



U.S. Department of Justice

Immigration and Naturalization Service

GI

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



FILE: [Redacted] Office: Harlingen

Date:

OCT 12 2000

IN RE: Obligor: [Redacted]
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

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

Terrance M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

The record indicates that on March 28, 1989 the obligor posted a \$3,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) was sent to the obligor via certified mail on September 30, 1999 return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of the Immigration and Naturalization Service (the Service) for interview at 10:00 a.m. on November 1, 1999 at 2102 Teege Avenue, Harlingen, TX 78550. The obligor failed to present the alien and the alien failed to appear as required. On January 11, 2000, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor states that the alien departed from the United States on October 25, 1999.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced to the immigration officer upon each and every proper demand served upon the obligor, until deportation proceedings are finally terminated, or until the alien is actually accepted by the immigration officer for detention and deportation. 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 [REDACTED] 77087 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 [REDACTED] TX 77087 on September 30, 1999. This notice demanded that the obligor produce the bonded alien for interview on November 1, 1999. The receipt also indicates the obligor received notice to produce the bonded alien on October 5, 1999. Consequently, the record clearly establishes that the notice was properly served 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 submitted a copy of a verification of departure letter signed by the officer in charge in San Salvador, El Salvador, which was compared with the original by a Service officer and found to be a true copy. This document indicates that the bonded alien departed the United States on October 25, 1999 and prior to the scheduled date to surrender.

After a careful review of the record, it is concluded that the bonded alien departed from the United States and his departure was properly verified. Consequently, the appeal will be sustained. The decision of the district director will be withdrawn and the collateral will be returned.

ORDER: The appeal is sustained and the bond is cancelled.