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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date: MAY 12 2005

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.

Mari Johnson

Robert P. Wiemann, Director
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 August 9, 2002, the obligor posted a \$500.00 bond conditioned for her voluntary departure. An order of the immigration judge (IJ) dated August 5, 2002, was issued granting the alien voluntary departure in lieu of removal on or before October 4, 2002. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On June 30, 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. The alien filed a motion to reopen before the BIA. On September 26, 2003, the BIA denied the alien's motion to reopen. On October 27, 2003, the alien filed a motion to stay and a petition for review before the Ninth Circuit Court of Appeals. On June 21, 2004, the petition for review was dismissed in part and denied in part by the Ninth Circuit Court of Appeals. On December 1, 2004, the field office director concluded the bond had been breached.

On appeal, counsel asserted asserts that the breach is not valid as the bonded alien's petition for review was still pending before the Ninth Circuit Court of Appeals, "with a temporary stay on her voluntary departure period on July 30, 2003."

The regulation at 8 C.F.R. § 1003.2(f) states in part that a filing of 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 Immigration and Customs Enforcement (ICE) officer. The record does not reflect that a stay of deportation was granted by the BIA, IJ, or an authorized ICE officer.

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). There is no evidence of record to indicate that the Ninth Circuit Court of Appeals had stayed the bonded alien's removal on or before July 30, 2003. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As noted, the alien's motion to stay of removal was filed on October 27, 2003.

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 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.