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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

FILE: [redacted] Office: San Antonio Date: FEB 11 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 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 that 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

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

The record indicates that on March 22, 2001, the obligor posted a $7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated December 20, 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) at 10:00 a.m. on January 28, 2002, at 8940 Fourwinds Drive, Room 2063, 2nd Floor, San Antonio, TX 78239. The obligor failed to present the alien, and the alien failed to appear as required. On January 29, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the bonded alien is a national of El Salvador. Counsel opines that the bonded alien is eligible for Temporary Protected Status (TPS). Counsel asserts that the fact the Notice to Deliver Alien was for an interview demonstrates that the INS has questions about the alien's TPS eligibility. Counsel further states that the alien's eligibility raises questions whether his bond has "ceased to exist as a matter of law" since a grant of TPS terminates INS detention and removal authority. Counsel cites no law that provides for a delivery bond to "cease to exist."

Jurisdiction over whether an alien is eligible for TPS lies with the Service or the immigration judge, not the obligor for the alien's delivery bond. Counsel has not submitted evidence that the bonded alien has been granted Temporary Protected Status by either the Service or an immigration judge. The obligor is not relieved of its responsibility to deliver and surrender the bonded alien at the time and place specified in the district director's demand notice simply because said notice indicated the alien was to surrender for an interview instead of deportation.

Temporary Protected Status is by definition a temporary status for certain qualifying aliens from designated countries. At the expiration of a validly granted TPS period, absent some further change of the alien's status, the alien will be required to depart the United States. Under the terms of the bond contract, the Service has the responsibility to maintain the bond to insure the alien's ultimate departure from the United States. Pursuant to part (G) of the bond contract, a delivery bond remains in effect until removal proceedings are finally terminated or the alien is actually accepted for removal.

On appeal, counsel claims that "INS/EOIR had an affirmative duty to inform him of her eligibility" for TPS.

Section 244(a)(3) of the Act provides for notice to aliens of their eligibility for Temporary Protected Status in a form and language that the alien can understand. The Service has widely publicized the eligibility criteria for each TPS program, both in English and in the native language of the designated country, e.g. Spanish for Nicaragua, Honduras and El Salvador. This satisfies the notice requirement of the Act.

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 Service 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 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 525 Penn Street, Suite 200, Reading, PA 19601 as the obligor's 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 December 20, 2001 via certified mail. This notice demanded that the obligor produce the bonded alien on January 28, 2002. The domestic return receipt shows it was signed by a representative of Capital Bonding Corporation and subsequently received by the Service on January 4, 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 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.