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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

FILE: [redacted] Office: San Diego Date: JAN 1 0 2003

IN RE: Obligor:
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

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the District Director, San Diego, California, 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 March 8, 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 November 6, 2001 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 December 6, 2001 at 880 Front Street, Room 2242, San Diego, California 92101. The obligor failed to present the alien, and the alien failed to appear as required. On March 26, 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 of the matter without setting forth 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. Further, the delivery bond would not be canceled until it was replaced by another type of bond to ensure the alien's departure, such as a supervision bond or a voluntary departure bond, or until proceedings were terminated or the alien was accepted 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 objects to language in the August 30, 2000 decision sustaining the appeal with respect to the Attorney General's continuing authority to require delivery bonds when an alien has been granted voluntary departure. Counsel incorrectly indicates that the August 30, 2002 dismissed the appeal, as that decision sustained the appeal. As counsel concedes that the Associate Commissioner correctly adjudicated that the delivery bond should be maintained during the period of voluntary departure, this issue will not be addressed further.

**ORDER:** The order of August 30, 2002 sustaining the appeal is withdrawn. The district director's decision declaring the bond breached is affirmed.

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[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.