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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



JUL 11 2003

FILE:  Office: Houston

Date:

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:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Houston, Texas, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a second motion to reopen. The motion will be granted. The previous decisions of the district director and Associate Commissioner will be withdrawn. The bond will be canceled.

The record indicates that on May 8, 1998, the obligor posted a \$15,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated December 28, 2000, 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) for removal at 9:30 a. m. on January 19, 2001, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On January 19, 2001, the district director informed the obligor that the delivery bond had been breached. The Associate Commissioner affirmed that decision on appeal.

The Service has held that an alien who departs from the United States prior to the date demanded for surrender may be in substantial compliance with the terms of her delivery bond. Matter of Don Donaldson's Key Bail Service, 13 I&N Dec. 563 (Acting Reg. Comm. 1969). The burden is upon the alien or his surety to prove by probative evidence that the alien did leave the country prior to his surrender date. Matter of Peerless Insurance Company, 15 I&N Dec. 133 (Reg. Comm. 1974).

On October 17, 2001, the Associate Commissioner determined that the documentation provided by the obligor was not probative evidence that the alien departed from the United States prior to his surrender date. The documentation was illegible, had strikeovers, and was not certified. The Associate Commissioner concluded that the conditions of the delivery bond had been substantially violated. The order dismissing the appeal was affirmed and the motion was dismissed.

Subsequent to the motion, documentation has been furnished which reveals that a Form G-146 was re-issued on June 13, 2001 and executed by a Service official from the U.S. Embassy in Pakistan. The form indicates that the alien presented himself at the Embassy with his passport which revealed an entry stamp into Pakistan on August 1, 2000. The record also contains a worksheet from the Houston Fugitive Unit which indicates that it discovered a sealed envelope containing an original Form G-146 re-issued by the U.S. Embassy in Pakistan on June 13, 2001.

Consequently, the previous decisions of the Associate Commissioner and the district director will be withdrawn, and the bond will be canceled.

ORDER: The decisions of the Associate Commissioner dated May 17, 2001 and October 17, 2001 and the district director's January 19, 2001 decision declaring the bond breached are withdrawn. The bond is canceled.