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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



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

FILE:

Office: Dallas

Date:

FEB 27 2003

IN RE: Obligor:

Bonded Alien:



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: Self-represented

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.

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 Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on January 22, 2001, 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 September 17, 2002, 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 (the Service) at 10:00 a.m. on October 16, 2002, at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On October 16, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor states that he informed the alien to depart the United States. The obligor asserts "she is no longer here with me."

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 upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the immigration officer 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 evidence of record indicates that the Notice to Deliver Alien was sent to the obligor's counsel at [REDACTED] on September 17, 2002. This notice demanded that the obligor produce the bonded alien on October 16, 2002. The domestic return receipt indicates counsel received notice to produce the bonded alien on September 19, 2002. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

Furthermore, it is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to a Service officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by the Service for detention or removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by the Service for hearings or removal. Such bonds are necessary in order for the Service to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited their or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

The Service has held that an alien who departs from the United States prior to the date demanded for surrender may be in substantial compliance with the terms of his delivery bond. *Matter of Don Donaldson's Key Bail Service*, 13 I&N Dec. 563 (Acting Reg. Comm. 1969). However, the burden is upon the alien or his surety to prove by probative evidence that the alien did leave the country prior to his surrender date. *Matter of Peerless Insurance Company*, 15 I&N Dec. 133 (Reg. Comm. 1974).

A physical verification of departure by an immigration officer at the port of departure, or a verification of the alien's presence in the foreign destination by a United States consular officer or immigration officer abroad, is required to verify departure.

The Service will accept a document signed by an embassy official, consular officer, or Service officer abroad, and bearing an appropriate seal or other indicia of reliability as proof that a voluntary departure or self-removal has occurred. The district director retains the discretion to accept other documents of voluntary departure. The original of such documents may be delivered either by the surety or through diplomatic channels. Copies of such documents will be accepted only if received through diplomatic channels.

On appeal, the obligor appears to indicate that the bonded alien has departed from the United States. However, this assertion is unsupported by any acceptable evidentiary documentation. The record does not contain a Notification of Departure-Bond Case (Form I-392) properly executed by a United States Embassy official, consular officer or immigration officer abroad and received through official



channels indicating the bonded alien's departure from the United States prior to hers surrender date.

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the district director will not be disturbed.

ORDER: The appeal is dismissed.