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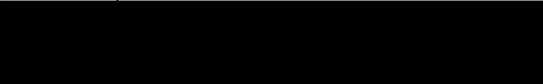
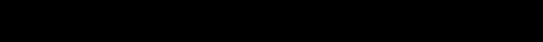
U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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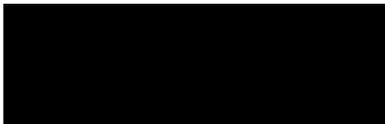


FILE:  Office: New York Date: **JAN 06 2003**

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, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record indicates that on June 8, 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 May 14, 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 9:00 a.m. on July 8, 2002, at 26 Federal Plaza, Room 9-110, 9th Floor, New York, NY 10278. The obligor failed to present the alien, and the alien failed to appear as required. On July 31, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the alien was granted voluntary departure on November 14, 2000. Counsel indicates that the obligor does not know whether the immigration judge set a voluntary departure bond, whether the alien posted such a bond or whether the alien has departed the United States. Counsel states that one of these events constitutes sufficient grounds for sustaining the appeal and canceling the bond.

The record reflects that a removal hearing was held on November 14, 2000, and the alien was granted voluntary departure from the United States on or before March 14, 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 alien was ordered to provide the Service, within 60 days, travel documentation sufficient to assure lawful entry into the country to which the alien was departing. The right of appeal was waived. The alien nevertheless appealed the decision. The Board of Immigration Appeals dismissed the appeal on April 18, 2002.

The Immigration and Nationality Act (INA) §240B provides the statutory framework for voluntary departure. An alien may receive voluntary departure before the immigration court either prior to the conclusion of removal proceedings under INA §240B(a), 8 U.S.C. 1229c(a), or at the conclusion of proceedings under INA §240B(b), 8 U.S.C. 1229c(b), if the alien meets the required statutory and regulatory conditions. See Matter of Arguelles, 22 I & N Dec. 811 (BIA 1999). When a court orders voluntary departure under INA §240B(a) and 8 C.F.R. 240.26(b), at or near the beginning of the proceedings, the court may impose conditions of departure, including the posting of a voluntary departure bond. If the court orders voluntary departure at the conclusion of the proceedings, a voluntary departure bond is required. INA §240B(b), 8 C.F.R. 240.26(c). If the court does not impose a voluntary departure bond, and does not order that the delivery bond be canceled, the delivery

bond remains in effect to ensure delivery of the alien who fails to depart as required.

It is noted that the present record contains evidence that a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the Service and Far West Surety Insurance Company.

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 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 525 Penn Street, Suite 200, Reading, PA 19601 as the obligor's address.

The evidence of record indicates that the Notice to Deliver Alien was sent to the obligor at 525 Penn Street, Suite 200, Reading, PA 19601 on May 14, 2002 via certified mail. This notice demanded that the obligor produce the bonded alien on July 8, 2002. The domestic return receipt indicates the obligor received notice to produce the bonded alien on May 22, 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).

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.