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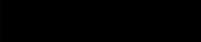
U.S. Department of Justice

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: 

Office: New Orleans (MEM)

Date: JUL 19 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: The obligor appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered, but the decision will be furnished only to the obligor.

**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, New Orleans, Louisiana, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record indicates that on July 10, 2001, the obligor posted a \$2,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 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) for removal at 9:00 a.m. on October 2, 2001, at 1341 Sycamore View Road, Suite 100, Memphis, TN 38134. The obligor failed to present the alien, and the alien failed to appear as required. On January 15, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the alien departed the United States on October 2, 2001 to Canada. The obligor provides a copy of a Notice of Determination of Eligibility to the Convention Refugee, Form IMM 1442 (08-1998) B AQ from the Canadian Immigration.

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 [REDACTED] as the obligor's address.

The record fails to contain the certified mail receipt to indicate that the Notice to Deliver Alien was sent to the obligor at [REDACTED] on August 22, 2001, or to indicate that the obligor had received the notice to produce the bonded alien on October 2, 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).

The Service has held that an alien who departs from the United States prior to the date demanded for surrender may be in substantial compliance with the terms of his delivery bond. Matter of Don Donaldson's Key Bail Service, 13 I&N Dec. 563 (Acting Reg. Comm. 1969). However, the burden is upon the alien or his surety to prove by probative evidence that the alien did leave the country prior to his surrender date. Matter of Peerless Insurance Company, 15 I&N Dec. 133 (Reg. Comm. 1974).

A physical verification of departure by an immigration officer at the port of departure, or a verification of the alien's presence in the foreign destination by a United States consular officer or immigration officer abroad, is required to verify departure.

The Service will accept a document signed by an embassy official, consular officer, or Service officer abroad, and bearing an appropriate seal or other indicia of reliability as proof that a voluntary departure or self-removal has occurred. The district director retains the discretion to accept other documents of voluntary departure. The original of such document[s] may be delivered [either] *by the surety* or through diplomatic channels. Copies of such documents will be accepted only if received through diplomatic channels.

The obligor asserts on appeal that the bonded alien has departed from the United States. However, this assertion is unsupported by any evidentiary documentation. The record does not contain a Notification of Departure-Bond Case (Form I-392) properly executed by a United States Embassy official, consular officer or immigration officer abroad and received through official channels indicating the bonded alien's departure from the United States prior to his surrender date. Furthermore, the name of the individual listed on the documentation, IMM 1442, from the Canadian Immigration Center does not relate to the alien at hand.

After a careful review of the record, it is concluded that the conditions of the bond have not been substantially violated to cause the collateral to be forfeited. The appeal will be sustained, and the decision of the district director will be withdrawn.



**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.