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

GI

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

[REDACTED]

FILE: [REDACTED] Office: Atlanta (CLT) Date: **JUL 29 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

ON 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 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, Atlanta, Georgia. A subsequent appeal was dismissed by the Administrative Appeals Office. The matter is now before the Administrative Appeals Office on a motion to reconsider. The motion will be granted. The decision of the Administrative Appeals Office will be affirmed.

The record indicates that on June 12, 2000, the obligor posted a \$2,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated May 8, 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 (INS), now the Bureau of Immigration and Customs Enforcement (BICE), at 10:00 a.m. on May 28, 2002, at [REDACTED].

The obligor failed to present the alien, and the alien failed to appear as required. On June 4, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor stated that the Atlanta District Director failed to attach a properly completed questionnaire to the I-340 Notice to Deliver Alien as required by the *Amwest v. Reno Settlement Agreement* entered into on June 22, 1995 by the former INS and Far West Surety Insurance Company.

The Director, Administrative Appeals Office (AAO), ruled in a decision dated August 11, 2002 that the completed questionnaire complied with the terms of the Settlement Agreement. The AAO further concluded that the obligor was bound by the terms of the bond contract to surrender the alien upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted for detention or removal.

On motion, counsel for the obligor again states that the questionnaire was incomplete, as not all sections were filled out. Counsel argues that the failure to complete all sections invalidates the bond breach, because it does not comply with the Settlement Agreement.

Counsel indicates:

See attached questionnaire brief, which is a history of the I-340 questionnaire and the requirements under *Amwest I*, *Amwest II*, and many INS [now BICE] memorandums, wires and training materials dedicated to this particular issue. They make clear the different requirements each District is under when preparing and attaching a properly completed, and signed questionnaire to each I-340 at the time they send it to the surety.

Counsel further indicates that these materials were the basis for BICE training in the field.

It is noted that counsel for the obligor is quite familiar with the cited materials, as he helped to write them and to train the former INS field personnel on the implementation of the Settlement Agreement when he worked as an associate in the INS Office of General Counsel immediately before representing the bonding company. Counsel, however, fails to submit the BICE memoranda, wires and training materials to support his arguments. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The Settlement Agreement, Exhibit F, provides that "a questionnaire prepared by the surety with approval of the INS [now BICE] will be completed by the [BICE] whenever a demand to produce a bonded alien is to be delivered to the surety. The completed questionnaire will be certified correct by an officer of the [BICE] delivered to the surety with the demand." The BICE is in compliance with the Settlement Agreement when the questionnaire form is provided to the obligor with the alien's identifying information, such as his or her name, alien number and if available, a photograph. The Settlement Agreement does not require each section to be filled out. Counsel has not alleged or established any prejudice resulting from the BICE's failure to complete each section. More importantly, failure to complete each section does not invalidate the bond breach.

Training materials written by counsel for the obligor when he was an associate in the INS office of General Counsel are not binding on the BICE. Memoranda issued by the Office of General Counsel of the former INS are advisory in nature. 8 C.F.R. § 100.2(1). Internal memoranda routinely issued by the BICE to guide the field offices in implementing the Settlement Agreement do not have the force of law.

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 BICE 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 occurrences, the bond breach resulting from the obligor's failure to produce the alien on May 28, 2002 is valid.

The decisions of the district director and the AAO will not be disturbed.

ORDER: The motion to reopen is granted. The decision of the AAO dated August 11, 2002 is affirmed.