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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: Harlingen

Date:

IN RE: Obligor:
Bonded Alien:



MAR 26 2001

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: Self-represented

Public Copy

Identification data deleted to prevent identity and contact information 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

Robert J. Wiemann, Acting 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 sustained.

The record indicates that on May 23, 2000 the obligor posted a \$2,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) was sent to the obligor via certified mail on November 21, 2000 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 December 21, 2000 at PISPC, Route 3, Box 341, Buena Vista Road, Los Fresnos, TX 78566. The obligor failed to present the alien and the alien failed to appear as required. The district director subsequently informed the obligor that the delivery bond had been breached.

On appeal, the obligor submits copies of documents certified by a Service officer as having seen the originals which reflect that the bonded alien departed from the United States July 16, 2000 and appeared before a Service officer at the U.S. Embassy in Honduras on November 28, 2000 to verify his departure.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced to the immigration officer upon each and every proper demand served upon the obligor, until deportation proceedings are finally terminated, or until the alien is actually accepted by the immigration officer for detention and deportation. Matter of Smith, 16 I&N Dec. 146 (Reg. Comm. 1977).

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).

The Service has held that an alien who departs from the United States prior to the date demanded for surrender may be in substantial compliance with the terms of his delivery bond. Matter of Don Donaldson's Key Bail Service, 13 I&N Dec. 563 (Acting Reg. Comm. 1969). However, the burden is upon the alien or his surety to prove by probative evidence that the alien did leave the country prior to his surrender date. Matter of Peerless Insurance Company, 15 I&N Dec. 133 (Reg. Comm. 1974).

A physical verification of departure by an immigration officer at the port of departure, or a verification of the alien's presence in the foreign destination by a United States consular officer or immigration officer abroad, is required to verify departure. Whether together or separate, Forms I-94 and departure manifests submitted by a transportation line are insufficient verification of departure for bond cancellation purposes.

The Service will accept a document signed by an embassy official, consular officer, or Service officer abroad, and bearing an appropriate seal or other indicia of reliability as proof that a voluntary departure or self-removal has occurred. The district director retains the discretion to accept other documents of voluntary departure. The original of such document[s] may be delivered [either] by the surety or through diplomatic channels. Copies of such documents will be accepted only if received through diplomatic channels.

After a careful review of the record, it is concluded that the bonded alien departed from the United States prior to his surrender date. Consequently, the appeal will be sustained. The bond will be cancelled and the collateral will be returned.

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