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U.S. Citizenship
and Immigration
Services

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MAR 06 2007

FILE:



Office: SEATTLE

Date:

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, Seattle, Washington, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on October 23, 1998, the obligor posted a \$500.00 bond conditioned for the voluntary departure of the above referenced alien. On October 21, 1998, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before December 20, 1998. On November 10, 1998, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On June 6, 2002, 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 June 24, 2002, the alien filed a petition for review before the U.S. Court of Appeal for the Ninth Circuit (Ninth Circuit). On March 31, 2004, the Ninth Circuit dismissed the petition for review and its mandate was issued on July 12, 2004. On September 11, 2006, the field office director concluded the bond had been breached on August 11, 2004.

On appeal, the obligor asserts that he did not receive notification to surrender the alien and reported this fact at the time of the alien's petition for alien relative (Form I-130) interview.

The service of a notice to surrender or the presence of a certified mail receipt is not required in voluntary departure bond proceedings. The alien's interview has no bearing in this matter as bond proceedings are separate and apart from any other proceedings.

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

The BIA's decision of the alien's appeal granted the alien a renewed voluntary departure period of 30 days was issued on June 6, 2002. The alien filed a petition for review on June 24, 2002, after 18 days had passed. The petition for review had the effect of tolling the remaining voluntary departure period of 12 days. *See Desta v. Ashcroft* at 747. The record reflects that the Ninth Circuit mandate was issued on July 12, 2004.

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: July 12, 2004. The period of July 12, 2004 through July 23, 2004 amounts to 12 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 July 23, 2004. The director's decision of September 11, 2006, declaring the bond breached is valid.

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 ICE 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.