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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

[Redacted]

FILE [Redacted] Office: New Orleans (MEM)

Date: JAN 10 2003

IN RE: Obligor: [Redacted]
Bonded Alien: [Redacted]

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:
[Redacted]

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

[Signature]

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, New Orleans, Louisiana, and the Associate Commissioner for Examinations sustained a subsequent appeal. The Associate Commissioner reopened the matter on a Service motion pursuant to 8 C.F.R. 103.5(a)(5)(ii), and notified the obligor of his intention to affirm the decision of the district director. The obligor timely submitted a response. The Order of the Associate Commissioner sustaining the appeal will be withdrawn. The district director's decision declaring the bond breached will be affirmed.

The record reflects that on January 23, 2001, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated January 7, 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 March 5, 2002 at 1341 Sycamore View Road, Suite 100, Memphis, TN 38134. The obligor failed to present the alien, and the alien failed to appear as required. On April 19, 2002, the district director informed the obligor that the delivery bond had been breached.

The Associate Commissioner incorrectly sustained the appeal, finding that the district director had notified the obligor to produce the alien outside of the 90-day period of detention authority. On motion, the Associate Commissioner determined that the bond breach was valid.

In his response to the Service motion, counsel for the obligor requests oral argument without specifically explaining the reasons why oral argument is necessary, as required by 8 CFR 103.3(b)(1). The request is denied.

Counsel argues that the Service's authority to maintain a delivery bond on an alien ceases by operation of law upon the expiration of the Attorney General's detention authority under section 241 of the Immigration & Nationality Act (the Act), 8 U.S.C. 1231. Counsel further argues that fairness dictates that the bond should be canceled when the Service waits more than 180 days to attempt to execute a deportation order. Counsel cites no law to support his argument. The maintenance of a delivery bond is not contingent upon the continuing authority of the Attorney General to detain an alien. The U.S. Supreme Court has indicated that a bond may be issued as a condition of an alien's release

under supervision following the expiration of the Attorney General's detention authority. *Zadvydas v. Davis*, 533 U.S. 678 (2001), *Doan v. Immigration & Naturalization Service*, No. 01-56784, 2002 WL 31667621, (9th Cir. September 10, 2002).

Counsel distinguishes supervision bonds from delivery bonds, and essentially argues that, as delivery bonds are extinguished upon the expiration of detention authority, the Attorney General should issue a supervision bond to replace the delivery bond. This distinction is without basis in law or fact.¹ The Attorney General contracted with the obligor under the terms of the delivery bond to ensure that the alien would be surrendered for any required appearances and ultimately, for removal. Under the provisions of the delivery bond contract, the obligor agreed to produce the alien upon demand until removal proceedings were finally terminated. As the alien is still at large, the bond will not be canceled.

In response to the Service motion, counsel also argues that the Attorney General does not have continuing authority to maintain a delivery bond over an alien who has been granted voluntary departure, without a voluntary departure bond or other conditions imposed by the immigration court, and who has not filed an appeal.² This argument is not supported by the statutory framework, which gives the Service continuing responsibility for the alien until he or she departs the United States. Section 241 of the Act, 8 U.S.C. 1231.

The record reflects that a removal hearing was held on July 16, 2001, and the alien was granted voluntary departure from the United States on or before November 13, 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, and did not set other conditions on the grant of voluntary departure. The alien waived the right of appeal. Counsel argues that in this circumstance, the Service

¹ The Form I-352 Immigration Bond has not been amended to reflect any difference between supervision bonds and delivery bonds. That a supervision bond contract has not been approved or published does not mean that the INS has no authority to issue or continue a delivery bond to ensure the appearance of an alien at a future hearing.

² This issue was previously raised on appeal, but was not addressed in the earlier decision because the Associate Commissioner sustained the original appeal; the issue will thus be addressed here.

lost detention authority over the alien, and the bond was canceled by operation of law.

Counsel provides documentation developed by the INS Office of General Counsel (OGC) stating that a delivery bond must be canceled if an immigration court grants voluntary departure in a removal proceeding without requiring a voluntary departure bond or setting other conditions on the grant of voluntary departure. The Administrative Appeals Office has held in a precedent decision that OGC memoranda are merely opinions. OGC is not an adjudicative body and is in the position only of being an advisor; as such, adjudicators are not bound by OGC recommendations. See, 8 CFR 103.1(b)(1), *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998). Further, the Administrative Appeals Office is not bound to follow Service policy that violates procedure established by statute or regulation. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

Voluntary departure may be granted by the Service or by the immigration court under prescribed conditions set forth in the statute at section 240B of the Act, 8 U.S.C. 1229c, and by regulation at 8 CFR 240.25 and 8 CFR 240.26. The statute and regulations do not mandate that a delivery bond be canceled when a court or the Service do not impose a voluntary departure bond or other conditions.

Under the provisions of section 240B of the Act, 8 U.S.C. 1229c, and 8 CFR 240.26(d), when an immigration court grants a request for voluntary departure, the immigration judge also enters an alternate order of removal to take effect in the event the alien fails to depart as required. The Service, not the immigration court, is statutorily responsible for removing the alien whose order of voluntary departure becomes a final removal order. Section 241 of the Act, 8 U.S.C. 1231. Removal proceedings are not over until the Service has discharged this statutory responsibility.

During the period of voluntary departure, the Service has no authority to physically detain the alien who complies with the immigration laws. Implicit in the voluntary departure order, however, is the Service's continuing authority to supervise the alien, and to detain the alien who violates the immigration laws, e.g. by working without employment authorization or by committing a crime. Section 236 of the Act, 8 U.S.C. 1226. Moreover, the Service has the ultimate statutory responsibility to remove the alien who fails to comply with the order of voluntary departure.

The statute does not extinguish the delivery bond on an alien who remains free to choose whether to voluntarily depart the United States, or to remain in the United States in violation of the order.

The delivery bond will not be canceled until it is replaced by another type of bond to ensure the alien's departure, such as by a voluntary departure bond or a supervision bond, or until proceedings have terminated or the alien is accepted for removal. A delivery bond, by its terms, remains in effect until removal proceedings are finally terminated or the alien is actually accepted for removal. As the bonded alien is still in the United States, removal proceedings are not over, and the delivery bond remains in effect.

ORDER: The order of August 3, 2002 sustaining the appeal is withdrawn. The district director's decision declaring the bond breached is affirmed.