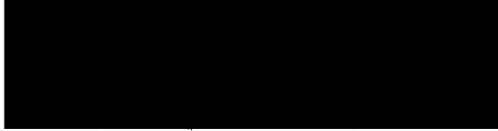




Department of Justice
Immigration and Naturalization Service

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

Handwritten note: "Handwritten note: Case closed in court clearly..."



GI

FILE: [Redacted] Office: Houston

Date: 02 JUN 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 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 E. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Houston, Texas, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be granted. The Associate Commissioner's order dismissing the appeal will be withdrawn and the prior appeal will be sustained. The district director's decision declaring the bond breached will be withdrawn and the bond will be continued in full force and effect.

The record indicates that on August 25, 1998, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated July 19, 1999, 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 10:00 a.m. on August 16, 1999, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On September 24, 1999, the district director informed the obligor that the delivery bond had been breached.

On motion, counsel disagrees with the Associate Commissioner's decision to deny him additional time in which to prepare and file a brief upon receipt of a copy of the Service file.

On motion, counsel states that the legal issues in this case are as follows:

1. Form I-352 is unenforceable because the Service failed to obtain the required OMB approval prior to using this form.

The Immigration Bond (Form I-352) is a collection of information as defined by the Paperwork Reduction Act (PRA), 5 C.F.R. 1320.3(3)(c). The Service is an agency for the purposes of the PRA and the Form I-352 falls under the PRA. In stating that the Form I-352 is unenforceable because the Service did not seek approval for the Form I-352 after its prior approval lapsed, counsel ignores the provision of the whole law and its plain meaning.

The PRA was intended to rein agency activity by not burdening the public, small businesses, corporations and other government agencies to submit information collection requests on forms that do not display control numbers approved by the Office of Management and Budget (OMB). The plain meaning of the PRA makes it clear that a person who fails to comply with a collection of information will not be subject to any penalty. See U.S. v. Burdett, 768 F. Supp. 409 (E.D.N.Y. 1991).

The PRA only protects the public from failing to provide information to a government agency. Here, the obligor did file the information requested on Form I-352, therefore, the obligor cannot avail himself of the affirmative defense provision codified in 44

U.S.C. § 3512. Only those persons who refuse to comply with a collection of information can raise the public protection provision as in Saco River Cellular, Inc. v. FCC, 133 F.3d. 25, 28 (D.C. Cir. 1998). See also U.S. v. Spitzauer, where the U.S. Court of Appeals for the Ninth Circuit stated that the public protection provision is limited in scope and only protects individuals who fail to file information. (1999 US App Lexis 6535).

2. The Form I-340 surrender notice is null and void because, contrary to the Amwest Settlement and nationwide Service directive, the Service did not attach a questionnaire to the surrender demand.

The present record fails to contain 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 agreement between Amwest Surety Insurance Company and the Service, a properly completed questionnaire must be attached to all Form I-340's (Notices to Surrender) going to the obligor on a surety bond. Failure to attach the questionnaire would result in rescission of any breach related to that Form I-340 notice.

Based on the provisions of the Amwest Agreement and the fact that the record fails to show that a properly completed questionnaire was sent to the obligor, the order dismissing the appeal will be withdrawn. The district director's decision declaring the bond breached will be withdrawn and the bond will be continued in full force and effect.

ORDER: The order of March 10, 2000 dismissing the appeal is withdrawn. The district director's decision declaring the bond breached is withdrawn and the bond is continued in full force and effect.