



61

U.S. Department of Justice  
Immigration and Naturalization Service

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



FILE: [Redacted] Office: Miami,

Date: **AUG 10 2000**

IN RE: Obligor,  
Bonded Alien:



IMMIGRANON BOND; Bond Conditioned for the Delivery of an Alien under § 103 of the  
Immigration and Nationality Act, 8 U.S.C. 1103

IN BEHALF OF OBUGOR: Self-represented

**Public Copy**

n

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. Id.

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

**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance O'Reilly, Director  
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Assistant District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations 'on appeal. The appeal will be sustained.

The record indicates that on May 19, 1989 the obligor posted a \$1,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated January 11, 2000 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, interview at 9:00 a.m. on February 10, 2000 at [REDACTED] Miami., FL 33138. The [REDACTED] present e. alien, and the alien failed to appear as required. On March 6, 2000, the assistant district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor provides documentation that she sent the Service a notice of address change dated November 12, 1999 and prior to the date on the Notice to Deliver via certified mail. The notice was received by the Service on November 23, 1999.

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 the Service for detention or removal. Matter of Smith, 16I&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(e) (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.

(Emphasis supplied.) The bond (Form I-352) provides in pertinent part that the obligor: "agrees that any notice to him/her in

connection with this bond may be accomplished by mail directed to him/her at the above address." In this case, the Form 1-352 listed [REDACTED] as the obligor's address.

Contained in the record is a certified mail receipt which indicates that a letter containing the Service's notice on November 12, 1999, a pre-arrest surrender notice. Contained in the record is a certified mail receipt which indicates that the notice of address change was received by the Service on November 23, 1999.

The Service sent its notice to appear on January 11, 2000 to the obligor's former address having failed to change the obligor's address after being duly notified. This notice demanded that the obligor produce the bonded alien for interview on February 10, 2000. Since the obligor no longer resided at the former address, the notice was returned to the Service marked unclaimed. Since the record clearly establishes that the obligor notified the Service well in advance of the change of address, the assistant district director failed to properly serve notice on the obligor in compliance with 8 C.F.R. 103.5a(a) (2) (iv).

After a careful review of the record, it is concluded that the conditions of the bond have not been substantially violated, and the collateral will not be forfeited. The appeal will be sustained and decision of the acting district director will be withdrawn.

**ORDER:** The appeal is sustained. The assistant district director's decision is withdrawn and the bond is continued in full force and effect.