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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: El Paso

Date: MAR 27 2001

IN RE: Obligor:
Bonded Alien:



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

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.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The record indicates that on June 16, 1997 the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated November 28, 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 1:30 p.m. on December 12, 2000 at 1545 Hawkins Boulevard, 1st Floor, El Paso, TX 79925. The obligor failed to present the alien, and the alien failed to appear as required. On December 14, 2000, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that it caused the alien to appear and to surrender himself on January 4, 2001 and he was accepted by a Service officer. The obligor states that the breach was minimal and merely a technical violation. The obligor asserts that there has been a substantial performance of all conditions imposed by the terms of the bond and the bond should be cancelled.

It should be noted that 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 pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the Service and Far West Surety Insurance Company.

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. 146 (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. 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. 103.6(c)(3) provides 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(e) provides that a bond is breached when there has been "substantial violation of the stipulated conditions of the bond." "Substantial

performance" exists where there has been no willful departure from the terms or conditions of a bond, where the conditions have been honestly and faithfully complied with and the only variance from their strict and actual performance consists of technical or unimportant occurrences. "Substantial violation" exists where there is a willful departure from the terms or conditions of the bond or the failure to comply or adhere to the essential elements of those terms or conditions. See Matter of Nguyen, 15 I&N Dec. 176 (Reg. Comm. 1975); Matter of Arbelaez-Naranjo, 18 I&N Dec. 403 (Reg. Comm. 1983).

Where there is a variance from the strict and literal performance of the conditions of a delivery bond, an obligor must establish substantial performance which is of benefit to the government. Proceedings regarding administrative cancellation of removal before a district director or the Board of Immigration Appeals are set forth by regulation. See 8 C.F.R. 241.6.

In Matter of Allied Fidelity Insurance Company, 19 I&N Dec. 124 (Comm. 1984), it was held that determining whether a violation is "substantial" within the meaning of 8 C.F.R. 103.6(e) requires consideration of the following factors:

- (a) Extent of the breach;
- (b) Whether the violation was intentional or accidental on the part of the alien;
- (c) Whether the actions which constitute the violation were committed in good faith; and
- (d) Whether the alien took steps to made amends, or to put himself in compliance.

Following the guidelines contained in Matter of Allied Fidelity Insurance Company, supra, the violation was intentional because the bonded alien absconded and made the demand upon him impossible by his own actions. See Matter of S-, 3 I&N Dec. 813 (C.O. 1949). The alien's actions were not committed in good faith and he failed to take steps to put himself in compliance.

According to the obligor, the alien in this matter was returned to Service custody on January 4, 2001 following the specified surrender date. Such action demonstrates a complete absence of good faith on the part of the bonded alien as held in Matter of Allied Fidelity Insurance Company, supra.

The Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the Service and Far West Surety Insurance Company contains a mitigation clause which provides that an exception occurs when the obligor or surety delivers the bonded alien within varying increments of the 30 calendar day period following the date of the bond breach. The date of the bond breach is the day that the

obligor is ordered to surrender the alien and not the date on which the bond breach notice is issued. In the present matter, the obligor was ordered to surrender the alien on December 12, 2000. The obligor failed to do that and the bond was breached on that same date, December 12, 2000. However, the alien was surrendered within 30 days of the surrender date and the bond principal may be mitigated.

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] El Paso, TX 79901 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] El Paso, TX 79901 on November 28, 2000. This notice demanded that the obligor produce the bonded alien for removal on December 12, 2000. The receipt also indicates the obligor received notice to produce the bonded alien on November 30, 2000. Consequently, the record clearly establishes that the district director properly served notice 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.

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 December 13, 2000. This notice stated that arrangements have been made for the alien's departure to Mexico on January 4, 2001. 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.