



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

[Redacted]

FILE:

[Redacted]

Office: Miami

Date:

FEB 14 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:

[Redacted]

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, Miami, Florida. 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 will be granted. The decision of the Associate Commissioner will be affirmed.

The record indicates that on December 1, 2000, the obligor posted a \$7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated March 13, 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 April 2, 2002, at 7880 Biscayne Blvd., Room 800, Miami, FL 33138. The obligor failed to present the alien, and the alien failed to appear as required. On May 6, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor stated that the Miami District Director failed to attach a properly completed questionnaire 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 August 29, 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 "criminal background/detention" was not filled out. 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 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 signed questionnaire to each I-340 at the time they send it to the surety. Improperly "completed" questionnaires that are not signed do 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.

On motion, counsel further indicates:

I am attaching a second brief that outlines in detail why the bond must be cancelled when the judge grants voluntary departure and does not require a voluntary departure bond to be set. I have also attached a second document relating to this issue that was distributed by the INS General Counsel throughout the Service as a training document reiterating this requirement.

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).

A removal hearing was held on October 11, 2001, and the alien was granted voluntary departure from the United States on or before February 11, 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 provide the Service, within 60 days, travel documentation sufficient to assure lawful entry into the country to which the alien was departing. The right of appeal was waived.

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.

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 April 2, 2002 is valid.

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

ORDER: The motion to reconsider is granted. The decision of the Associate Commissioner dated August 29, 2002 is affirmed.