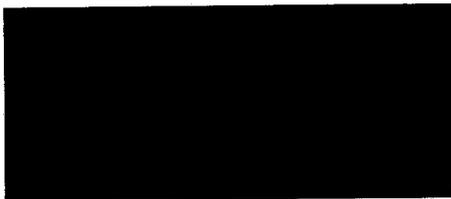




U.S. Department of Justice .
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
7LLB, Jrd Floor
Washington, D.C. 20536



FILE: [Redacted] Office: Dallas Date: **SEP 14 2000**

INRE: 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 OBLIGOR:
[Redacted]

Public Copy

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
E TrONS

[Signature]
Terence 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, Dallas, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record indicates that on July 21, 1998 the obligor posted a \$1,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated September 1, 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 Service) for removal at 10:00 a.m. on October 6, 1999 at [redacted]. The obligor failed to present the alien, and the alien failed to appear as required. On October 21, 1999, 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 two 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 did file the information requested on Form I-352, therefore, the obligor cannot avail himself of the affirmative defense provision codified 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 BacD River Cellular, Inc. v. FCC, 133 F.3d. 25, 28 (D.C. Cir., 1999). 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.

Although the district director sent a questionnaire with a prior notice to appear for hearing on July 28, 1998, the record fails to contain evidence that a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the present 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. 1461 (Reg. Comm. 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. B.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 address."

In this case, the Form I-352 listed [REDACTED] 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 'September' 1, 1999. This notice
g p ce the bonded alien for removal on
October 6, 1999. The receipt Iso indicates the obligor received
notice to produce the bond d alien on September 13, 1999.
consequently, the record clearly establishes that the notice was
properly served on the obli or in compliance with 8 C.F.R.
103.5a{a} (2) (iv) .

Furthermore, it is 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 u til removal proceedings are either
finally terminated or the ali n is accepted by: the Service for
detention or removal.

Counsel states that the obligor as been relieved from liability on
the bond because the Service se t the alien a notice to appear for
removal on Form 1-166. The obli or states that this is contrary to
current Service regulations.

Form I-166 has not been requir since July 25, 1986 which is the
effective date of an amendmen 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 a alien that he or she has exhausted
all due process and appeals a d is subject to a final order of
removal; does not relieve the obligor from its obligation to fulfill
the terms of the bond agreement.

Pursuant to the [redacted] en into on
June 22, 1995 by e ervice and [redacted]
the Service agreed that a properly completed questionnaire would be
attached to all Form 1-340s (N tices to Surrender) going to the
obligor on a surety bond. The f ilure to attach the questionnaire
would result in rescission of ny breach related to that Form 1-
340. A properly completed quest onnaire must include a copy of any
picture of the alien found in t e Service file.

Based on the provisions of the [redacted] and the fact that
the record fails to show that [redacted] eted questionnaire
was sent to the obligor, the ppeal will be sustained and the
district director's decision declaring the bond breached will be
rescinded and the bond will be' ontinued in full force and effect.

ORDER: The appeal is tained. The district
director's decision declaring the 'borid
breached is rescin ed and the bond is
continued in full for e and effect.-