

U.S. Department of Homeland Security

Citizenship and Immigration Services

GI

ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

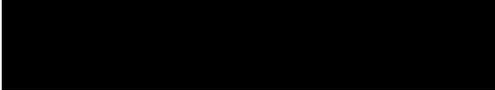
425 I Street N.W.

Washington, D.C. 20536



Identified in previous decision as invasion of personal privacy

FILE:  Office: San Antonio Date:

IN RE: Obligor: 
Bonded Alien: 

FEB 06 2004

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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Mari Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

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

The record indicates that on March 28, 2002, the obligor posted a \$7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated September 17, 2002, was sent to the co-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 October 16, 2002, at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On December 31, 2002, the district director informed the obligor that the delivery bond had been breached.

Counsel states that the AAO 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 requiring the director to state a correct purpose on the Form I-340. Counsel argues that calling the alien in for an interview/custody was an incorrect statement of purpose and, therefore, the bond breach is invalid under the Amwest/Reno Settlement Agreement.

The obligor is not relieved of its responsibility to deliver and surrender the bonded alien at the time and place specified in the district director's demand notice simply because said notice instructed the alien to surrender for an interview/custody. This instruction is not an incorrect or inconsistent statement of purpose. The district director may call the alien in for an interview and/or custodial determination at any time.

On appeal, counsel asserts that the alien was granted voluntary departure on July 9, 2002. Counsel indicates that the obligor does not know whether the immigration judge set a voluntary departure bond, whether the alien posted such a bond or whether the alien has departed the United States. Counsel states that one of these events constitutes sufficient grounds for sustaining the appeal and canceling the bond.

Counsel provides documentation developed by the Office of General Counsel (OGC), now Office of the Chief Counsel (OCC), that states a delivery bond must be canceled if an immigration court grants voluntary departure in a removal proceeding without the requirement of a voluntary departure bond and without setting other conditions on the grant of voluntary departure. The AAO has held in a precedent decision that the OCC memoranda are merely opinions. The OCC is not an adjudicative body and is in the position only of being an advisor; as such, adjudicators are not bound by the OCC recommendations. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998). Further, the AAO is not bound to follow a policy that

policy that violates procedure established by statute or regulation. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

The record reflects that a removal hearing was held on July 7, 2002, and the alien was granted voluntary departure from the United States on or before October 7, 2002, with an alternate order of removal to take effect in the event that the alien failed to depart as required. The court did not order the alien to post a voluntary departure bond. The alien was ordered to provide ICE, within 60 days, travel documentation sufficient to assure lawful entry into the country to which the alien was departing. The right of appeal was waived.

On appeal, counsel states that ICE lost statutory detention authority and hence the authority to maintain the delivery bond if the immigration judge granted the alien voluntary departure without the requirement of a bond or other conditions. Notwithstanding that in this case the court ordered the alien to provide travel documentation, which according to counsel provides ICE with the requisite detention authority, counsel's arguments will be fully addressed below.

Under the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company, the parties agreed that, pursuant to statute, the authority of the Attorney General, now the Secretary, Department of Homeland Security (Secretary), to detain an alien subject to a final order of deportation generally expires six months after the order of deportation becomes final. The agreement also contains a passage from the Deportation Officer's Handbook, as it then existed, that stated "upon the expiration of the six month period . . . the alien, as a rule, cannot . . . be continued on bond. Any outstanding bond or order of recognizance must be cancelled (emphasis added)." The parties, following the rule established by *Shrode v. Rowoldt*, 213 F.2d 810 (8th Cir. 1954), stipulated that ICE would cancel any bond which was not breached prior to the expiration of the six month period.

The provision, stipulation and case law were predicated on former section 242(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1252(c), which was deleted by section 306 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), effective April 1, 1997. Because former section 242 (c) of the Act no longer exists, this language contained in the Settlement Agreement is no longer applicable.

The AAO has continually held that the Secretary's authority to maintain a delivery bond is not contingent upon his authority to detain the alien.

The obligor is bound by the terms of the contract to which it obligated itself. 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.

Counsel suggests that once ICE no longer has detention authority over the alien, it can no longer require a delivery bond. However, this ignores the holdings of *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002). In *Zadvydas*, the Supreme Court expressly recognized the authority of the 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*, the 9th 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. Even though these cases arose in the post-removal period, 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 removal 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.

The immigration court's failure to order the posting of a voluntary departure bond would not alter the terms of the bond contract, and does not serve to extinguish the delivery bond despite ICE loss of detention authority during the period of voluntary departure. The delivery bond requires delivery of the alien to ICE upon demand or until proceedings have terminated, and is not conditioned upon a theory of constructive detention.

The present record contains evidence that a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company.

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 was sent to the co-obligor on September 17, 2002 via certified mail. This notice demanded that the obligor produce the bonded alien on October 16, 2002. The domestic return receipt indicates the co-obligor received notice to produce the bonded alien on September 30, 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).

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.