

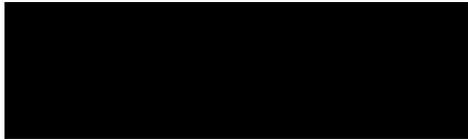
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES Date: **MAY 07 2010**

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

IN 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

Mari Johnson

S Perry Rhew
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 dismissed.

The record indicates that on March 14, 2007, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before May 14, 2007. On March 14, 2007, the obligor posted a \$500.00 bond conditioned for the above referenced alien. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On June 20, 2008, the BIA affirmed, without opinion, the IJ's decision and granted the alien voluntary departure within 60 days from the date of the order. On July 18, 2008, the alien filed a petition for review before the United States Court of Appeals for the Ninth Circuit (Ninth Circuit). On January 28, 2009, the Ninth Circuit dismissed the petition for review for failure to prosecute and indicated that its order shall act as and for the mandate of this court within 21 days. On November 30, 2009, the alien filed a motion to reopen before the BIA. On December 31, 2009, the field office director concluded that the bond had been breached on March 23, 2009.

On appeal, the obligor asserts that the alien has filed a petition for review before the Ninth Circuit and "the court has not entered a decision."

The obligor's assertion is without merit as the Ninth Circuit issued its decision on January 28, 2009.

On appeal, the obligor asserts that the alien has moved the BIA to reopen his removal proceedings based upon newly found evidence.

The Ninth Circuit 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.

This ruling, however, is not applicable to this case as the alien did not file a *timely* motion to reopen and there is no evidence the alien had filed a request for a stay of voluntary departure before the BIA.

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. The service of a notice to surrender or the presence of a certified mail receipt is not required in voluntary departure bond proceedings.

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


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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.