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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: Harlingen Date: JAN 29 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]

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

Elizabeth Hayward

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Harlingen, Texas. A subsequent appeal was dismissed by the Associate Commissioner, Examinations. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be granted. The decision of the Associate Commissioner will be affirmed.

The record indicates that on September 5, 2000, the obligor posted a $2,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated May 1, 2002, 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 June 5, 2002, at [redacted] The obligor failed to present the alien, and the alien failed to appear as required. On June 14, 2002, the district director informed the obligor that the delivery bond had been breached.

On motion, counsel argues that the INS has lost detention authority over the alien as a result of the alien's eligibility for, and possible grant of, Temporary Protected Status (TPS).

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.

Counsel asserts that either INS or EOIR would be the logical agency through which the Attorney General would give written notice of eligibility to all aliens eligible to apply for TPS. Counsel cites section 244(a)(3) of the Immigration & Nationality Act (the Act).

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.

The obligor is bound by the terms of the bond contract to surrender the alien upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted for detention or removal.

Under the provisions of the Immigration Bond Form I-352, the obligor agrees to produce the alien upon demand until: (1)

exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by the INS for detention or deportation/removal; or (3) the bond is canceled for some other reason. The obligor is relieved of its contractual responsibility to deliver the alien only if one of these enumerated circumstances has occurred. As the obligor has not shown any of the above occurrences, the bond breach resulting from the obligor's failure to produce the alien on June 5, 2002 is valid.

The decisions of the district director and the Associate Commissioner will not be disturbed.

ORDER: The motion to reopen is granted. The decision of the Associate Commissioner dated August 28, 2002 is affirmed.