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

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FILE:



Office: HOUSTON

Date:

MAR 07 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:



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

The record indicates that on December 15, 2003, the obligor posted a \$1000.00 bond conditioned for his voluntary departure. On December 9, 2003, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before February 7, 2004. On January 6, 2004, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On February 8, 2005, the BIA dismissed the appeal. The applicant filed a motion to reconsider before the BIA, which was denied on March 31, 2005. On June 27, 2005, the field office director concluded the bond had been breached.

On appeal, counsel asserts that the bond has not been breached as the alien has filed a petition for review and motion for stay of removal before the Fifth 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). There is no evidence of record to indicate that the Fifth Circuit Court of Appeals has stayed the bonded alien's removal. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel cites *Azarte v. Ashcroft*, 394 F.3d 1278 (9th Cir. 2005), *Sidhikhouya v. Gonzales*, 407 F.3d 950 8th Cir. 2005), and *Barrios v. Attorney General*, 399 F.3d 272 (3rd Cir. 2005) and argues, "these cases stand for the proposition that the voluntary departure period is tolled when an individual seeks administrative review."

Counsel's argument, however, is without merit as the cases cited relate to the timely filing of a motion before the BIA and not to the filing of a petition for review. As noted above, the alien's voluntary departure was tolled during the adjudication of his motion to reconsider by the BIA.

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.