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**U.S. Citizenship  
and Immigration  
Services**

GI



FILE: 

Office: SAN ANTONIO

Date: FEB 27 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 Field Office Director, Detention and Removal, San Antonio, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on April 29, 2003, 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 July 12, 2003, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to an officer of Immigration and Customs Enforcement (ICE) at 10:00 a.m. on August 26, 2003, at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On October 9, 2003, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the bonded alien is a national of El Salvador. Counsel opines that the bonded alien is eligible for Temporary Protected Status (TPS). Counsel argues that a grant of TPS would terminate ICE's detention and removal authority and require cancellation of the delivery bond.

Jurisdiction to determine whether an alien is eligible for TPS lies with CIS or the immigration judge, not the obligor for the alien's delivery bond. Counsel has not submitted evidence that the bonded alien has been granted Temporary Protected Status by either CIS or an immigration judge.

Temporary Protected Status is by definition a temporary status for certain qualifying aliens from designated countries. At the expiration of a validly granted TPS period, absent some further change of the alien's status, the alien will be required to depart the United States.

The obligor is bound by the terms of the contract to which it obligated itself. It is noted that 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, the delivery bond must terminate by operation of law. However, this is contrary to the holdings of *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Doan v. INS*, 311 F.3d 1160 (9<sup>th</sup> Cir. 2002). In *Zadvydas*, the Supreme Court expressly recognized the authority of the Immigration and Naturalization Service (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 9<sup>th</sup> 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 deportation 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 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 Immigration and Naturalization Service (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 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 was sent to the obligor at [REDACTED] on July 12, 2003 via certified mail. This notice demanded that the obligor produce the bonded alien on August 26, 2003. The domestic return receipt indicates the obligor received notice to produce the bonded alien on July 16, 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).

On appeal, counsel states that the ICE 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 the statement of a single purpose.

The Settlement Agreement requires the Form I-340 to state the correct purpose for which the alien is to be produced. The evidence reflects that the obligor was required "to interview such alien(s) for custody" at the time and place specified in the notice. However, this statement of purpose is unclear, does not reflect the correct purpose for which the alien is to be produced, and therefore does not meet the requirement of the Settlement Agreement.

Based on the provisions of the Amwest Agreement and the fact that the Form I-340 did not state a correct purpose, the appeal will be sustained. The field office director's decision declaring the bond breached will be rescinded and the bond will be continued in full force and effect.

**ORDER:** The appeal is sustained. The field office director's decision declaring the bond breached is rescinded and the bond is continued in full force and effect.