



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**DHS/ICE Office of Chief Counsel - NYD
201 Varick, Rm. 1130
New York, NY 10014**

Name: NUNEZ BENCOSME, EDWIN

A 206-223-455

Date of this notice: 10/4/2016

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

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Grant, Edward R.
Mann, Ana
O'Connor, Blair

Userteam: Docket

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Falls Church, Virginia 22041

**NUNEZ BENCOSME, EDWIN
A206-223-455
HUDSON COUNTY JAIL
30-35 HACKENSACK AVENUE
KEARNY, NJ 07032**

**DHS/ICE Office of Chief Counsel - NYD
201 Varick, Rm. 1130
New York, NY 10014**

Name: NUNEZ BENCOSME, EDWIN

A 206-223-455

Date of this notice: 10/4/2016

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
Chief Clerk

Enclosure

Panel Members:
Grant, Edward R.
Mann, Ana
O'Connor, Blair

User team:

Falls Church, Virginia 22041

File: A206 223 455 – New York, NY

Date:

OCT - 4 2016

In re: EDWIN NUNEZ-BENCOSME

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: George A. Terezakis, Esquire

APPLICATION: Voluntary departure

The respondent, a native and citizen of the Dominican Republic, has appealed from the Immigration Judge's decision dated June 1, 2016. The Immigration Judge found the respondent removable as an alien who overstayed his nonimmigrant visa, based on the respondent's admissions and concessions, and the respondent requested no relief from removal. On appeal, the respondent requests remand to enable him to apply for voluntary departure. The record will be remanded.

On June 1, 2016, the respondent (through counsel) indicated he was requesting no relief other than voluntary departure. The Immigration Judge granted voluntary departure under safeguards, and the respondent waived appeal. Thereafter, the Immigration Judge conducted a bond hearing. At the conclusion of the bond hearing, the respondent asked whether appeal of the bond decision would preclude voluntary departure under safeguards (which had already been granted). The Immigration Judge said he would consider post-conclusion voluntary departure, but it was discretionary, and he would not exercise his discretion to grant voluntary departure if the respondent appealed the bond decision. As a result, the respondent withdrew the request for voluntary departure (I.J. at 2; Tr. at 7-10).

On appeal, the respondent argues that the Immigration Judge erred in not advising him that he had to choose between appealing the bond decision and being granted pre-conclusion voluntary departure under safeguards. The respondent also argues that he did not make a knowing and voluntary decision in choosing between a bond appeal and pre-conclusion voluntary departure.¹

¹ On appeal, the respondent also says he does not have a final conviction that would render him inadmissible or deportable. However, the respondent was not found removable or ineligible for any relief from removal on the basis of any conviction. The respondent also says the Immigration Judge should have considered administrative closure of proceedings pending adjudication of his appeal of his criminal conviction. However, the respondent did not request this of the Immigration Judge.


Pursuant to section 240B(a) of the Act, a respondent may be granted voluntary departure at his own expense before the conclusion of proceedings if he is not deportable under section 237(a)(2)(A)(iii) (relating to aggravated felonies) or section 237(a)(4)(B) (relating to espionage, sabotage, terrorism, and national security). *See* 8 U.S.C. § 1229c(a)(1); 8 C.F.R. § 1240.26(b)(1). The respondent must concede removability and must make no additional requests for relief (or if such requests have been made, such requests must be withdrawn prior to any grant of voluntary departure). In addition, the respondent must waive appeal of all issues. *See* 8 C.F.R. § 1240.26(b)(1)(i)(D); *Matter of Arguelles-Campos*, 22 I&N Dec. 811 (BIA 1999).

With regard to the requirement that a respondent waive appeal of all issues under 8 C.F.R. section 1240.26(b)(1)(i)(D) to qualify for pre-conclusion voluntary departure, the respondent is only required to waive all issues pertinent to removal proceedings. Bond proceedings are separate and apart from removal proceedings. It is inappropriate for any bond issues to be considered in removal proceedings. *See* 8 C.F.R. §§ 1003.19(d), (f). Consequently, the waiver of all issues requirement of 8 C.F.R. § 1240.26(b)(1)(i)(D) does not encompass a requirement to waive bond or a requirement to waive bond appeal. Furthermore, a respondent's desire to file an appeal in separate bond proceedings is not an appropriate factor on which to deny voluntary departure in the exercise of discretion.

Because the Immigration Judge appears to have conditioned pre-conclusion voluntary departure under safeguards on waiver of the respondent's bond appeal, we find it appropriate to remand the record to enable the Immigration Judge to reconsider the respondent's request for pre-conclusion voluntary departure under safeguards.

Accordingly, the following order will be entered.

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



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
NEW YORK, NEW YORK

File: A206-223-455

June 1, 2016

In the Matter of

EDWIN NUNEZ BENCOSME
RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGES: Section 237(a)(1)(B) of the Immigration and Nationality Act,
remained in the United States for a longer time than permitted.

APPLICATIONS:

ON BEHALF OF RESPONDENT: SUCHITA MATHER, Esquire
The Bronx Defenders
360 East 161st Street
Bronx, New York 10451

ON BEHALF OF DHS: MARGO STRAUSS, Esquire
Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a native and citizen of the Dominican Republic. He was admitted into the United States at New York, New York on or about February 17, 2010 with authorization to remain in the United States for a temporary period not to exceed August 16, 2010. He remained beyond that date without authorization from the Immigration and Naturalization Service or its successor, the Department Homeland

Security.

On May 10, 2016 the respondent through counsel admitted the four allegations and conceded the charge. The Department of Homeland Security designated the Dominican Republic.

The respondent has one arrest which led to a conviction under New York Penal Law Section 110-220.16 on February 29, 2016. That conviction is currently on direct appeal. However, the pendency of that appeal does not impact the fact that he remained in the United States for a longer time than permitted. The respondent initially applied for voluntary departure, but then withdrew that application in order to pursue a bond application. Subsequent to a decision on the bond matter the respondent indicated that there would be no applications for relief before this Court. Accordingly, since there is no applications for relief pending before the Court, the Court has no option but to issue a removal order.

For the above reasons, the following order will be entered.

The respondent is hereby ordered removed from the United States to the Dominican Republic.

THOMAS J. MULLIGAN
Immigration Judge

CERTIFICATE PAGE

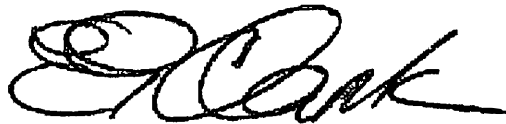
I hereby certify that the attached proceeding before JUDGE THOMAS J.
MULLIGAN, in the matter of:

EDWIN NUNEZ BENCOSME

A206-223-455

NEW YORK, NEW YORK

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



EVALENA E. CLARK

DEPOSITION SERVICES, Inc.-2

July 15, 2016

(Completion Date)