

YOUR IMMIGRATION SOLUTION



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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. 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.

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were covered with tape and *may undies naman kami*. Very artistic ang body paintings. Our bodies were covered with paint *kaya wala talagang makikita*. Remember the painted lady in the Bond movie *Goldfinger*? *Parang ganoon*."

And how did you get into film?
"I did school plays directed by Francis Villacorta who recommended me to other directors. He also knew Tito Ferdy (Lapuz, *The STAR's* Toronto-based international correspondent and co-producer of *Kinatay* with Frenchman Didier Costet) who introduced me to *direk* Dante Mendoza. It was also Tito Ferdy who got me into *Thirst*. He met *direk* Park Chan-wook's producer who asked him to e-mail photos of Filipino actresses."

Did you really shoot Thirst simultaneously with Serbis?

"Yes. *Thirst* took one year to shoot kasi very meticulous si *direk* Park. I play the Filipina wife of a Korean. For three months, I went back and forth between Manila and South Korea for the shoot. My dialogue was mixed English and Korean. I rehearsed my lines so well that I started speaking fluent Korean. But they asked me to speak *baluktot* Korean *para daw* realistic."

Did you think you would end up an actress?

"Not really. When I was a child, I wanted to be a veterinarian. As I grew up, *doon na lumabas ang hilig ko sa pagpipinta*. I grew up in a family of artists. My mom used to do theater in school. My (older) brother is also taking up Fine Arts (major in Advertising) and my other (younger) brother, Culinary Arts. Becoming an actress happened only by accident. At first, you know, 'Sige, try-try.' Until I started to like it. More indie projects are coming, so I started to take a leave from school. I just finished *Ang Pang-gagahasa Kay Fe*, an indie film directed by Alvin Yapan with Irma

Adlawan in the title role, showing in the CineMalaya in July. Support *lang ako*, as the mistress of Nonie Buencamino who plays Irma's husband."

(Asked what kind of childhood Mercedes had, Petty Cabral said, "Being an only daughter, she was protected. We have a close-knit family, very religious. She grew up on good values.")

Then my *Lola* learned about the naked art, *umiyak talaga siya*. But when she saw the actual show, she realized *na wala naman nakikita dahil nga makapal talaga ang painting*."

How was it working with Dante?

"Well, *iba siya*. It's true that he didn't give us the whole script; he gave me only a copy of it *na nandoon ang character ko* and told me to concentrate on my character. Would you believe that I only saw *Kinatay* in Cannes? *Doon ko lang nalaman* what the film is all about." (Scripted by Armando "Bing" Lao, whom Dante calls "my mentor responsible for what I am now" and who also wrote *Serbis*, *Kinatay* is a gritty look at the slow "chop-chopping" of a prostitute, played by Maria Isabel

Lopez, with blunt kitchen knives. Coco Martin plays the neophyte cop initiated into his new world by a firsthand view of police brutality right on his wedding day. Mercedes plays his bride.) "The film got a standing ovation. *Nagpalakpakan talaga ang audience* for about 10 minutes. It was unbelievable! *Direk* Dante was overwhelmed; he was teary-eyed. *Ganoon din kami*."

What about working with Park Chan-wook?

"Unlike *direk* Dante, *direk* Park stuck to the script. *Nasanay ako kay direk* Dante so *medyo nangapa ako sa umpisa*. On the set, the assistant director who spoke good English was the one who explained what I had to do. They were surprised when my scene was shot, in a hospital. *Bakit daw kaya ko umiyak* and then *makikipag-biruan* and then *iiyak uli* during the next take. Sila kasi, minsan they use artificial tears. *Direk* Park later told me that I did more than what he expected."

Who's the producer from LA whom you met in Cannes?

"His name is Frederick Golchan. He saw *Thirst* and he liked my performance. We've commu-



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