



U.S. Citizenship
and Immigration
Services

63

[REDACTED]

FILE:

[REDACTED]

Office: COW Date: NOV 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: 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 breached by the Director, Headquarters, Bonds, Immigration and Customs Enforcement (ICE), and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on April 18, 2003, the obligor posted a \$1000.00 bond conditioned for his voluntary departure. On April 15, 2003, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before May 15, 2003. On May 12, 2003, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On July 27, 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 June 4, 2007, the director concluded the bond had been breached on June 1, 2007.

On appeal, the obligor asserts that he has filed a motion to reopen before the BIA that is currently pending. The obligor further asserts if the motion is denied, a petition for review would be filed before the United States Court of Appeals for the Ninth Circuit.

The BIA inquiry system does not contain any information regarding the purported filing of a motion to reopen and the obligor provided no evidence to support his assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The Ninth Circuit's ruling in *Azarte v. Ashcroft*, 394 F.3d 1278 (9th Cir. 2005) states in 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.

This ruling, however, is not applicable to this case as the alien did not file a *timely* motion to reopen and there is no evidence the alien had filed a request for a stay of voluntary departure before 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 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 director will not be disturbed.

ORDER: The appeal is dismissed.