



U.S. Citizenship
and Immigration
Services

G1

[Redacted]

FILE: [Redacted] Office: CHICAGO Date: 6/1/04

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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on February 3, 2003, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated February 12, 2004, 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 Immigration and Customs Enforcement (ICE) at 1:00 p.m. on April 6, 2004, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On April 20, 2004, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the bonded alien filed a motion to reopen/reconsider before the Board of Immigration Appeals (BIA). Counsel submits documentation from Escape Travel, Inc., which lists the alien's flight itinerary from the United States on April 9, 2004.

The record reflects that a removal hearing was held on June 30, 2003, and the alien was ordered removed from the United States. The bonded alien appealed the immigration judge's (IJ) decision to the BIA. On November 21, 2003, the BIA affirmed, without opinion, the IJ's decision. The alien filed a motion to reopen, which was subsequently denied by the BIA on May 4, 2004.

The mere filing of a motion to reopen in deportation proceedings does not excuse the obligor from delivering the alien as demanded. Bond proceedings are separate and distinct from deportation proceedings. Deportation proceedings are between the United States government and an alien with a questionable right to remain in the U.S. A delivery bond is a contract between ICE and the obligor, where in consideration for obtaining the alien's release from custody, the obligor agrees to produce the alien on demand until the obligation to do so terminates under grounds specified in the contract.

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.

Counsel provides a copy of a Form I-392, Notification of Departure-Bond; however, the form was not 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. Assuming, arguendo, the alien departed the United States on April 9, 2004, the alien's departure does not change the fact that the breach occurred when the obligor failed to deliver the alien on April 6, 2004.

The regulation at 8 C.F.R. § 1003.2(f) expressly provides that filing a motion to reopen or reconsider before the BIA does not stay the deportation unless a stay is obtained. The record does not reflect that the BIA stayed the bonded alien's deportation upon the filing of the motion. The breach was valid on April 6, 2004.

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 evidence of record indicates that the Notice to Deliver Alien dated February 12, 2004 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on April 6, 2004. The domestic return receipt indicates the obligor received notice to produce the bonded alien on February 24, 2004. 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 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 field office director will not be disturbed.

ORDER: The appeal is dismissed.