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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: LOS ANGELES

Date:

JAN 04 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.

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 dismissed.

The record indicates that on June 2, 2003, the obligor posted a \$500.00 bond conditioned for his voluntary departure. On May 29, 2003, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before July 28, 2003. On June 6, 2003, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On July 26, 2004, 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 August 18, 2004, the alien filed his first petition for review and a motion for stay of removal before the Ninth Circuit Court of Appeals. On May 18, 2005, the Ninth Circuit Court of Appeals dismissed the alien's petition for review for lack of jurisdiction. On July 14, 2005, the alien filed a motion to reopen before the BIA, which was denied on September 14, 2005. On September 7, 2005, the field office director concluded the bond had been breached on June 17, 2005.

On appeal, obligor asserts that he has filed a petition for review that is currently pending and a motion for stay of removal which has been granted by the Ninth Circuit Court of Appeals

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 United States Court of Appeals for the Ninth Circuit, upon the filing of a motion or request for stay of removal or deportation, the order of removal or deportation is temporarily stayed until further order of the court.

The General Order is applicable to this case, as the applicant filed a motion for stay of removal. In dismissing the alien's petition for review on May 18, 2005, the Ninth Circuit Court of Appeals ordered the temporary stay of removal to remain in effect pending issuance of the mandate. The record reflects that the mandate was issued on June 10, 2005.

The Ninth Circuit Court's ruling in *Azarte v. Ashcroft*, 394 F.3d 1278 (9th 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.

Although the regulation at 8.C.F.R. § 1003.2(a)(2) provides that an alien has a period of 90 days within which to file a motion to reopen, in *Azarte*, the court found that the voluntary departure period is tolled during the period the BIA is considering the motion "in cases in which a motion to reopen is filed *within the voluntary departure period* and a stay of removal or voluntary departure is requested." (Emphasis added). *Azarte v. Ashcroft*, p. 1290. The BIA granted the alien voluntary departure within 30 days from the date of its decision of July 26, 2004. That 30-day period ended on August 25, 2004. The alien filed his motion to reopen on July 14, 2005. As the alien's motion to reopen was filed well after the 30-day voluntary departure period ended, the voluntary departure period was not tolled.

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

The BIA's decision granting the alien a renewed voluntary departure period of 30 days was issued on July 26, 2004. The alien filed a petition for review on August 18, 2004, after 23 days had passed. The petition for review had the effect of tolling the remaining voluntary departure period of 7 days. *See Desta v. Ashcroft* at 747. The record reflects that the Ninth Circuit mandate was issued on June 10, 2005.

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: June 10, 2005. The period of June 10, 2005 through June 16, 2005 amounts to 7 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 June 16, 2005. The director's decision of September 7, 2005, declaring the bond breached on June 17, 2005 is valid.

It is noted that on October 4, 2005, the alien filed his second motion for stay of removal and petition for review before the Ninth Circuit Court of Appeals, which was denied on March 8, 2006 and dismissed on May 8, 2006, respectively. The alien filed a second motion to reopen on April 26, 2006 before the BIA, which was denied on August 18, 2006.

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.

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.