

U.S. Department of Homeland Security

Citizenship and Immigration Services

Administrative Appeals Office
Investigation of [redacted] [redacted]
Investigation of [redacted] [redacted]

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass. 3/F
425 I Street N.W.
Washington, D.C. 20536



GH

FILE: [redacted] Office: Dallas

Date:

JAN

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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Dallas, Texas, and the Administrative Appeals Office (AAO) sustained a subsequent appeal. The matter will be reopened by the AAO on motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii).

The record reflects that on August 6, 1999, 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 January 10, 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 8:00 a.m. on February 12, 2002 at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On February 14, 2002, the district director informed the obligor that the delivery bond had been breached.

The AAO sustained the obligor's appeal, finding that the bond breach was not valid, as the district director had issued the Notice to Deliver Alien outside of the 90-day period of detention authority under section 241(a)(1) of the Immigration & Nationality Act (the Act). This decision did not take into account the legal authority of the Secretary, Department of Homeland Security (Secretary), to require an alien to post a bond.

Under the terms of the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company, the parties agreed that, pursuant to statute, the Secretary's authority to detain an alien subject to a final order of deportation generally expires six months after the order of deportation becomes final. The parties, following the rule established by *Shrode v. Rowoldt*, 213 F.2d 810 (8th Cir. 1954), stipulated that the legacy INS would cancel any bond which was not breached prior to the expiration of the six month period. This stipulation was based on former INA section 242(c), which was deleted by section 306 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), effective April 1, 1997. Because former INA section 242(c) no longer exists, this stipulation of the Settlement Agreement is no longer applicable.

Since *Shrode*, section 305 of the IIRAIRA added section 241(a)(1) of the Act, 8 U.S.C. § 1231(a)(1). It provides generally that the Secretary shall remove an alien from the United States within 90 days following the order of removal, with the 90-day period suspended for cause. During the 90-day removal period, the Secretary shall exercise detention authority by taking the alien into custody and canceling any previously posted bond unless the bond has been breached or is subject to being breached. Section 241(a)(2) of the Act; 8 C.F.R. § 241.3(a).

Section 241(a)(3) of the Act provides that if an alien does not leave or is not removed during the 90-day period, the alien shall be subject to supervision under regulations prescribed by the Secretary. Posting of a bond may be authorized as a condition of release after the 90-day detention period. 8 C.F.R. § 241.5(b). Thus, unlike in *Shrode*, the Secretary has the continuing authority to require aliens to post bond following the 90-day post-order detention period.

The obligor is bound by the terms of the contract to which it obligated itself. Under the terms of the Form I-352 for bonds conditioned upon the delivery of the alien, the obligor contracted to "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.

The Secretary's authority to maintain a delivery bond is not contingent upon his authority to detain the alien. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court expressly recognized the authority of the 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 v. INS*, 311 F.3d 1160 (9th Cir. 2002), the 9th 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. These cases arose in the post-removal period and make clear 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.

Based on the statutory and regulatory provisions discussed above, the AAO reopens the matter, withdraws the order of September 5, 2002 and proposes to affirm the district director's decision declaring the bond breached.

Pursuant to 8 C.F.R. § 103.5(a)(5)(ii), the obligor is granted 30 days from the date of this notice, in which to submit a brief in



response to the AAO determination.

ORDER: The AAO order of September 5, 2002 is withdrawn.