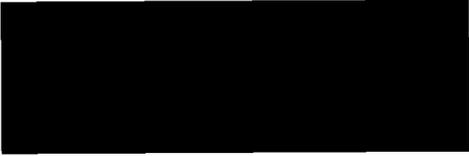


U.S. Department of Homeland Security
Citizenship and Immigration Services

GI

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

PUBLIC COPY



FILE:



Office: Miami

Date:

OCT 07 2003

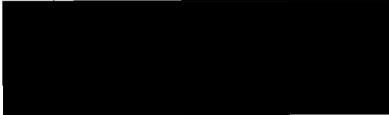
IN RE: Obligor:

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

ON BEHALF OF OBLIGOR:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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 Citizenship and Immigration Services (CIS) 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
for Robert P. Wiemann, Director
Administrative Appeals Office

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

The record indicates that on August 17, 2001, 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 July 23, 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 (Service), now Immigration and Customs Enforcement (ICE), at 9:00 a.m. on August 23, 2002, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On October 21, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that ICE failed to provide all the required information on the questionnaire as the sections on "criminal background/detention" and "miscellaneous issues" were not filled out.

Counsel indicates:

I am attaching a questionnaire brief, which is a history of the I-340 questionnaire and the requirements under *Amwest I*, *Amwest II*, and many ICE memorandums, wires and training materials dedicated to this particular issue. They make it clear that each District must attach a properly completed (and signed) questionnaire to each I-340 at the time they send it to the surety. Improperly completed questionnaires, or those that do not provide answers to all sections (including a negative one) do not satisfy the *Amwest Settlements'* requirements.

Counsel, however, fails to submit the ICE 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 ICE] will be completed by [ICE] 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 [ICE] delivered to the surety with the demand." ICE 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 ICE's failure to complete each section. More importantly, failure to complete each section does not invalidate the bond breach.

It is noted that the present record contains evidence that a 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 by the former INS and Far West Surety Insurance Company.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an ICE 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 ICE 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).

Pursuant to 8 C.F.R. § 103.5a(a)(2), 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 [REDACTED] on July 23, 2002 via certified mail. This notice demanded that the obligor produce the bonded alien on August 23, 2002. The domestic return receipt indicates the obligor received notice to produce the bonded alien on July 30, 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).

It must be noted that delivery bonds are exacted to insure that

aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which 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 appeal will be dismissed.

ORDER: The appeal is dismissed.