G1

U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

FILE: [redacted] Office: Miami Date: AUG 03 2002

IN RE: Obligor:
Bonded Alien: [redacted]

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:

[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.

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, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record indicates that on August 5, 1988, the obligor posted a $25,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated December 19, 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 February 8, 2002, at 7880 Biscayne Blvd, 8th Floor, Room 800, Miami, FL 33138. The obligor failed to present the alien, and the alien failed to appear as required. On March 15, 2002, the district director informed the obligor that the delivery bond had been breached. [It is noted that the district director made a typographical error on the date of the Form I-323; the demand month should have read December rather than January].

On appeal, among other arguments, counsel asserts that the bond in this case was written 13 years ago. Counsel argues that the obligor cannot be held responsible to deliver the alien after such a long period of time has elapsed.

Section 241(a)(1) of the Act, 8 U.S.C. 1231(a)(1), was added by section 305 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and was effective on April 1, 1997. It superseded former section 242(c) of the Act, 8 U.S.C. 1252(c) and changed the six-month period of time to 90 days.

Section 241(a)(1) of the Act, 8 U.S.C. 1231(a)(1), provides, in part:

> When a final order of removal under administrative processes is made against any alien, the Attorney General shall have a period of 90 days from the date of such order, or if judicial review is had, then from the date of the final order of the court, within which to effect the alien's departure from the United States, during which period, at the Attorney General's discretion, the alien may be detained, released on bond in an amount and containing such conditions as the Attorney General may prescribe, or released on such other conditions as the Attorney General may prescribe.

The record reflects that deportation proceedings were held and the alien was ordered deported by the immigration judge on May 12, 1993. On May 25, 1993, the bonded alien appealed the judge's decision to the Board of Immigration Appeals (BIA). The BIA upheld the decision to deport the alien on May 19, 1997. Because there is no evidence that the alien departed from the United States, the district director exercised his authority to determine custody

status by directing the obligor to produce the bonded alien for removal.

As noted previously, the Notice to Deliver Alien was issued by the district director on December 19, 2001. The director has exercised his authority outside of the 90 day period during which he had the statutory authority to detain the alien pursuant to section 241(a)(1) of the Act. As such, the breach is not valid. Therefore, the district director's decision to breach the bond will be withdrawn.

ORDER: The appeal is sustained. The bond is cancelled.