U.S. Department of Justice

Immigration and Naturalization Service

G-1

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

[redacted]

FILE: [redacted] Office: New Orleans Date: SEP 5 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:

[redacted]

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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

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

The record indicates that on September 2, 1999 the obligor posted a $50,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated September 24, 1999 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 9:00 a.m. on November 5, 1999 at [redacted] The obligor failed to present the alien, and the alien failed to appear as required. On February 7, 2000 the acting district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the Service concludes that the conditions of the bond have been substantially violated even though the alien is delivered within 30 day of the Notice of Breach. Counsel argues that the Service is violating the substantive and due process rights of the obligor and renders it impossible for the obligor to perform or to substantially perform its obligations under the bond.

Counsel refers to the mitigation clause relating to a bond breach. The mitigation clause provides that an exception occurs when the obligor or surety delivers the bonded alien within varying increments of the 30 calendar day period following the date of the bond breach. The date of the bond breach is the day that the obligor is ordered to surrender the alien and not the date on which the bond breach notice is issued. In the present matter, the obligor was ordered to surrender the alien on November 5, 1999. The obligor failed to do that and the bond was breached on that same date, November 5, 1999. If the alien is surrendered within 30 days of the surrender date, the bond principal may be mitigated.

On appeal, counsel states that district offices have retreated from their former practice of requiring only 24 hours notice of delivery and are now requiring a full 72 hours notice. Counsel states that this constitutes an abuse of discretion by the district directors.

In the [redacted] Agreement, entered into on June 22, 1995 by the Service and [redacted], the parties agreed that obligors wishing to mitigate their damages must give the Service office demanding delivery written notice (on a business day) not less that 72 hours before delivering the alien. All Service offices are obliged to comply with that settlement agreement.

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

 [redacted]

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 525 Penn Street, Suite 200, Reading, PA 19601 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 525 Penn Street, Suite 200, Reading, PA 19601 on September 24, 1999. This notice demanded that the obligor produce the bonded alien for removal on November 5, 1999. The receipt also indicates the obligor received notice to produce the bonded alien on September 28, 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).

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.

Pursuant to the agreement between [redacted] and the Service, a properly completed questionnaire must be attached to all Form I-340's (Notices to Surrender) going to the obligor on a surety bond. Failure to attach the questionnaire would result in rescission of any breach related to that Form I-340 notice.

Based on the provisions of the [redacted] and the fact that the record fails to show that a properly completed questionnaire was sent to the obligor, the appeal will be sustained and the acting district director's decision declaring the bond breached will be withdrawn.

ORDER: The appeal is sustained. The acting district director's decision declaring the bond breached is withdrawn and the bond is continued in full force and effect.