



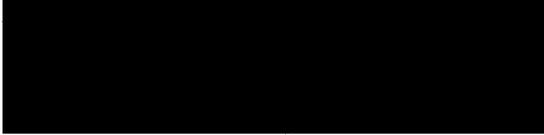
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U.S. Department of Justice

Immigration and Naturalization Service

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



FILE:



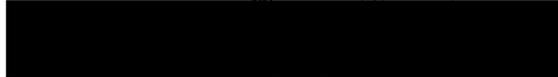
Office: San Antonio

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, San Antonio, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record indicates that on November 20, 1997, the obligor posted a \$3,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated September 24, 1998, 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) for removal at 10:00 a.m. on October 22, 1998, at 8940 Fourwinds Drive, Room 2063, 2nd Floor, San Antonio, TX 78239. The obligor failed to present the alien, and the alien failed to appear as required. On February 5, 1999, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the Attorney General's authority to detain an alien following a final order of removal is 90 days. Counsel states that the district director erred in breaching the bond because he did not make a timely demand for the alien to be surrendered.

The record reflects that removal proceedings were held on November 19, 1997, and the alien was granted voluntary departure until March 19, 1997. The proceedings further ordered that a voluntary departure bond be imposed in the amount of \$3,500. A voluntary departure bond was not posted, and the delivery bond remains in effect.

Section 241(a)(1) of the Act, 8 U.S.C. 1231(a)(1), was added by section 305 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (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.

On appeal, counsel asserts that the obligor has not yet received a response to its FOIA request.

The alleged failure of the San Antonio District Office to respond to the obligor's FOIA request has no bearing in this matter as bond proceedings are separate and apart from any other proceedings. Furthermore, the mere filing of a FOIA request does not excuse the obligor from delivering the alien as demanded.

On appeal, counsel indicates that the Service violated Exhibit "E" of the Settlement Agreement by failing to provide the bonded alien with instructions regarding voluntary departure procedures. Counsel contends that the bonded alien could have departed the United States and be unaware of his obligation to present himself at the Embassy.

The obligor's assertions on appeal are not substantiated by any independent, documentary evidence. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

It is noted that the present record contains evidence that a properly completed questionnaire was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement.

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, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by the Service for detention or removal. Matter of Smith, 16 I&N Dec. 146 (Reg. Comm. 1977).

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.

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:

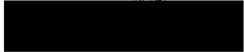
- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The 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 412 E. Commercial Street, Los Angeles, CA 90012 as the obligor's address.

The evidence of record indicates that the Notice to Deliver Alien was sent to the obligor at 412 E. Commercial Street, Los Angeles, CA 90012 on September 24, 1998 via certified mail. This notice demanded that the obligor produce the bonded alien on October 22, 1998. The domestic return receipt indicates the obligor received notice to produce the bonded alien on October 2, 1998. 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).

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).



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.