of ten (10) years from the date of your scheduled hearing.
- ( ) You have been granted voluntary departure from the United States pursuant to section 240B of the Immigration and Nationality Act. Remaining in the United States beyond the authorized date, other than because of exceptional circumstances beyond your control\*\* will result in your being ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for ten (10) years from the date of scheduled departure or the date of unlawful reentry, respectively. Your voluntary departure bond, if any, will also be breached. Additionally, if you fail to voluntarily depart the United States within the time period specified, you shall be subject to a civil penalty of not less than \$1000 and not more than \$5000.

(X) An order of removal has been entered against you. If you fail to appear pursuant to a final order of removal at the time and place ordered by the INS, other than because of exceptional circumstances beyond your control\*\* you will not be eligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for ten (10) years after the date you are scheduled to appear.

\*\* The term "Exceptional Circumstances" refers to circumstances such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances.

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

- 1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act; 2) Cancellation of Removal as provided for in section 240A of the Immigration and Nationality Act; and 3) Adjustment of status or change of status as provided for in section 245, 248 or 249 of the Immigration and Nationality Act.

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

Date: 11 March 2014 Immigration Judge RJ or Court Clerk \_\_\_\_\_

## CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: ☐ MAIL ☒ PERSONAL SERVICE  
 TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒ ALIEN'S ATTY/REP ☒ DHS.  
 DATE: 11 March 2014 BY: IJ/COURT STAFF  
 Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

RY/6/is