



U.S. Citizenship  
and Immigration  
Services

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**G3**

FILE:

Office: LOS ANGELES

Date: AUG 30 2007

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: Self-represented

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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on April 7, 2000, the obligor posted a \$500.00 bond conditioned for the voluntary departure of the above referenced alien. On April 5, 2000, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before June 4, 2000. On May 2, 2000, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On April 16, 2003, the BIA affirmed, without opinion, the IJ's decision, and granted the alien voluntary departure within 30 days from the date of the order. On May 15, 2003, the alien filed a petition for review and a motion for stay of removal before the United States Court of Appeals for the Ninth Circuit (Ninth Circuit). On December 9, 2004, the Ninth Circuit dismissed the petition for review for failure to prosecute and indicated that the order shall act as and for the mandate of the court. On August 8, 2005, the field office director concluded the bond had been breached on May 16, 2003.

On appeal, the obligor asserts that because he did not represent the alien before the Ninth Circuit he needs to find out whether the alien had extended her departure date.

An appeal to the federal court of appeals does not stay the execution of the removal order unless the court orders otherwise. Section 242(b)(3)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1252(b)(3)(B).

Nevertheless, General Order 6.4(c) of the Ninth Circuit provides, in pertinent part:

(1) Temporary Stay

Upon the filing of a motion or request for stay of removal or deportation, the order or removal or deportation is temporarily stayed until further order of the court.

\* \* \*

(6) Non-Opposition

If respondent files a notice of non-opposition to the stay motion in lieu of the response provided for in subsection (3) above, the temporary stay shall continue in effect during the pendency of the petition for review or until further order of the court.

The General Order is applicable to this case, as the applicant filed a motion for stay of removal and the respondent filed a statement of non-opposition. The Ninth Circuit ordered the temporary stay of removal to remain in effect pending issuance of its decision or until further order of the court. In dismissing the alien's petition for review on December 9, 2004, the Ninth Circuit indicated that the order shall act as and for the mandate of the court.

The timely filing of a petition for review stays the voluntary departure period and preserves the number of remaining days within which to depart voluntarily. *See Desta v. Ashcroft*, 365 F.3d 741, 743-744 (9<sup>th</sup> Cir. 2004). The period for an alien to voluntarily depart runs immediately upon issuance of an IJ's or the BIA's entry of the order granting voluntary departure and not when the Ninth Circuit concludes its review. *See Zarzuela-Carrillo v. Ashcroft*, 322 F.3d 1166, 1170-75 (9<sup>th</sup> Cir. 2003). The authority to extend the time within which to depart voluntarily specified initially by an IJ or the BIA lies solely within

jurisdiction of certain Immigration and Customs Enforcement and legacy Immigration and Naturalization Service officials listed in the regulation at 8 C.F.R. § 1240.26(f).

The BIA's decision granting the alien a renewed voluntary departure period of 30 days was issued on April 16, 2003. The alien filed a petition for review on May 15, 2003, after 29 days had passed. The petition for review had the effect of tolling the remaining voluntary departure period of 1 day. *See Desta v. Ashcroft* at 747. The record reflects that the Ninth Circuit mandate was issued on December 9, 2004.

In calculating the remaining period of voluntary departure, the AAO relies on *Lagandaon v. Ashcroft*, 383 F.3d 983, 986 (9th Cir. 2004), in which the Ninth Circuit found that "the period beginning May 14, 1987, and ending May 13, 1997, is 'a continuous period of not less than 10 years.'" In the *Lagandaon* decision, the Ninth Circuit observed that the period from January 1 to December 31 is recognized as a year, and that a period of continuous presence ends "when" a Notice to Appear is served. The Ninth Circuit also cited *Griffith v. Bogert*, 59 U.S. 158, 159 (1855), in which the United States Supreme Court held that the 18-month period that began on November 1, 1819, ended on April 30, 1821, rather than May 1 of the latter year. By the same logic, the period within which to voluntarily depart resumed on the day that the mandate was issued: December 9, 2004. We note that the present matter arose within the jurisdiction of the Ninth Circuit.

As such, the field office director's decision dated August 8, 2005, declaring the bond breached on May 16, 2003 is not valid. Accordingly, the field office director's decision to breach the bond will be rescinded and the appeal will be sustained.

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