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



FILE: [Redacted]

Office: San Diego

Date: JAN 21 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:



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
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 is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record indicates that on November 8, 2000, the obligor posted a \$7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated February 25, 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 9:00 a.m. on March 25, 2002, 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 April 11, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the Immigration Judge entered a final order of removal on January 8, 2001; however, the director waited over thirteen months to attempt to execute the order. Counsel asserts that such a delay raises questions as to whether the Service lost detention authority over the alien, and is therefore required to cancel the bond.

The Service records show that removal proceedings were held in absentia on January 8, 2001, and the alien was ordered removed from the United States.

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." 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.¹

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 occurred, the bond is still valid and binding. As the obligor has not shown any of the above occurrences, the bond will not be canceled.

It should be 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;

^{1/} The Administrative Appeals Office acknowledges that it has rendered several recent decisions that did not take into account the statutory and regulatory language discussed in this section, and thus has made decisions contrary to the decision reached in this case. These decisions will be reopened on Service motion by the Associate Commissioner for entry of a new decision.

(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 February 25, 2002 via certified mail. This notice demanded that the obligor produce the bonded alien on March 25, 2002. The domestic return receipt shows it was signed by a representative of Capital Bonding Corporation. 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.