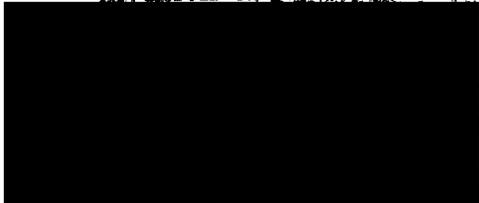


Department of Justice
Immigration and Naturalization Service

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



GI

FILE: [Redacted]

Office: New York

Date: AUG 02 2002

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, 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 April 18, 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 May 11, 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 10:00 a.m. on July 11, 2001, at 26 Federal Plaza, Room 12-110, New York, NY 10278. The obligor failed to present the alien, and the alien failed to appear as required. On August 17, 2001, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that a point of contact (POC) list was not provided as required by the Amwest/Reno Settlement Agreement, entered into on June 22, 1995, by the Service and Far West Surety Insurance Company.

The parties to the settlement agreement did not intend for the sending of a question or complaint to a POC to replace the existing procedures for filing either a motion for reconsideration with the office issuing a breach notice, or an appeal with the Administrative Appeals Office (AAO). It was their intent, however, to create both an alternative, informal procedure for resolution of questions relating solely to the implementation of the settlement agreement, and a procedure through which sureties could obtain general information about bond practices in a particular district. Thus, if an obligor's concern about the validity of a breach is based entirely on the settlement agreement, it is entitled to seek resolution through the appropriate POC without paying any filing fee. If the surety has filed, or subsequently files, either a motion for reconsideration, or an appeal with the AAO on the same issue as that presented to a POC, the POC shall have no obligation to respond to the surety, but may do so. Sureties may not use a question or complaint to a POC to challenge a decision made in response to either a motion for reconsideration or an appeal to the AAO.

Counsel has failed to establish that the alleged unavailability of a POC was responsible for the obligor's failure to surrender the bonded alien upon demand.

On appeal, counsel states that the Service did not provide the obligor with a questionnaire and photograph.

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 525 Penn Street, Suite 200, Reading, PA 19601 as the obligor's address.

On appeal, counsel states that the obligor was not provided with advance notice of hearings and orders to appear for removal which substantially interferes with the obligor's ability to monitor the alien and produce him upon receipt of the Form I-340.

The record fails to contain the certified mail receipt to indicate that the Notice to Deliver Alien was sent to the obligor at 525 Penn Street, Suite 200, Reading, PA 19601 on May 11, 2001, or to indicate that the obligor had received the notice to produce the bonded alien on July 11, 2001. 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 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.