



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

DHS/ICE Office of Chief Counsel - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014

Name: PEREZ, LUIS ALBERTO

A 095-790-490

Date of this notice: 2/27/2014

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.

Lulseges
Userteam: Docket

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Falls Church, Virginia 20530

File: A095 790 490 – Los Angeles, CA

Date:

FEB 27 2014

In re: LUIS ALBERTO PEREZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se¹

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Continuance

The respondent appeals from the Immigration Judge's order granting the respondent's request for the privilege of voluntary departure under section 240B(a) of the Act, 8 U.S.C. § 1229c(a), and affording the respondent 120 days to depart the United States at his own expense. The Immigration Judge did not ascertain that the respondent knowingly and voluntarily waived appeal as required in order for a 120-day period of voluntary departure to be granted under section 240B(a) of the Act (Tr. at 40-41). *See* 8 C.F.R. § 1240.26(b)(1)(i)(D). Thus, the Immigration Judge incorrectly afforded the respondent a 120-day period to voluntarily depart the United States. This Board cannot make factual findings on appeal as would be necessary to grant the respondent voluntary departure under section 240B(b) of the Act, 8 U.S.C. § 1229c(b). *See* 8 C.F.R. § 1003.1(d)(3)(iv). Therefore, the record will be remanded to the Immigration Judge for further proceedings.

ORDER: The record is remanded for further proceedings.



FOR THE BOARD

¹ The respondent was informed by notice dated April 23, 2013, that his attorney, Mr. Ronald Earl Behling, Esquire, has been suspended from the practice of law before the Board, the Immigration Courts and the Department of Homeland Security.

IMMIGRATION COURT
606 SOUTH OLIVE STREET, 15TH FLOOR
LOS ANGELES, CA 90014

In the Matter of: **PEREZ, LUIS ALBERTO**

Case No.: **A095-790-490**

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on April 27, 2012.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

☐ The respondent was ordered removed from the United States to _____ or in the alternative to _____.

☐ Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ or in the alternative to ~~any other country~~ ARO.

☒ Respondent's application for voluntary departure was granted until 8/27/12 upon posting a bond in the amount of \$ _____ with an alternative order of removal to Mexico.

Respondent's application for:

☐ Asylum was ☐ granted ☐ denied ☐ withdrawn ☐ other.

☐ Withholding of removal was ☐ granted ☐ denied ☐ withdrawn ☐ other.

☐ Respondent's application for ☐ withholding of removal ☐ deferral of removal under Article III of the Convention Against Torture was ☐ granted ☐ denied ☐ withdrawn ☐ other.

☐ A Waiver under section _____ was ☐ granted ☐ denied ☐ withdrawn ☐ other.

☐ Cancellation of removal under section 240A(a) was ☐ granted ☐ denied ☐ withdrawn ☐ other.

Respondent's application for:

☐ Cancellation under section 240A(b)(1) was ☐ granted ☐ denied ☐ withdrawn ☐ other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

☐ Cancellation under section 240A(b)(2) was ☐ granted ☐ denied ☐ withdrawn ☐ other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

☐ Adjustment of Status under section _____ was ☐ granted ☐ denied ☐ withdrawn ☐ other. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

☐ Respondent's status was rescinded under section 246.

☐ Respondent is admitted to the United States as a _____ until _____.

☐ As a condition of admission, respondent is to post a \$ _____ bond.

☐ Respondent knowingly filed a frivolous asylum application after proper notice.

☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

☐ Proceedings were terminated.

☐ Other: _____

Date: April 27, 2012.

Arlene E. Dorfman
ARLENE E. DORFMAN
Immigration Judge

Appeal waived Reserved A / I / B

Appeal due by: May 29, 2012

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: _____ BY: COURT STAFF _____

Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other Q6

Alien Number:

95-790-490

Alien Name:

Perez, Luis Alberto

**NOTICE TO RESPONDENTS
GRANTED VOLUNTARY DEPARTURE**

You have been granted the privilege of voluntarily departing from the United States of America. The Court advises you that, if you fail to voluntarily depart the United States within the time period specified, a removal order will automatically be entered against you. Pursuant to section 240B(d) of the Immigration and Nationality Act, you will also be subject to the following penalties:

1. You will be subject to a civil penalty of not less than \$1,000 and not more than \$5,000; and
2. You will be ineligible, for a period of 10 years, to receive cancellation of removal, adjustment of status, registry, voluntary departure, or a change of nonimmigrant status.

The Court further advises you that:

☒ **You have been granted pre-conclusion voluntary departure.**

1. If you file a motion to reopen or reconsider during the voluntary departure period, the grant of voluntary departure will be terminated automatically, the alternate order of removal will take effect immediately, and the penalties for failure to depart voluntarily under section 240B(d) of the Act will not apply. 8 C.F.R. § 1240.26(b)(3)(iii).
2. There is a civil monetary penalty if you fail to depart within the voluntary departure period. In accordance with the regulation, the Court has set the presumptive amount of \$3,000 (or instead of the presumptive amount). 8 C.F.R. § 1240.26(j).

☐ **You have been granted post-conclusion voluntary departure.**

1. If the Court set any additional conditions, you were advised of them, and were given an opportunity to accept or decline them. As you have accepted them, you must comply with the additional conditions. 8 C.F.R. § 1240.26(c)(3).
2. The Court set a specific bond amount. You were advised of the bond amount, and were given an opportunity to accept or decline it. As you have accepted it, you have a duty to post that bond with the Department of Homeland Security, Immigration and Customs Enforcement, Field Office Director within 5 business days of the Court's order granting voluntary departure. 8 C.F.R. § 1240.26(c)(3)(i).
3. If you have reserved your right to appeal, then you have the absolute right to appeal the decision. If you do appeal, you must provide to the Board of Immigration Appeals, within 30 days of filing an appeal, sufficient proof of having posted the voluntary departure bond. The Board will not reinstate the voluntary departure period in its final order if you do not submit timely proof to the Board that the voluntary departure bond has been posted. 8 C.F.R. § 1240.26(c)(3)(ii).
4. If you do not appeal and instead file 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 penalties for failure to depart voluntarily under section 240B(d) of the Act will not apply. 8 C.F.R. §§ 1240.26(c)(3)(iii), (e)(1).
5. There is a civil monetary penalty if you fail to depart within the voluntary departure period. In accordance with the regulation, the Court has set the presumptive amount of \$3,000 (or instead of the presumptive amount). 8 C.F.R. § 1240.26(j)

Alien Number: 095-790-490

Alien Name: PEREZ, LUIS ALBERTO

LIMITATIONS ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR

- () 1. You have been scheduled for a removal hearing, at the time and place set forth on the attached sheet. Failure to appear for this hearing other than because of exceptional circumstances beyond your control** will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for a period of ten (10) years after the date of entry of the final order of removal.
- () 2. You have been scheduled for an asylum hearing, at the time and place set forth on the attached notice. Failure to appear for this hearing other than because of exceptional circumstances beyond your control** will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for a period of ten (10) years from the date of your scheduled hearing.
- X () 3. You have been granted voluntary departure from the United States pursuant to section 240B of the Immigration and Nationality Act, and remaining in the United States beyond the authorized date other than because of exceptional circumstances beyond your control** will result in your being ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for ten (10) years from the date of the scheduled departure or the date of unlawful reentry, respectively. Your voluntary departure bond, if any, will also be breached. Additionally, if you fail to voluntarily depart the United States within the time period specified, you shall be subject to a civil penalty of not less than \$1000 and not more than \$5000.
- () 4. An order of removal has been entered against you. If you fail to appear pursuant to a final order of removal at the time and place ordered by the DHS, other than because of exceptional circumstances beyond your control** you will not be eligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for ten (10) years after the date you are scheduled to appear.

**the term "exceptional circumstances" refers to circumstances such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances.

A. THE FORMS OF RELIEF FROM REMOVAL FOR WHICH YOU WILL BECOME INELIGIBLE ARE:

- 1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;
- 2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and
- 3) Adjustment of status or change of status as provided for in Section 245, 248 or 249 of the Immigration and Nationality Act.

This written notice was provided to the alien in English. Oral notice of the contents of this notice must be given to the alien in his/her native language, or in a language he/she understands by the Immigration Judge.

Date: Apr 27, 2012

Immigration Judge: [Signature] or Court Clerk: _____

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: 4/27/12 BY: COURT STAFF [Signature]

Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other