



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date:

JAN 10 2007

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.

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 30, 2003, the obligor posted a \$500.00 bond conditioned for his voluntary departure. On January 28, 2003, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal. The 60-day period for voluntary departure was to end on March 31, 2003. On February 19, 2003, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On March 15, 2004, 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 April 12, 2004, the alien filed a petition for review and a motion to stay before the U.S. Court of Appeals for the Ninth (Ninth Circuit). On November 24, 2004, the Ninth Circuit dismissed the petition for review. On January 10, 2005, the alien filed a motion to reconsider before the Ninth Circuit. On January 13, 2005, the motion was denied as untimely. On March 14, 2005, the field office director concluded the bond had been breached on January 26, 2005.

On appeal, counsel asserts that the Ninth Circuit issued its decision on January 25, 2005 and, therefore, the alien should have been afforded 30 days in which to depart the United States. Counsel requests that the alien be given additional time to depart the United States under a voluntary departure order.

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 U.S. Court of Appeals for 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 timely motion for stay of removal. In dismissing the alien's petition for review on November 24, 2004, the Ninth Circuit ordered the temporary stay of removal and the voluntary departure period to remain in effect pending issuance of the mandate.

Counsel argues on appeal that the alien should have been afforded a 30-day departure period beginning after the January 25, 2005 mandate; however, the timely filing of a petition for review merely 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 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 the 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 March 15, 2004. The alien filed a petition for review on April 12, 2004, after 28 days had passed. The petition for review had the effect of tolling the remaining voluntary departure period of two days. *See Desta v. Ashcroft* at 747. The record reflects that the Ninth Circuit's mandate was issued on January 25, 2005.

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: January 25, 2005. The period of January 25, 2005 through January 26, 2005 amounts to two days. We note that the present matter arose within the jurisdiction of the Ninth Circuit.

Accordingly, the alien's 30-day period of voluntary departure ended on January 26, 2005. The director's decision of March 14, 2005, declaring the bond breached on January 26, 2005 is valid.

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.