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U.S. Citizenship  
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FILE:

Office: SAN FRANCISCO

Date: APR 03 2009

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:

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).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The voluntary departure bond in this matter was declared breached by the Field Office Director, Detention and Removal, San Francisco, California, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on July 17, 2006, an immigration judge (IJ) issued an order granting the alien voluntary departure in lieu of removal on or before September 15, 2006. On July 24, 2006, the obligor posted a \$500.00 bond conditioned for his voluntary departure. On August 16, 2006, the bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On May 30, 2007, 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 June 27, 2007, the alien filed a petition for review before the United States Court of Appeals for the Ninth Circuit (Ninth Circuit). On August 30, 2007, 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 2, 2007, the field office director concluded that the bond had been breached on July 29, 2007.

On appeal, the obligor asserts that he has filed a motion to reconsider before the BIA, which is currently pending.

The BIA inquiry system, however, does not contain any information regarding the alien's purported filing of a motion to reconsider. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, the obligor disputes the director's finding that the bond had been breached because he failed to depart on or before July 30, 2007.

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).

Pursuant to General Order 6.4(c)(1) of the Ninth Circuit, upon the filing of a motion or request for stay of removal or deportation, the order of removal or deportation is temporarily stayed until further order of the court.

The General Order is applicable to this case, as 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 (9<sup>th</sup> Cir. 2004). As the voluntary departure order was stayed, the field office director's decision declaring the bond breached on July 29, 2007 is not valid. Therefore, the field office director's decision to breach the bond will be withdrawn, the appeal will be sustained, and the bond will be continued.

**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.