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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: New York

Date: 20 MAR 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: SELF-REPRESENTED

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

The record indicates that on January 14, 1999, 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 March 29, 2001, 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 9:00 a.m. on May 16, 2001, at 26 Federal Plaza, Room 12-110, 12th Floor, New York, NY 10278. The obligor failed to present the alien, and the alien failed to appear as required. On August 13, 2001, the district director informed the obligor that the delivery bond had been breached.

On appeal, among other arguments, counsel asserts that the district director erred in breaching the bond because he did not make a timely demand for the alien to be surrendered.

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).

Section 241(a)(1) of the Act, 8 U.S.C. 1231(a)(1), was added by section 305 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and was effective on April 1, 1997. It superseded former section 242(c) of the Act, 8 U.S.C. 1252(c) and changed the six-month period of time to 90 days.

Section 241(a)(1) of the Act, 8 U.S.C. 1231(a)(1), provides, in part:

When a final order of removal under administrative processes is made against any alien, the Attorney General shall have a period of 90 days from the date of such order, or if judicial review is had, then from the date of the final order of the court, within which to effect the alien's departure from the United States, during which period, at the Attorney General's discretion, the alien may be detained, released on bond in an amount and containing such conditions as the Attorney General may prescribe, or released on such other conditions as the Attorney General may prescribe.

The record reflects that removal proceedings were held on June 15, 2000. The district director's authority to detain the bonded alien expired on September 13, 2000. The Notice to Deliver Alien demanded that the obligor surrender the bonded alien on May 16, 2001. Therefore, the district director's decision to breach the bond will be withdrawn.

ORDER: The appeal is sustained. The bond is cancelled.