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U.S. Citizenship  
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FILE:



Office: ATLANTA

Date:

APR 09 2008

IN RE:

Obligor:

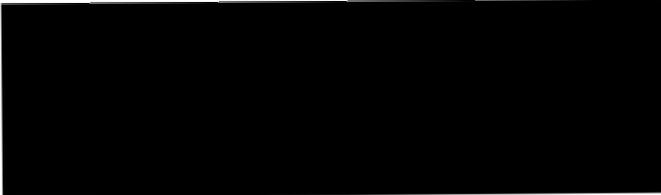
Bonded Alien:



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. Wienmann, Chief  
Administrative Appeals Office

**DISCUSSION:** The voluntary departure bond in this matter was declared breached by the Field Office Director, Detention and Removal, Atlanta, Georgia, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on February 7, 2007, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before April 9, 2007. On February 16, 2007, the obligor posted a \$2000.00 bond conditioned for his voluntary departure. On August 14, 2007, the field office director concluded the bond had been breached.

On appeal, the bonded alien asserts that at the time of his hearing his prior counsel reserved the right to file an appeal, and prior counsel had assured him that an appeal would be filed before the Board of Immigration Appeals (BIA). Counsel asserts that the alien was not aware that prior counsel had failed to file an appeal until three months later when he visited prior counsel's office. Counsel asserts that the alien did not knowingly or willingly violate the terms of his bond conditions. Counsel states that he will be filing a motion with the BIA based on the ineffective assistance of counsel and to allow the alien to submit a late appeal.<sup>1</sup>

Counsel submits a copy of a letter from prior counsel in which he addresses the allegations leveled against him. In his response, prior counsel indicated that he advised the alien that filing of an appeal "would be more or less frivolous," that it would not be in the alien's best interest, and that he thought that the alien "understood this thinking." Prior counsel further indicated, "I would not deny that the situation, legally, emotionally, and procedurally, was less than ideal. I regret if they were under the impression we would definitely appeal, because that was not my understanding of our plan."

The alien's current counsel asserts that the alien chose not to file a complaint with the disciplinary authorities because of the content of prior counsel's response. Counsel asserts that if prior counsel had countered that he had in fact served as adequate counsel, the alien would have filed a bar complaint.

An appeal based upon a claim of ineffective assistance of the representative requires (1) that the appeal be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with the representative with respect to the actions to be taken and what representations the representative did or did not make to the respondent in this regard, (2) that the representative whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of the representative's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). The BIA emphasized the necessity of filing a complaint with the appropriate authorities since it "not only serves to deter meritless claims of ineffective representation but also highlights the standards which should be expected of attorneys who represent persons in immigration proceedings, the outcome of which may, and often does, have enormous significance for the person." *Id* at 639-640. In this case, the alien states on appeal that he decided not to file a complaint because his prior attorney "in effect" supports the alien's claim that the prior attorney provided ineffective assistance of counsel. As discussed above, the alien's prior attorney made no such admission and in fact disputed that he ever advised or agreed to file an appeal from the order granting voluntary departure.

The alien's motion is insufficient in light of the foregoing guidelines because the alien failed to file a complaint with the appropriate disciplinary authorities. Although the alien claims that he believed his

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<sup>1</sup> The BIA inquiry system indicates that an appeal was filed on November 9, 2007.

attorney would file an appeal after the order of voluntary departure, his prior counsel has responded that there was no such agreement, and that he and the alien agreed not to file such an order. Prior counsel denied that there was misconduct or ineffective assistance on his part, and the alien has failed to file a complaint with appropriate disciplinary authorities. Accordingly, the alien has not established that the third prong of *Lozada* has been met.

The regulation at 8 C.F.R. § 1240.26(c)(3) provides that in order for the voluntary departure bond to be canceled, 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. The service of a notice to surrender or the presence of a certified mail receipt is not required in voluntary departure bond proceedings.

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.