



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: GARCIA PEREZ, RAUL BOSVELI      A 076-894-739**

**Date of this notice: 1/18/2013**

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:  
Manuel, Elise L.  
Adkins-Blanch, Charles K.  
Hoffman, Sharon

TranC  
User team: Docket

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

Falls Church, Virginia 22041

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File: A076 894 739 – Atlanta, GA

Date: JAN 18 2013

In re: RAUL BOSVELI GARCIA PEREZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Aseph Almas, Esquire

ON BEHALF OF DHS: Ozlem B. Barnard  
Assistant Chief Counsel

APPLICATION: Voluntary departure

The respondent, a native and citizen of Guatemala, appeals from the decision of the Immigration Judge dated October 28, 2010, granting the respondent pre-conclusion voluntary departure under section 240B(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(a). The appeal will be dismissed.

We review the findings of fact, including any determination of credibility, made by the Immigration Judge under the “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

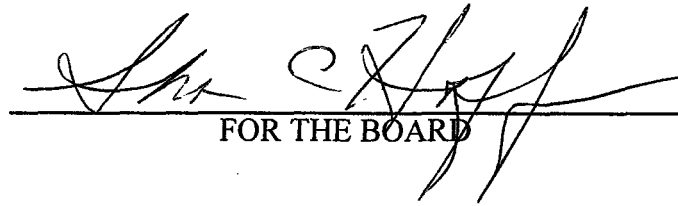
Upon request by the respondent and over the Department of Homeland Security’s objection, the Immigration Judge granted the respondent pre-conclusion voluntary departure, which required him to waive appeal of all issues. *See* 8 C.F.R. § 1240.26(b)(1)(i)(D); *see also Matter of Ocampo*, 22 I&N Dec. 1301 (BIA 2000). A Notice of Appeal (Form EOIR-26) may not be filed by any party who has waived appeal. 8 C.F.R. § 1003.3(a)(1); *see also Matter of Shih*, 20 I&N Dec. 697 (BIA 1993).

On appeal, the respondent urges that the Immigration Judge erred in granting his request for pre-conclusion voluntary departure because the respondent was not present at the hearing, and the Immigration Judge did not give the respondent the voluntary departure advisals under 8 C.F.R. § 1240.26(b)(iii). However, the respondent’s presence was previously waived at the final hearing, and the respondent’s prior counsel who was present affirmatively indicated to the Immigration Judge that he would advise the respondent of all the voluntary departure advisals, and further indicated that he had already done so (Tr. at 66). In a form order granting the respondent pre-conclusion voluntary departure, the Immigration Judge indicated that there would be “NO APPEAL” from the decision. The respondent does not claim that the waiver of appeal was not properly accomplished by his counsel, and upon review of the record before us, we are satisfied that the respondent, through counsel, accepted pre-conclusion voluntary departure and waived appeal. We therefore conclude that this case is not properly before us. The Immigration

Judge's decision became administratively final upon the respondent's waiver of the right to an appeal, and the Board therefore lacks jurisdiction over this case. *See Matter of Shih, supra.*

We note that even if we had jurisdiction over this case, we would dismiss the respondent's appeal because he has not established that his prior counsel failed to inform him of the required advisals, and he has therefore not established that his prior counsel was ineffective in this regard. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). Accordingly, the following order will be entered.

ORDER: The respondent's appeal is dismissed and the record is returned to the Immigration Court without further action.

  
\_\_\_\_\_  
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:  
GARCIA PEREZ, RAUL BOSVELI

Case No.: A076-894-739

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 and has waived appeal of all issues.

It is HEREBY ORDERED that Respondent be GRANTED pre-conclusion voluntary departure under section 240B(a) of the Act, in lieu of removal, without expense to the Government, on or before FEB. 25, 2011, 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 \_\_\_\_\_ with the Department of Homeland Security on or before \_\_\_\_\_;

☐ that Respondent 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 pre-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 GUATEMALA on the charge (s) in the Notice to Appear, and in the alternative to \_\_\_\_\_.

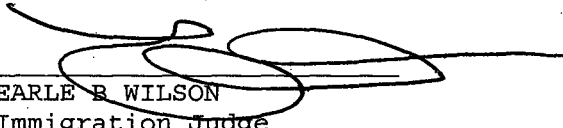
Respondent is HEREBY ADVISED that if he or she fails to voluntarily depart the United States within the time specified, or within any extensions that may be granted by the Department of Homeland Security, Respondent will be subject to the following penalties:

1. Respondent will be subject to a civil monetary penalty of not less than

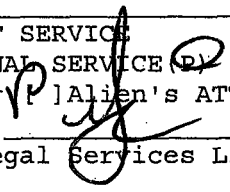
\$1,000 and not more than \$5,000. INA § 240B(d). The Court has set the presumptive civil monetary penalty amount of \$3,000 (or \_\_\_\_\_ instead of the presumptive amount). 8 C.F.R. § 1240.26(j).

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 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(b)(3)(iii), (e)(1).

  
EARLE B. WILSON  
Immigration Judge  
Date: Oct 28, 2010  
Appeal: NO APPEAL

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: 10/28/10 BY: COURT STAFF   
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List  
☐ Other

Form EOIR 6 - VB (Vol. Depart. - REMOVAL)

ADVISALS WAIVED