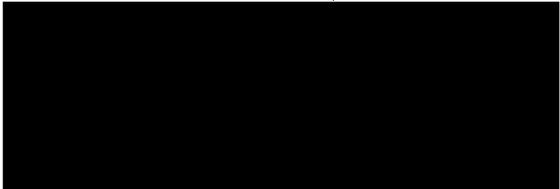




U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED] Office: Dallas Date:

AUG 29 2000

IN RE: Obligor:
Bonded Alien: [REDACTED]

IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under § 103 of the
Immigration and Nationality Act, 8 U.S.C. 1103

IN BEHALF OF OBLIGOR: Self-represented

Public Copy Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Acting District Director, Dallas, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record indicates that on May 27, 1998 the obligor posted a \$7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated December 18, 1998 was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to the Immigration and Naturalization Service (the Service) for removal at 10:00 a.m. on February 25, 1999 at 8101 North Stemmons Freeway, Dallas, TX 75247. The obligor failed to present the alien, and the alien failed to appear as required. On March 11, 1999, the acting district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the alien failed to comply with the terms of his release and returned to his home land of Guatemala. The obligor submits a copy of an airline ticket which contains the alien's name and the itinerary for a flight from Houston to Guatemala City on September 13, 1998.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by the Service for detention or removal. Matter of Smith, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. 103.6(e).

8 C.F.R. 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The bond (Form I-352) provides in pertinent part that the obligor "agrees that any notice to him/her in connection with this bond may be accomplished by mail directed to him/her at the above address." In this case, the Form I-352 listed 3550 N. Central Avenue, Suite 1700, Phoenix, AZ 85012 as the obligor's address.

Contained in the record is a certified mail receipt which indicates that the Notice to Deliver Alien was sent to the obligor at 3550 N. Central Avenue, Suite 1700, Phoenix, AZ 85012 on December 18, 1998. This notice demanded that the obligor produce the bonded alien for removal on February 25, 1999. The receipt also indicates the obligor received notice to produce the bonded alien on January 4, 1999. Consequently, the record clearly establishes that the district director properly served notice on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

The Service has held that an alien who departs from the United States prior to the date demanded for surrender may be in substantial compliance with the terms of his delivery bond. Matter of Don Donaldson's Key Bail Service, 13 I&N Dec. 563 (Acting Reg. Comm. 1969). However, the burden is upon the alien or his surety to prove by probative evidence that the alien did leave the country prior to his surrender date. Matter of Peerless Insurance Company, 15 I&N Dec. 133 (Reg. Comm. 1974).

A physical verification of departure by an immigration officer at the port of departure, or a verification of the alien's presence in the foreign destination by a United States consular officer or immigration officer abroad, is required to verify departure. Whether together or separate, Forms I-94 and departure manifests submitted by a transportation line are insufficient verification of departure for bond cancellation purposes.

The Service will accept a document signed by an embassy official, consular officer, or Service officer abroad, and bearing an appropriate seal or other indicia of reliability as proof that a voluntary departure or self-removal has occurred. The district director retains the discretion to accept other documents of voluntary departure. The original of such document[s] may be delivered [either] by the surety or through diplomatic channels. Copies of such documents will be accepted only if received through diplomatic channels.

The obligor asserts that the bonded alien departed from the United States on September 13, 1998 and has returned to Guatemala. However, the obligor's assertion is unsupported by any satisfactory evidentiary documentation received through official channels. Nor does the record contain a Notification of Departure-Bond Case (Form I-392) properly executed by a United States Embassy official, consular officer or immigration officer abroad and received through official channels indicating the bonded alien's departure from the United States prior to his surrender date.

Furthermore, it is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or

the alien shall produce himself to a Service officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by the Service for detention or removal.

"Substantial performance" exists where there has been no willful departure from the terms or conditions of a bond, where the conditions have been honestly and faithfully complied with and the only variance from their strict and actual performance consists of technical or unimportant occurrences. "Substantial violation" exists where there is a willful departure from the terms or conditions of the bond or the failure to comply or adhere to the essential elements of those terms or conditions. See Matter of Nguyen, 15 I&N Dec. 176 (Reg. Comm. 1975); Matter of Arbelaez-Naranjo, 18 I&N Dec. 403 (Reg. Comm. 1983).

Where there is a variance from the strict and literal performance of the conditions of a delivery bond, an obligor must establish substantial performance which is of benefit to the government. Proceedings regarding administrative cancellation of removal before a district director or the Board of Immigration Appeals are set forth by regulation. See 8 C.F.R. 241.6.

Failure of the obligor to seek an administrative cancellation of removal from either the district director or the Board of Immigration Appeals prior to the day demanded for the alien's delivery and surrender, is ample evidence that the conditions of the bond were not accidentally violated.

In Matter of Allied Fidelity Insurance Company, 19 I&N Dec. 124 (Comm. 1984), it was held that determining whether a violation is "substantial" within the meaning of 8 C.F.R. 103.6(e) requires consideration of the following factors:

- (a) Extent of the breach;
- (b) Whether the violation was intentional or accidental on the part of the alien;
- (c) Whether the actions which constitute the violation were committed in good faith; and
- (d) Whether the alien took steps to make amends, or to put himself in compliance.

Following the guidelines contained in Matter of Allied Fidelity Insurance Company, the violation was intentional because the bonded alien absconded and made the demand upon him impossible by his own actions. See Matter of S-, 3 I&N Dec. 813 (C.O. 1949). The alien's actions in the present matter were not committed in good faith, and he failed to take steps to put himself in compliance. Such action demonstrates a complete absence of good faith on the part of the bonded alien as held in Matter of Allied Fidelity Insurance Company.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by the Service for hearings or removal. Such bonds are necessary in order for the Service to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited their or the surety's convenience. Matter of L-, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the obligor has failed to establish there has been a substantial performance of all conditions of the bond which is of benefit to the government and the conditions of the bond have been substantially violated. The appeal will be dismissed and the collateral will be forfeited.

ORDER: The appeal is dismissed.