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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED] Office: Houston Date:

IN RE: Obligor:  
Bonded Alien:

[REDACTED]

JUL 2003

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]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the District Director, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on September 22, 1997, the obligor posted a \$1,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated March 21, 2002, 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 (INS), now the Bureau of Immigration and Customs Enforcement (BICE), at 9:00 a.m. on April 24, 2002, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On May 7, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the Form I-352 is unenforceable because the BICE failed to obtain the required Office of Management and Budget (OMB) approval prior to using this form.

The Immigration Bond (Form I-352) is a collection of information as defined by the Paperwork Reduction Act (PRA), 5 C.F.R. § 1320.3(3)(c). The BICE is an agency for the purposes of the PRA and the Form I-352 falls under the PRA. In stating that the Form I-352 is unenforceable because the BICE did not seek approval for the Form I-352 after its prior approval lapsed, counsel ignores the provision of the whole law and its plain meaning.

The PRA was intended to rein agency activity by not burdening the public, small businesses, corporations and other government agencies to submit information collection requests on forms that do not display control numbers approved by the OMB. The plain meaning of the PRA makes it clear that a person who fails to comply with a collection of information will not be subject to any penalty. See U.S. v. Burdett, 768 F. Supp. 409 (E.D.N.Y. 1991).

The PRA only protects the public from failing to provide information to a government agency. Here, the obligor did file the information requested on Form I-352, therefore, the obligor cannot avail himself of the affirmative defense provision codified in 44 U.S.C. § 3512. Only those persons who refuse to

comply with a collection of information can raise the public protection provision as in Saco River Cellular, Inc. v. FCC, 133 F.3d 25, 28 (D.C. Cir. 1998). The U.S. Court of Appeals has stated that the public protection provision is limited in scope and only protects individuals who fail to file information. U.S. v. Spitzauer, 176 F.3d 486 (9th Cir. 1999) (Unpublished, text in Westlaw); cert. denied 528 U.S. 921, 120 S.Ct. 283 (Oct. 4, 1999).

On appeal, counsel contends that the obligor is not bound by the obligations it freely undertook in submitting the bond in this case, and that the BICE cannot enforce the terms of the Form I-352 because "its terms constitute regulations, and the INS did not submit it to Congress for review as required by the Congressional Review Act" (CRA), 5 U.S.C. § 801, et seq. This argument is meritless.

For purposes of the CRA, the term "rule" has, with three exceptions, the same meaning that the term has for purposes of the Administrative Procedure Act (APA). 5 U.S.C. § 804(3). The relevant provision of the APA defines a "rule" as the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency. 5 U.S.C. § 551(4).

There are at least two reasons why Form I-352 is not a "rule" for purposes of the CRA. First, the Form I-352 is not a rule at all. It is a bonding agreement, in effect, a surety contract under which the appellant undertakes to guarantee an alien's appearance in the immigration court, and, if it comes to that, for removal. Section 236(a)(2) of the Immigration & Nationality Act (the Act), 8 U.S.C. § 1226(a)(2), permits the Attorney General, now the Secretary, Department of Homeland Security (Secretary), to release on bond an alien subject to removal proceedings. This section also permits the Secretary to describe the conditions on such bonds, and to approve the security on them. Section 103(a)(3) of the Act, 8 U.S.C. § 1103(a)(3), permits the Secretary to prescribe bond forms. While Form I-352 may well be a form used to comply with rules relating to release of aliens on bond, the form itself is not a rule. It is not an "agency statement," 5 U.S.C. § 551(4), but a surety agreement between the obligor and the government.

Second, even if it can be said that Form I-352 is a "rule," the CRA does not apply. The CRA itself provides that its requirements do not apply to a "rule of particular applicability." 5 U.S.C. § 804(3)(A). If Form I-352 is a "rule," it is "of particular applicability" since it applies only to each particular case in which a person freely agrees to sign and file the Form I-352.

On appeal, counsel indicates that the district director "attached a copy of an approved [Form] I-130 [Petition for Alien Relative] dated March 10, 1998 to the [Form] I-340" issued to the obligor. Counsel further indicates that the bonded alien's wife filed the petition on September 22, 1997 and, therefore, the alien was eligible to adjust status under section 245(i) of the Immigration and Nationality Act. Counsel indicates that adjustment of status requires cancellation of the bond.

The record reflects that a removal hearing was held on November 16, 1999. The immigration judge denied the alien's application for adjustment of status under section 245(i) of the Act. The court granted the alien voluntary departure until January 15, 2000 with an alternate order of removal to Mexico in the event the alien failed to depart as required. The court ordered the alien to post a voluntary departure bond in the amount of \$500.00. The record does not reflect that a voluntary departure bond was posted. A subsequent appeal of the court's decision was dismissed on December 4, 2001.

It is 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.

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 upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the immigration officer 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 Immigration 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 [REDACTED] as the obligor's address.

Contained in the record is evidence indicating that the Notice to Deliver Alien was sent to the obligor at [REDACTED] on March 21, 2002. This notice demanded that the obligor produce the bonded alien on April 24, 2002. The certified mail receipt indicates the obligor received notice to produce the bonded alien on March 28, 2002. 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).

Furthermore, 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 BICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by the BICE 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 BICE for

hearings or removal. Such bonds are necessary in order for the BICE to function in an orderly manner. The courts have long considered the confusion that would result if aliens could be surrendered at any time or place it suited the alien's 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.