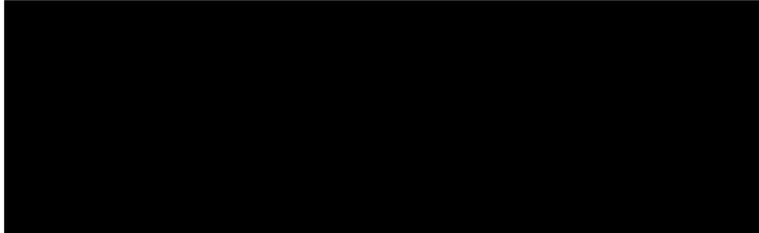




U.S. Department of Justice
Immigration and Naturalization Service

G-1

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



FILE: [Redacted]
IN RE: Obligor: [Redacted]
Bonded Alien: [Redacted]

Date: SEP 11 2000

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.

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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 District Director, Dallas, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal has been filed by an attorney who appears to represent the bonded alien. The bonded alien and the alien's attorney are without standing in this proceeding. See Matter of Insurance Company of North America, 17 I&N Dec. 251 (Act. Reg. Comm. 1978). However, in the interest of due process, the case will be considered on certification pursuant to 8 C.F.R. 103.4. The appeal will be rejected. The decision declaring the bond breached will be rescinded, the matter will be remanded and the bond will be continued in full force and effect.

The record indicates that on February 26, 1998 the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated May 4, 1999 was sent to a party other than 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 June 7, 1999 at 8101 N. Stemmons Fwy., Dallas, TX 75247. The obligor failed to present the alien, and the alien failed to appear as required. On August 18, 1999 the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the alien was arrested on April 27, 1999, an Immigration Detainer was also placed on him and he has not been out of jail since his arrest. The obligor states that it was impossible to present the alien, therefore, there was no substantial violation of the terms of the bond.

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 [REDACTED] 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 an individual named [REDACTED] at [REDACTED] on May 4, 1999. The record is silent as to the standing of [REDACTED]. This notice demanded that the obligor produce the bonded alien for removal on June 7, 1999. The receipt indicates a representative for [REDACTED] received notice to produce the bonded alien on May 7, 1999. Consequently, the record clearly establishes that the district director failed to properly serve notice on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

As a result of the [REDACTED] Agreement, entered into on June 22, 1995 by the Immigration and Naturalization Service and [REDACTED] the Office of General Counsel provided specific guidelines for all Service offices regarding delivery bonds. The guidelines state that there are several circumstances which require cancellation of a delivery bond. These circumstances include, in part, but are not limited to:

3. The Service's taking a bonded alien into custody;
4. The Service's receipt of notice that the bonded alien is being detained by either another federal, or a state or local law enforcement agency, and failure to post a detainer on the alien within 30 days of such notice (unless the Service attempts to post a detainer within 30 days but finds that the alien is no longer in custody);
5. The Service's placing a detainer on the bonded alien with another law enforcement agency which has the alien in custody;

The obligor asserts that the alien is in custody and that the Service has placed a detainer on him. The record is devoid of evidence in support of this assertion. However, since the record contains evidence of improper service and the assertion made on appeal is significant in the resolution of this matter, the appeal will be rejected and the decision declaring the bond breached will be rescinded.

The matter will be remanded for the district director to provide evidence that notice to surrender has been properly served on the obligor and the obligor failed to comply, or to establish whether a detainer was placed on the alien and the appropriate date of that detainer, and to afford the obligor the opportunity to submit any supporting evidence within a reasonable time to support his prior assertions. The district director will enter a new decision based on the record, either declaring the bond breached or cancelling it and which decision, if adverse to the obligor, is to be certified to the Associate Commissioner for review.

ORDER: The appeal is rejected. The decision declaring the bond breached is rescinded. The matter is remanded to the district director for further action and the entry of a new decision which, if adverse to the obligor, is to be certified to the Associate Commissioner for review.