



**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

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**DHS/ICE Office of Chief Counsel - SDC  
146 CCA Road  
Lumpkin, GA 31815**

**Name: CASTORENA-ALONSO, MARCE...      A 205-866-201**

**Date of this notice: 9/17/2013**

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

lucasd  
Userteam: Docket

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**CASTORENA-ALONSO, MARCELO**  
**A205-866-201**  
**William McMinn**  
**Stewart Detention Center 146 CCA Road**  
**Lumpkin, GA 31815**

**DHS/ICE Office of Chief Counsel - SDC**  
**146 CCA Road**  
**Lumpkin, GA 31815**

**Name: CASTORENA-ALONSO, MARCE...      A 205-866-201**

**Date of this notice: 9/17/2013**

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). 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 the decision.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Manuel, Elise

lucasd  
User team: Docket

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

Falls Church, Virginia 22041

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File: A205 866 201 – Lumpkin, GA

Date: SEP 17 2013

In re: MARCELO CASTORENA-ALONSO a.k.a. Marcelo Castorena

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Christopher Taylor, Esquire

APPLICATION: Voluntary Departure

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's April 25, 2013, decision ordering his removal.<sup>1</sup> The respondent does not contest the Immigration Judge's removability determination, but appeals the denial of voluntary departure. The Board reviews findings of fact under a clearly erroneous standard, while all other issues, including whether the parties have met the relevant burden of proof, are reviewed de novo. 8 C.F.R. § 1003.1(d)(3)(i)-(ii). The record will be remanded as set forth below.

The Immigration Judge denied voluntary departure in discretion based solely on an apparent conviction for possession of marijuana (I.J. at 2).<sup>2</sup> In exercising discretion with respect to a voluntary departure application, an Immigration Judge must weigh both favorable and unfavorable factors. *See Matter of Arguelles-Campos*, 22 I&N Dec. 811, 817 (BIA 1999) (setting forth the favorable factors, as well as adverse factors, that should be considered in a discretionary analysis). We agree with the respondent that the Immigration Judge's decision does not reflect consideration of any of the respondent's favorable equities in deciding whether he merited voluntary departure in the exercise of discretion, nor does it appear he was asked questions relating to his favorable equities. Thus, a remand for further consideration of that request and the entry of a new decision is warranted.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

  
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FOR THE BOARD

<sup>1</sup> On June 15, 2012, the Secretary of the Department of Homeland Security (DHS) announced that certain young people, who are low law enforcement priorities, will be eligible to receive deferred action. The respondent, through counsel, indicated below that he was seeking deferred action. Nevertheless, we note that information regarding DHS' Deferred Action Process for Young People Who are Low Enforcement Priorities may be obtained at the following DHS websites: USCIS at [www.uscis.gov](http://www.uscis.gov), and ICE at [www.ice.gov](http://www.ice.gov). Individuals can also call USCIS' hotline at 1-800-375-5283 or ICE's hotline at 1-888-351-4024.

<sup>2</sup> The record before us does not contain any conviction documents.

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
LUMPKIN, GEORGIA

File: A205-866-201

April 25, 2013

In the Matter of

MARCELO CASTORENA-ALONSO

RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended - in that you are an alien present in the United States without being admitted or paroled or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATION: Pre-conclusion voluntary departure.

ON BEHALF OF RESPONDENT: GIOVANNI DIAZ

ON BEHALF OF DHS: SARAH MAZZIE-BRISCOE

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OFFICE OF THE CLERK

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent is a male native and citizen of Mexico. The respondent claims to have entered the United States in 1997. The respondent was not then admitted or paroled after inspection by an Immigration officer.

On March 25, 2013, respondent admitted and conceded via his counsel and the Court found that the allegations and the charge were sustained by clear and convincing evidence and that the respondent was removable to Mexico.

The information before this Court is that the respondent is not married to a United States citizen or legal permanent resident. His parents and his grandparents are not United States citizens or legal permanent residents. The respondent does not have any United States citizen children. Therefore, the respondent is not eligible for non-legal permanent resident cancellation of removal, better known as EOIR-42B relief.

At an earlier hearing it was established that respondent's relief was deferral of action, over which this Court has no jurisdiction.

The Court is also aware that the respondent has been arrested in Henry County, Georgia, by the police department for possession of marijuana less than one ounce. On January 22, 2013, he was convicted and given 12 months' confinement.

Also the respondent, January 30, 2013, was arrested by the Clayton County, Georgia PD for driving without a valid license. That case is pending.

Today, April 25, 2013, respondent's counsel asked for voluntary departure for his client. This Court denied that request as a matter of discretion based on the respondent's criminal history in the United States, to wit: the possession of marijuana.

Counsel for respondent then reserved appeal, as is his right.

Then, after reserving his right, counsel for respondent told the Court that he was appealing the case because he wanted an opportunity to ask the Government if the Government objected to voluntary departure for the respondent.

At that time the Court simply said to respondent's counsel, go ahead and ask the Government, to wit the Government counsel answered, upon the question being posed to her, that she objected to the respondent having voluntary departure for the same reasons as the Court, those being his possession of marijuana.

As respondent has no qualifying relatives in the United States and is in the United States illegally and as the respondent has violated the drug laws of the United

States, albeit with the small amount of marijuana, the Court, having reviewed the possibilities for the respondent to remain in the United States, has denied his relief. The respondent has conceded removability. The Court notes that he has not been convicted of an aggravated felony. The Court notes that he is not seeking any other relief in front of this Court, although he is, according to his counsel at the last setting, seeking prosecutorial discretion from the Department of Homeland Security. The Court has balanced the negatives and the positives and the potential for the respondent to remain in the United States and has determined that the respondent should be denied voluntary departure as a matter of discretion.

ORDER OF THE COURT

Relief pursuant to voluntary departure is ordered denied.

Appeal date is May 28, 2013.

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SAUNDRA D. ARRINGTON  
Immigration Judge

CERTIFICATE PAGE

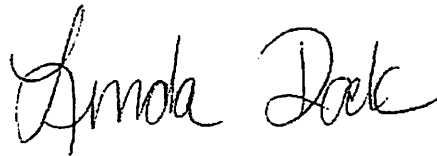
I hereby certify that the attached proceeding before JUDGE SAUNDRA D.  
ARRINGTON, in the matter of:

MARCELO CASTORENA-ALONSO

A205-866-201

LUMPKIN, GEORGIA

was held as herein appears, and that this is the original transcript thereof for the file of  
the Executive Office for Immigration Review.



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LINDA DOCK (Transcriber)

FREE STATE REPORTING, Inc.-2

JUNE 14, 2013

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(Completion Date)