



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: Buffalo

Date:

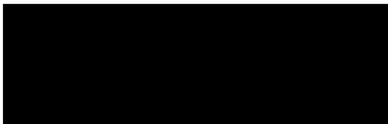
FEB 28 2003

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:



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

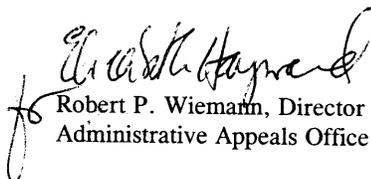
INSTRUCTIONS:

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the District Director, Buffalo, New York. A subsequent appeal was dismissed by the Administrative Appeals Office. The matter is now before the Administrative Appeals Office on a motion to reconsider. The motion will be granted. The decision of the Administrative Appeals Office will be affirmed.

The record indicates that on November 1, 2000, 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 March 20, 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 2:00 p.m. on March 29, 2002, at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On April 4, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that:

The AAO seems to assume that the only issue under the current law concerning voluntary departure is whether the alien departed the United States "as required." [The obligor] agrees that this question is one of the issues raised by a grant of voluntary departure, and expressly asked in its appeal that INS examine it's [sic] A-file to see if there were any evidence establishing that the alien timely departed. This assumption completely ignores the changes IIRIRA made in the law governing voluntary departure. These changes introduced other issues which the AAO failed to address.

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 (AAO) 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 August 15, 2001, and the alien was granted voluntary departure from the United States on or before December 13, 2001, 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 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 March 29, 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 AAO will not be disturbed.

**ORDER:** The motion to reconsider is granted. The decision of the AAO dated September 30, 2002 is affirmed.

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