



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: MARTINEZ-TORRES, CRESENCI... A 206-861-386

Date of this notice: 3/26/2020

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:
Cassidy, William A.
Hunsucker, Keith
Creppy, Michael J.

User team: Docket

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Falls Church, Virginia 22041

File: A206-861-386 – Miami, FL

Date: **MAR 26 2020**

In re: Cresenciano MARTINEZ-TORRES a.k.a. Cresenciano MARTINEZ
a.k.a. Benito RAMOS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark A. Prada, Esquire

APPLICATION: Voluntary departure

The respondent, a native and citizen of Mexico, has appealed from the decision of the Immigration Judge dated April 2, 2018, denying his application for voluntary departure. The record will be remanded.

The Immigration Judge did not prepare a separate oral or written decision in this matter setting out the reasons for the decision. An explanation of the reasons in the transcript is not sufficient. Accordingly, the record will be remanded to the Immigration Judge for preparation of a full decision. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999).

Additionally, the respondent should be given an opportunity to establish that he merits voluntary departure in the exercise of discretion. Pursuant to 8 C.F.R. § 1240.11(a)(2), Immigration Judges have an affirmative duty to inform an alien in removal proceedings of his “apparent eligibility” to apply for any form of relief under the Act and to afford the alien an opportunity to apply for such relief during the removal hearing. *See also Matter of Cordova*, 22 I&N Dec. 966, 970-71 (BIA 1999).

Here, the Immigration Judge complied with his duty under the regulations to inform the respondent that he appeared eligible for voluntary departure and continued the proceedings to allow the respondent an opportunity to establish his eligibility for such relief. However, the Immigration Judge did not inform the respondent, who was unrepresented, of the requirements for voluntary departure but accepted the respondent’s statement that he was aware of the requirements (Tr. at 28).¹ At the remanded proceeding, the Immigration Judge should inform the respondent of the requirements for voluntary departure, including the fact that the respondent has the burden of establishing that he merits such relief in the exercise of discretion, and give him another opportunity to establish his statutory eligibility for voluntary departure and that he merits such relief in the exercise of discretion. We express no view on the ultimate resolution of the case.

¹ Although the respondent’s appellate brief refers to his “diminished cognitive abilities,” the respondent does not claim that he lacks competency to participate in these proceedings, nor does the record show indicia of incompetency such that a judicial competency hearing would be warranted. *See Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011).

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.



FOR THE BOARD