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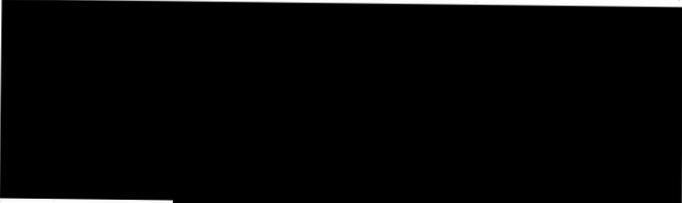
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
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FILE:

Office: LOS ANGELES

Date: NOV 27 2006

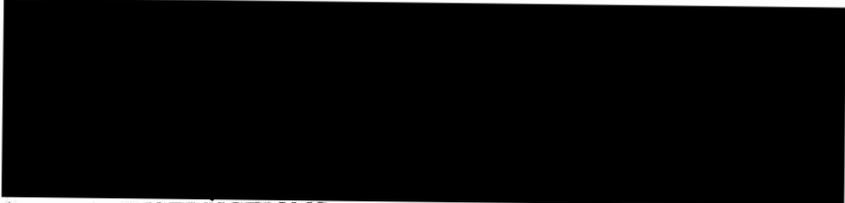
IN RE:



IMMIGRATION BOND:

Bond Conditioned for Voluntary Departure under § 240B of the Immigration and Nationality Act, 8 U.S.C. § 1229c

ON BEHALF OF OBLIGOR:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Maurice" or similar.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The voluntary departure bond in this matter was declared breached by the Field Office Director, Detention and Removal, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on June 8, 2004, the obligor posted a \$500.00 bond conditioned for the voluntary departure of the above referenced alien. An order of the immigration judge (IJ) dated June 4, 2004, was issued granting the alien voluntary departure in lieu of removal on or before August 3, 2004. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On July 22, 2005, the BIA affirmed, without opinion, the IJ's decision, and granted the alien voluntary departure within 60 days from the date of the order. On October 20, 2005, the alien filed a motion to reopen before the BIA. On October 31, 2005, the field office director concluded the bond had been breached.

On appeal, counsel argues that the bond should not have been breached as the alien "has filed a motion to reopen/reconsider" before the BIA and requested a stay of voluntary departure. Counsel cites *Azarte v. Ashcroft*, 394 F.3d 1278 (9th Cir. 2005).

The Ninth Circuit Court's ruling in *Azarte v. Ashcroft*, 394 F.3d 1278 (9th Cir. 2005) states in pertinent part that where a timely motion to reopen has been filed and in which a stay of voluntary departure has been requested, the voluntary departure period is tolled during the time that the BIA is considering the motion.

Although the regulation at 8.C.F.R. § 1003.2(a)(2) provides that an alien has a period of 90 days within which to file a motion to reopen, in *Azarte*, the court found that the voluntary departure period is tolled during the period the BIA is considering the motion "in cases in which a motion to reopen is filed *within the voluntary departure period* and a stay of removal or voluntary departure is requested." (Emphasis added). *Azarte v. Ashcroft*, p. 1290. The BIA granted the alien voluntary departure within 60 days from the date of its decision, which ended on September 20, 2005. The alien filed his motion to reopen/reconsider on October 20, 2005. As the alien's motion to reopen/reconsider was filed well after the 60-day voluntary departure period ended, the voluntary departure period was not tolled. The director's decision of October 31, 2005 declaring the bond breach is valid.

It is noted that BIA denied the alien's motion to reopen/reconsider on January 26, 2006.

The regulation at 8 C.F.R. § 1240.26(c)(3) provides that in order for the voluntary departure bond to be cancelled, the alien must provide proof of departure to the field office director.

No satisfactory evidence has been introduced into the record to establish the alien made a timely departure. The service of a notice to surrender or the presence of a certified mail receipt is not required in voluntary departure bond proceedings.

Voluntary departure bonds are exacted to ensure that aliens will depart when required in lieu of removal. Such bonds are necessary in order for Immigration and Customs Enforcement to function in an orderly manner. After a careful review of the record, it is concluded that the alien failed to depart by the stipulated time, the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the field office director will not be disturbed.

ORDER: The appeal is dismissed.