



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: LOS ANGELES

Date: JAN 29 2007

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.

Mail please

✓ 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 sustained.

The record indicates that on October 24, 2002, the obligor posted a \$500.00 bond conditioned for his voluntary departure. On October 21, 2002, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal. The 60-day period for voluntary departure was to end on December 20, 2002. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On February 25, 2004, the BIA dismissed the appeal, and granted the alien voluntary departure within 30 days from the date of the order. On or about March 23, 2004, the alien filed a petition for review before the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit). It appears that the alien simultaneously filed a motion to stay removal pending review of the petition. The Attorney General subsequently filed a motion of non-opposition to the alien's motion to stay removal. On May 21, 2004, the Ninth Circuit issued a temporary stay of removal pending its decision or until further ordered. There is no evidence that the Ninth Circuit issued a final decision in this matter and it appears that the petition for review is still pending. On March 3, 2006, the field office director concluded that the bond had been breached on March 26, 2004.

On appeal, counsel asserts that the bond was not breached because the alien filed a petition for review and a motion for stay of removal with the Ninth Circuit Court of Appeals, which subsequently granted a stay of removal.

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).

Nevertheless, General Order 6.4(c) of the U.S. Court of Appeals for the Ninth Circuit provides, in pertinent part:

(1) Temporary Stay

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.

* * *

(6) Non-Opposition

If respondent files a notice of non-opposition to the stay motion in lieu of the response provided for in subsection (3) above, the temporary stay shall continue in effect during the pendency of the petition for review or until further order of the court.

It is noted that the Attorney General filed a statement of non-opposition and that the stay is considered in effect in accordance with General Order 6.4(c)(6). Further, 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). Accordingly, it appears that the bonded alien's removal is stayed while this petition for review is pending. Therefore, the field office director's decision to breach the bond will be withdrawn, the appeal will be sustained, and the bond will be continued.

ORDER: The appeal is sustained. The field office director's decision declaring the bond breached is withdrawn and the bond continued in full force and effect.