



U.S. Department of Justice

Immigration and Naturalization Service

Handwritten initials

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



FILE:  Office: Dallas

Date: OCT 15 2001

IN RE: Obligor:
Bonded Alien:



IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under Section 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.

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 delivery bond in this matter was declared breached by the Acting District Director, Dallas, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal has been filed by an attorney 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 record indicates that on August 10, 1999, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 9, 2000, was allegedly sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to the Immigration and Naturalization Service (the Service) for removal at 9:00 a.m. on September 15, 2000, at 8101 North Stemmons Freeway, Dallas, TX 75247. The obligor failed to present the alien, and the alien failed to appear as required. On December 19, 2000, the acting district director informed the obligor that the delivery bond had been breached.

On appeal, it is asserted that the obligor never received the notice to surrender. It is suggested that it stretches logic to suggest that the obligor deliberately avoided claiming the notice to surrender but then claimed the notice of bond breach. It is suggested that the notice was lost in the mail or, perhaps, inadvertently never mailed. It is noted that the alien's wife, the obligor, is a lawful permanent resident, suffers from multiple sclerosis and is unable to effectively speak or walk.

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, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by the Service for detention or removal. 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).

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 3042 Storey Lane, Dallas, TX 75220 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 3042 Storey Lane, Dallas, TX 75220 on August 9, 2000. This notice demanded that the obligor produce the bonded alien for removal on September 15, 2000.

The record contains a certified receipt which is undated and fails to contain a recipient's signature. Further, the record does not contain the envelop in which the notice was mailed to see if the postal service made any annotations on it. Consequently, the record fails to establish that the district director properly served notice on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

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

ORDER: The appeal is sustained. The district director's decision declaring the bond breached is withdrawn, and the bond is continued in full force and effect.