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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

[redacted]

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JAN 1 2 2005

FILE: [redacted] Office: CHICAGO Date:

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

ON BEHALF OF OBLIGOR: Self-represented

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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on May 15, 1998, the obligor posted a $3,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated September 24, 1998, 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 the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 11:00 a.m. on October 20, 1998, at The obligor failed to present the alien, and the alien failed to appear as required. On October 30, 1998, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor requests that the bond be canceled pursuant to 8 C.F.R. § 103.6(c)(3) because there has not been a substantial violation of the terms of the bond. The obligor asserts that it has been unable to locate the alien and "it is felt that she had returned to her home land of Honduras."

The regulations at 8 C.F.R. § 103.6(c)(3) provides 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(e) provides that a bond is breached when there has been "substantial violation of the stipulated conditions of the bond."

"Substantial performance" exists where there has been no willful departure from the terms or conditions of a bond, where the conditions have been honestly and faithfully complied with and the only variance from their strict and actual performance consists of technical or unimportant occurrences. "Substantial violation" exists where there is a willful departure from the terms or conditions of the bond or the failure to comply or adhere to the essential elements of those terms or conditions. *See Matter of Nguyen,* 15 I&N Dec. 176 (Reg. Comm. 1975), *Matter of Arbelaez-Naranjo*, 18 I&N Dec. 403 (Reg. Comm. 1983).

Where there is a variance from the strict and literal performance of the conditions of a delivery bond, an obligor must establish substantial performance, which is of benefit to the government. Proceedings regarding administrative stays of deportation before a field office director or the Board of Immigration Appeals (BIA) are set forth by regulation. Failure of the obligor to seek an administrative stay of removal from either the field office director or the BIA prior to the day demanded for the alien's delivery and surrender, is ample evidence that the conditions of the bond were not accidentally violated.

The obligor's contentions were addressed in *Matter of Allied Fidelity Insurance Company*, 19 I&N Dec. 124 (Comm. 1984), where it was held that failure of the obligor to surrender the alien as required is not a mere technical or unimportant occurrence. The Commissioner held that both the obligor and the alien bear a responsibility to comply with the terms and conditions of the bond. It was held that determining whether a violation is "substantial" within the meaning of 8 C.F.R. 103.6(e) requires consideration of the following factors:

(a) Extent of the breach;

(b) Whether the violation was intentional or accidental on the part of the alien;

(c) Whether the actions which constitute the violation were committed in good faith; and

(d) Whether the alien took steps to made amends, or to put himself in compliance.

The record reflects that there has been a willful departure from the terms or conditions of the bond and the obligor's failure to deliver the alien at the scheduled time and place is not a mere technical or unimportant occurrence.

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 September 24, 1998 was sent to the obligor [redacted] via certified mail. This notice demanded that the obligor produce the bonded alien on October 20, 1998. The domestic return receipt shows it was signed by a representative of United Bonding Services, Inc., and was subsequently received by ICE on October 9, 1998. 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 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).
The AAO has held that an alien who departs from the United States prior to the date demanded for surrender may be in substantial compliance with the terms of his delivery bond. *Matter of Don Donaldson's Key Bail Service*, 13 I&N Dec. 563 (Acting Reg. Comm. 1969). However, the burden is upon the alien or his surety to prove by probative evidence that the alien did leave the country prior to his surrender date. *Matter of Peerless Insurance Company*, 15 I&N Dec. 133 (Reg. Comm. 1974).

A physical verification of departure by an immigration officer at the port of departure, or a verification of the alien's presence in the foreign destination by a United States consular officer or immigration officer abroad, is required to verify departure.

ICE will accept a document signed by an embassy official, consular officer, or an immigration officer abroad, and bearing an appropriate seal or other indicia of reliability as proof that a voluntary departure or self-removal has occurred. The district director retains the discretion to accept other documents of voluntary departure. The original of such documents may be delivered either by the surety or through diplomatic channels. Copies of such documents will be accepted only if received through diplomatic channels.

On appeal, the obligor asserts that the bonded alien has departed from the United States. However, this assertion is unsupported by any acceptable evidentiary documentation. The record does not contain a Notification of Departure-Bond Case (Form I-392) properly executed by a United States Embassy official, consular officer or immigration officer abroad and received through official channels indicating the bonded alien's departure from the United States prior to her surrender date.

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.