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FILE: [REDACTED] Office: LOS ANGELES Date: **APR 21 2006**

IN RE: Obligor: [REDACTED]
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 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 rejected.

The record indicates that on February 4, 2005, the obligor posted a \$5000.00 bond conditioned for the voluntary departure of the above referenced alien. On February 1, 2005, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before June 1, 2005. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On December 9, 2005, the field office director concluded the bond had been breached.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The regulation at 8 C.F.R. § 103.3(a)(2) states an appeal must be accompanied by a nonrefundable fee as set forth in 8 C.F.R. § 103.7. An application, which is submitted with the wrong filing fee, shall be rejected as improperly filed. 8 C.F.R. § 103.2(a)(7)(i). As of September 28, 2005, the fee for filing an appeal is \$385.00. *See* 8 C.F.R. § 103.7(b)(3).

The record indicates that the field office director issued the Notice-Immigration Bond Breached on December 9, 2005. It is noted that the field office director properly gave notice to the obligor that it had 33 days to file the appeal. The obligor submitted an appeal which was received by Immigration and Customs Enforcement (ICE) on January 5, 2006 along with an incorrect fee of \$110 for the appeal. The appeal with the correct filing fee was subsequently received by ICE on January 12, 2006, 34 days after the adverse decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The field office director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.