



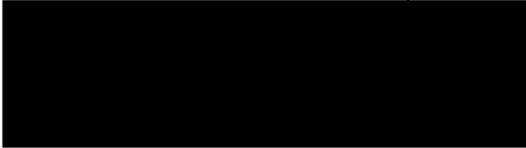
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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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



FILE: [Redacted] Office: Atlanta

Date: JAN 02 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.

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, Atlanta, Georgia, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record indicates that on March 17, 2000, the obligor posted a \$3,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated July 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 8:00 a.m. on August 1, 2002, at 77 Forsyth Street, Room 105, Atlanta, GA 30303. The obligor failed to present the alien, and the alien failed to appear as required. On August 22, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the bonded alien is a national of El Salvador. Counsel opines that the bonded alien is eligible for Temporary Protected Status (TPS). Counsel further states that a grant of TPS terminates INS detention authority and requires the cancellation of the bond.

Jurisdiction over whether an alien is eligible for TPS lies with the Service or the immigration judge, not the obligor for the alien's delivery bond. Counsel has not submitted evidence that the bonded alien has been granted Temporary Protected Status by either the Service or an immigration judge. Further a grant of TPS is temporary in nature. At the termination of TPS the alien will be required to leave the country. A delivery bond remains in effect until removal proceedings are finally terminated or the alien is actually accepted for removal.

On appeal, counsel asserts that immigration judge issued an order of removal on February 28, 2001; however, the Service waited seventeen months to attempt to execute the order. Counsel requests that the bond be cancelled.

The Service records show that removal proceedings were held in absentia on February 28, 2001, and the alien was ordered removed from the United States.

Section 241(a)(1) of the Act, 8 U.S.C. 1231(a)(1), was added by section 305 of IIRAIRA. Section 241(a)(1) provides generally that the Attorney General shall remove an alien from the United States within 90 days following the order of removal, with the 90-day period suspended for cause. Section 241(a)(2) envisions that during the 90-day period, the Attorney General shall exercise detention authority over the alien.

Removal proceedings do not end when the 90-day post-order detention period has expired. INA section 241(a)(3) provides that if an alien does not leave or is not removed during the 90-day period, the alien shall be subject to supervision under regulations prescribed

by the Attorney General. Posting of a bond may be authorized as a condition of release after the 90-day detention period. 8 C.F.R. section 241.5(b) provides that: "An officer authorized to issue an order of supervision may require the posting of a bond in an amount determined by the officer to be sufficient to ensure compliance with the conditions of the order, including surrender for removal." [The Attorney General also has authority to require the alien to post a bond in voluntary departure proceedings. See INA section 240B(a)(3), 8 U.S.C. section 1229c(a)(3) and INA section 240B(b)(3), 8 U.S.C. section 1229c(b)(3).] Thus, unlike in Shrode, the Attorney General has the continuing authority to require aliens to post bond following the 90-day post-order detention period.¹

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 will not be canceled.

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;

¹ / The Administrative Appeals Office acknowledges that it has rendered several recent decisions that did not take into account the statutory and regulatory language discussed in this section, and thus has made decisions contrary to the decision reached in this case. These decisions will be reopened on Service motion by the Associate Commissioner for entry of a new decision.

(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 407 Fannin St., Houston, TX 77002 as the obligor's address.

On appeal, counsel asserts that the obligor did not receive the Notice to Deliver Alien.

The record fails to contain the domestic return receipt to indicate that the Notice to Deliver Alien was sent to the obligor at 407 Fannin St., Houston, TX 77002 on July 17, 2002, or to indicate that the obligor had received the notice to produce the bonded alien on August 1, 2002. 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).

Pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995, by the Service and Far West Surety Insurance Company, the Service agreed that a properly completed questionnaire would be attached to all Form I-340s (Notices to Surrender) going to the obligor on a surety bond. The failure to attach the questionnaire would result in rescission of any breach related to that Form I-340. A properly completed questionnaire must include a copy of any picture of the alien found in the Service file.

Based on the provisions of the Amwest Agreement and the fact that the record fails to show that the Form I-340 and a properly completed questionnaire were sent to 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 rescinded and the bond is continued in full force and effect.