

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



JUL 21 2003

FILE:  Office: Dallas

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:



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 Bureau of Citizenship and Immigrations 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, Dallas, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on April 12, 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 August 15, 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 (INS), now the Bureau of Immigration Customs Enforcement (BICE), at 8:00 a.m. on September 17, 2001, at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On October 15, 2001, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the district's FOIA response is defective as it did not include certain key documentation.

The alleged failure of the Dallas District Office to release the alien's record in full has no bearing in this matter as bond proceedings are separate and apart from any other proceedings. Furthermore, the mere filing of a FOIA request does not excuse the obligor from delivering the alien as demanded.

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 BICE 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 evidence of record indicates that the Notice to Deliver Alien was sent to the obligor at 407 Fannin St., Houston, TX 77002 on August 15, 2001. This notice demanded that the obligor produce the bonded alien on September 17, 2001. The domestic return receipt indicates the obligor received notice to produce the bonded alien on August 21, 2001. 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).

On appeal, counsel asserts that the director failed to provide the obligor with a properly completed questionnaire.

There is no evidence of record that the questionnaire form was delivered to the obligor as required by the Amwest/Reno Settlement Agreement.

Based on the provisions of the Amwest Agreement and the fact that the record fails to show that a properly completed questionnaire were sent to the obligor with the Form I-340, 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.