

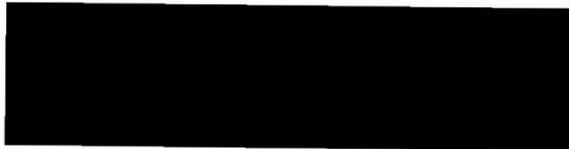
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
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Services

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FILE:



Office: LOS ANGELES

Date: **MAY 18 2006**

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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on July 14, 2003, the obligor posted a \$500.00 bond conditioned for the voluntary departure of the above referenced alien.¹ On July 8, 2003, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before September 8, 2003. On August 6, 2003, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On January 28, 2005, the BIA dismissed the appeal, and granted the alien voluntary departure within 30 days from the date of the order. On February 25, 2005, the applicant filed an Application for Stay of Deportation or Removal. On February 28, 2005, the alien filed a motion to reconsider. The BIA denied the alien's motion to reconsider on March 31, 2005. On or about May 2, 2005, the alien applied for an extension of her voluntary departure date. On October 27, 2005, the field office director concluded the bond had been breached because the alien failed to depart the United States on or before February 27, 2005.

On appeal, counsel argues that the bond has not been breached because Immigration and Customs Enforcement (ICE) never rendered a decision on the alien's request for an extension of voluntary departure.

A request for an extension of voluntary departure does not stay the execution of the removal order unless the field office director orders otherwise. 8 C.F.R. § 241.6(a). In the instant case, ICE took no action in this matter.

The Ninth Circuit Court's ruling in *Barroso v. Gonzales*, 429 F.3d 1195 (9th Cir. 2005) states in part that where a timely motion to reconsider has been filed before the expiration of the voluntary departure period, the period of voluntary departure is automatically tolled while the BIA is considering the motion.

This ruling is applicable to the case at hand as the alien did file a *timely* motion to reconsider before the BIA. The bonded alien was allowed to remain in the United States under the condition of the voluntary departure bond until the BIA had issued its decision.

Although the field office director inadvertently listed an incorrect breach date, the fact remains that the alien was granted 30 days from the BIA's order of March 31, 2005 to leave the United States. The alien did not leave as required on or before April 30, 2005. The field office director's decision of October 27, 2005 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. 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 field office director will not be disturbed.

ORDER: The appeal is dismissed.

¹ Although the name of the obligor is typed [REDACTED] on the Form I-352, the correct spelling is [REDACTED]