U.S. Department of Justice

Innnigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: Harlingen 'Date: ' AUG 10 2000

IN RE: Obligor:
Bonded Alien: [redacted]

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: ,

[redacted]

Public Copy

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

INSTRUCTIONS:

This is the decision in your case. All documents have beenreturned 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 inconsiste t with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion rim t state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider m st be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(l)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reop n. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavit or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks reopen, except that failure to file before this period expires may be excused in the discretion of the Service here 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 req' d under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance . O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, 'Harlingen, .Texas, and a subsequent appeal was dismissed-by the Associate commissioner for.Examinations. The matter is before the Associate Commissioner'on a motion to reopen. The motion will be granted. The Associate Commissioner's order dismissing the appeal will be withdrawn. The district director's decision declaring the bond breached will be withdrawn and the bond will be continued _in full force and effect. .

The record indicates that on August 3, 1999 the obligor posted a $5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form 1-340) dated December 29, 1999 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 the Immigration and Naturalization Service the Servi val at 10:00 a.m. on January 31, 2000 a Los Fresnos, TX 78566. The obligor failed to present the 'alien, and the'alien failed to appear as required. On February 7, 2000, the district director informed the obligor that the delivery bond_had been breached. .

On motion, counsel for the obligor.states that there are atlleast three reasons why the Administrative Appeals Office should sustain this appeal:

1. Form 1-352 {Rev. 5/27/97)N is unenforceable because the Service failed to obtain the requiredOMB approval prior to using this ·form.

The Immigration Bond (Form 1-352) is a collection of 'information as defined by the Paperwork Reduction Act (PRA), 5 C.F.R. 1320.3 (3) (c) . The Service is an agency for the purposes of the PRA and the Form 1-352 falls under the PRA. In stating that the Form 1-352 is unenforceable because the Service did not seek approval for the Form 1-352 after its prior approval lapsed, counsel ignores the provision of the whole'law and its plain meaning.

The PRA was-intended to rein agency activity by not burdening the public, small businesses, 'corporations and other government agencies to submit information collection requests on forms that do not display control numbers approved by the Office of Management and Budget (OMB) • The plain meaning of the PRA makes it clear that a person who fails to comply with a collection of information will not be subject to any penalty. See U.S. v. Burdett, 768 F'ISUpp, 409 (E.D.N.Y. 1991).

The PRA only protects the public from failing to. provide information to a government agency. Here, the obligor did file the information requested on Form 1-352, therefore, the obligor cannot avail himself of the affirmative defense provision codifiediin 44 U.S.C. § 3512. Only those persons who refuse to comply with a collection of informati_on can raise the public protection 'provision as in SacoRiver Cellular, Inc. v. FCC, 133 F.3d. 25, 28 *(D.cl* Cir. 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 express language of the contract *is* so critically flawed that it fails to create an obligation binding on the obligor. "

The bond contract:clearly requires that'the obligor deliver the alien into the custody of the,Service upon demand. Delivery/bonds are violated if the obligorfails'to cause the bonded alien Ito be produced or to produce himself/herself to an immigration offi¢er 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).

3. The Form 1-340 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. .1

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. 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; 1

(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 bOIldmay 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.'

Cont'ained in the record is a certified mail receipt which indicates that the Notice to Deliver Alien was sent to the obligor a [redacted]

[redacted] on December 29, 1999. This notice demanded that the obligor produce the bonded alien for removal on January 31, 2000. The receipt also indicates the obligor received notice to produce the bonded alien, on December 31, 1999. 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)*.

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 I-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 order dismissing the appeal will be withdrawn. The district director's decision declaring the bond breached will be withdrawn and the bond will be continued in full force and effect.

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