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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: San Diego Date: FEB 05 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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record indicates that on October 5, 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 June 12, 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 July 12, 2002, at [redacted] The obligor failed to present the alien, and the alien failed to appear as required. On August 19, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the alien was granted voluntary departure on September 27, 2001. Counsel indicates that the obligor does not know whether the immigration judge set a voluntary departure bond, whether the alien posted such a bond or whether the alien has departed the United States. Counsel states that one of these events constitutes sufficient grounds for sustaining the appeal and canceling the bond.

The record reflects that a removal hearing was held on September 27, 2001, and the alien was granted voluntary departure from the United States on or before December 26, 2001, with an alternate order of removal to take effect in the event that the alien failed to depart as required. The court did not order the alien to post a voluntary departure bond, and did not set other conditions on the grant of voluntary departure. The right of appeal was waived.

Voluntary departure may be granted by the Service or by the immigration court under prescribed conditions set forth in the statute at section 240B of the Act, 8 U.S.C. 1229c, and by regulation at 8 C.F.R. 240.25 and 8 C.F.R. 240.26. Under the provisions of section 240B of the Act, 8 U.S.C. 1229c and 8 C.F.R. 240.26(d), when an immigration court grants a request for voluntary departure, the immigration judge also enters an alternate order of removal to take effect in the event the alien fails to depart as required. The Service, not the immigration court, is statutorily responsible for removing the alien whose order of voluntary departure becomes a final removal order. Section 241 of the Act, 8 U.S.C. 1231. Removal proceedings are not over until the Service has discharged this statutory responsibility. The statute does not extinguish the delivery bond on an alien who remains free to choose whether to voluntarily depart the United Stats, or to remain in the United States in violation of the order.

The delivery bond will not be canceled until it is replaced by another type of bond to ensure the alien's departure, such as a

voluntary departure bond, or under the terms of the bond, until proceedings have terminated or the alien is accepted for removal. As the bonded alien is still in the United States, removal proceedings are not over, and the delivery bond remains in effect.

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 [redacted] Reading, PA 19601 as the obligor's address.

The record fails to contain the domestic return receipt to indicate that the Notice to Deliver Alien was sent to the obligor at [redacted] on June 12, 2002, or to indicate that the obligor had received the notice to produce the bonded alien on July 12, 2002. Consequently, the record fails to establish that the district director properly served notice on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

On appeal, counsel states that the Service did not provide the obligor with a photograph of the alien.

Because the record fails to contain evidence that the Form I-340 was properly served on the obligor, counsel's assertion does not need to be addressed.

Because the record fails to establish proper service of the Form I-340 on the obligor as required, the appeal will be sustained. The district director's decision declaring the bond breached will be rescinded and the bond will be continued in full force and effect.

ORDER: The appeal is sustained. The district director's decision declaring the bond breached is withdrawn, and the bond is continued in full force and effect.