

MATTER OF YOU FU WANG

In Deportation Proceedings

A-16007602

Decided by Board May 16, 1975

On appeal from the immigration judge's denial of voluntary departure, using the short form I-38 order, the record is remanded for the entry of a proper denial order. A summary decision on form I-38 is permitted only if the alien makes no application under 8 CFR 247.17, or if the alien applies for voluntary departure under section 244(e) of the Immigration and Nationality Act, and such relief is granted.

CHARGE:

Order: Act of 1952—Section 241(a)(2) [8 U.S.C. 1251(a)(2)]—Entered after being refused permission to land temporarily as a crewman, in violation of section 252(a).

ON BEHALF OF RESPONDENT: David W. Walters, Esquire
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This is an appeal from an order of an immigration judge finding the respondent deportable as charged and directing his deportation to Taiwan. The record will be remanded to the immigration judge for further proceedings.

The record indicates that the respondent, through counsel, applied for a grant of sufficient voluntary departure to enable him to earn money to depart at his own expense. This application was denied by the immigration judge using summary order Form I-38.

The immigration judge erred in entering the deportation order on the short Form I-38, which states that "Respondent has made no application for relief from deportation." We note that the immigration judge predicated his request for counsel's consent to a "short form" order, on the finding "the respondent has made no application for relief from deportation because he is unable to show that he has funds. . . ." (Tr. P. 8). A summary decision on Form I-38 or I-39 is permitted *only* if the alien makes no application under section 242.17 or if he applies for voluntary departure only and the immigration judge grants the application. The action here was in violation of 8 CFR 242.18(b), and a remand

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is required for the entry of a proper order by the immigration judge. Accordingly, the following order will be entered.

ORDER: The record is remanded to the immigration judge for further proceedings consistent with the foregoing opinion.