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**U.S. Citizenship
and Immigration
Services**

G3

FILE: [REDACTED]

Office: LOS ANGELES

Date: **DEC 15 2005**

IN RE: Obligor: [REDACTED]
Bonded Alien [REDACTED]

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

ON BEHALF OF OBLIGOR:

[REDACTED]

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.

Robert P. Wiemann, Director
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 July 12, 2002, the obligor posted a \$500.00 bond conditioned for her voluntary departure. An order of the immigration judge (IJ) dated July 8, 2002, was issued granting the alien voluntary departure in lieu of removal on or before August 7, 2002. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On October 28, 2003, the BIA dismissed the appeal, and granted the alien voluntary departure within 30 days from the date of the order. The alien filed a petition for review before the 9th Circuit Court of Appeals. On January 14, 2004, the petition for review was denied by the 9th Circuit Court of Appeals. On June 14, 2005 the alien filed a motion to reopen before the BIA. On June 30, 2005, the field office director concluded the bond had been breached.

On appeal, counsel asserts that the alien has a motion to reopen pending before the BIA.

It is noted that on September 1, 2005, the BIA denied the alien's motion to reopen.

The 9th Circuit Court's recent ruling in *Azarte v. Ashcroft*, 394 F.3d 1278 (9th Cir. 2005) states in 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.

The recent ruling, however, is not applicable to this case as the alien did not file a *timely* motion to reopen and there is no evidence the alien had filed a request for a stay of voluntary departure before the BIA.

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.