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U.S. Citizenship
and Immigration
Services

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FEB 12 2004

FILE: [REDACTED] Office: SAN ANTONIO Date:

IN RE: Obligor: [REDACTED]
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.

Mari Johnson
for 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, San Antonio, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on April 27, 2001, the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated February 19, 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 the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 10:00 a.m. on April 14, 2003, at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On August 19, 2003, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the bonded alien has a motion to reconsider currently pending before the court, and a pending motion for stay of removal.

The record reflects that a removal hearing was held on December 18, 2002 and the alien was ordered removed in absentia. The alien filed a motion to reopen along with a motion for stay of removal before the court. On January 30, 2003, the immigration judge (IJ) granted the application for a temporary stay of removal. On February 18, 2003, the IJ denied the alien's motion to reopen. The obligor indicates that on June 23, 2003, the alien filed a motion before CIS. CIS records do not reflect that an appeal was either properly filed or is pending with the Executive Office for Immigration Review. The removal order against the bond alien is final.

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 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 February 19, 2003 was sent to the obligor at [REDACTED] on February 21, 2003 via certified mail. This notice

demanded that the obligor produce the bonded alien on April 14, 2003. The domestic return receipt indicates the obligor received notice to produce the bonded alien on February 24, 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).

Furthermore, 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.