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U.S. Citizenship  
and Immigration  
Services

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FILE: Office: LOS ANGELES Date: JAN 04 2007

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*  
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 January 25, 2006, the obligor posted a \$500.00 bond conditioned for her voluntary departure. On January 19, 2006, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before March 20, 2006. On June 6, 2006, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On June 26, 2006, the BIA dismissed the appeal due to lack of jurisdiction. On June 23, 2006, the field office director concluded the bond had been breached.

On the appeal, counsel asserted that the bonded alien has a motion to reopen currently pending before the BIA. Counsel requested 60 days in which to submit a brief and/or evidence to the AAO. However, more than 90 days later, no additional correspondence has been presented by either counsel or the obligor.

The record reflects that at the time the appeal was filed on July 24, 2006, no motion to reopen had been filed before the BIA. The record reflects that the alien's motion to reopen, which is currently pending was filed on October 2, 2006.

The Ninth Circuit Court's recent ruling in *Azarte v. Ashcroft*, 394 F.3d 1278 (9<sup>th</sup> 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.