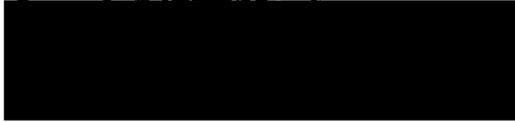




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U.S. Department of Justice
Immigration and Naturalization Service

identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy



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

FILE:

Office: Harlingen

Date:

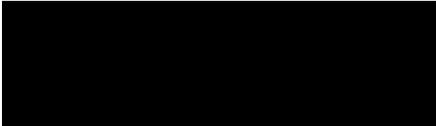
JAN 06 2003

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

The record indicates that on July 12, 2000, the obligor posted a \$2,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 13, 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 10:00 a.m. on September 18, 2002, at 2102 Teege Avenue, Harlingen, TX 78550. The obligor failed to present the alien, and the alien failed to appear as required. On September 26, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the immigration judge administratively closed the alien's case on May 17, 2001; however, the Service waited sixteen months to call the alien in for an interview. Counsel asserts that a delay of this length should require cancellation of the bond.

The present record indicates that the alien's case was administratively closed by the immigration judge on May 17, 2001 because of a finding that the alien was eligible for Temporary Protected Status (TPS). The record fails to contain evidence that, as a native and citizen of El Salvador, the alien has applied for and/or has been granted TPS. Counsel's argument that the delay is excessive ignores the plain language of the bond contract. In exchange for the alien's release, the obligor received a bond premium and agreed to monitor and produce the alien when called by the Service. A delivery bond remains in effect until removal proceedings are finally terminated or the alien is actually accepted for removal. Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. See Matter of Gutierrez-Lopez, 21 I&N Dec. 479 (BIA 1996).

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, 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).

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 [REDACTED] 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 August 13, 2002 via certified mail. This notice demanded that the obligor produce the bonded alien on September 18, 2002. The domestic return receipt indicates the obligor received notice to produce the bonded alien on August 16, 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.