



U.S. Department of Justice
Immigration and Naturalization Service

GI

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

[Redacted]

Public Copy

FILE: [Redacted] Office: Harlingen

Date: **SEP 12 2000**

INRE: 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 OBUGOR:

[Redacted]

Identifying data deleted 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 **o f f i c e . . .**

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

Terrance M. O'Reilly

Terrance M. O'Reilly, Director
Administrative Appeals Office

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

The record indicates that on November 2, 199B 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 May 3, 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 June 5, 2000 at **PISSPC, Route 3, Box 341, Los Fresnos, TX. 7B566.** The obligor failed to present the alien, and the alien failed to appear as required. On June 8, 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 1-166), 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 1-352 (Rev. 5/27/97)N is unenforceable because the Service failed to obtain the required OMB 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, 76B 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 1-352, 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 Saco River Cellular, Inc. v.FCC, 133 F.3d. 25, 28 (D.C. Cir.

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 May 3, 2000. This notice demanded that the obligor produce the bonded alien for removal on June 5, 2000. The receipt also indicates the obligor received notice to produce the bonded alien on May 5, 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. 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.

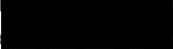
Counsel states that the obligor has been relieved from liability on the bond because the Service sent the alien a notice to appear for removal on Form I-166. Counsel states that this is contrary to current Service regulations.

Form 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 [REDACTED] Agreement, entered into on June 22, 1995 by the Service and [REDACTED], 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 June 8, 2000. This notice stated that arrangements have been made for the alien's departure to Honduras on July 10, 2000. Consequently, the record clearly establishes that the Form I-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).



After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the district director will not be disturbed.

ORDER: The appeal is dismissed.

