

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Field Office Directors

FROM: James T. Hayes, Jr.
Director

SUBJECT: Updated Voluntary Departure
Policies

JUL 21 2009

A handwritten signature in black ink, appearing to read "James T. Hayes, Jr.", with a stylized flourish at the end.

Purpose:

This guidance describes changes to 8 C.F.R. § 1240.26 relating to grants of voluntary departure in removal proceedings. These changes come from the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) Final Rule on Voluntary Departure: Effect of a Motion to Reopen or Reconsider or a Petition for Review, which took effect January 20, 2009. In short, the rule provides that a Motion to Re-open or Reconsider (MTR) filed by an alien with a decision of voluntary departure granted by an Immigration Judge (IJ) or the Board of Immigration Appeals (Board) within the voluntary departure period automatically terminates the grant of voluntary departure. Likewise, the filing of a Petition for Review (PFR) in a federal court of appeals within the voluntary departure period automatically terminates the grant of voluntary departure.

Background:

The Immigration and Nationality Act (INA) provides for IJs to grant voluntary departure. They may do so prior to the completion of removal proceedings (for a period of up to 120 days) and at the conclusion of removal proceedings (for a period of up to 60 days). If an alien granted voluntary departure fails to depart during the period of time provided, an alternate Order of Removal takes effect.

Grants of Voluntary Departure

An alien may voluntarily depart the United States during the voluntary departure period after the alien posts a voluntary departure bond (departure bond). The departure bond remains valid and in effect until canceled by proof of the alien's voluntary departure, or by the alien's surrender for removal before the expiration of the voluntary departure period. The departure bond is breached if the alien fails to depart or surrender pursuant to the alternate order of removal during the voluntary departure period. A voluntary departure bond is not canceled if the alien appeals a decision of the IJ.

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Failure to post the required departure bond does not terminate the alien's obligation to depart or exempt the alien from the consequences for failure to depart voluntarily during the period allowed.

Please see attached Voluntary Departure Questions and Answers (Q&As) developed to help further explain these changes.

All inquiries, questions, and/or concerns may be directed to the HQ DRO BOND mailbox at

(b)(7)(E) [\[REDACTED\]@dhs.gov](mailto: [REDACTED]@dhs.gov) or your local Chief Counsel's Office.

Attachment

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Voluntary Departure Bond O&A

1. What is the effect of an alien's failure to post a departure bond within 5 days of an Order of Voluntary Departure?

The Order of Voluntary Departure is automatically terminated. If the alien has waived appeal of the Immigration Judge's (IJ) decision, the alternative Order of Removal is immediately effective, and the alien may be removed, unless a court has stayed removal. The Office of Detention and Removal Operations (DRO) may also set a delivery bond where appropriate. If the alien has an outstanding delivery bond, the delivery bond remains in full force and effect and the obligor may be called upon to deliver the alien if the alien fails to appear for removal.

2. When will a departure bond be breached?

A departure bond will be determined to have been breached if the alien fails to depart the United States on or before the date specified in the order granting Voluntary Departure in accordance with 8 C.F.R. § 103.6(e).

3. What is the effect of an alien furnishing proof of Voluntary Departure after a determination and declaration that the bond has been breached?

DRO may rescind its determination that a bond has been breached and cancel the bond if DRO is furnished with probative documentation of the alien's departure during the Voluntary Departure period. The requirement to furnish probative documentation may be satisfied by the obligor providing DRO with a completed Form 1-392 or Form G-146 executed by the alien before an officer of the U.S. Consulate affirming the alien's entry into the country to which the alien is departing within 60 days of the date of the voluntary departure order or with any verified corroboration of the alien's presence by a third party in the destination country.

4. What is the effect of an alien posting a departure bond within five days of an Order of Departure?

At the discretion of the Field Office Director (FOD), the alien may be held in custody until the bond is posted. Upon posting the departure bond, any outstanding delivery bond must be cancelled. If the alien satisfies the conditions of the departure bond prior to the expiration of the voluntary departure period, the departure bond must be cancelled.

5. What is the effect of filing a Notice of Appeal to the Board within 30 days of the date of the IJs order?

The voluntary departure decision is not final until the appeal is completed and the Voluntary Departure Order has become administratively final. If on appeal an order granting voluntary departure is reversed by the Board, the voluntary departure bond must

be cancelled. Because the Board will reverse a grant of voluntary departure unless the alien submits proof of the posting of the departure bond, an alien may ask the FOD for the following documents as evidence that the voluntary departure bond was posted:

A copy of the Immigration Bond (Form 1-352)

A copy of the Receipt of Immigration Officer - United States Bond or Notes, or Cash, Accepted as Security on Immigration Bond (Form 1-305).

6. What is the effect of an alien filing a Motion to Re-open or Reconsider (MTR) during the period allowed for Voluntary Departure?

The Voluntary Departure Order is terminated and the departure bond must be cancelled. The alien may be removed unless a court has stayed removal. DRO may also set a delivery bond where appropriate.

7. What is the effect of an alien filing a petition for review (PFR) prior to the expiration of the voluntary departure period?

A grant of Voluntary Departure shall terminate automatically upon the filing of the PFR and the alternate order of removal shall take effect immediately, unless a court has stayed removal. DRO may also set a delivery bond where appropriate. If a departure bond has been posted, it must be canceled. If the alien has not posted a departure bond, and there is an outstanding delivery bond, the delivery bond remains in full force and effect and the obligor may be called upon to deliver the alien if the alien fails to appear for removal.