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U.S. Department of Justice
Immigration and Naturalization Service

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



FILE: [Redacted] Office: Denver Date: **AUG 03 2002**

IN RE: Obligor: [Redacted]
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 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, Denver, Colorado, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record indicates that on November 6, 2001, 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 February 13, 2002, was 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 10:00 a.m. on March 14, 2002, at 4730 Paris Street, Denver, CO 80239. The obligor failed to present the alien, and the alien failed to appear as required. On April 1, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that according to the "FOIR [sic] hotline," the alien's case is still pending and his next hearing is scheduled for June 20, 2002.

The Service record shows that removal proceedings were held in absentia on January 24, 2002, and the alien was ordered removed from the United States. On February 13, 2002, the district director exercised his authority to detain and remove the alien by directing the obligor to produce the bonded alien for removal on March 14, 2002. The obligor failed to present the alien and the alien failed to appear for his removal.

A motion to reopen was filed which was subsequently granted by the EOIR on March 14, 2002. On June 20, 2002, the alien was granted voluntary departure on or before September 18, 2002 with an alternate order of removal in the event the alien fails to depart as required. No voluntary departure bond was set by the court. These proceedings were scheduled and decided after the alien failed to appear for his removal on March 14, 2002, and do not negate the bond breach that occurred on that date.

On appeal, counsel asserts that the director failed to provide the obligor with a properly completed questionnaire.

The questionnaire form states in part that it is to be completed on the basis of information available. As there is no evidence in the record to suggest the applicant had been detained by a penal, mental, or other institution, subsequent to posting of the bond, counsel's assertion on appeal is moot. It is noted that the questionnaire did include the bonded alien's identity information (name, A-number, 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, 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 525 Penn Street, Suite 200, Reading, PA 19601 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 525 Penn Street, Suite 200, Reading, PA 19601 on February 13, 2002. This notice demanded that the obligor produce the bonded alien for removal on March 14, 2002. The receipt also indicates the obligor received notice to produce the bonded alien on February 19, 2002. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

On appeal, counsel asserts that the Form I-166 dated February 13, 2002 was mailed to the alien on the same date as the Form I-340 Notice to Deliver Alien in violation of the Amwest/Reno Settlement Agreement.

The record indicates that a courtesy copy of the Form I-166 letter was mailed to the obligor along with the Form I-340. The record further indicates that the original Form I-166 was mailed to the alien on February 19, 2002 via certified mail, in compliance with

the terms of the Amwest/Reno Settlement Agreement. The Form I-166 was received by the alien on February 20, 2002.

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.

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 dismissed.