

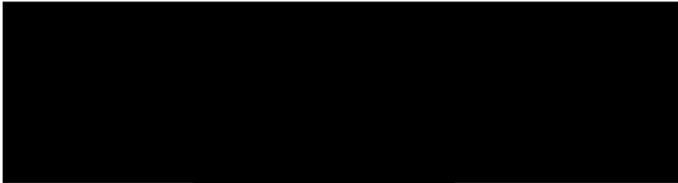


U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: LOS ANGELES

Date: JUL 25 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:



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 May 27, 2004, the obligor posted a \$500.00 bond conditioned for her voluntary departure. On May 21, 2004, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before July 20, 2004. On June 21, 2004, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On September 9, 2005, the BIA dismissed the appeal, and granted the alien voluntary departure within 60 days from the date of the order. On April 24, 2006, the alien filed a motion to reopen before the BIA. On May 31, 2006, the BIA denied the motion to reopen. On July 24, 2006, the field office director concluded the bond had been breached on October 9, 2005.

On appeal, counsel asserts that the bond has not been breached as a timely motion to reconsider and a stay of deportation was filed on July 19, 2006.

The record reflects that on July 17, 2006, the alien filed a motion to reconsider, which was denied by the BIA on December 8, 2006.

The regulations at 8 C.F.R. §§ 1003.2(f) and 1003.23(b)(1)(v) provide in part that filing a motion to reopen or a motion to reconsider 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 officer of Immigration and Customs Enforcement (ICE). The record does not reflect that a stay of deportation was granted.

The United States Court of Appeals for the Ninth Circuit (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 Ninth Circuit ruling in *Barroso v. Gonzales*, No. 03-72552 (9<sup>th</sup> Cir. 2005) states in part that where a timely motion to reconsider has been filed before the expiration of the voluntary departure period, the period of voluntary departure is automatically tolled while the BIA is considering the motion.

The Ninth Circuit's rulings are not applicable in the instant case, as the alien did not file a *timely* motion to reopen or motion to reconsider.

In the instant case, the alien was entitled to 60 days from the BIA order (until November 8, 2005) to leave the United States. As such, the director's decision dated July 24, 2006, declaring the bond breached on October 9, 2005 is not valid. Accordingly, the 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.