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U.S. Department of Justice

Immigration and Naturalization Service

**PUBLIC COPY**

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

[Redacted]

FEB 11 2003

FILE [Redacted]

Office: San Antonio

Date:

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]

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

The record indicates that on November 23, 2001, the obligor posted an \$8,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 16, 2002, 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 9:00 a.m. on September 16, 2002, at 8940 Fourwinds Drive, Room 2063, 2nd Floor, San Antonio, TX 78239. The obligor failed to present the alien, and the alien failed to appear as required. On October 28, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel argues that failing to state a purpose for a surrender demand is an incorrect statement of purpose and, therefore, the bond breach is invalid under the Amwest/Reno Settlement Agreement.

The obligor is not relieved of its responsibility to deliver and surrender the bonded alien at the time and place specified in the district director's demand notice. The instruction is not an incorrect or inconsistent statement of purpose. The district director may call the alien in for an interview or custodial determination at any time.

On appeal, counsel asserts that the alien was granted voluntary departure on November 13, 2001. Counsel indicates that the obligor does not know whether the immigration judge set a voluntary departure bond, whether the alien posted such a bond or whether the alien has departed the United States. Counsel states that one of these events constitutes sufficient grounds for sustaining the appeal and canceling the bond.

Counsel provides documentation developed by the INS Office of General Counsel (OGC) that states a delivery bond must be canceled if an immigration court grants voluntary departure in a removal proceeding without the requirement of a voluntary departure bond and without setting other conditions on the grant of voluntary departure. The Administrative Appeals Office has held in a precedent decision that OGC memoranda are merely opinions. OGC is not an adjudicative body and is in the position only of being an advisor; as such, adjudicators are not bound by OGC recommendations. See 8 C.F.R. 103.1(b)(1), Matter of Izummi, 22 I&N Dec. 169 (Comm. 1998). Further, the Administrative Appeals Office is not bound to follow Service policy that violates procedure established by statute or regulation. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

The record reflects that a removal hearing was held on November 13, 2001, and the alien was granted voluntary departure from the United States on or before March 13, 2002, with an alternate order of removal to take effect in the event that the alien failed to depart as required. The court did not order the alien to post a voluntary departure bond. The alien was ordered to post a custody bond no later than November 23, 2001.

Voluntary departure may be granted by the Service or by the immigration court under prescribed conditions set forth in the statute at section 240B of the Act, 8 U.S.C. 1229c, and by regulation at 8 C.F.R. 240.25 and 8 C.F.R. 240.26. Under the provisions of section 240B of the Act, 8 U.S.C. 1229c and 8 C.F.R. 240.26(d), when an immigration court grants a request for voluntary departure, the immigration judge also enters an alternate order of removal to take effect in the event the alien fails to depart as required. The Service, not the immigration court, is statutorily responsible for removing the alien whose order of voluntary departure becomes a final removal order. Section 241 of the Act, 8 U.S.C. 1231. Removal proceedings are not over until the Service has discharged this statutory responsibility. The statute does not extinguish the delivery bond on an alien who remains free to choose whether to voluntarily depart the United States, or to remain in the United States in violation of the order.

The delivery bond will not be canceled until it is replaced by another type of bond to ensure the alien's departure, such as a voluntary departure bond, or under the terms of the bond, until proceedings have terminated or the alien is accepted for removal. As the bonded alien is still in the United States, removal proceedings are not over, and the delivery bond remains in effect.

It is noted that the present record contains 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 Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the Service and Far West Surety Insurance Company.

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 525 Penn Street, Suite 200, Reading, PA 19601 as the obligor's address.

The evidence of record indicates that the Notice to Deliver Alien dated August 16, 2002 was sent to the obligor at 525 Penn Street, Suite 200, Reading, PA 19601 on August 19, 2002 via certified mail. This notice demanded that the obligor produce the bonded alien on September 16, 2002. The domestic return receipt, however, indicates the obligor received notice to produce the bonded alien on September 17, 2002, a day after the surrender date. 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.