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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: New York Date: AUG - 5 2003

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

ON BEHALF OF OBLIGOR: [redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on October 23, 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 October 4, 2002, 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 INS, now the Bureau of Immigration and Customs Enforcement (BICE), at 9:30 a.m. on October 28, 2002, at 26 Federal Plaza, 9th Floor, Room 9-110, New York, NY 10278. The obligor failed to present the alien, and the alien failed to appear as required. On February 4, 2003, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that removal proceedings were held in the applicant's case, but the district office waited more than eight months to attempt to execute the order. Counsel states that because of such delay, the BICE lost detention authority over the alien, and is therefore required to cancel the bond.

The BICE records show that removal proceedings were held in absentia on March 1, 2002, and the alien was ordered removed from the United States. No appeal appears to have been taken from that decision.

Section 241(a)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1231(a)(1), was added by section 305 of the Illegal Immigration reform and Immigrant Responsibility Act of 1996 (IIRIRA) and was effective on April 1, 1997. It superseded former section 242(c) of the Act, 8 U.S.C. § 1252(c) and changed the six-month period of time to 90 days.

In *Bartholomeu v. INS*, 487 F. Supp. 315 (D. Md. 1980), the judge stated regarding former section 242(c) of the Immigration and Nationality Act (the Act) that, although the statute limited the authority of the Attorney General, now the Secretary, Department of Homeland Security (Secretary), to detain an alien after a six-month period (at that time) following the entry of an order of removal, the period had been extended where the delay in effecting removal arose not from any dalliance on the part of the Attorney General but from the alien's own resort to delay or avoid removal. The Attorney General never had his unhampered and unimpeded six-month period in which to effect the alien's timely removal because the alien failed to appear for removal and remained a fugitive.

Present section 241(a)(2) of the Act, 8 U.S.C. § 1231(a)(2), gives the Secretary authority to physically detain an alien for a period of 90 days from the date of final order of removal for the purpose of effecting removal, and was intended to give the

Secretary a specific unhampered period of time within which to effect removal. Section 241(a)(1)(C) of the Act, 8 U.S.C. § 1231(a)(1)(C), also provides for an extension of the removal period beyond the 90-day period of time and, following *Bartholomeu*, will be deemed to start running when the alien is apprehended and otherwise available for actual removal.

It is noted that the alien's failure to appear for the removal hearing extends the authority of the Secretary to detain and remove the alien under Section 241(a)(1)(c) of the Act.

Under the provisions of the Immigration Bond Form I-352, the obligor is not relieved of its contractual obligation to produce the alien until: (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by the BICE for detention or deportation/removal; or (3) the bond is canceled for some other reason. None of these circumstances has occurred in this case.

It is noted that the present record contains evidence that a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the former INS and Far West Surety Insurance Company.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to a BICE 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 BICE 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).

Pursuant to 8 C.F.R. § 103.5a(a)(2), 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 evidence of record indicates that the Notice to Deliver Alien was sent to the obligor at 525 Penn Street, Suite 200, Reading, PA 19601, on October 4, 2002 via certified mail. This notice demanded that the obligor produce the bonded alien on October 28, 2002. The domestic return receipt indicates the obligor received notice to produce the bonded alien on October 21, 2002. 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 must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by the BICE for hearings or removal. Such bonds are necessary in order for the BICE 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 the alien's 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 appeal will be dismissed.

ORDER: The appeal is dismissed.