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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: New York

Date: OCT 19 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.

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 delivery bond in this matter was declared breached by the District Director, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record indicates that on January 12, 1996, the obligor posted a \$2,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated June 3, 1997, 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 9:00 a.m. on August 5, 1997, at 26 Federal Plaza, Room 12-110, 12th Floor, New York, NY 10278. The obligor failed to present the alien, and the alien failed to appear as required. On July 6, 1998, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the district director failed to provide notice to the bonding company of each and every appearance or hearing required of the alien. The obligor argues that while the Form I-352 stipulates the obligor shall cause the alien to be produced to an immigration officer, it does not specify any particular district or officer.

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).

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).

As provided by 8 C.F.R. 103.5a(a)(2), 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 302 Nolana, McAllen, Texas 78504 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 302 Nolana, McAllen, Texas 78504 on June 3, 1997. This notice demanded that the obligor produce the bonded alien for removal on August 5, 1997. Contrary to the obligor's claims on appeal, the receipt also indicates the obligor received notice to produce the bonded alien on June 25, 1997. 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. The bond agreement is silent as to any requirement compelling the Service to notify the obligor of all bond-related matters, despite the obligor's assertion to the contrary. Similarly, neither the statute, the regulations, nor administrative case law provide support for the obligor's allegation that the Service is required to notify the obligor of all bond-related matters.

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).

Additionally, while the obligor claims the Form I-352 does not reveal any requirement to produce the alien to any particular district or officer, there is no evidence the obligor requested a change in venue, or that the Service was even contacted to make other arrangements to produce the alien. Prior to the commencement of removal proceedings, the district director may determine where the hearing should be held. The place of the removal proceedings is a matter of venue rather than jurisdiction. Such hearings are usually held in the district of the alien's residence or place of arrest. See Matter of Smith, supra.

8 C.F.R. 3.14 states that jurisdiction vests and proceedings before an immigration judge commence when a charging document (Notice to Appear, Notice of Intention to Rescind, etc.) is filed with the Office of the Immigration Judge by the Service. 8 C.F.R. 3.20 provides that venue shall lie at the Office of the Immigration Judge where the charging document is filed. The immigration judge, for good cause, may change venue only upon motion by one of the

parties, after the charging document has been filed with the Office of the Immigration Judge. Venue in this matter is determined by regulation and not by addresses which appear on the face of the bond application.

Pursuant to the agreement between Amwest Surety Insurance Company and the Service, entered into on June 22, 1995, by the Service and Far West Surety Insurance Company, a properly completed questionnaire must be attached to all Form I-340's (Notices to Surrender) going to the obligor on a surety bond. Failure to attach the questionnaire would result in rescission of any breach related to that Form I-340 notice.

Based on the provisions of the Amwest Agreement and the fact that the record fails to show that a properly completed questionnaire was sent to the obligor, the appeal will be sustained. The district director's decision declaring the bond breached will be rescinded.

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