

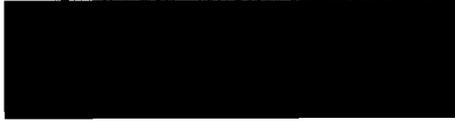


U.S. Department of Justice

Immigration and Naturalization Service

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



GI

FILE: [Redacted] Office: Harlingen Date: 14 AUG 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, Harlingen, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record indicates that on November 13, 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 April 12, 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) at 10:00 a.m. on May 13, 2002, at 2102 Teege Avenue, Harlingen, TX 78550. The obligor failed to present the alien, and the alien failed to appear as required. On June 3, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that removal proceedings were held in the applicant's case, but the Service waited over fourteen months to execute the order.

The Service record shows that removal proceedings were held in absentia on March 5, 2001, and the alien was ordered removed from the United States. No appeal appears to have been taken from that decision.

In Bartholomeu v. INS, 487 F. Supp. 315 (D. Md. 1980), the judge stated regarding former section 242(c) of the Act that, although the statute limited the Attorney General's authority to detain an alien after a six-month period (at that time) following the entry of an order of removal, the period has been extended where the delay in effecting removal arose not from any dalliance on the part of the Attorney General but from the alien's own resort to delay or avoid removal. The Attorney General has never had his unhampered and unimpeded six-month period in which to effect the alien's timely removal because the alien failed to appear for removal and remains a fugitive.

Present section 241(a) (1) (C) of the Act gives the Attorney General authority to detain an alien for a period of 90 days from the date of final order of removal for the purpose of effecting removal, and was intended to give the Attorney General specific unhampered period of time within which to effect removal. The statute also provides for an extension of the removal period beyond the 90-day period of time and, following Bartholomeu, will be deemed to start running when the alien is apprehended and otherwise available for actual removal.

On appeal, counsel states that the bonded alien is a national of El Salvador. Counsel opines that the bonded alien may be eligible for Temporary Protected Status. Jurisdiction over such a determination lies with the Service or the immigration judge, not the obligor for the alien's delivery bond. Counsel has not submitted evidence that the bonded alien has been granted Temporary Protected Status by

either the Service or an immigration judge. Counsel's opinion of the bonded alien's eligibility for an immigration benefit has no effect on the obligation of the obligor to produce the bonded alien on demand.

It is noted that the present record contains evidence that a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995, by the Service and Far West Surety Insurance Company.

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 April 12, 2002. This notice demanded that the obligor produce the bonded alien on May

13, 2002. The receipt also indicates the obligor received notice to produce the bonded alien on April 16, 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).

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.