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FEB 06 2004

FILE:



Office: WASHINGTON

Date:

IN RE:

Obligor:

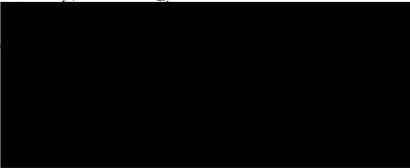
Bonded Alien:



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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Washington, DC, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the bond continued in full force and effect.

The record indicates that on March 21, 2000, the obligor posted a \$2,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated May 4, 2001 was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 9:00 a.m. on August 23, 2001, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On September 13, 2001, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel submits a Freedom of Information Act (FOIA) request, and demands an extension of 60 days from receipt of the FOIA response in which to state the reasons for the appeal and to file a written brief. Counsel alleges that the facts of the case, and the law applicable thereto, are complicated and he cannot intelligently pursue an appeal without a copy of the alien file.

It should be noted that the facts present in the appeal at hand are similar not only to numerous appeals already presented to the AAO by the obligor but to a myriad of similar appeals adjudicated by the AAO since its inception in 1983. Therefore, the request for extension of time in which to submit a brief is denied.

Counsel nonetheless asserts on appeal a number of general reasons for rescinding the bond breach, including that ICE violated one or more terms of the June 22, 1995 Amwest/Reno Settlement Agreement entered into by the legacy INS and Far West Surety Insurance Company. However, counsel fails to raise any specific ICE violations or issues specific to this appeal.

Counsel also states on appeal that by sending a Form I-166, which has been "abolished," to the alien to appear for removal, ICE has made compliance with the terms of the bond impossible.

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, which provided that aliens not in the custody of ICE must be provided with a 72-hour advance written notice of the time and place for surrender for removal. That amendment did not mandate that ICE discontinue using the Form I-166 and had no effect on the obligor's agreement to produce the alien upon request.

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

The record does not reflect that a questionnaire was mailed to the obligor along with the Form I-340. The district director's failure to attach a questionnaire to the Form I-340 does not substantially comply with the terms of the Settlement Agreement, and the bond breach must be rescinded.

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).

Although the obligor failed to produce the alien as required by the surrender demand, counsel stated, on appeal, that all the conditions imposed by the terms of the bond were substantially performed by the obligor. 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 was sent to the obligor on May 4, 2001 via certified mail. This notice demanded that the obligor produce the bonded alien on August 23, 2001. The domestic return receipt indicates the obligor received notice to produce the bonded alien on July 30, 2001. 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).

Pursuant to the Amwest/Reno Settlement Agreement, ICE agreed that a properly completed questionnaire would be attached to all Forms I-340 (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 Settlement 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.

ORDER: The appeal is sustained. The district director's decision declaring the bond breached is rescinded, and the bond is continued in full force and effect.