



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: [Redacted] Office: El Paso

Date: OCT 12 2000

IN RE: Obligor: [Redacted]
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 OBUGOR: [Redacted]



Public Copy
Identifying data is to be removed to prevent clearly unnecessary 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.

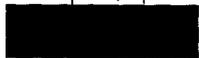
If you believe the law was inappropriately applied or the analysis used in reaching the decision is inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such motion must state the reasons for reconsideration and be supported by any pertinent precedent 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. 1.3.5(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.

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,
IMMIGRATION AND NATURALIZATION SERVICE

Terrance M. O'Reilly, Director
Administrative Appeals Office



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

The record indicates that on July 2, 1999 the obligor posted a \$7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated September 27, 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 on October 26, 1999.

at [redacted] The obligor failed to present the alien, and the alien failed to appear as required. On March 1, 2000, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the district director erred in breaching the bond because: (1) he did not notify the obligor of all hearings in the alien's case, and (2) he sent the alien notice to appear for removal (Form I-166), contrary to Service regulations.

In a supplementary brief, counsel for the obligor states that there are at least three reasons why the Administrative Appeals Office should sustain this appeal:

1. Form I-352 (Rev. 5/27/97) is unenforceable because the Service failed to obtain the required OMB approval prior to using this form.

The Immigration Bond (Form I-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 I-352 falls under the PRA. In stating that the Form I-352 is unenforceable because the Service did not seek approval for the Form I-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. Supp 409 (E.D.N.Y. 1991).

The PRA only protects the public from failing to provide information to a government agency. Here, the obligor failed to file the information requested on Form I-352, therefore, the obligor cannot avail himself of the affirmative defense provided in 44 U.S.C. § 3512. Only those persons who refuse to comply with a collection of information can raise the public protection provision as in Saco River Cellular, Inc. v. FCC, 133 F.3d 25, 28 (D.D. 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 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. 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 a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the notice to surrender.

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;

(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 him/her at the above address. In this case, the Form I-352 listed [redacted] TX [redacted] as the obligor's address.

Contained in the record is a certified mail receipt which indicates that the [redacted] deliver Alien was sent to the obligor at [redacted] TX 77002 on September 27, 1999. This notice demanded that the obligor produce the bonded alien for removal on October 26, 1999. The receipt also indicates the obligor received notice to produce the bonded alien on September 30, 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).

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 bond agreement is silent as to any requirement compelling the Service to notify the obligor of all bond-related matters, despite counsel's assertion to the contrary. Similarly, neither the statute, the regulations nor administrative case law provide support for counsel's allegation that the Service is required to notify the obligor of all bond-related matters.

Counsel states that the obligor has been relieved from liability on the bond because the Service sent the alien a notice to appear for removal on Form I-166. Counsel 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.

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 later, 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 February 28, 2000. This notice stated that arrangements have been made for the alien's departure to El Salvador on March 27, 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.

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)

Pursuant to 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 properly completed questionnaire would be attached to all Form 1-340s (Notices to Surrender) going to the obligor on a surety bond. The failure to attach the questionnaire would result in rescission of any breach related to that Form 1-340. A properly completed questionnaire must include a copy of any picture of the alien found in the Service file.

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. The district director's decision declaring the bond breached will be rescinded and the bond will be continued in full force and effect.

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

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