



U.S. Department of Justice

Immigration and Naturalization Service

prevent clearly unlawful
invasion of personal

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



GA

02 AUG 2002

FILE:



Office: Newark

Date:

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:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Director
Administrative Appeals Office

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

The record indicates that on August 2, 2000, 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 June 22, 2001, 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) at 9:00 a.m. on July 10, 2001, at 570 Hemisphere Center, 5th Floor, Room 512, Route 1 & 9 South, Newark, NJ 07114. The obligor failed to present the alien, and the alien failed to appear as required. On September 10, 2001, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the immigration judge administratively closed the case on June 7, 2001, as the alien "proved that he had been granted Temporary Protected Status..."

The present record indicates that the applicant's case was administratively closed by the immigration judge on June 7, 2001 because of a finding that the alien had filed for Temporary Protected Status. The record fails to contain evidence that, as a native and citizen of El Salvador, the applicant has been granted TPS. Further, a delivery bond remains in effect until removal proceedings are finally terminated or the alien is actually accepted for removal. Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. See Matter of Gutierrez-Lopez, 21 I&N Dec. 479 (BIA 1996).

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).

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 367 Henry Street, Fairview, NJ 07022 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 367 Henry Street, Fairview, NJ 07022 on June 22, 2001. This notice demanded that the obligor produce the bonded alien on July 10, 2001. However, the receipt indicates the obligor received notice to produce the bonded alien on July 11, 2001, after the surrender date. 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).

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