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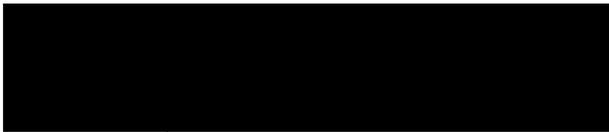
U.S. Department of Justice

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



FILE



Office: Omaha

Date:

FEB 27 2003

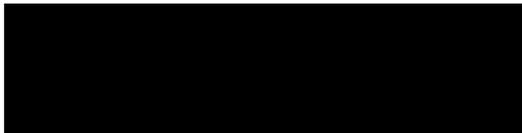
IN RE: Obligor:

Bonded Alien:



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:



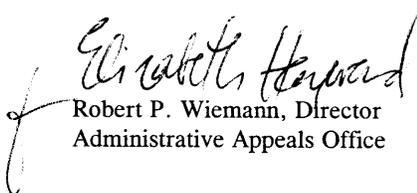
INSTRUCTIONS:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The record indicates that on June 25, 1999, the obligor posted a \$3,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 21, 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 9:00 a.m. on September 18, 2002, at 3736 South 132nd Street, Omaha, NE 68144. The obligor failed to present the alien, and the alien failed to appear as required. On September 23, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the director failed to provide the obligor with a properly completed questionnaire as the sections were not all filled out. Counsel argues that the failure to complete all sections of the questionnaire invalidates the bond breach, because it does not comply with the Settlement Agreement.

Counsel indicates that:

I am attaching a questionnaire brief, which is a history of the I-340 questionnaire and the requirements under *Amwest I*, *Amwest II*, and many INS memorandums, wires and training materials dedicated to this particular issue. They make it clear that each District must attach a properly completed (and signed) questionnaire to each I-340 at the time they send it to the surety. Improperly completed questionnaires, or those that do not provide answers to all sections (including a negative one) do not satisfy the *Amwest Settlements'* requirements.

It is noted that counsel for the obligor is quite familiar with the cited materials, as he helped to write them and to train INS field personnel on the implementation of the Settlement Agreement when he worked as an associate in the INS Office of General Counsel immediately before representing the bonding company. Counsel, however, fails to submit the INS memoranda, wires and training materials to support his arguments. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The Settlement Agreement, Exhibit F, provides that "a questionnaire prepared by the surety with approval of INS will be completed by INS whenever a demand to produce a bonded alien is to be delivered to the surety. The completed questionnaire will be certified correct by an officer of the INS delivered to the surety with the demand." The INS is in compliance with the Settlement Agreement when the questionnaire form is provided to the obligor with the

alien's identifying information, such as his or her name, alien number and if available, a photograph. The Settlement Agreement does not require each section to be filled out. Counsel has not alleged or established any prejudice resulting from the Service's failure to complete each section. More importantly, failure to complete each section does not invalidate the bond breach.

Training materials written by counsel for the obligor when he was an associate in the INS Office of General Counsel are not binding on the Service. Memoranda issued by the Office of General Counsel are advisory in nature. 8 C.F.R. § 100.2(1). Internal memoranda routinely issued by the Service to guide the field offices in implementing the Settlement Agreement do not have the force of law.

On appeal, counsel states that removal proceedings were held in the applicant's case, but the Service waited over 15 months to attempt to execute the order. Counsel states that because of such delay, the Service lost detention authority over the alien, and is therefore required to cancel the bond.

The Service records show that removal proceedings were held on June 17, 2001, and the alien was ordered removed from the United States.

Under the terms of the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the Service and Far West Surety Insurance Company, the parties agreed that, pursuant to statute, the Attorney General's authority to detain an alien subject to a final order of deportation generally expires six months after the order of deportation becomes final. The parties, following the rule established by *Shrode v. Rowoldt*, 213 F.2d 810 (8th Cir. 1954), stipulated that the INS would cancel any bond which was not breached prior to the expiration of the six month period. This stipulation was based on former INA section 242(c), which was deleted by section 306 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), effective April 1, 1997. Because former INA section 242(c) no longer exists, this stipulation of the settlement agreement is no longer applicable.

Section 241(a)(1) of the Act, 8 U.S.C. § 1231(a)(1), was added by section 305 of IIRAIRA. Section 241(a)(1) provides generally that the Attorney General shall remove an alien from the United States within 90 days following the order of removal, with the 90-day period suspended for cause. Section 241(a)(2) envisions that during the 90-day period, the Attorney General shall exercise detention authority over the alien.

Removal proceedings do not end when the 90-day post-order detention period has expired. INA section 241(a)(3) provides that if an alien does not leave or is not removed during the 90-day period, the alien shall be subject to supervision under regulations prescribed by the Attorney General. Posting of a bond may be authorized as a condition of release after the 90-day detention period. 8 C.F.R. § 241.5(b) provides that: "An officer authorized to issue an order of

supervision may require the posting of a bond in an amount determined by the officer to be sufficient to ensure compliance with the conditions of the order, including surrender for removal." Thus, unlike in *Shrode*, the Attorney General has the continuing authority to require aliens to post bond following the 90-day post-order detention period.¹

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 will not be canceled.

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;

1/ The AAO acknowledges that it has rendered several recent decisions that did not take into account the statutory and regulatory language discussed in this section, and thus has made decisions contrary to the decision reached in this case. Those decisions were reopened on Service motion by the AAO for entry of a new decision.

(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 August 21, 2002 via certified mail. This notice demanded that the obligor produce the bonded alien on September 18, 2002. The domestic return receipt indicates the obligor received notice to produce the bonded alien on September 3, 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.