

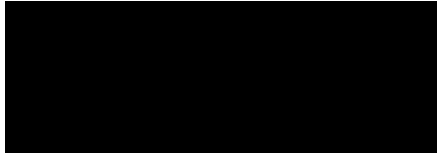
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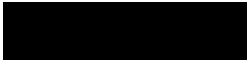


**U.S. Citizenship
and Immigration
Services**

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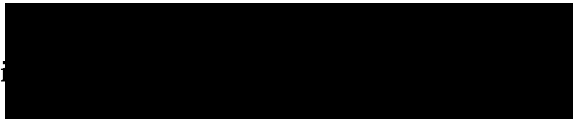


Office: PHOENIX (TUC)

Date: **NOV 07 2005**

IN RE:

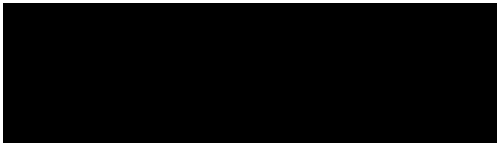
Obligor:
Bonded Ali



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:



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.

Mar Johnson

→ Robert P. Wiemann, Director
Administrative Appeals Office

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

The record indicates that on December 10, 2002 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 March 7, 2005, 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 10:00 a.m. on March 17, 2005, at 6431 S. Country Club Road, Tucson, AZ 85706. The obligor failed to present the alien, and the alien failed to appear as required. On April 8, 2005, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the bond was not breached as the bonded alien filed a timely petition for Writ of Habeas Corpus. Counsel further asserts that the chief counsel of the ICE Office was advised of the filing and was delivered a copy of the petition.

Counsel fails to submit evidence to support this assertion. Counsel's assertion does 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). According to a memorandum dated September 2, 2005 from the Tucson Office, the assistant chief counsel was contacted and indicated that he did not recall speaking to, or receiving a petition for Writ of Habeas Corpus from the office of counsel.

The record reflects that a removal hearing was held on November 6, 2003, and the alien was ordered removed from the United States. The alien filed an appeal and a motion to remand before the Board of Immigration Appeals (BIA). On February 8, 2005, the BIA dismissed the appeal and denied the motion to remand. On March 3, 2005, the alien filed a petition for a Writ of Habeas Corpus in the United States District Court for the District of Arizona.

A judicial review of order of removal does not stay the execution of the removal order unless the court orders otherwise. Section 242(b)(3)(B) of the Immigration and Nationality Act (the Act) 8 U.S.C. § 1252(b)(3)(B). There is no evidence of record to indicate that the United States District Court has stayed the bonded alien's removal.

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 upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the immigration officer 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 March 10, 2005 was sent to the obligor [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on March 17, 2005. The domestic return receipt shows it was signed by a representative of the obligor on March 9, 2005, and was subsequently received by ICE. 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).

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.