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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

GI

[Redacted]

DEC 30 2004

FILE:

[Redacted]

Office: MIAMI (TAM)

Date:

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]

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
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, Miami, Florida, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on July 11, 2000, 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 November 13, 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 November 26, 2002, at [REDACTED] Tampa, FL 33607. The obligor failed to present the alien, and the alien failed to appear as required. On April 1, 2003, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel contends that the obligor is not bound by the obligations it freely undertook in submitting the bond in this case, and that ICE cannot enforce the terms of the Form I-352 because "its terms constitute regulations, and the INS [now ICE] did not submit it to Congress for review as required by the Congressional Review Act" (CRA), 5 U.S.C. § 801, et seq. This argument is meritless.

For purposes of the CRA, the term "rule" has, with three exceptions, the same meaning that the term has for purposes of the Administrative Procedure Act (APA). 8 U.S.C. § 804(3). The relevant provision of the APA defines a "rule" as the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency. 5 U.S.C. § 551(4).

There are at least two reasons why Form I-352 is not a "rule" for purposes of the CRA. First, the Form I-352 is not a rule at all. It is a bonding agreement, in effect, a surety contract under which the appellant undertakes to guarantee an alien's appearance in the immigration court, and, if it comes to that, for removal. Section 236(a)(2) of the Act, 8 U.S.C. § 1226(a)(2), permits the Attorney General, now the Secretary, Department of Homeland Security (Secretary), to release on bond an alien subject to removal proceedings. This section also permits the Secretary to describe the conditions on such bonds, and to approve the security on them. Section 103(a)(3) of the Act, 8 U.S.C. § 1103(a)(3), permits the Secretary to prescribe bond forms. While Form I-352 may well be a form used to comply with rules relating to release of aliens on bond, the Form itself is not a rule. It is not an "agency statement," 5 U.S.C. § 551(4), but a surety agreement between the obligor and the Government.

Second, even if it can be said that Form I-352 is a "rule," the CRA does not apply. The CRA itself provides that its requirements do not apply to a "rule of particular applicability." 5 U.S.C. § 804(3)(A). Assuming, arguendo, that Form I-352 can be called a rule, it applies only to each particular case in which a person freely agrees to sign and file the Form I-352. Thus, even if the obligor were correct in saying Form I-352 is a rule, it would be a rule of particular applicability, exempt from the reporting requirement.

On appeal, counsel states that the ICE ignored the language in Exhibit G of the Amwest/Reno Settlement Agreement entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company. Counsel argues that calling the alien in for an interview when there was an Order of Removal issued on March 8, 2001, is an incorrect statement of purpose. Counsel asserts that the bond breach must be rescinded.

The record reflects that a removal hearing was held on March 8, 2001, and the alien was ordered removed in absentia.

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 district director was and is free to call the alien in for an interview prior to deportation. The Settlement Agreement does not remove the district director's right to interview an alien at any time.

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 November 13, 2002 was sent to the obligor at [REDACTED] Houston, TX 77002, or to indicate that the obligor had received the notice to produce the bonded alien on November 26, 2002. 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).

On appeal, counsel asserts that ICE did not provide the obligor with a questionnaire and photograph of the alien.

Because the record fails to contain evidence that the Form I-340 was properly served on the obligor, counsel's assertion does not need to be addressed.

Counsel argues that the service of the Form I-323 was untimely as it was issued over 180 days after the breach date.

The record contains a Notice-Immigration Bond Breached dated April 1, 2003, which relates to a Notice to Deliver Alien that previously demanded the bonded alien's surrender on April 25, 2001. The record, however, fails to contain a Notice-Immigration Bond Breached for the Form I-340 which demanded the alien's surrender on November 26, 2002. As such the breach is not valid.



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.