

61

U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[REDACTED]

DEC 29 2003

FILE: [REDACTED] Office: Houston

Date:

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

ON BEHALF OF OBLIGOR:

[REDACTED]

Notice of Privacy Rights
Your privacy is important to us. We are committed to protecting your personal information. For more information, please see the Privacy Policy on our website.

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 Citizenship and Immigrations Services (CIS) 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the bond continued in full force and effect.

The record indicates that on February 29, 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 September 19, 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 (legacy INS), now Immigration and Customs Enforcement (ICE), at 10:00 a.m. on October 18, 2001, at [REDACTED] Houston, TX 77060. The obligor failed to present the alien, and the alien failed to appear as required. On May 15, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the immigration judge entered an order of removal on September 5, 2000. Counsel further argues that because ICE made no attempt to execute this order for 13 months, it lost detention authority over the alien and the bond should be canceled.

The record reflects that a removal hearing was held on December 5, 2000 and the alien was ordered removed in absentia.

In *Bartholomeu v. INS*, 487 F. Supp. 315 (D. Md. 1980), the judge stated regarding former section 242(c) of the Immigration and Nationality Act (the Act) that, although the statute limited the authority of the Attorney General, now the Secretary, Department of Homeland Security (Secretary), to detain an alien after a six-month period (at that time) following the entry of an order of removal, the period had 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 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 remained a fugitive.

Present section 241(a)(2) of the Act, 8 U.S.C. § 1231(a)(2), gives the Secretary authority to physically 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 Secretary a specific unhampered period of time within which to effect removal. Section 241(a)(1)(C) of the Act, 8 U.S.C. § 1231(a)(1)(C), specifically provides for an extension of the removal period beyond the 90-day period when the alien conspires or acts to prevent his own removal. As the alien in this case failed to appear for the removal hearing, the Secretary's detention authority is suspended, and, following *Bartholomeu*, will be deemed to start running when the alien is apprehended and otherwise available for actual removal.

On appeal, counsel argues that a loss of detention authority requires cancellation of the delivery bond. As noted above, the Secretary maintains detention authority in this case, as the alien failed to appear for her removal hearing and to surrender to ICE for removal. We will nevertheless fully address counsel's arguments below.

The AAO has continually held that the Secretary's authority to maintain a delivery bond is not contingent upon his authority to detain the alien.

The obligor is bound by the terms of the contract to which it obligated itself. Under the terms of the Form I-352 for bonds conditioned upon the delivery of the alien, the obligor contracted to "cause the alien to be produced or to produce himself/herself . . . upon each and every written request until *exclusion/deportation/removal proceedings . . . are finally terminated.*" (Emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

Recent cases make it clear that detention authority is not the sole determining factor as to whether ICE can require a delivery bond. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court expressly recognized the authority of the legacy INS to require the posting of a bond as a condition of release after it lost detention authority over the alien, even though a bond was not provided as a condition of release by the statute. In *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002), the court held the legacy INS had the authority to require a \$10,000 delivery bond in a supervised release context even though it did not have detention authority.

The bond contract provides that it may be canceled when (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by ICE for detention or deportation/removal; or (3) the bond is otherwise canceled. The circumstances under which the bond may be "otherwise canceled" occur when the Secretary or the Attorney General imposes a requirement for another bond, and the alien posts such a bond, or when an order of deportation has been issued and the alien is taken into custody. As the obligor has not shown that any of these circumstances apply, the bond is not canceled.

Counsel alternatively argues that the obligor is entitled to cancellation of the bond for equitable reasons, as the delay in action after the removal order prejudices the obligor's ability to perform. As stated in the preceding paragraph, the obligor is bound under the terms of the contract to deliver the alien until the bond is canceled or breached.

The agreement entered into on June 22, 1995 by the legacy INS and

Amwest Surety Insurance Company (the Amwest/Reno Settlement Agreement) provides at Paragraph 9:

[ICE] agrees that no Form I-323, Notice - Immigration Bond Breached, shall be sent to the obligor more than 180 days following the date of the breach. If the I-323 is not sent to the obligor within 180 days following the date of the breach, then the declared breach shall be stale and unenforceable against the obligor.

As noted previously, the record indicates that the Form I-323, Notice - Immigration Bond Breached dated November 17, 2001, was sent to the obligor on May 15, 2002. This notice was sent to the obligor based upon the obligor's failure to produce the bonded alien on October 18, 2001.

As the district director delayed notification of the bond breach in violation of the conditions of the aforementioned Amwest/Reno Settlement Agreement, the breach is not valid. The appeal is sustained.

ORDER: The appeal is sustained. The bond will be continued in full force and effect.