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YOUR IMMIGRATION SOLUTION



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The 'privileges' and consequences of voluntary departure

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 from 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.

Because the consequences of failing to depart are so severe, and the benefits of returning are so limited, the privilege of voluntary departure is not for everyone. Instead of gambling with your life and choosing voluntary departure as a quick and risky solution, you should first consult an attorney experienced in immigration matters to carefully evaluate your case and see if voluntary departure would be best for your individual case.

Atty. Reeves has represented clients in numerous landmark immigration cases that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City.
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The analysis and suggestions offered in this column do not create a lawyer-client relationship and are not a substitute for the personalized representation that is essential to every case. (Advertising Supplement)

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