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invasion of personal privacy**



FILE:



Office: WASHINGTON

Date:

FEB 24 2004

IN RE:

Obligor:

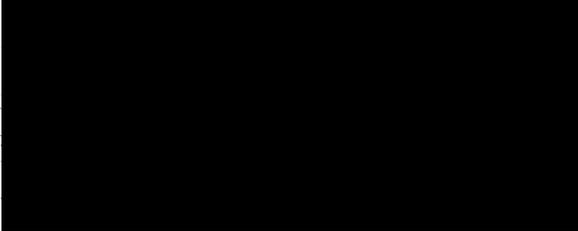
Bonded Alien:



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.

Mari Johnson

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 April 5, 2002, the obligor posted a \$3,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated November 7, 2002 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 9:30 a.m. on December 10, 2002, at 4420 Fairfax Drive, Room 426, Arlington, VA 22203. The obligor failed to present the alien, and the alien failed to appear as required. On December 28, 2002, the district director informed the co-obligor that the delivery bond had been breached.

On appeal, counsel asserts that the director failed to attach a questionnaire and photograph to the Form I-340 as required by the Amwest/Reno Settlement Agreement entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company.

In a supplementary brief, counsel asserts that the requirements under *Amwest I*, *Amwest II*, and many ICE memoranda, wires and training materials make it clear that each district must attach a properly completed and signed questionnaire to each Form I-340 sent to the surety. Counsel asserts that improperly completed questionnaires or those that are not signed do not satisfy the Amwest Settlements' requirements. Counsel further indicates that these materials were the basis for extensive ICE training in the field.

Memoranda issued by the Office of General Counsel of the legacy INS, now Office of Chief Counsel, are advisory in nature. 8 C.F.R. § 100.2(1). Internal memoranda routinely issued by ICE to guide the field offices in implementing the Settlement Agreement do not have the force of law, and training materials are not binding on ICE.

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 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 ICE officer or immigration judge upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by an ICE officer 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).

Pursuant to 8 C.F.R. § 103.5a(a)(2), 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 at P.O. Box 3153, Harrisburg, PA 17105 on November 7, 2002 via certified mail. This notice demanded that the obligor produce the bonded alien on December 10, 2002. The domestic return receipt indicates the obligor received notice to produce the bonded alien on November 12, 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).

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