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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[Redacted]

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

FILE:

[Redacted]

Office: San Diego

Date:

JAN 27 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*  
for 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 sustained.

The record indicates that on June 21, 2002, the obligor posted a \$3,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated July 26, 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 August 26, 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 September 11, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the bonded alien is a national of El Salvador. Counsel opines that the bonded alien is eligible for Temporary Protected Status (TPS). Counsel further states that a grant of TPS terminates INS detention authority and requires the cancellation of the bond.

Jurisdiction over whether an alien is eligible for TPS lies with the Service or the immigration judge, not with the obligor for the alien's delivery bond. Counsel has not submitted evidence that the bonded alien has been granted Temporary Protected Status by either the Service or an immigration judge.

Temporary Protected Status is by definition a temporary status for certain qualifying aliens from designated countries. At the expiration of a validly granted TPS period, absent some further change of the alien's status, the alien will be required to depart the United States. Under the terms of the bond contract, the Service has the responsibility to maintain the bond to insure the alien's ultimate departure from the United States. Pursuant to part (G) of the bond contract, a delivery bond remains in effect until removal proceedings are finally terminated or the alien is actually accepted for removal.

On appeal, counsel claims that "INS/EOIR had an affirmative duty to inform [the alien] of his eligibility." He cites section 244(a)(3) of the Act.

Section 244(a)(3) of the Act provides for notice to aliens of their eligibility for Temporary Protected Status in a form and language that the alien can understand. The Service has widely publicized the eligibility criteria for each TPS program, both in English and in the native language of the designated country, e.g. Spanish for Nicaragua, Honduras and El Salvador. This satisfies the notice requirement of the Act.

On appeal, counsel requests 60 days in which to file a brief and/or evidence. Counsel asserts that the obligor has put forth a Freedom of Information Act (FOIA) request, but has yet to receive a response.

The alleged failure of the San Diego District Office to respond to the obligor's FOIA request has no bearing in this matter as bond proceedings are separate and apart from any other proceedings. The mere filing of a FOIA request does not excuse the obligor from delivering the alien as demanded. Further, the facts present in the case at hand are similar not only to numerous cases already presented to the Associate Commissioner by the obligor on previous appeals but to a myriad of similar cases adjudicated by the Associate Commissioner since the inception of the Office of Administrative Appeals in 1983. Therefore, counsel's request for a 60 day extension is denied.

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 P.O. Box 3153, Harrisburg, PA 17105 as the obligor's address.

The record fails to contain the domestic return receipt to indicate that the Notice to Deliver Alien was sent to the obligor at P.O. Box 3153, Harrisburg, PA 17105 on July 26, 2002, or to indicate that the obligor had received the notice to produce the bonded alien on August 26, 2002. Consequently, the record fails to establish that the district director properly served notice on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

Because the record fails to establish proper service of the Form I-340 on the obligor as required, the appeal will be sustained. The district director's decision declaring the bond breached will be rescinded and the bond will be continued in full force and effect.

**ORDER:** The appeal is sustained. The district director's decision declaring the bond breached is withdrawn, and the bond is continued in full force and effect.