



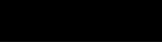
U.S. Department of Justice

Immigration and Naturalization Service

**BB**

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



FILE: 

Office: Atlanta

Date:

**MAR - 9 2000**

IN RE: Obligor:  
Bonded Alien:



APPLICATION:

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.

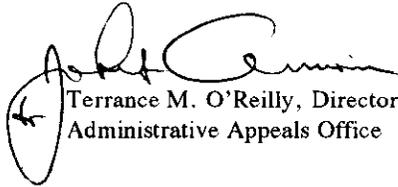
If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent 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

Identifying each instance 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 District Director, Atlanta, Georgia, who certified the decision to the Associate Commissioner for Examinations for review. The appeal will be sustained and the district director's decision will be withdrawn.

The record indicates that on June 27, 1997 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 December 18, 1997 was sent to the obligor via certified mail, 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 removal at 10:00 a.m. on January 27, 1998, at 77 Forsyth Street, S.W., Room G-89, Atlanta, GA 30303. The obligor failed to present the alien, and the alien failed to appear as required. On February 23, 1998, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the district director erred in breaching the bond because: (1) he did not notify the obligor of the alien's scheduled hearing, and (2) he sent the alien notice to appear for removal (Form I-166), contrary to Service regulations.

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 upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the immigration officer 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. (Emphasis supplied.)

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 the obligor at [REDACTED] on December 18, 1997. This notice demanded that the obligor produce the bonded alien for removal on January 27, 1998. The receipt also indicates the obligor received notice to produce the bonded alien on January 20, 1998. 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).

In the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the Immigration and Naturalization Service and Far West Surety Insurance Company, the Service agreed that a Form I-166 letter would not be mailed to the alien's last known address before, and not less than 3 days after, the demand to produce the alien is mailed to the obligor.

Contained in the record is evidence that the Form I-166 letter was prepared on December 18, 1997 to be mailed to the bonded alien's last known address. This notice stated that arrangements have been made for the alien's departure to El Salvador on a date to be determined and to report to the Service office on January 27, 1998. Although the record does not contain a certified receipt showing when the Form I-166 was received, the record clearly establishes that the Form I-166 letter was prepared for mailing on the same date as the Form I-340.

Since the record fails to contain specific evidence that the Form I-166 was actually mailed or that it was mailed less than 3 days after the Form I-340 was sent, the bond will not be cancelled. However, since the Form I-166 was prepared on the same day as the Form I-340 and the probability exists that it was sent on the same day to the alien's attorney, the district director's decision declaring the bond breached will be withdrawn and the bond will be continued in full force and effect.

**ORDER:** The appeal is sustained. The decision declaring the bond breached is withdrawn and the bond is continued in full force and effect.