

GI

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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date:

DEC 29 2004

IN RE:

Obligor:  
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]

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

INSTRUCTIONS:

**PUBLIC COPY**

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*

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on November 9, 2001, the obligor posted a \$2,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated June 25, 2003, 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 11:00 a.m. on August 25, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On August 28, 2003, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that ICE ignored the language in Exhibit G of the Amwest/Reno Settlement Agreement entered into on June 22, 1995 by the Immigration and Naturalization Service (legacy INS) and Far West Surety Insurance Company requiring the director to state a correct purpose on the Form I-340. Counsel asserts that ICE cannot avoid the requirement to state a correct purpose on an Form I-340 by stating no purpose at all.

The record reflects that the Form I-340 did not indicate the purpose for the surrender of the alien.

The Settlement Agreement requires the Form I-340 to state the correct purpose for which the alien is to be produced. The fact remains, however, that the field office director was and is free to call the alien in for an interview and/or custodial determination at any time. Further, the director's failure to state the purpose of the surrender demand does not invalidate the surrender demand.

On appeal, counsel states that the bonded alien is a national of El Salvador. Counsel opines that the bonded alien is eligible for Temporary Protected Status (TPS). Counsel argues that a grant of TPS would terminate ICE's detention and removal authority and require cancellation of the delivery bond.

Jurisdiction to determine whether an alien is eligible for TPS lies with CIS or the immigration judge, not the obligor for the alien's delivery bond. Counsel has not submitted evidence that the bonded alien has been granted TPS by either CIS or an immigration judge.

TPS is by definition a temporary status for certain qualifying aliens from designated countries. At the expiration of a validly granted TPS period, absent some further change of the alien's status, the alien will be required to depart the United States.

The obligor is bound by the terms of the contract to which it obligated itself. It is noted that the terms of the Form I-352 for bonds conditioned upon the delivery of the alien establish the following condition: "the obligor shall cause the alien to be produced or to produce himself/herself . . . upon each and every written request until *exclusion/deportation/removal proceedings* . . . are finally terminated." (Emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court expressly recognized the authority of the Immigration and Naturalization Service (legacy INS) to require the posting of a bond as a condition of release after it lost detention authority over the alien, even though a bond was not provided as a condition of release

by the statute. In *Doan v. INS*, 311 F.3d 1160 (9<sup>th</sup> Cir. 2002), the 9<sup>th</sup> Circuit held the legacy INS had the authority to require a \$10,000 delivery bond in a supervised release context even though it did not have detention authority. These cases arose in the post-removal period, and it is obvious from the rulings that detention authority is not the sole determining factor as to whether ICE can require a delivery bond.

The bond contract provides that it may be canceled when (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by ICE for detention or deportation/removal; or (3) the bond is otherwise canceled. The circumstances under which the bond may be "otherwise canceled" occur when the Secretary or the Attorney General imposes a requirement for another bond, and the alien posts such a bond, or when an order of deportation has been issued and the alien is taken into custody. As the obligor has not shown that any of these circumstances apply, the bond is not canceled.

On appeal, counsel claims that "the INS/EOIR had an affirmative duty to inform him of his eligibility" for TPS.

Sections 244(a)(3)(B) and (C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254(3)(B) and (C), require to aliens in removal proceedings to be given notice of their eligibility for TPS. While the alien within the context of removal proceedings must be provided notice of his or her eligibility for TPS, this requirement has no bearing on the obligor's contractual duty to deliver an alien. Even assuming that ICE were to lose detention authority over an alien who may be eligible for TPS, as noted above, this would not require cancellation of the delivery bond.

On appeal, counsel asserts that ICE attached a questionnaire to the Form I-340, but did not provide the required information as required by the Amwest/Reno Settlement Agreement.<sup>1</sup>

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 INS [now 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 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). Further, training materials written by the INS office of General Counsel, now Office of the Principal Legal Adviser (OPLA), are not binding on ICE.

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

<sup>1</sup> Capital Bonding Corporation executed a settlement agreement with the legacy INS on February 21, 2003, in which it agreed not to raise certain arguments on appeals of bond breaches. The AAO will adjudicate the appeal notwithstanding Capital Bonding Corporation's failure to comply with the settlement agreement in this case.

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, for example, 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.

Counsel has not alleged or established any prejudice resulting from ICE's failure to complete each section of the questionnaire. More importantly, failure to complete each section 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, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said 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 June 25, 2003 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on August 25 2003. The domestic return receipt indicates the obligor received notice to produce the bonded alien on July 1, 2003. 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.