



U.S. Citizenship
and Immigration
Services

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MAY 31 2007

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

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: 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 (AAO) on appeal. The appeal will be dismissed.

The record indicates that on September 5, 2002, the obligor posted a \$500.00 bond conditioned for his voluntary departure. On August 29, 2002, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal. The 120-day period for voluntary departure was to end on or before December 27, 2002. On September 23, 2002, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On November 20, 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 November 28, 2003, the alien filed a motion to reconsider. On December 10, 2003, the alien filed a petition for review and a motion for stay of removal before the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit). On February 3, 2004, the BIA denied the motion to reconsider. On July 20, 2004, the Ninth Circuit dismissed the petition for review, but ordered the temporary stay of removal and voluntary departure to remain in effect until the issuance of the mandate. The mandate was subsequently issued. On February 14, 2005, the alien filed a motion to reopen before the BIA. On April 7, 2005, the BIA denied the motion to reopen. On May 5, 2005, the alien filed a second petition for review, which was denied by the Ninth Circuit on April 19, 2006. The mandate was issued on May 10, 2006. On September 15, 2006, the field office director concluded the bond had been breached on May 20, 2006.

On appeal, the obligor asserts that he has filed a petition for review that is currently pending before the Ninth Circuit.

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).

Pursuant to General Order 6.4(c)(1) of the Ninth Circuit, 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.

The General Order is applicable to this case, as the alien filed a motion for stay of removal. In dismissing the alien's petition for review on April 19, 2006, the Ninth Circuit ordered the mandate effective 21 days after the date of the order.

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 (9th 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 (9th 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 (ICE) and legacy Immigration and Naturalization Service officials listed in the regulation at 8 C.F.R. § 1240.26(f).

The Ninth Circuit's ruling in *Barroso v. Gonzales*, No. 03-72552 (9th 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 BIA's decision of the alien's appeal granted the alien a renewed voluntary departure period of 30 days was issued on November 20, 2003. The alien filed a petition for review on December 10, 2003, after 20 days had passed. The petition for review had the effect of tolling the remaining voluntary departure period of 10 days. *See Desta v. Ashcroft* at 747. The record reflects that the Ninth Circuit mandate was issued on May 10, 2006.

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: May 10, 2006. The period of May 10, 2006 through May 19, 2006 amounts to 10 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 May 19, 2006. The director's decision of September 15, 2006, declaring the bond breached on May 20, 2006 is valid.

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 that 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 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.