



GI

U.S. Department of Justice
Immigration and Naturalization Service

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

PUBLIC COPY



FILE [redacted] Office: Dallas

Date: FEB 11 2003

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:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

The record indicates that on July 19, 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 October 18, 1999, 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) at 8:00 a.m. on November 16, 1999, at 8101 N Stemmons Freeway, Dallas, TX 75247. The obligor failed to present the alien, and the alien failed to appear as required. On November 18, 1999, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the denial of the alien's request for a change of venue caused him to miss his court date due to financial reasons. Counsel requests that the bond be canceled as there has not been a substantial violation of the terms of the bond as provided in 8 C.F.R. 103.6(e) because there has been no willful departure from the terms or conditions of the bond.

Counsel's contentions were addressed in Matter of Allied Fidelity Insurance Company, 19 I&N Dec. 124 (Comm. 1984), where it was held that failure of the obligor to surrender the alien as required is not a mere technical or unimportant occurrence. The Commissioner held that both the obligor and the alien bear a responsibility to comply with the terms and conditions of the bond. It was held that determining whether a violation is "substantial" within the meaning of 8 C.F.R. 103.6(e) requires consideration of the following factors:

- (a) Extent of the breach;
- (b) Whether the violation was intentional or accidental on the part of the alien;
- (c) Whether the actions which constitute the violation were committed in good faith; and
- (d) Whether the alien took steps to made amends, or to put himself in compliance.

The failure of the alien to seek an administrative stay of deportation from either the district director or the Board of Immigration Appeals is ample evidence that the conditions of the bond were not accidentally violated.

Following the guidelines contained in Matter of Allied Fidelity Insurance Company, the violation was intentional because the bonded alien in this matter absconded and made the demand upon him impossible by his own actions. See Matter of S-, 3 I&N Dec. 813

(C.O. 1949). The alien's actions were not committed in good faith, and he failed to take steps to put himself in compliance. According to the obligor, the alien failed to stay in communication with the obligor and to keep the obligor updated as to his whereabouts. Such action demonstrates a complete absence of good faith on the part of the bonded alien as held in Matter of Allied Fidelity Insurance Company.

The record reflects that there has been a willful departure from the terms or conditions of the bond and the obligor's failure to deliver the alien at the scheduled time and place is not a mere technical or unimportant occurrence.

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, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by the Service 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 3550 N. Central Avenue, Suite 1700, Phoenix, AZ 85012 as the obligor's address.

The record fails to contain the domestic return receipt to indicate that the Notice to Deliver Alien was sent to the obligor at 3550 N. Central Avenue, Suite 1700, Phoenix, AZ 85012 on October 18, 1999,

or to indicate that the obligor had received the notice to produce the bonded alien on November 16, 1999. 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).

Because the record fails to establish proper service of the Form I-340 on the obligor as required, the appeal will be sustained. The district director's decision declaring the bond breached will be rescinded and the bond will be continued in full force and effect.

ORDER: The appeal is sustained. The district director's decision declaring the bond breached is withdrawn, and the bond is continued in full force and effect.