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U.S. Citizenship  
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**GI**



FILE:



Office: SAN ANTONIO

Date:

**FEB 20 2004**

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, 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 April 10, 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 October 10, 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 10:00 a.m. on November 25, 2002, at 8940 Fourwinds Drive, Room 2063, 2nd Floor, San Antonio, TX 78239. The obligor failed to present the alien, and the alien failed to appear as required. On December 16, 2002, the district director informed the co-obligor that the delivery bond had been breached.

On appeal, 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 asserts that a correct statement of purpose can only be satisfied by a statement of a single purpose.

The record reflects that the Form I-340 requests the surrender of the alien for interview/custody.

The Settlement Agreement requires the Form I-340 to state the correct purpose for which the alien is to be produced. The fact remains, however, that the district director was and is free to call the alien in for an interview and/or deportation. The Settlement Agreement does not remove the district director's right to interview an alien at any time.

On appeal, counsel asserts that the director failed to provide the obligor with a properly completed questionnaire as the sections on criminal background/detention and miscellaneous issues were not filled out. Counsel argues that the failure to complete all sections of the questionnaire invalidates the bond breach, because it does not comply with the Amwest/Reno Settlement Agreement entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company.

Counsel indicates:

I am attaching a questionnaire brief, which is a history of the I-340 questionnaire and the requirements under *Amwest I*, *Amwest II*, and many INS [now ICE] memorandums, wires and training materials dedicated to this particular issue. They make it clear that each District must attach a properly completed (and signed) questionnaire to each I-340 at the time they send it to the surety. Improperly completed questionnaires, or those that do not provide answers to all sections (including a negative one) do not satisfy the *Amwest* Settlements' requirements.

Counsel, however, fails to submit the ICE memoranda, wires and training materials to support his arguments. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, training materials are not binding on ICE.

The Settlement Agreement, 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."

ICE is in substantial compliance with the Settlement Agreement when the questionnaire provides the obligor with sufficient identifying information to assist in expeditiously locating the alien, and does not mislead the obligor. Each case must be considered on its own merits. Failure to include a photograph, for example, which is not absolutely required under the terms of the Agreement, does not have the same impact as an improper alien number or wrong name. The AAO must look at the totality of the circumstances to determine whether the obligor has been prejudiced by ICE's failure to fill in all of the blanks. A strict reading of the word "complete" as urged by counsel sets standards that are contained in neither of the agreements styled *Amwest I* and *Amwest II*.<sup>1</sup>

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 October 10, 2002 via certified mail. This notice demanded that the obligor produce the bonded alien on November 25, 2002. The domestic return receipt shows it was signed by a representative of Aegis Insurance Company and was subsequently received by ICE on October 21, 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.

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<sup>1</sup> *Amwest II* requires ICE to send out field memoranda and to provide training to ICE personnel on the use of the questionnaire. Neither agreement implies that the questionnaire is invalid if all fields are not completely filled in.

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.