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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: San Diego Date: MAY 16 2002

IN RE: Obligor:
Bonded Alien: [redacted]

IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under Section 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

Robert P. Wiemann, Director
Administrative Appeals Office

 [redacted]

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

The record indicates that on May 16, 2001, 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 July 9, 2001, 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 August 8, 2001, at [redacted]. The obligor failed to present the alien, and the alien failed to appear as required. On October 9, 2001, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the obligor was not provided with advance notice of hearings and orders to appear for removal which substantially interferes with the obligor's ability to monitor the alien and produce him upon receipt of the Form I-340.

The obligor did receive the notice to deliver alien upon which the breach is based. The obligor's assertion that he could not monitor or produce the alien does not overcome the basis for the breach of this bond.

On appeal, counsel further states that the Service did not provide the obligor with a questionnaire and photograph.

It is noted that the present record contains evidence that a properly completed questionnaire was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement. The Amwest/Reno Settlement Agreement does not require that the Service provide a photograph of the alien to the obligor; only a properly completed questionnaire. If a photograph is available, the photo is sent to the obligor along with the questionnaire. The Settlement Agreement requires the Service to send a questionnaire, but does not provide that the failure to provide a photograph along with the questionnaire warrants cancellation 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).

 [redacted]

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;
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> (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 the obligor at [redacted] on July 9, 2001. This notice demanded that the obligor produce the bonded alien for removal on August 8, 2001. The receipt also indicates the obligor received notice to produce the bonded alien on July 16, 2001. 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).

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.

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 conditions of the bond have been substantially violated, and the

collateral has been forfeited. The decision of the district director will not be disturbed.

ORDER: The appeal is dismissed.