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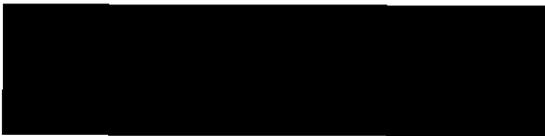
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

G3



FILE:



Office: LOS ANGELES

Date:

APR 01 2011

IN RE:

Obligor:

Bonded Alien:



IMMIGRATION BOND:

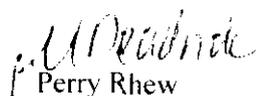
Bond Conditioned for Voluntary Departure under § 240B of the
Immigration and Nationality Act, 8 U.S.C. § 1229c

IN BEHALF OF OBLIGOR: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



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 (AAO) on appeal. The appeal will be sustained.

The record indicates that on November 7, 2003, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before January 6, 2004. On November 13, 2003, the obligor posted a \$500.00 bond conditioned for the above referenced alien. On December 4, 2004, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On February 15, 2005, 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 March 14, 2005, the alien filed a petition for review before the United States Court of Appeals for the Ninth Circuit (Ninth Circuit). On March 16, 2007, the Ninth Circuit dismissed in part and denied in part the petition for review, and issued its mandate on May 8, 2007. On May 3, 2007, the field office director concluded that the bond had been breached.

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

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 Zarzuela-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 30 days was issued on February 15, 2005. The alien filed a petition for review on March 14, 2005, after 27 days had passed. The petition for review had the effect of tolling the remaining voluntary departure period of 3 days. *See Desta v. Ashcroft* at 747. The record reflects that the Ninth Circuit mandate was issued on May 8, 2007.

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:

May 8, 2007. The period of May 8, 2007 through May 10, 2007 amounts to 3 days. We note that the present matter arose within the jurisdiction of the Ninth Circuit.

Accordingly, the alien's 30-day period of voluntary departure ended on May 10, 2007. As such, the field office director's decision declaring the bond breached on May 3, 2007, is not valid. Therefore, the field office director's decision to breach the bond will be rescinded and the appeal will be sustained.

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.