



**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 20530

**Miras, Leo  
Azucena Valencia Law Corp  
1055 E. Colorado Blvd.  
Pasadena, CA 91780**

**DHS/ICE - Office of Chief Counsel  
10400 Rancho Road  
Adelanto, CA 92301**

**Name: LOPEZ MARTINEZ, JOSE**

**A 205-717-934**

**Date of this notice: 5/4/2015**

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:  
Adkins-Blanch, Charles K.  
Guendelsberger, John  
Grant, Edward R.

Userteam: Docket

**For more unpublished BIA decisions, visit  
[www.irac.net/unpublished/index/](http://www.irac.net/unpublished/index/)**

Falls Church, Virginia 20530

---

File: A205 717 934 – Adelanto, CA

Date: **MAY - 4 2015**

In re: JOSE LOPEZ MARTINEZ a.k.a. Jose Sauno

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Leo Miras, Esquire


The respondent, a native and citizen of Mexico, has appealed the Immigration Judge's December 23, 2014 decision, finding him ineligible for relief from removal and ordering him removed. The appeal will be sustained and the record remanded.

The Board reviews an Immigration Judge's findings of fact under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii). The respondent's claim was filed after May 11, 2005. Thus, the amendments made to the Immigration and Nationality Act by the REAL ID Act of 2005 are applicable.

The respondent contends on appeal that the Immigration Judge erred in finding that he did not wish to apply for voluntary departure prior to the conclusion of the proceedings. When the Immigration Judge advised the respondent of the requirements of voluntary departure (Tr. at 8-9), the respondent indicated that he did not want to leave the United States but also that he was "okay" with the Immigration Judge's removal order (Tr. at 31). We note, however, that the Immigration Judge erred in saying that the respondent had to waive appeal in order to obtain voluntary departure (Tr. at 31). While the respondent must waive his right to appeal to seek pre-conclusion voluntary departure, there is no such requirement for post-conclusion voluntary departure. See *Matter of Ocampo-Ugalde*, 22 I&N Dec. 1301, 1302-04 (BIA 2000); 8 C.F.R. §§ 1240.26(c), (g). This error may have influenced the respondent's statements, which also were ambiguous regarding his intent.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained and the record remanded to the Immigration Judge for a new hearing regarding the respondent's eligibility for voluntary departure, and any other relief for which he may be eligible, and for the entry of a new decision.

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

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
ADELANTO, CALIFORNIA

File: A205-717-934

December 23, 2014

In the Matter of

JOSE LOPEZ MARTINEZ  
RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: PRO SE,  
c/o Custodial Officer  
10400 Rancho Road  
Adelanto, CA 92301

ON BEHALF OF DHS: SANDRA J. SANTOS, Senior Attorney  
10250 Rancho Road  
Adelanto, CA 92301

ORAL DECISION AND ORDERS OF THE IMMIGRATION JUDGE

Jurisdiction vested in the Immigration Court with the filing of a Notice to Appear on April 3, 2013. The Notice to Appear was issued on March 29, 2013, and personally served on ~~respondent-Respondent~~ on March 29, 2013.

Respondent was originally scheduled on the non-detained docket, however However, he found himself back in custody, and, as a result, venue was changed to Adelanto. Respondent appeared at three Master Calendar proceedings on the detained

docket, each time asking for time to get an attorney. After being informed that this would be his last continuance, ~~respondent~~-Respondent appeared and indicated that they had managed to obtain only \$800 of the \$2,500 retainer for any attorney, and therefore, as he was advised that he needed to represent himself at the prior hearing, the Court proceeded with pleadings. The respondent admitted all factual allegations, and based thereon the Court sustained the charge of removability. The respondent declined to designate a country for removal and based on the Government's recommendation, the Court directed Mexico.

A number of questions were asked of ~~respondent~~-Respondent to determine what relief, if any, he had from removal. The Court determined that there were no viable applications that could be submitted before this Court, and asked ~~respondent~~ Respondent whether he wanted to apply for pre-conclusion voluntary departure, which requires him to give up his right to appeal. Respondent indicated that he would prefer to appeal the matter and so the Court ultimately will enter a removal order.

As far as relief applications go, ~~respondent~~ Respondent testified that he is not afraid of harm or persecution in Mexico, but he does not want to return to Mexico. He has been in the United States since 1999 with no departures. Neither his parents nor his grandparents were American citizens. At one point he had a work permit in 2000 or 2001, which expired and the basis upon which he received it is unknown as ~~respondent~~ Respondent says his uncle filed some document for him but he does not really know what it was. No visa petition has been filed on his behalf, although he is married to a lawful permanent resident spouse. He states that the petition was never filed for him, although they have worked on it. Both of ~~respondent's~~-Respondent's parents are deceased and he has a one-year-and-six-month-old United States citizen child. Respondent testified that he has no medical conditions and he has never been

deported, removed, or granted voluntary departure in the past.

He did testify to being the victim of a violent crime in either 2002 or 2003, and that it was an assault. He reported the incident to the police and ~~respondent~~ Respondent testified that the police were able to recover his stolen vehicle, and he believes that an arrest was made of the perpetrator, however he has no police certification and there is nothing pending with regard to potential U visa status. The Court also notes that should he obtain such certification, U visa status can be sought from outside the country. Respondent testified to a single arrest and conviction for methamphetamine for which he was sentenced to 30 days. The Government records referred to by the Department attorney indicates ~~respondent~~ Respondent has a couple of arrests and that he was first sentenced to three days and that it appears that there may have been a probation violation and he ended up with a 30-day sentence. In any event, a possession of methamphetamine conviction will bar him from cancellation of removal for nonpermanent residents, so despite the fact that he has enough time and a qualifying relative, the crime will bar ~~him~~ his application.

There are no other applications pending before this Court, nor any that he is eligible to file before this Court, and based upon all of the foregoing, the Court will enter the following orders.

ORDER

IT IS HEREBY ORDERED that the respondent be removed to Mexico.

**Please see the next page for electronic**

**signature**

AMY T. LEE  
Immigration Judge



//s//

Immigration Judge AMY T. LEE

leea on February 2, 2015 at 6:48 PM GMT

Immigrant & Refugee Appellate Center, LLC | [www.irac.net](http://www.irac.net)