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U.S. Department of Justice  
Immigration and Naturalization Service

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



FILE: [Redacted] Office: Oakdale

Date: JUL 11 2001

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

IMMIGRATION BOND: Bond Conditioned for Voluntary Departure under Section 240B  
of the Immigration and Nationality Act, 8 U.S.C. 1230B

IN BEHALF OF OBLIGOR: Self-represented

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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The voluntary departure bond in this matter was declared breached by the District Director, Oakdale, Louisiana, and is now before the Associate Commissioner for Examinations on appeal. The appeal has been filed by an attorney whose standing in this proceeding has not been demonstrated by the filing of a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28), and who appears to represent the bonded alien. The bonded alien and the alien's attorney are without standing in this proceeding. See Matter of Insurance Company of North America, 17 I&N Dec. 251 (Act. Reg. Comm. 1978). However, in the interest of due process, the case will be considered on certification pursuant to 8 C.F.R. 103.4. The appeal will be sustained. The district director's decision declaring the bond breached will be rescinded, and the bond will be cancelled.

The record indicates that on December 7, 2000, the obligor posted a \$7,500 bond for the voluntary departure of the above referenced alien based on the December 6, 2000, decision of an immigration judge who granted the alien until January 22, 2001, to depart voluntarily in lieu of removal. On March 19, 2001, the district director informed the obligor that the voluntary departure bond had been breached after failing to receive satisfactory evidence of that departure.

On certification, it is noted that a Warrant of Removal was issued in behalf of the bonded alien and he was removed from the United States on March 27, 2001.

Pursuant to the [REDACTED] Settlement Agreement, entered into on June 22, 1995, by the Service and [REDACTED] if the Service receives notice from either another law enforcement agency or a bond obligor that the former is detaining a bonded alien, the Service is required to place a detainer on the alien within 30 days of the notice. If the Service does not comply with this requirement, it must cancel the bond. Any subsequent attempt to breach the bond will be unenforceable and subject to rescission. This requirement applies regardless of whether the detention is the result of a conviction, or of pretrial detention. The only exception is when the Service attempts to place a detainer within 30 days but finds that the other law enforcement agency has already released the alien.

The Agreement also contains a separate, independent provision stating that "as a matter of policy, the Service may not declare...an immigration bond breached when the bonded alien was in the custody of another law enforcement agency on the date of the alleged breaching event." Unlike the provisions relating to detainers, this policy applies regardless of whether the Service had notice of the alien's being in custody. When the Service does not receive the notice until after it has breached the bond, it shall rescind. Rescission of the breach under these facts is mandatory, but they do not require cancellation of the bond unless they also involve a failure to file a detainer as discussed above.

The record contains evidence that on January 10, 2001, a judge ordered the bonded alien to be placed in custody until at least February 12, 2001, to allow for the completion of a pre-sentence investigation. This judicial order prevented the bonded alien from departing voluntarily by the scheduled date. Although the record fails to show whether the Service received such notice, there is no evidence in the record to show that the Service placed a detainer on the bonded alien. Therefore, the bond must be cancelled.

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

**ORDER:** The appeal is sustained. The district director's decision declaring the bond breached is rescinded, and the bond is cancelled.