



67

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: Miami

Date:

JAN 06 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:



PUBLIC COPY

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 April 4, 2001, 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 December 17, 2001, 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 January 15, 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 February 21, 2002, the district director informed the obligor that the delivery bond had been breached.

On motion, counsel argues that the Associate Commissioner, Examinations, through the Director, Administrative Appeals Office (AAO), has completely ignored the issues raised in the obligor's appeal. Counsel states that the obligor, Capital Bonding Corporation, did not receive the Form I-340.

Counsel's assertion, however, is erroneous. The AAO ruled in a decision dated August 7, 2002 that the record indicated that the Notice to Deliver Alien was sent on December 17, 2001 by certified mail to the obligor at 525 Penn Street, Suite 200, Reading, PA 19601. The domestic return receipt indicates that the obligor received notice to produce the bonded alien on December 31, 2001. While not previously mentioned, on December 17, 2001, a copy of the Notice to Deliver Alien was also sent by certified mail to the obligor's agent, James K. Lawlor, at 525 Penn Street, Suite 200, Reading, PA 19601. The domestic return receipt indicates that the agent also received notice to produce the bonded alien on December 31, 2001.

Counsel further states that the AAO ignored the language in Exhibit G of the Amwest/Reno Settlement Agreement entered into on June 22, 1995 by the Service and Far West Surety Insurance Company. Counsel asserts that there is no exception for inadvertent errors to the provision that requires the Form I-340 to state the correct purpose for which the alien is to be produced.

Counsel is correct in that the Settlement Agreement requires the Form I-340 to state the correct purpose for which the alien is to be produced; the AAO language in the August 7, 2002 decision which suggests that the district director may have inadvertently indicated the alien was to surrender for an interview instead of for removal is misleading. The fact remains, however, that the district director was and is free to call the alien in for an interview to determine the alien's status prior to deportation.

The Settlement Agreement does not remove the district director's right to interview an alien at any time either prior to or following an order of deportation.

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 January 15, 2002 is valid.

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

ORDER: The motion to reopen is granted. The decision of the Associate Commissioner dated August 7, 2002 is affirmed.