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FILE:

Office: NEW YORK

Date:

APR 21 2006

IN RE:

Obligor:

Bonded Alien:



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.

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record indicates that on March 26, 2003, the obligor posted a \$500.00 bond conditioned for his voluntary departure. On March 24, 2003, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before May 23, 2003. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On May 3, 2004, the BIA dismissed the appeal, and granted the alien voluntary departure within 30 days from the date of the order. The alien filed a motion to reopen before the BIA. On June 18, 2004, the BIA denied the motion to reopen. On October 24, 2005, the field office director concluded the bond had been breached.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the field office director issued the Notice-Immigration Bond Breached on October 24, 2005. It is noted that the field office director properly gave notice to the obligor that it had 33 days to file the appeal. The Form I-290B, Notice of Appeal is very clear in indicating that the appeal is not to be sent directly to the AAO. Counsel, nevertheless, sent the appeal to the AAO. The appeal is not considered properly received until it is received by the district office, which rendered the unfavorable decision. The appeal was properly received at the respective district office on February 16, 2006, over three months after the adverse decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The field office director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.