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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

FILE: [redacted] Office: Baltimore Date: 24 JUN 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, Baltimore, Maryland, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record indicates that on August 14, 2001, the obligor posted a $3,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated February 5, 2002, 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 8:00 a.m. on February 19, 2002. [redacted] The obligor failed to present the alien, and the alien failed to appear as required. On March 5, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the director did not provide the obligor with a photograph of the alien, and 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 and A-number). Furthermore, the Amwest/Reno Settlement Agreement does not require that the Service provide a photograph of the alien to the obligor; only a properly completed questionnaire. If a photograph is available, the photo is sent to the obligor along with the questionnaire. The Settlement Agreement requires the Service to send a questionnaire, but does not provide that the failure to provide a photograph along with the questionnaire warrants cancellation of the bond.

On appeal, counsel asserts that the obligor has not yet received a response to its FOIA request.

The alleged failure of the Baltimore District office to respond to the obligor's FOIA request has no bearing in this matter as bond proceedings are separate and apart from any other proceedings. Furthermore, the mere filing of a FOIA request does not excuse the obligor from delivering the alien as demanded.

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).

 [redacted]

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] 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 February 5, 2002, or to indicate that the obligor had received the notice to produce the bonded alien on February 19, 2002. 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).

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 sustained. The district director's decision declaring the bond breached is rescinded and the bond is continued in full force and effect.