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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: SEATTLE Date: **OCT 30 2008**

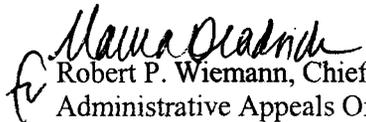
IN RE: Obligor: [REDACTED]  
Bonded Alien: [REDACTED]

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, Seattle, Washington, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on April 29, 2004, the obligor posted a \$500.00 bond conditioned on his voluntary departure. On April 23, 2004, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before June 22, 2004. The IJ indicated that if the alien should fail to obey the immigration court's order to depart voluntarily, the privilege of voluntary departure shall be withdrawn, without further notice or proceedings, and the alien shall be removed from the United States to his native country, Thailand on the charges contained in the Notice to Appear.

On May 18, 2004, the bonded alien appealed the IJ's decision and filed a motion to stay of removal before the Board of Immigration Appeals (BIA). In filing his brief, the alien argued that he "did not apply for such application for voluntary departure and never wish to request one." In dismissing the appeal on September 12, 2005, the BIA ordered the IJ's order removing the alien affirmed, except for the portion which granted the alien voluntary departure. Because the alien objected to being provided voluntary departure, the BIA construed this as a withdrawal, with prejudice, of any request for voluntary departure.

On September 16, 2005, the alien filed a petition for review and a motion for stay of removal before the United States Court of Appeals for the Ninth Circuit (Ninth Circuit). On December 13, 2006, the petition for review was dismissed in part and denied in part by the Ninth Circuit. On March 19, 2007, the Ninth Circuit denied the petitions for panel rehearing and rehearing en banc and the motion for stay of the mandate and removal. The alien's appeal filed before the United States Supreme Court was denied on March 26, 2007. On March 27, 2007, the Ninth Circuit issued its mandate. On September 28, 2007, the field office director concluded the bond had been breached on September 27, 2007.

On appeal, the obligor asserts that because his voluntary departure was withdrawn with prejudice by the BIA, the bond is not enforceable. The obligor asserts that the bond and the breach notice must be canceled in order to eliminate any unnecessary litigation on appeal.

Section 240B of the Immigration and Nationality Act (the Act) provided, in pertinent part:

(a) Certain conditions.-

- (1) *In general.* – The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 240 or prior to the completion of such proceedings, if the alien is not deportable under section 237(a)(2)(A)(iii)<sup>1</sup> or section 237(a)(4)(B)<sup>2</sup>.

At the time of his removal hearing the alien did not object to grant of voluntary departure. The court transcripts taken at the time of his removal hearing on April 23, 2004, indicate, in pertinent part, that the alien "equivocated, at first, then agreed that he would obey the Court's order when his immigration appeals have been exhausted." The transcripts also indicate that the alien was advised of the consequences if he failed to voluntarily depart by the date set in a final order. The alien stated that he understood the penalties if he did not voluntarily depart by the date set in a final order. The IJ entered an order granting voluntary departure as the alien met the requirements set forth in section 240B(b) of the Act.

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<sup>1</sup> An alien convicted of an aggravated felony.

<sup>2</sup> Terrorist activities.

The alien, in posting the voluntary bond, agreed to the terms and conditions of the bond. The alien retracted his request for voluntary departure and as such, the BIA, in its order, withdrew the request. The BIA, however, upheld the IJ's order which indicated that the alien shall be *removed* if the alien did not depart the United States voluntarily. Accordingly, the alien was ordered removed from the United States on April 23, 2004.

It is noted that the Notice-Immigration Bond Breach (Form I-323) issued by the field office director indicates that the bond was breached because the alien failed to *voluntary depart* the United on or before January 13, 2007. This was a harmless error by the director which has not prejudiced the obligor. No satisfactory evidence has been introduced into the record to establish that the alien departed the United States. 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.