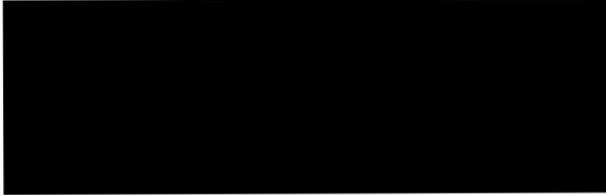




U.S. Department of Justice
Immigration and Naturalization Service

GI

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



FILE: [Redacted] Office: Los Angeles Date:

IN RE: Obligor: [Redacted]
Bonded Alien: [Redacted]

OCT 31 2000

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 Identifying code inserted to prevent clearly unwarranted 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 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

Terrence M. O'Reilly, Director
Administrative Appeals Office

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

The record indicates that on September 21, 1998 the obligor posted a \$3,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated March 14, 2000 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 Service) for removal at 10:00 a.m. on May 23, 2000 at 300 North Los Angeles Street, Room 7621, Los Angeles, CA 90012. The obligor failed to present the alien, and the alien failed to appear as required. On June 6, 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.

On appeal, counsel requests an additional 60 days in which to file a written brief after the receipt of the alien's file pursuant to the filing of a Freedom of Information Act (FOIA) request and states that the facts of the case, and the law applicable thereto, are complicated.

It should be noted that the facts present in the case at hand are similar not only to numerous cases already presented to the Associate Commissioner by the obligor on previous appeals but to a myriad of similar cases adjudicated by the Associate Commissioner since the inception of the Office of Administrative Appeals in 1983. Therefore, the request is denied.

Pursuant to the agreement between Amwest Surety Insurance Company and the Service, entered into on June 22, 1995 by the Service and Far West Surety Insurance Company, a properly completed questionnaire must be attached to all Form I-340's (Notices to Surrender) going to the obligor on a surety bond. The present record contains evidence that 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] as 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] on March 14, 2000. This notice demanded that the obligor produce the bonded alien for removal on May 23, 2000. The receipt also indicates the obligor received notice to produce the bonded alien on March 24, 2000. 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.

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 asserts that this is contrary to current Service regulations.

Form I-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 I-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 I-166 letter was sent to the alien's last known

address on March 14, 2000. This notice stated that arrangements have been made for the alien's departure to [REDACTED] on June 13, 2000. Consequently, the record clearly establishes that the Form I-166 letter was mailed less than 3 days after the notice to surrender was mailed.

Based on the provisions of the Amwest/Reno Settlement Agreement and the fact that the record shows that a Form I-166 letter was mailed on the same day as the notice to appear 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.