

COMMUNITY

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YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & JEREMIAH JOHNSON

The 'privileges' and consequences of voluntary departure

ALTHOUGH voluntary departure is considered a privilege, all too often aliens accept this privilege without fully realizing the benefits and possible consequences. If you are really planning to leave the United States, voluntary departure may be an appropriate option. However, if you are using the voluntary departure time for delay, hoping that visa will become available, you can be taking much too great a risk. Perhaps the most important question to ask yourself when you consider voluntary departure is whether you are truly going to leave the United States.

What is voluntary departure and how do i obtain it?

An alien in removal proceedings may request voluntary departure at either the outset of the removal hearing or at the end of the removal hearing. If the alien requests voluntary departure at the outset of the hearing, then the immigration judge may grant an alien a maximum of 120 days to voluntarily depart the United States. The immigration judge may also prescribe certain conditions before granting voluntary departure such as setting a bond. An alien who seeks voluntary departure at this stage may not request any other form of relief, must concede removability and must waive their right to appeal the decision. This option is only recommended after a careful review of the case and should be reserved for aliens who have no other forms of relief and have decided that they are truly going to leave the United States.

An alien may also request voluntary departure at the conclusion of the removal hearing as a form of alternative relief. At this stage, an immigration judge may grant a maximum of 60 days to voluntarily depart the United States if the alien can demonstrate that they have been physically present in the United States for at least one year, they possess good moral character, they are not an aggravated felon, they have the means to depart the United States and intend to do so, and they post a \$500 bond. If the alien accepts voluntary departure at this stage, the period may be tolled during any appeal process. An alien should not accept voluntary departure at this stage unless they fully understand the need to comply with all the requirements – most importantly the requirement to leave the United States within the voluntary departure time period.

What if i accept voluntary departure but do not leave?

Realizing that many aliens would accept voluntary departure and simply remain in the United States, Congress enacted a law to impose harsh consequences for failing to leave the United States. Specifically, if an alien fails to timely depart he can be fined up to \$5,000 and would become ineligible for a period of ten years for many forms of immigration benefits. Chief among the lost benefits is the ability to apply for adjustment of status (obtain a green card.) So, even if an alien has an approved visa petition, no criminal record, and no record of any fraud, he would be barred for a period of ten years from receiving a green

card. The 10-year period begins from the date the alien was required to have departed the United States. Furthermore, the Board of Immigration Appeals has held that an alien is barred from filing a motion to reopen to apply for adjustment of status if he failed to depart the United States. This is commonly known as a "Shaar Bar", named for the Board's case law in Matter of Shaar. It is important to note, however, that if an alien has remained in the United States longer than the ten-year bar, then it might be possible to file a motion to reopen if the alien is other eligible to apply for adjustment of status.

When can i return to the united states after leaving voluntarily?

Perhaps no aspect of voluntary departure is more misunderstood than its effect on an immigrant's eligibility to return to the United States. Although accepting voluntary departure avoids the consequences of a removal order (a 10 year bar from returning to the United States), many immigrants still face other grounds of inadmissibility when they seek to reunite with their families. A common ground of inadmissibility that is not solved by voluntary departure is the 10-year bar for unlawful presence. For example, an immigrant who was unlawfully present in the United States for over 1 year and voluntarily departs still faces a ten-year bar from returning to the United States. Although the immigrant would not need to waive any bar resulting from a removal order, he will need to file a waiver for the unlawful presence bar.

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ATTY. RAY BULAON

"5 Facts You Should Know About Bankruptcy"

1. Bankruptcy is not always your fault.

If you are overwhelmed with debt problems, you may feel alone, depressed, guilty or all of the above. In most cases, bankruptcy is caused by events beyond your control- job loss, sickness, disability, divorce, to name a few. In others, it is simply due to poor financial planning. Don't be too hard on yourself. Life is not perfect- and neither are you.

2. There is life after bankruptcy.

Some people have the mistaken belief that once they file, life will never be "normal" again and that their credit is ruined forever. The truth is that most people who file bankruptcy are able to rebuild credit very quickly only after a few years and buy a home like everyone else.

3. Bankruptcy provides immediate debt relief.

The day you file bankruptcy, creditors have no choice but to leave you alone. That means no more harassment from creditors, lawsuits, judgments or wage garnishments. The relief is immediate. Suddenly you can breathe better and feel like a human being again.

4. Most people who file bankruptcy keep everything and lose nothing.

Some people are worried that once they file, they will automatically lose everything that they have worked so hard for. The truth is that in most cases, you get to protect your home, car, bank account and all other assets. You lose nothing but your debts.

5. Choosing the right bankruptcy attorney to help you is essential.

Choose a lawyer who not only has the knowledge and experience to handle your case (the "legal side") but also one who has your best interests at heart- someone who will take time to listen, answer your questions, and someone who understands the "human side" of bankruptcy.

(Important: None of the information herein is intended to give legal advice for any specific situation. Bankruptcy laws are often complex and situations vary. For a FREE LEGAL ANALYSIS of your situation, please call for an appointment.)

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