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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: Office: NEW YORK Date: JAN 04 2007

IN RE: Obligor: [Redacted]  
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 on appeal. The appeal will be dismissed.

The record indicates that on October 25, 2004, the obligor posted a \$500.00 bond conditioned for his voluntary departure. On October 22, 2004, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before December 21, 2004. On November 8, 2004, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On January 27, 2006, the BIA adopted and affirmed the IJ's decision, and granted the alien voluntary departure within 60 days from the date of the order. On May 24, 2006, the alien filed a motion to reopen before the BIA. On June 12, 2006, the field office director concluded the bond had been breached on March 28, 2006.

On appeal, counsel asserts that the alien has a motion to reopen pending before the BIA, and a pending Form I-485, Application for Adjustment of Status, before Citizenship and Immigration Services.

Bond proceedings are separate and distinct from any other proceedings and, therefore, the alien's Form I-485 has no bearing in this matter.

The regulation at 8 C.F.R. § 1003.2(f) states in part that a filing of a motion to reopen shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the BIA, the IJ, or an authorized Immigration and Customs Enforcement (ICE) officer.

The U.S. Court of Appeals for the Ninth Circuit ruling in *Azarte v. Ashcroft*, 394 F.3d 1278 (9<sup>th</sup> Cir. 2005) states, in pertinent 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 *timely* request for a stay of voluntary departure before the BIA.

Although the regulation at 8.C.F.R. § 1003.2(a)(2) provides that an alien has a period of 90 days within which to file a motion to reopen, in *Azarte*, the court found that the voluntary departure period is tolled during the period the BIA is considering the motion "in cases in which a motion to reopen is filed *within the voluntary departure period* and a stay of removal or voluntary departure is requested." (Emphasis added). *Azarte v. Ashcroft*, p. 1290. The BIA granted the alien voluntary departure within 60 days from the date of its decision, a period which ended on March 28, 2006. The alien filed his motion to reopen on May 24, 2006. As the alien's motion to reopen was filed well after the 60-day voluntary departure period ended, the voluntary departure period was not tolled. The director's decision of June 12, 2006 declaring the bond breach on March 28, 2006 is valid.

It is noted that on August 3, 2006, the BIA denied the alien's motion to reopen.

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.

Voluntary departure bonds are exacted to ensure that aliens will depart when required in lieu of removal. Such bonds are necessary in order for ICE 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.