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U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES

Date:

JAN 04 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on July 23, 2001, the obligor posted a \$500.00 bond conditioned for her voluntary departure. On July 23, 2001, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal. The 60-day period for voluntary departure was to end on or before September 21, 2001. On August 9, 2001, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On September 11, 2003, the BIA dismissed the appeal, and granted the alien voluntary departure within 30 days from the date of the order. On September 26, 2003, the alien filed a petition for review and a motion for stay of removal before the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit). The Attorney General subsequently filed a motion of non-opposition to the alien's motion to stay removal. On December 10, 2004, the Ninth Circuit denied the petition for review. On June 2, 2005, the field office director concluded the bond had been breached on February 16, 2005.

On appeal, counsel cites 8 C.F.R. § 1240.26(h) and asserts that the BIA may also reinstate voluntary departure in a removal proceeding. Counsel states as the alien has filed a motion to reopen, the BIA has jurisdiction and may reinstate the alien's voluntary departure at any time.

The record also indicates that on June 23, 2005, the alien filed a motion to reopen and a request for stay of removal before the BIA. On November 2, 2005, the BIA denied the motion to reopen. On December 2, 2005 the alien filed a second motion to reopen, which was denied by the BIA on March 28, 2006.

The Ninth Circuit's 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.

The recent ruling, however, is not applicable to this case as the alien did not file a *timely* motion to reopen and a *timely* request for a stay of voluntary departure before the BIA.

On appeal, counsel asserts that the alien did not breach the bond as the BIA's decision in *Matter of A-M-*, 23 I&N Dec. 737 (BIA 2005) states in part that an IJ's initial grant of voluntary departure would be reinstated instead of the 30 day time period usually granted by the BIA.

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).

Nevertheless, General Order 6.4(c) of the Ninth Circuit provides, in pertinent part:

(1) Temporary Stay

Upon the filing of a motion or request for stay of removal or deportation, the order or removal or deportation is temporarily stayed until further order of the court.

* * *

(6) Non-Opposition

If respondent files a notice of non-opposition to the stay motion in lieu of the response provided for in subsection (3) above, the temporary stay shall continue in effect during the pendency of the petition for review or until further order of the court.

The General Order is applicable to this case, as the applicant filed a timely motion for stay of removal and the Attorney General filed a statement of non-opposition. In dismissing the alien's petition for review on December 10, 2004, the Ninth Circuit ordered the temporary stay of removal to remain in effect pending issuance of the mandate.

The timely filing of a petition for review stays the voluntary departure period and preserves the number of remaining days within which to depart voluntarily. See *Desta v. Ashcroft*, 365 F.3d 741, 743-744 (9th Cir. 2004). The period for an alien to voluntarily depart runs immediately upon issuance of an IJ's or the BIA's entry of order granting voluntary departure and not when the Ninth Circuit concludes its review. See *Zarzueta-Carrillo v. Ashcroft*, 322 F.3d 1166, 1170-75 (9th Cir. 2003). The authority to extend the time within which to depart voluntarily specified initially by an IJ or the BIA lies solely within the jurisdiction of certain Immigration and Customs Enforcement and legacy Immigration and Naturalization Service officials listed in the regulation at 8 C.F.R. § 1240.26(f).

The BIA's decision granting the alien a renewed voluntary departure period of 30 days was issued on September 11, 2003. The alien filed a petition for review on September 26, 2003, after 15 days had passed. The petition for review had the effect of tolling the remaining voluntary departure period of 15 days. See *Desta v. Ashcroft* at 747. The record reflects that the Ninth Circuit mandate was issued on February 1, 2005.

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 logic, the period within which to voluntarily depart resumed on the day that the mandate was issued: February 1, 2005. The period of February 1, 2005 through February 15, 2005 amounts to 15 days. We note that the present matter arose within the jurisdiction of the Ninth Circuit.

Accordingly, the alien's 30-day period of voluntary departure ended on February 15, 2005. The director's decision of June 2, 2005, declaring the bond breached on February 16, 2005 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.

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.