U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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JAN 12 2005

FILE: [redacted] Office: VERMONT (LSC) Date:

IN RE: Obligor: [redacted]
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

ON BEHALF OF OBLIGOR:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Director, Headquarters, Detention and Removal, Williston, Vermont, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on September 17, 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 October 29, 2003, 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 Immigration and Customs Enforcement (ICE) at 9:00 a.m. on November 18, 2003, at The obligor failed to present the alien, and the alien failed to appear as required. On November 19, 2003, the director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the immigration judge issued an order of removal on August 5, 2002. Counsel states that although ICE made a timely attempt to execute this order with a demand for the alien's surrender on September 17, 2002, it failed to breach the bond within 180 days when the obligor failed to deliver the alien. Counsel further states that ICE let the case sit idle for over a year before a second demand for the alien's surrender on November 18, 2003. Counsel argues that equity demands cancellation of the bond because ICE's failure to execute the immigration judge's order of removal within 180 days made it impossible for the obligor to perform its obligations under the contract. As such, according to counsel, ICE is estopped from declaring the bond breached.

The record reflects that a removal hearing was held on August 5, 2002 and the alien was ordered removed in absentia.

The obligor is bound by the terms of the contract to which it obligated itself. The terms of the Form I-352 for bonds conditioned upon the delivery of the alien establish the following condition: "the obligor shall cause the alien to be produced or to produce himself/herself . . . upon each and every written request until *exclusion/deportation/removal proceedings* . . . are finally terminated." (Emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

The bond contract provides that it may be canceled when (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by ICE for detention or deportation/removal; or (3) the bond is otherwise canceled. The circumstances under which the bond may be "otherwise canceled" occur when the Secretary or the Attorney General imposes a requirement for another bond, and the alien posts such a bond, or when an order of deportation has been issued and the alien is taken into custody. As the obligor has not shown that any of these circumstances apply, the bond is not canceled.

Counsel argues that the obligor is entitled to cancellation of the bond for equitable reasons, as the alien essentially goes into hiding after a final order is issued. Counsel does not argue and the record does not reflect that the obligor was unable to perform its obligations under the contract because the alien in the present case was in hiding. As stated in the preceding paragraph, the obligor is bound under the terms of the contract to deliver the alien until the bond is canceled or breached.

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 legacy Immigration and Naturalization Service and 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 ICE 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 evidence of record indicates that the Notice to Deliver Alien dated October 29, 2003 was sent to the obligor at via certified mail. This notice demanded that the obligor produce the bonded alien on November 18, 2003. The domestic return receipt indicates the obligor received notice to produce the bonded alien on November 3, 2003. 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).

On appeal, counsel asserts that because the Form I-166 was attached to and dated the same date as the Form I-340, the obligor has no way of knowing if ICE waited the required three days to mail the Form I-166 to the alien.

The Amwest/Reno Settlement Agreement provides that the Form I-166 notice will not be mailed to the alien before, and not less than three days after the demand to surrender is mailed to the obligor.

A copy of the Form I-166 was mailed with the Form I-340 to the obligor as a courtesy and in no way does it violate the Amwest/Reno Settlement Agreement. Contained in the record is a postmarked envelope, returned by the post office as unclaimed, indicating that the Form I-166 was sent to the alien's last known address on November 3, 2003. The record thus clearly establishes that the Form I-166 was mailed at least three days after the Form I-340 was mailed.

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 an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE 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 ICE for hearings or removal. Such bonds are necessary in order for ICE 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 decision of the field office director will not be disturbed.

ORDER: The appeal is dismissed.