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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

DEC 29 2004

[Redacted]

FILE: [Redacted] Office: ST. PAUL Date:

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.

Mari Pluss

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The delivery bond in this matter was declared breached by the District Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on July 18, 2001, the obligor posted a \$7,5000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated May 21, 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 (legacy INS), now Immigration and Customs Enforcement (ICE), at 9:00 a.m. on June 11, 2002, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On June 24, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that ICE failed to provide the obligor with a properly completed questionnaire and did not include a photograph of the alien or indicate that one was unavailable as required by the Amwest/Reno Settlement Agreement entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company.

The Settlement Agreement, Exhibit F, provides that "a questionnaire prepared by the surety with approval of the INS [now ICE] will be completed by the [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 the [ICE] delivered to the surety with the demand."

ICE is in substantial compliance with the Settlement Agreement when the questionnaire provides the obligor with sufficient identifying information to assist in expeditiously locating the alien, and does not mislead the obligor. Each case must be considered on its own merits. Failure to include a photograph, which is not absolutely required under the terms of the Agreement, does not have the same impact as an improper alien number or wrong name. The AAO must look at the totality of the circumstances to determine whether the obligor has been prejudiced by ICE's failure to fill in all of the blanks, or to attach a photograph if one is available.

Counsel has not alleged or established any prejudice resulting from ICE's failure to complete each section or to attach a photograph. More importantly, failure to complete each section or a lack of a photograph does not invalidate the bond breach.

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 May 21, 2002 was sent to the obligor at [REDACTED] a certified mail. The notice demanded that the obligor produce the bonded alien on June 11, 2002. The domestic return receipt indicates the obligor received notice to produce the bonded alien on May 24, 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).

On appeal, counsel asserts that because the Form I-166 was attached to and dated the same date as the Form I-340, the obligor has no way of knowing if ICE waited the required three days to mail the Form I-166 to the alien.

The Amwest/Reno Settlement Agreement provides that the Form I-166 notice will not be mailed to the alien before, and not less than three days after the demand to surrender is mailed to the obligor.

A copy of the Form I-166 dated [REDACTED] was mailed with the Form I-340 to the obligor as a courtesy and in no way does it violate the Amwest/Reno Settlement Agreement. Contained in the record is a postmarked envelope, returned by the post office as undeliverable, indicating that the Form I-166 was mailed to the alien's last known address on June 4, 2002. The record thus clearly establishes that the Form I-166 was mailed at least three days after the Form I-340 was mailed.

On appeal, counsel further asserts that the sending of a Form I-166 has had such a prejudicial effect on the obligor's ability to produce the alien that the bond should be canceled.

Form I-166 has not been required since July 25, 1986, which is the effective date of an amendment to former 8 C.F.R. § 243.3. That amendment had no effect on the obligor's agreement to produce the alien upon request. Further, the obligor's contractual obligation to surrender the alien is not affected by ICE's discharge of its responsibility to locate and remove an alien by sending the Form I-166 to the alien's last known address.

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.