



U.S. Department of Justice
Immigration and Naturalization Service

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Public Copy



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

FILE: — Office: El Paso Date: **AUG 102000**

IN RE: Obligor: [Redacted]
Bonded Alien: [Redacted]

IMMIGRATION BOND: Bond Conditioned for the **Delivery** of an Alien under § 103 of the
Immigratori and Nationality Act, 8 U.S.C. 1103

IN BEHALF OF OBLIGOR: **Self-represented**

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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. rd.

Any motion must be filed with the office which **originally** decided your case along with a fee of \$110 as required under 8 C.P.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. Reilly, Director
Administrative Appeals Office



DISCUSSION: The delivery bond in this matter was declared breached by the District Director, El Paso, Texas, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations on appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be denied and the order dismissing the appeal will be affirmed.

The record indicates that on August 26, 1998 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 16, 1999 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) for removal at 2:00 p.m. on April 21, 1999 at El Paso, TX 79925. The obligor alien failed to appear as required. On July 16, 1999, the district director informed the obligor that the delivery bond had been breached.

The record further contains a certified mail receipt which indicates that the Notice to Deliver Alien was sent to the obligor at [redacted] in March 16, 1999. This notice emanates that the obligor produce the bonded alien for removal on April 21, 1999. The receipt indicates that the obligor received the notice to produce the bonded alien on March 22, 1999. Consequently, the record clearly establishes that the district director properly served notice on the obligor in compliance with 8 C.F.R. 103.5a(a) (2) (iv).

On motion, the obligor contends that there has not been a substantial violation of the terms of the bond as provided in 8 C.F.R. 103.6(e) because there has been no willful departure from the terms or conditions of the bond and 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.

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 8C.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 make amends, or to put himself in compliance.

The failure of the alien to seek an administrative stay of deportation from either the district director or the Board of Immigration Appeals is ample evidence that the conditions of the bond were not accidentally violated.

Following the guidelines contained in Matter of Allied Fidelity Insurance Company, the violation was intentional because the bonded alien in this matter absconded and made the demand upon him impossible by his own actions. See Matter of S-, 3 I&N Dec. 813 (C.O. 1949). The alien's actions were not committed in good faith, and he failed to take steps to put himself in compliance. According to the obligor, the alien failed to stay in communication with the obligor and to keep the obligor updated as to his whereabouts. Such action demonstrates a complete absence of good faith on the part of the bonded alien as held in Matter of Allied Fidelity Insurance Company.

The record reflects that there has been a willful departure from the terms or conditions of the bond resulting in a substantial violation of those terms. The obligor's failure to deliver the alien at the scheduled time and place is not a mere technical or unimportant occurrence. Where a substantial violation of the terms of the bond has been established, there cannot be a simultaneous substantial performance of those same conditions. 8 C.F.R. 103.6(c) (3) provides that there must be a substantial performance of all conditions imposed by the terms of the bond. A failure to satisfy all conditions imposed by the terms of the bond results in a substantial violation, the antithesis of substantial performance.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by the Service for hearings or removal. Such bonds are necessary in order for the Service 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 their 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, there has not been a substantial performance of all conditions imposed by the terms of the bond and the collateral has been forfeited. The decision of the district director will not be disturbed.

ORDER: The motion is dismissed. The order of September 30, 1999 dismissing the appeal is affirmed.