



U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

GI

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

[REDACTED]

FILE: [REDACTED]

Office: Harlingen

Date:

FEB 13 2008

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]

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Harlingen, Texas. A subsequent appeal was dismissed by the Associate Commissioner, Examinations. The matter is now before the Associate Commissioner on a motion to reconsider. The motion is granted. The decision of the Associate Commissioner will be affirmed.

The record indicates that on December 21, 2001, 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 April 8, 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 10:00 a.m. on May 8, 2002, at 2102 Teege Avenue, Harlingen, TX 78550. The obligor failed to present the alien, and the alien failed to appear as required. On May 20, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor stated that the Harlingen District Director failed to attach a properly completed questionnaire and a photograph of the alien to the I-340 Notice to Deliver Alien as required by the *Amwest v. Reno Settlement Agreement* entered into June 22, 1995 between the Service and the Amwest and Far West Surety Insurance Companies (Settlement Agreement).

The Associate Commissioner, Examinations, through the Director, Administrative Appeals Office (AAO), ruled in a decision dated September 5, 2002 that the completed questionnaire complied with the terms of the Settlement Agreement. The AAO further concluded that the obligor was bound by the terms of the bond contract to surrender the alien upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted for detention or removal.

On motion, counsel for the obligor again states that the questionnaire was incomplete, as the section on "miscellaneous issues" was not filled out and a photograph of the alien was not provided. Counsel argues that the failure to complete all sections invalidates the bond breach, because it does not comply with the Settlement Agreement.

Counsel indicates:

I am attaching a questionnaire brief which is a history of the I-340 questionnaire and the requirements under *Amwest I*, *Amwest II*, and many INS memorandums, wires and training materials dedicated to this particular issue. They make it clear that each District must attach a properly completed and a photograph, if available (or otherwise state "none is available"), to each I-340 at the time they send it to the surety. An improperly completed questionnaires without the photograph does not satisfy the *Amwest Settlements'* requirements.

Counsel further indicates that these materials were the basis for extensive INS training in the field.

It is noted that counsel for the obligor is quite familiar with the cited materials, as he helped to write them and to train INS field personnel on the implementation of the Settlement Agreement when he worked as an associate in the INS Office of General Counsel immediately before representing the bonding company. Counsel, however, fails to submit the INS memoranda, wires and training materials to support his arguments. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The Settlement Agreement, Exhibit F, provides that "a questionnaire prepared by the surety with approval of INS will be completed by INS whenever a demand to produce a bonded alien is to be delivered to the surety. The completed questionnaire will be certified correct by an officer of the INS delivered to the surety with the demand." The INS is in compliance with the Settlement Agreement when the questionnaire form is provided to the obligor with the alien's identifying information, such as his or her name, alien number and if available, a photograph. The Settlement Agreement does not require each section to be filled out. The obligor has not alleged or established any prejudice resulting from the Service's failure to complete each section. More importantly, failure to complete each section does not invalidate the bond breach.

Training materials written by counsel for the obligor when he was an associate in the INS Office of General Counsel are not binding on the Service. Memoranda issued by the Office of General Counsel are advisory in nature 8 C.F.R. § 100.2(1). Internal memoranda routinely issued by the Service to guide the field offices in implementing the Settlement Agreement do not have the force of law.

The obligor is bound by the terms of the bond contract to surrender the alien upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted for detention or removal.

Under the provisions of the Immigration Bond Form I-352, the obligor agrees to produce the alien upon demand until: (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by the INS for detention or deportation/removal; or (3) the bond is canceled for some other reason. The obligor is relieved of its contractual responsibility to deliver the alien only if one of these enumerated circumstances has occurred. As the obligor has not shown any of the above occurrences, the bond breach resulting from the obligor's failure to produce the alien on May 8, 2002 is valid.

The decisions of the district director and the Associate Commissioner will not be disturbed.



ORDER: The decision of the Associate Commissioner dated September 5, 2002 is affirmed.