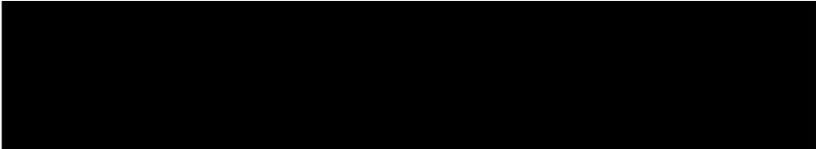




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

03



FILE:

Office: LOS ANGELES

Date: JAN 15 2008

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 sustained.

The record indicates that on October 30, 2003, the obligor posted a \$500.00 bond conditioned for his voluntary departure. On October 30, 2003, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before December 29, 2003. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On December 30, 2004, the BIA affirmed, without opinion, the IJ's decision, and granted the alien voluntary departure within 30 days from the date of the order. On February 28, 2006, the field office director concluded the bond had been breached on January 29, 2005.

On appeal, the obligor asserts that he has filed an appeal that is pending before the United States Court of Appeals for the Ninth Circuit (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, 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 record indicates that on January 27, 2005, the alien filed a petition for review and motion for stay of removal before the Ninth Circuit. A timely filing of a motion to stay of removal 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 General Order is applicable to this case, as the alien filed a timely motion for stay of removal and the Attorney General filed a statement of non-opposition. As the voluntary departure order was stayed, the breach of the voluntary departure bond on January 29, 2005 is not valid. Therefore, the field office director's decision to breach the bond will be rescinded and the appeal will be sustained.

It is noted that on September 28, 2005, the Ninth Circuit dismissed the petition for review for failure to prosecute and indicated that its order "shall, 21 days after [September 28, 2005], become mandate of this court."

ORDER: The appeal is sustained. The field office director's decision declaring the bond breached will be withdrawn and the bond continued in full force and effect.