

U.S. Department of Homeland Security

Citizenship and Immigration Services

Identifying information related to
prevent unauthorized disclosure
Invasion of personal privacy

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

FILE:

Office: New York

Date:

JAN 13 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:

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.

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, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on April 17, 2002, the obligor posted a \$4,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated May 15, 2003, was sent 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 June 2, 2003, at [REDACTED]

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

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 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, 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

return receipt requested, addressed to a person at his last known address.

On appeal, counsel asserts that the Form I-352 required all notices to be sent to both the obligor and co-obligor, and the Form I-340 was sent only to the obligor. Counsel states that the obligor received the Form I-340 on May 27, 2003 and mailed it to the co-obligor who received it on May 29, 2003. Counsel argues that the notice, with a surrender date of June 2, 2003, was untimely in that service of the Form I-340 within 10 days of the surrender date is insufficient time within which to produce the alien.

The evidence of record indicates that the Notice to Deliver Alien was sent to the obligor at [REDACTED] on May 15, 2003 via certified mail. This notice demanded that the obligor produce the bonded alien on June 2, 2003. The domestic return receipt indicates the obligor received notice to produce the bonded alien on May 27, 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).

Counsel fails to explain how he arrived at 10 days as being reasonable notice or how a 10-day notification is more inherently reasonable than the six days notice the obligor actually received, or the three days notice that the co-obligor apparently received. In *International Fidelity Ins. Co. v. Crosland*, 516 F. Supp. 1249 (S.D.N.Y. 1981), the court determined that the surety received sufficient notice even though it did not receive the demand notice until one day before it was required to produce the alien. Furthermore, as in *International Fidelity*, there is no indication that the obligor or the co-obligor have produced the alien or that either company could have produced him within 10 days instead of the six or three days received.

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.

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 field office



director will not be disturbed.

ORDER: The appeal is dismissed.