



U.S. Department of Justice
Immigration and Naturalization Service

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



FILE

Office: Harlingen

AUG 1 1980

IN RE: Obligor:
Bonded Alien



IMMIGRATION 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 OBLIGOR:



Public Copy

Removing data deleted to
prevent clearly unwarranted
disclosure of personal privacy

INSTRUCTIONS:

This is the decision on 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance Reilly, Director
Administrative Appeals Office

1998}. See also U.S. v. Spitzauer, where the u.s. Court of Appeals for the Ninth Circuit stated that the public protection provision *is* limited in scope and only protects individuals who fail to file information. (1999 US App Lexis 6535).

2. The Form I-340 surrender notice is null and void because, contrary to the Amwest Settlement and nationwide Service directive, the Service did not attach a questionnaire to the surrender demand.

The present record fails to contain evidence that a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the notice to surrender.

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. Comma 1977).

Although the obligor failed to produce the alien as required by the surrender demand, counsel stated on appeal that all the conditions imposed by the terms of the bond were substantially performed by the obligor. 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. B C.F.R. 103.6(e)..

a 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 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 h

In this case, the Form I-352 listed the obligor's address.

Contained in the record is a certified mail receipt which indicates that the Notice to Deliver Alien was sent to the obligor at [REDACTED] in February 4, 2000. This notice demanded that the obligor produce the bonded alien for removal on March 6, 2000. The receipt also indicates the obligor received notice to produce the bonded alien on February 7, 2000. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. 103.Sa(a) (2).

Furthermore, 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 a Service officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by the Service for detention or removal.

The obligor states that it has been relieved from liability on the bond because the Service sent the alien a notice to appear for removal on Form 1-166. The obligor states that this is contrary to current Service regulations.

Form 1-166 has not been required since July 25, 1986 which is the effective date of an amendment to former 8 C.F.R. 243.3. That amendment had no effect on the obligor's agreement to produce the alien upon request. Notice to an alien that he or she has exhausted all due process and appeals and is subject to a final order of removal does not relieve the obligor from its obligation to fulfill the terms of the bond agreement.

In the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the Service and Far West Surety Insurance Company, the Service agreed that a Form 1-166 letter would not be mailed to the alien's last known address before, and not less than 3 days after, the demand to produce the alien is mailed to the obligor.

Contained in the record is a certified mail receipt which indicates that the Form 1-166 letter was sent to the alien's last known address on March 31, 2000. This notice stated that arrangements have been made for the alien's departure to Guatemala on May 1, 2000. Consequently, the record clearly establishes that the Form 1-166 letter was mailed more than 3 days after the notice to surrender was mailed.

Pursuant to the agreement between Amwest Surety Insurance Company and the Service, a properly completed questionnaire must be attached to all Form I-340's (Notices to Surrender) going to the obligor on a surety bond. Failure to attach the questionnaire would result in rescission of any breach related to that Form 1-340 notice.

Based on the provisions of the Amwest Agreement and the fact that the record fails to show that a properly completed questionnaire was sent to the obligor, the appeal will be sustained and the



district director's decision declaring the, bond'breached will be withdrawn.

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

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