

INA: ACT 240B - VOLUNTARY DEPARTURE

Sec. 240B. 1/ (a) Certain Conditions.-

(1) In general.-The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 240 or prior to the completion of such proceedings, if the alien is not deportable under section 237(a)(2)(A)(iii) or section 237(a)(4)(B).

(2) 2/ PERIOD-

(A) IN GENERAL- Subject to subparagraph (B), permission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days.

(B) Three-YEAR PILOT PROGRAM WAIVER- During the period October 1, 2000, through September 30, 2003, and subject to subparagraphs (C) and (D)(ii), the Attorney General may, in the discretion of the Attorney General for humanitarian purposes, waive application of subparagraph (A) in the case of an alien--

(i) who was admitted to the United States as a nonimmigrant visitor (described in section 101(a)(15)(B)) under the provisions of the visa waiver pilot program established pursuant to section 217, seeks the waiver for the purpose of continuing to receive medical treatment in the United States from a physician associated with a health care facility, and submits to the Attorney General--

(I) a detailed diagnosis statement from the physician, which includes the treatment being sought and the expected time period the alien will be required to remain in the United States;

(II) a statement from the health care facility containing an assurance that the alien's treatment is not being paid through any Federal or State public health assistance, that the alien's account has no outstanding balance, and that such facility will notify the Service when the alien is released or treatment is terminated; and

(III) evidence of financial ability to support the alien's day-to-day expenses while in the United States (including the expenses of any family member described in clause (ii)) and evidence that any such alien or family member is not receiving any form of public assistance; or

(ii) who--

(I) is a spouse, parent, brother, sister, son, daughter, or other family member of a principal alien described in clause (i); and

(II) entered the United States accompanying, and with the same status as, such principal alien.

(C) WAIVER LIMITATIONS-

(i) Waivers under subparagraph (B) may be granted only upon a request submitted by a Service district office to Service headquarters.

(ii) Not more than 300 waivers may be granted for any fiscal year for a principal alien under subparagraph (B)(i).

(iii)(I) Except as provided in subclause (II), in the case of each principal alien described in subparagraph (B)(i) not more than one adult may be granted a waiver under subparagraph (B)(ii).

(II) Not more than two adults may be granted a waiver under subparagraph (B)(ii) in a case in which--

(aa) the principal alien described in subparagraph (B)(i) is a dependent under the age of 18; or

(bb) one such adult is age 55 or older or is physically handicapped.

(D) REPORT TO CONGRESS; SUSPENSION OF WAIVER AUTHORITY--

(i) Not later than March 30 of each year, the Commissioner shall submit to the Congress an annual report regarding all waivers granted under subparagraph (B) during the preceding fiscal year.

(ii) Notwithstanding any other provision of law, the authority of the Attorney General under subparagraph (B) shall be suspended during any period in which an annual report under clause (i) is past due and has not been submitted.

(3) Bond.-The Attorney General may require an alien permitted to depart voluntarily under this subsection to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.

(4) Treatment of aliens arriving in the United States.-In the case of an alien who is arriving in the United States and with respect to whom proceedings under section 240 are (or would otherwise be) initiated at the time of such alien's arrival, paragraph (1) shall not apply. Nothing in this paragraph shall be construed as preventing such an alien from withdrawing the application for admission in accordance with section 235(a)(4).

(b) At Conclusion of Proceedings.-

(1) In general.-The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense if, at the conclusion of a proceeding under

section 240, the immigration judge enters an order granting voluntary departure in lieu of removal and finds that-

(A) the alien has been physically present in the United States for a period of at least one year immediately preceding the date the notice to appear was served under section 239(a);

(B) the alien is, and has been, a person of good moral character for at least 5 years immediately preceding the alien's application for voluntary departure;

(C) the alien is not deportable under section 237(a)(2)(A)(iii) or section 237(a)(4); and

(D) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so.

(2) Period.-Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 60 days.

(3) Bond.-An alien permitted to depart voluntarily under this subsection shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified.

(c) Aliens Not Eligible.-The Attorney General shall not permit an alien to depart voluntarily under this section if the alien was previously permitted to so depart after having been found inadmissible under section 212(a)(6)(A).

(d) 3/ Civil Penalty for Failure To Depart-

(1) IN GENERAL- Subject to paragraph (2), if an alien is permitted to depart voluntarily under this section and voluntarily fails to depart the United States within the time period specified, the alien--

(A) shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000; and

(B) shall be ineligible, for a period of 10 years, to receive any further relief under this section and sections 240A, 245, 248, and 249.

(2) APPLICATION OF VAWA PROTECTIONS- The restrictions on relief under paragraph (1) shall not apply to relief under section 240A or 245 on the basis of a petition filed by a VAWA self-petitioner, or a petition filed under section 240A(b)(2), or under section 244(a)(3) (as in effect prior to March 31, 1997), if the extreme cruelty or battery was at least one central reason for the alien's overstaying the grant of voluntary departure.

(3) NOTICE OF PENALTIES- The order permitting an alien to depart voluntarily shall inform the alien of the penalties under this subsection.

(e) Additional Conditions.-The Attorney General may by regulation limit eligibility for voluntary departure under this section for any class or classes of aliens. No court may review any regulation issued under this subsection.

(f) Judicial review.-No court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure under subsection (b), nor shall any court order a stay of an alien's removal pending consideration of any claim with respect to voluntary departure.

FOOTNOTES FOR SECTION 240B

INA: ACT 240B FN 1

FN 1 Added by § 304 of IIRIRA.

INA: ACT 240B FN 2

FN 2 Section 2 of Public Law 106-406, dated November 1, 2000, revised paragraph (a) (2) in its entirety.

INA: ACT 240B FN 3

FN 3 Section 812 of Public Law 109-162, dated January 5, 2006, amended section 240B of the Immigration and Nationality Act by revising paragraph (d).