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U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date:

SEP 20 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: 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.

A handwritten signature in black ink, appearing to read "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 (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the field office director issued the Notice-Immigration Bond Breached on July 28, 2006. It is noted that the field office director properly gave notice to the obligor that it had 33 days to file the appeal. The obligor dated the appeal September 22, 2006, and it was received by ICE on September 28, 2006, 62 days after the decision was issued. Accordingly, the appeal was untimely filed. The field office director erroneously annotated the appeal as timely and forwarded the matter to the AAO.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record indicates that on November 19, 2004, the obligor posted a \$500.00 bond conditioned for her voluntary departure. On November 15, 2004, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before January 14, 2005. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On January 23, 2006, the BIA dismissed the appeal, and granted the alien voluntary departure within 60 days from the date of the order. On July 28, 2006, the field office director concluded the bond had been breached on February 22, 2006.

In the instant case, the alien was entitled to 60 days from the BIA order to leave the United States which ended on March 24, 2006. The director's decision dated July 28, 2006, erroneously notes that the bond was breached on February 22, 2006. Nevertheless, as the alien failed to depart on or before March 24, 2006, the decision to breach the bond is valid. The director's statement that the bond was breached as of February 22, 2006 should have read March 25, 2006, but is harmless error in that the alien failed to depart as required.

The untimely appeal does not meet the requirements of a motion to reconsider. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the appeal will not be remanded to the field office director to consider the untimely appeal as a motion to reconsider.

ORDER: The appeal is rejected.