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**U.S. Citizenship  
and Immigration  
Services**

G3



FILE:



Office: COW Date: SEP 18 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The voluntary departure bond in this matter was declared breached by the Director, Headquarters, Bonds, Immigration and Customs Enforcement (ICE), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record indicates that on September 14, 2004, the obligor posted a \$500.00 bond conditioned for his voluntary departure. On September 13, 2004, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before November 12, 2004. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On November 16, 2005, the BIA dismissed the appeal, and granted the alien voluntary departure within 60 days from the date of the order. On May 29, 2007, the director concluded the bond had been breached on May 17, 2007.

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 date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the Notice-Immigration Bond Breached on May 29, 2007. It is noted that the field office director properly gave notice to the obligor that it had 33 days to file the appeal. Although the obligor dated the appeal June 6, 2007, it was received by ICE on July 23, 2007, 55 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely and does not qualify as a motion, the appeal must be rejected.

**ORDER:** The appeal is rejected.