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**U.S. Citizenship  
and Immigration  
Services**

**G 1**



FILE:



Office: BUFFALO

Date:

**APR 15 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: Self-represented

**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.

  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, Buffalo, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on March 19, 2003, the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated July 11, 2003, was addressed to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of Immigration and Customs Enforcement (ICE) at 10:00 a.m. on September 3, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On September 9, 2003, the field office director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the alien had voluntarily departed on March 27, 2003 to Canada. The obligor contends that correspondence issued by ICE to the bonded alien's address in Canada confirms that ICE is aware of the alien's departure from the United States. The obligor provides a copy of a Notice of Determination of Eligibility to the Convention Refugee, Form IMM 1442 (08-1998) B, dated March 27, 2003 from the Canadian Immigration, a copy of an immigration judge's decision dated June 4, 2003 and a Form I-166 dated July 11, 2003 addressed to the alien at a Canadian address.

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 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.

The record fails to contain the domestic return receipt to indicate that the Notice to Deliver Alien dated July 11, 2003 was sent to the obligor at [REDACTED] via certified mail, or to indicate that the obligor had received the notice to produce the bonded alien on September 3, 2003. Consequently, the record fails to establish that the field office director properly served notice on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

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.

The AAO has held that an alien who departs from the United States prior to the date demanded for surrender may be in substantial compliance with the terms of his delivery bond. *Matter of Don Donaldson's Key Bail Service*, 13 I&N Dec. 563 (Acting Reg. Comm. 1969). However, the burden is upon the alien or his surety to prove by probative evidence that the alien did leave the country prior to his surrender date. *Matter of Peerless Insurance Company*, 15 I&N Dec. 133 (Reg. Comm. 1974).

A physical verification of departure by an immigration officer at the port of departure, or a verification of the alien's presence in the foreign destination by a United States consular officer or immigration officer abroad, is required to verify departure.

ICE will accept a document signed by an embassy official, consular officer, or an immigration officer abroad, and bearing an appropriate seal or other indicia of reliability as proof that a voluntary departure or self-removal has occurred. The field office director retains the discretion to accept other documents of voluntary departure. The original of such documents may be delivered either by the surety or through diplomatic channels. Copies of such documents will be accepted only if received through diplomatic channels.

On appeal, the obligor asserts that the bonded alien has departed from the United States. Although the obligor provides documentation reflecting a Canadian address for the bonded alien, the documentation does not stipulate that the alien departed the United States. Further, the record does not contain a Notification of Departure-Bond Case (Form I-392) properly executed by a United States Embassy official, consular officer or immigration officer abroad and received through official channels indicating the bonded alien's departure from the United States prior to his surrender date.

Because the record fails to establish proper service of the Form I-340 on the obligor as required, the appeal will be sustained. The field office 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 field office director's decision declaring the bond breached is rescinded and the bond is continued in full force and effect.