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

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[Redacted]

FILE: [Redacted] Office: NEW YORK Date: JAN 04 2007

IN RE: Obligor: [Redacted]
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:

[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.

S Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record indicates that on July 8, 2004, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 19, 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 September 20, 2005, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On October 19, 2005, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the bonded alien never received a notice of the hearing date and has filed a motion to reopen an *in absentia* order of removal. Counsel states that filing the motion to reopen automatically stays the deportation of an alien.

The regulation at 8 C.F.R. § 1003.23(b)(4)(iii)(A)(2) states an order entered *in absentia* in removal proceedings may be rescinded only upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice. The filing of a motion to reopen an *in absentia* order stays the deportation of the alien pending decision on the motion. 8 C.F.R. § 1003.23(b)(1)(i)(v); 8 C.F.R. § 1003.23(b)(4)(iii)(C).

The record reflects that a removal hearing was held on October 1, 2004 and the alien was ordered removed *in absentia*. On September 20, 2005, the alien filed a motion to reopen before the court. The proceedings were subsequently reopened and on May 19, 2006, the immigration judge issued an order of removal. On June 16, 2006, the alien filed an appeal before the Board of Immigration Appeals, which is currently pending.

At the time the Form I-340 was issued, there was no motion to reopen in place. The field office director properly exercised his authority by directing the obligor to produce the bonded alien. The obligor is not relieved of its responsibility to deliver and surrender the bonded alien at the time and place specified in the field office director's demand notice simply because the alien filed a motion to reopen on the same day as the surrender date. While the filing of a timely motion stays removal, the field office director may call the alien in for a custodial determination at any time.

Bond proceedings are separate and distinct from deportation proceedings. Deportation proceedings are between the United States government and an alien with a questionable right to remain in the United States. A delivery bond is a contract between ICE and the obligor and, therefore, 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.

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 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 August 19, 2005 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on September 20, 2005. The domestic return receipt indicates the obligor received notice to produce the bonded alien on August 26, 2005. 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.