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U.S. Department of Homeland Security
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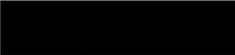


U.S. Citizenship
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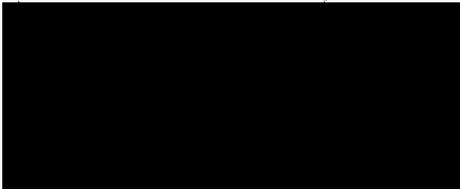
FILE:  Office: ATLANTA Date:

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

for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The record indicates that on December 8, 2000, 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 March 18, 2003, was addressed 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 April 8, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On May 5, 2003, the district director informed the obligor that the delivery bond had been breached.

8 C.F.R. § 103.3(a)(2)(v)(B) states:

Untimely appeal--(1) Rejection without refund of filing fee. An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Untimely appeal--(2) Untimely appeal treated as motion. If an untimely appeal meets the requirements of a motion to reopen as described in section 103.5(a)(2) of this part or a motion to reconsider as described in section 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

On appeal, counsel asserts that the obligor never received the Notice to Deliver Alien dated March 18, 2003. The evidence of record indicates that the Notice to Deliver Alien was sent to the obligor's address of record at [REDACTED] on March 19, 2003 via certified. The notice was returned by the post office as unclaimed. It is noted that the Notice-Immigration Bond Breached dated May 5, 2003 was also sent to the obligor's address of record on May 7, 2003 via certified mail. The envelope containing the Form I-323 was forwarded by the postal service to a post office box address. The domestic return receipt shows it was signed by the obligor.

Counsel also asserts that the obligor provided a change of address to the Citizenship and Immigration Services (CIS). Counsel has not provided any evidence indicating that the obligor provided ICE with a change of address prior to the issuance of the Form I-340. Unsubstantiated assertions are not sufficient to meet the burden of proof. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The Notice-Immigration Bond Breached dated May 5, 2003 and sent via certified mail on May 7, 2003 clearly advised the obligor that any appeal must be filed within thirty days. Coupled with three days for mailing the appeal, in this case, should have been filed on or before June 9, 2003. Counsel, on appeal, acknowledges the obligor received the notice on May 12, 2003. The appeal was dated by counsel on June 18, 2003, and received by ICE on June 23, 2003.

Based upon the obligor's failure to file a timely appeal, the appeal will be rejected.

ORDER: The appeal is rejected.