



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: PHOENIX (REN)

Date: **MAY 23 2006**

IN RE:

Obligor:
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.

Mari Johnson

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, Phoenix, Arizona, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on September 14, 2004, the obligor posted a \$500.00 bond conditioned for his voluntary departure. On September 14, 2004, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before October 14, 2004. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On November 4, 2005, the BIA dismissed the appeal, and granted the alien voluntary departure within 30 days from the date of the order. On December 2, 2005, the alien filed a motion to reopen and a stay of voluntary departure before the BIA. On December 14, 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 had filed a motion to reopen before the BIA and the voluntary departure was automatically tolled when the motion was filed. Counsel cites *Barroso v. Gonzales*, 2005 U.S. App. LEXUS 24845, June 3, 2005.

The Ninth Circuit Court's ruling in *Barroso v. Gonzales supra* is not applicable in the instant case, as the alien did not file a motion to reconsider.

The Ninth Circuit Court's 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.

This ruling is applicable to the case at hand as the alien did file a *timely* motion to reopen before the BIA. The bonded alien is allowed to remain in the United States under the condition of the voluntary departure bond until the BIA issues its decision. It is noted that on January 20, 2006, the BIA granted the alien's motion to reopen and remanded the record to the IJ.

Therefore, the field office director's decision to breach the bond will be withdrawn, the appeal will be sustained, and the bond will be continued

ORDER: The appeal is sustained. The field office director's decision declaring the bond breached will be withdrawn and the bond continued in full force and effect.