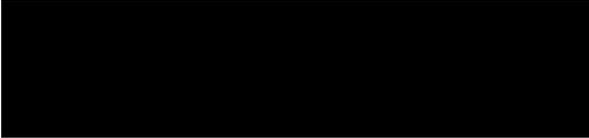




U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



GI

FILE:



Office: SAN ANTONIO

Date:

APR 12 2004

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record indicates that on June 25, 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 June 14, 2002, was sent to the co-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 Immigration and Customs Enforcement (ICE), at 10:00 a.m. on July 22, 2002, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On August 12, 2002, the district director informed the obligor that the delivery bond had been breached.

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 by the legacy 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 immigration officer or immigration judge, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by ICE 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.

On appeal, counsel asserts that ICE did not give the requisite notice to the obligors.

The evidence of record indicates that the Notice to Deliver Alien dated June 14, 2002 was sent to the co-obligor via certified mail. This notice demanded that the obligor produce the bonded alien on July 22, 2002. The domestic return receipt indicates the co-obligor received notice to produce the bonded alien on June 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).

It is noted that the Notice-Immigration Bond Breach (Form I-323) issued by the district director on August 12, 2002 indicates that the Notice to Deliver Alien was dated June 20, 2002, with a surrender dated of July 22, 2002.

This was a harmless error by the district director which has not prejudiced the obligor. Although the demand date for the Notice to Deliver Alien was listed incorrectly on the Form I-323, the obligor did receive the Notice to Deliver Alien dated June 14, 2002 which demanded the alien's surrender on July 22, 2002.

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 an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE 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 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 decision of the district director will not be disturbed.

ORDER: The appeal is dismissed.