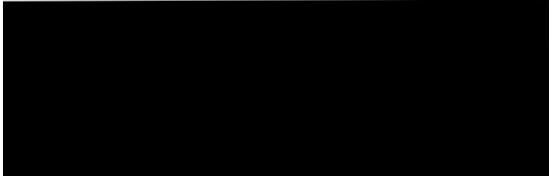


Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



03

FILE:



Office: LOS ANGELES

Date:

MAY 31 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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 September 17, 2004, the obligor posted a \$500.00 bond conditioned for her voluntary departure. On September 14, 2004, 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 November 15, 2004. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On September 30, 2005, the BIA denied the alien's motion to accept an untimely brief. On October 21, 2005, the BIA dismissed the appeal, and granted the alien voluntary departure within 60 days from the date of the order. On November 15, 2005, the alien filed a petition for review before the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit). On July 3, 2006, the Ninth Circuit dismissed the petition for review and issued its mandate on July 25, 2006. On July 17, 2006, the alien filed a motion to reopen before the BIA. On August 30, 2006, the BIA denied the motion to reopen as untimely. On November 16, 2006, the field office director concluded the bond had been breached on August 29, 2006.

On appeal, the bonded alien asserts that a petition for review is currently pending before the Ninth Circuit.

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).

Pursuant to General Order 6.4(c)(1) of the Ninth Circuit, 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.

The General Order is applicable to this case, as the applicant filed a motion for stay of removal. In dismissing the alien's petition for review on July 3, 2006, the Ninth Circuit ordered the temporarily stay of removal to remain in effect pending issuance of the mandate.

The Ninth Circuit Court'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.

Although the regulation at 8.C.F.R. § 1003.2(c)(2) provides that an alien has a period of 90 days within which to file a motion to reopen, in *Azarte*, the court found that the voluntary departure period is tolled during the period the BIA is considering the motion "in cases in which a motion to reopen is filed *within the voluntary departure period* and a stay of removal or voluntary departure is requested." (Emphasis added). *Azarte v. Ashcroft*, p. 1290. The BIA granted the alien voluntary departure within 60 days from the date of its decision of October 21, 2005. That 60-day period ended on December 20, 2005. The alien filed her motion to reopen on July 17, 2006. As the alien's motion to reopen was filed well after the 60-day voluntary departure period ended, the voluntary departure period was not tolled.

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 (ICE) and legacy Immigration and Naturalization Service officials listed in the regulation at 8 C.F.R. § 1240.26(f).

The BIA's decision of the alien's appeal granting the alien a renewed voluntary departure period of 60 days was issued on October 21 2005. The alien filed a petition for review on November 15, 2005, after 24 days had passed. The petition for review had the effect of tolling the remaining voluntary departure period of 36 days. *See Desta v. Ashcroft* at 747. The record reflects that the Ninth Circuit mandate was issued on July 25, 2006.

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: July 25, 2006. The period of July 25, 2006 through August 29, 2006 amounts to 36 days. We note that the present matter arose within the jurisdiction of the Ninth Circuit.

Accordingly, the alien's 60-day period of voluntary departure ended on August 29, 2006. The director's decision of November 16, 2006, declaring the bond breached on August 29, 2006 is valid.

It is noted that the alien filed a second motion to reopen, which was denied by the BIA on January 23, 2007. On February 13, 2007, the alien filed petition for review and a motion for stay of removal before the Ninth Circuit.

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 that 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 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.