MATTER OF MANALO

In Exclusion Proceedings

A–19257498

Decided by Board July 3, 1974

Request for permission to withdraw his application for admission, made following the entry of an exclusion order and during the pendency of appeal to the Board, is denied an applicant found excludable on the ground he obtained his visa by misrepresenting material facts.

EXCLUDABLE: Act of 1952—Section 212(a)(19) [8 U.S.C. 1182(a)(19)]—Procured visa by misrepresenting material facts.

Act of 1952—Section 212(a)(20) [8 U.S.C. 1182(a)(20)]—Immigrant alien not in possession of immigrant visa.

ON BEHALF OF APPLICANT: Dan F. Danilov, Esquire
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Seattle, Washington 98154

During the pendency of this appeal from an exclusion order, applicant's counsel wrote us under date of June 5, 1974 that the applicant "has requested departure from the United States on June 5, 1974 and he has arranged to pay for the transportation costs out of his own funds." Enclosed was a request for dismissal of the appeal "for the reason that the applicant wishes to withdraw his Application for Admission into the United States and return to the Republic of the Philippines as soon as possible." We are informed by the Immigration and Naturalization Service that the applicant departed from the United States on June 5, 1974.

There is a marked difference between withdrawl of an appeal, which under 8 CFR 3.4 leaves the original exclusion order in effect to the same extent as if no appeal had been taken, and withdrawal of an application for admission. If permission is granted by the immigration judge or this Board to withdraw the application for admission, the alien departs without being excluded. The alien may not, without leave and as a matter of right, withdraw his application for admission, *Matter of Vargas-Molina*, 13 I. & N. Dec. 651 (BIA, 1971). On this record, we see no reason to permit withdrawal of the application for admission.

ORDER: The record is returned to the Service without further action by the Board.