U.S. Department of Justice

. Immigration and Naturalization Service.

G-1

OFFICE OF ADMINISTRATIVE APPI
425 Eye Street N. W.
UILB. 3Td Floor
.. Washington, D. C. 20536

[redacted]

FILE: Date: AUG 2' 2000

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IN BEHALF OF OBUGOR: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. AU 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 inconsistellt 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 decisionthat the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i)1

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 originaliy decided your case'along with a fee of $110 as req ired under 8 C.F.R. 103.7,

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

The record indicates that on August 7, 1998 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 February 22, 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 8:00 a.m. on March 25, 1999 at [redacted] Houston, TX 77060. The obligor failed to present the alien, and the alien failed to appear as required. On March 27, 1999, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the Service is in violation of the [redacted] Settlement Agreement entered into on June 22, 1995, by the Immigration and Naturalization Service and Far West Surety Insurance Company by sending a Form 1-166 to the alien's last known address at the same time or prior to notifying the surety of its obligation. The obligor states that Service agreed that such notice will not be mailed to the alien before, and not less than 3 days after, the demand to produce the alien is mailed to the obligor.

On appeal, the obligor asserts that the breach notice sent to the obligor is deficient, void and subject to rescission as *it* fails to state a specific date of breach, reason therefore and/or date of breaching event. The breach notice present in the record contains all of that information. Although the bond was declared breached on March 27, 1999, for failure to present the alien for removal on March 25, 1999, the obligor still failed to present the alien on that date for removal and the bond was breachable on March 25, 1999 if the district director had not violated the terms of the [redacted] Agreement.

On appeal, the obligor asserts that the Attorney General's authority to detain an alien following a final order of removal is limited to a period of 90-days following a final order of removal. The obligor states that the Service's 90-day period expired on April 29, 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, 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. 8C.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. l03.6(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 personallYi.1

(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;1

(iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in. chargei

(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 bortd may be accomplished by mail directed to him/her at the above address." In this case, the Form 1-352 listed 412 E. Commercial Street Los Angeles, CA 90012 as the obligor's aadress.

Contained in the .record is a certified mail receipt 'which indicates that the Notice to Deliver Alien was sent to the obligor at [redacted] Los Angeles, CA 90012 on February 22, 1999. This notice eman e ,that .the obligor produce the. bonded alien for removal on March 25, 1999. The receipt also indicates that the obligor received notice to produce the bonded alien on February 26, 1999. Consequently, the record clearly establishes that the district director properly served notice on the obligor in compliance with B C.F.R. 103.Sa(a) (2) (iv).

Section 241(a) (1) of the Act, 8 U.S.C. 1231(a} (1), was added by § 305 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRlRA) and was effective on April 1, 1997. It superseded former § 242{c}of the Act, B U.S.C. 1252(c)], and provides, in part:

(A) When an alien is ordered removed, ... the Attorney General shall remove the alien from the' United States within a period of 90 days (in this section referred to as the ll removal periodll)

(B) The removal period begins on the latest of the following:'

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a 'stayof .the

removai of 'the alien, the'date of the court's final order.

(iii) If the .alien is detained -or_confined! (except under an immigration process), the date the alien is released from detention or confinement.,

*(C)* The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal' subject to an order of removal.

The Service record - shows that removal- proceedings were held *in absentia* on september 10, 1998 and the alien was ordered removed from the United States to El Salvador. No appeal appears to have been taken from that decision. On February 22, 1999, the district director exercised his authority to determine custody status by directing the obligor to produce the bonded alien for removal on March 25, 1999. However, the obligor failed to'present the/alien and the alien failed to appear for removal, thus preventing the district director from effecting the alien's removal.

In Bartholomeu v. INS, 487 F. Supp. 315 (D. Md. 1980), the judge stated regarding former § 242 (c) of the Act that, although the statute limited the Attorney General's authority to detain an' alien after a six-month period following the entry _of an order of removal, the period has been extended where the delay in effecting removal arose not from any dalliance on the part of the Attorney General but from the alien'S own resort to delay or avoid removal.

Present § 241 (a) (I) *(C)* of the Act gives the ,Attorney - General authority to detain an alien for a period of 90:days from the date of final order of removal for the purpose of effecting removal, and was intended to give the Attorney General specific unhampered period of time within which to effect removal. The statute also provides for an extension of the removal period beyond the 90-day period of *time* and, following Bartholomeu, will be deemed to;lstart running when the alien is apprehended and otherwise available for actual'removal. The Attorney General has never had her unhampered and unimpeded 90-day period in which to effect the alien's timely removal because the alien failed to appear for removal and remains 'a fugitive.

In th Settlement Agreement, _the Service agreed that a Form e er would not be mailed to the alien's lastjknown 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 the same day-as the notice to surrender, February 22,

1999. ThdiS notice stateld thlatdarrangemenhts have been made for tlhe alien's eparture to ESa va or on Marc 25, '1999. Consequent y, the record clearly establishes that the Form 1-166. letter was mailed less than 3 days after the notice to surrender was mailed. Since the district director violated the [redacted] Settlement Agreement, the decision declaring the bond breached will be withdrawn, and the bond will be continued in full force and effect.

**ORDER:** The appeal is sustained. The decision declaring the bond breached is withdrawn, and the bond is continued in full force and effect.