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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

FILE: [redacted] Office: Washington 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

IN 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, Washington, D.C., and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on January 18, 2001, the obligor posted a $6,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated July 26, 2001, 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 10:00 a.m. on August 26, 2001, at 4420 Fairfax Drive, Room 426, Arlington 22203. The obligor failed to present the alien, and the alien failed to appear as required. On September 5, 2001, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel puts forth a Freedom of Information Act (FOIA) request. Counsel requests an extension of 60 days in which to file a written brief pending receipt of the alien's file. Counsel claims that the facts of the case, and the law applicable thereto, are complicated.

It should be noted that the facts present in this case at hand are similar not only to numerous cases already presented to the AAO by the obligor on previous appeals but to a myriad of similar cases adjudicated by the AAO since its inception in 1983. Therefore, the request is denied.

On appeal, counsel states that the obligor has been relieved from liability on the bond because the BICE sent the alien a notice to appear for removal on Form I-166. Counsel asserts that this is contrary to current BICE regulations.

The present record contains evidence that the Form I-166 letter was prepared, but there is no evidence to show that the undated document was ever sent to the alien's last known address.

Form I-166 has not been required since July 25, 1986, which is the effective date of an amendment to former 8 C.F.R. § 243.3. That amendment had no effect on the obligor's agreement to produce the alien upon request. Further, the obligor's contractual obligation to surrender the alien is not affected by the BICE's discharge of its responsibility to locate and remove an alien by sending the Form I-166 to the alien's last known address.

It should be 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 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, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the BICE 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.

Contained in the record is a certified mail receipt that indicates the Notice to Deliver Alien was sent to the obligor at 407 Fannin St., Houston, TX 77002 on July 26, 2001. This notice demanded that the obligor produce the bonded alien on August 26, 2001. The receipt also indicates the obligor received notice to produce the bonded alien on August 10, 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).

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 BICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by the BICE 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 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.