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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: LOS ANGELES

Date: SEP 02 2009

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

IN 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

John F. Grissom
Acting 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 (AAO) on appeal. The appeal will be dismissed.

The record indicates that on April 4, 2005, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before June 3, 2005. On April 4, 2005, the obligor posted a \$500.00 bond conditioned for his voluntary departure. On April 29, 2005, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On July 26, 2006, the BIA dismissed the appeal, and granted the alien voluntary departure within 60 days from the date of the order. On August 7, 2006, the alien filed a petition for review before the United States Court of Appeals for the Ninth Circuit (Ninth Circuit). On January 21, 2009, the petition for review was denied by the Ninth Circuit and its mandate was issued on May 12, 2009. On July 2, 2009, the alien filed a motion to reopen before the BIA. On June 25, 2009,¹ the field office director concluded that the bond had been breached on June 29, 2009.

On appeal, counsel asserts that the alien has filed a motion to reopen before the BIA and, therefore, the bond has not been breached.

The Ninth Circuit 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.

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 BIA's decision on the alien's appeal granting the alien a renewed voluntary departure period of 60 days was issued on July 26, 2006. The alien filed a petition for review on August 7, 2006, after 12 days had passed. The petition for review had the effect of tolling the remaining voluntary departure period of 48 days. See *Desta v. Ashcroft*, 365 F.3d 741, 743-744 (9th Cir. 2004). The Ninth Circuit mandate was issued on May 12, 2009.

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

¹ The director inadvertently dated the Notice-Immigration Bond Beached June 25, 2009 instead of June 29, 2009.

logic, the period within which to voluntarily depart resumed on the day that the mandate was issued: May 12, 2009. The period of May 12, 2009 through June 28, 2009 amounts to 48 days. Accordingly, the alien's 60-day period of voluntary departure ended on June 28, 2009. The director's decision, declaring the bond breached on June 29, 2009 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. 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.