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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



FILE: [Redacted] Office: Miami

Date: JAN 10 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, and the Associate Commissioner for Examinations sustained a subsequent appeal. The matter will be reopened by the Associate Commissioner on a Service motion pursuant to 8 C.F.R. 103.5(a)(5)(ii).

The record reflects that on August 5, 1988, the obligor posted a \$25,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated December 19, 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 February 8, 2002 at 7880 Biscayne Blvd., 8th floor, Room 800, Miami, FL 33138. The obligor failed to present the alien, and the alien failed to appear as required. On March 15, 2002, the district director informed the obligor that the delivery bond had been breached. [It is noted that the district director made a typographical error on the Form I-323; the demand month should have read December rather than January].

The Associate Commissioner sustained the obligor's appeal, finding that the bond breach was not valid, as the district director had issued the Notice to Deliver Alien outside of the 90-day period of detention authority under section 241(a)(1) of the Immigration & Nationality Act (the Act). This decision did not take into account the legal authority of the Attorney General to require an alien to post a bond.

Under the terms of the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the Service and Far West Surety Insurance Company, the parties agreed that, pursuant to statute, the Attorney General's authority to detain an alien subject to a final order of deportation generally expires six months after the order of deportation becomes final. The parties, following the rule established by Shrode v. Rowoldt, 213 F.2d 810 (8th Cir. 1954), stipulated that the INS would cancel any bond which was not breached prior to the expiration of the six month period. This stipulation was based on former INA section 242(c), which was deleted by section 306 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), effective April 1, 1997. Because former INA section 242(c) no longer exists, this stipulation of the settlement agreement is no longer applicable.

Section 241(a)(1) of the Act, 8 U.S.C. 1231(a)(1), was added by section 305 of IIRAIRA. Section 241(a)(1) provides generally that the Attorney General shall remove an alien from the United States within 90 days following the order of removal, with the 90-day period suspended for cause. Section 241(a)(2) envisions that during the 90-day period, the Attorney General shall exercise detention authority over the alien.

Removal proceedings do not end when the 90-day post-order detention period has expired. INA section 241(a)(3) provides that if an alien does not leave or is not removed during the 90-day period, the alien shall be subject to supervision under regulations prescribed by the Attorney General. Posting of a bond may be authorized as a condition of release after the 90-day detention period. 8 C.F.R. 241.5(b) provides that: "An officer authorized to issue an order of supervision may require the posting of a bond in an amount determined by the officer to be sufficient to ensure compliance with the conditions of the order, including surrender for removal." The Attorney General also has authority to require the alien to post a bond in voluntary departure proceedings. See INA section 240B(a)(3), 8 U.S.C. 1229c(a)(3) and INA section 240B(b)(3), 8 U.S.C. 1229c(b)(3). Thus, unlike in Shrode, the Attorney General has the continuing authority to require aliens to post bond following the 90-day post-order detention period.

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 in this case, the bond will not be canceled.

Based on the statutory and regulatory provisions discussed above, the Associate Commissioner reopens the matter, withdraws the order of August 3, 2002 and proposes to affirm the district director's decision declaring the bond breached.

Pursuant to 8 C.F.R. 103.5(a)(5)(ii), the obligor is granted 30 days from the date of this notice, in which to submit a brief in response to the Service's determination.