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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

[Redacted]

FILE [Redacted] Office: Newark

Date: OCT 15 2001

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

IMMIGRATION BOND: Bond Conditioned for the Maintenance of Status and Departure of an Alien under Section 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,
EXAMINATIONS

Robert P. Wiemann

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The maintenance of status and departure bond in this matter was declared breached by the District Director, Newark, New Jersey, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be granted and order dismissing the appeal will be withdrawn.

The record indicates that on October 27, 1994, the obligor posted a \$3,000 bond for maintenance of status and departure (MS&D) of nonimmigrant alien. The applicant was paroled into the United States on November 19, 1994, for humanitarian reasons for one year with authorized extensions being granted until November 13, 1998. On August 19, 1998, the applicant filed an application to register permanent residence or adjust status, and she was interviewed on November 19, 1999. Her status was adjusted to that of lawful permanent resident on January 5, 2000.

The district director determined that the alien had violated the conditions of the bond and declared the bond breached. The Associate Commissioner affirmed that decision on appeal.

On appeal, counsel refers to Matter of Kubacki, 18 I&N Dec. 43 (Reg. Comm. 1981) where the Regional Commissioner held that if a nonimmigrant alien does not commit substantial violation of the terms of the bond, the bond should be cancelled and not breached.

MS&D bonds are violated if the alien fails to comply with all the conditions of the status accorded and fails to depart from the United States without expense thereto and before the date to which authorization is granted.

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 and the alien does not commit a "substantial violation." 8 C.F.R. 103.6(c)(2). 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).

Counsel states that in Matter of Kubacki, the Regional Commissioner referred to a test for evaluating substantiality as set out in International Fidelity Insurance Company v. Crosland, 490 F.Supp 446 (S.D.N.Y. 1980), to wit:

1. Extent of breach (how many days overstayed),
2. Whether it was intentional or accidental on the part of the alien;
3. Whether it was in good faith;
4. Whether the alien took steps to make amends or to put himself in compliance.

The record reflects that the applicant applied for a one-year extension of her parole on November 5, 1997, supported by evidence of her medical condition. However, she failed to receive any

response from the Service. If she would have been granted an extension of her parole, it would have been valid until November 13, 1998.

Prior to the above date of November 13, 1998, the applicant filed her application to register permanent residence or adjust status on August 19, 1998. Acknowledging the fact that the applicant was paroled into the United States for medical reasons, it is concluded that she would have been granted an extension of her parole. The record is silent as why the Service failed to respond to that request. Following Matter of Nguyen, 15 I&N Dec. 176 (Reg. Comm. 1975), the applicant filed her application to register permanent residence or adjust status believing that her request for extension of parole until November 13, 1998, was still pending adjudication. There is no evidence to show that the Service denied her request to extend the parole. Therefore, it is concluded that the application was filed while the bonded alien was still in lawful status, and the bond should be cancelled.

Upon review of this matter and the criteria set out in Kubacki, it is determined that the alien has not substantially violated the conditions of the bond, and the order dismissing the appeal will be withdrawn.

ORDER: The order of April 23, 2001, dismissing the appeal is withdrawn, and the bond is cancelled.