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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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DEC 30 2006

FILE:



Office: PHILDAELPHIA

Date:

IN RE:

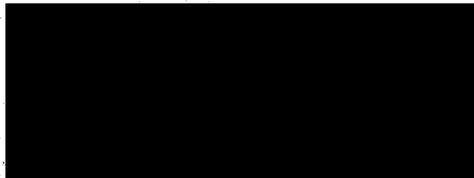
Obligor:
Bonded Alien



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:



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 Johnson

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, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record indicates that on December 20, 2002, 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 July 31, 2003, was sent to the co-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) on August 14, 2003, at [REDACTED] Philadelphia, PA 19130. The obligor failed to present the alien, and the alien failed to appear as required. On August 15, 2003, the field office director informed the co-obligor that the delivery bond had been breached.

On appeal, counsel asserts that according to the Executive Office for Immigration Review (EOIR) hotline, the alien's case is still pending with the immigration court, and his next master calendar hearing is scheduled for June 9, 2004. Counsel argues that nonetheless the director demanded the alien surrender for an interview on August 14, 2003.

EOIR public record reflects that the bonded alien's case was currently pending before the immigration court at the time the field office director issued the Form I-340.

The field office director properly exercised his authority on July 31, 2003 by directing the obligor to produce the bonded alien for an interview. The obligor is not relieved of its responsibility to deliver and surrender the bonded alien at the time and place specified in the field office director's demand notice simply because the alien's case is currently pending. The field office director may call the alien in for a custodial determination 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 evidence of record indicates that the Notice to Deliver Alien dated July 31, 2003 was sent to the co-obligor via certified mail. This notice demanded that the obligor produce the bonded alien on August 14, 2003. The domestic return receipt shows it was received by a representative of Capital Bonding Corporation and subsequently received by ICE. 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.

On appeal, counsel asserts that the director failed to attached a questionnaire and a photograph of the alien to the Form I-340.¹

Pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995, by the legacy INS and Far West Surety Insurance Company, ICE agreed that a properly completed questionnaire would be attached to all Form I-340s (Notices to Surrender) going to the obligor on a surety bond. The failure to attach the questionnaire would result in rescission of any breach related to that Form I-340.

Based on the provisions of the Amwest Agreement and the fact that the record fails to show that a properly completed questionnaire was sent to the obligor, 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.

¹ 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.