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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



FILE:  Office: Buffalo Date: **JAN 22 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: 

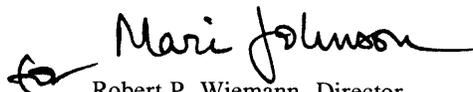
**INSTRUCTIONS:**

This is the decision 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 District Director, Buffalo, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on November 29, 2000, the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated January 21, 2003 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 10:00 a.m. on March 5, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On March 6, 2003, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the Form I-166 attached to the Form I-340 has the same surrender date as the Form I-340. Counsel asserts that the fact that the district had prepared the Form I-166 as of the date of the Form I-340 raises the presumption that the district did not wait three days before mailing the Form I-166, and failure to do so requires rescission of the breach.

The Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company, provides that the Form I-166 notice will not be mailed to the alien before, and not less than three days after, the demand to surrender is mailed to the obligor.

A copy of the Form I-166 was mailed with the Form I-340 to the obligor on January 21, 2003 as a courtesy and in no way violates the Amwest/Reno Settlement Agreement. The evidence of record indicates the Form I-166 was mailed to the alien on January 29, 2003. Additionally, contained in the record is a postmarked envelope, returned by the post office indicating delivery was attempted but the addressee was unknown. The record thus establishes that the Form I-166 was mailed to the alien more than 3 days after the Form I-340 was mailed.

Counsel also asserts that the sending of the "run" letter was so prejudicial as to make the obligor's duty to produce the alien impossible to perform. The district is statutorily responsible for finding and removing the bonded alien, and its discharge of these duties does not violate the bond contract.

On appeal, counsel states that the bonded alien is a national of Honduras who has been continuously residing in the United States since his entry on December 1, 1998. Counsel further states the bonded alien is therefore eligible for Temporary Protected Status (TPS) and his eligibility raises questions as to whether his bond has "ceased to exist as a matter of law" since a grant of TPS terminates ICE's detention and removal authority.

TPS is a temporary immigration status granted to eligible nationals of designated countries. During the period for which the Attorney General has designated a country under the TPS program, approved nationals of the designated country are not required to leave the United States. However, TPS is not a grant of permanent residence. When the Attorney General terminates a country's TPS status, the beneficiaries revert to the same immigration status they maintained before they were granted TPS. There are several factors to be considered before an alien may be eligible to apply for and receive TPS benefits. Although counsel does not state how he knows the alien has resided continuously in the United States since his entry, continuous residency is but one factor to consider. Section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

Jurisdiction to determine whether an alien is eligible for TPS lies with CIS or the immigration judge, and counsel has submitted no evidence that the bonded alien has been granted TPS status.

Counsel posits that once ICE no longer has detention authority over the alien, the delivery bond must terminate. 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 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. Although these cases arose in the post-removal period, they 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.

Counsel also asserts on appeal that ICE "has an affirmative duty to inform [the alien] of his eligibility" for TPS.

Sections 244(a)(3)(B) and (C) of the Act require notice to aliens in removal proceedings of their eligibility for TPS. While the alien within the context of removal proceedings must be provided notice of his or her eligibility for TPS, this requirement has no bearing on the obligor's contractual duty to deliver the alien. Even assuming that ICE were to lose detention authority over an alien who may be eligible for TPS, as noted above, this would not

require cancellation of the delivery bond.

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 the 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 [REDACTED] on January 21, 2003 via certified mail. This notice demanded that the obligor produce the bonded alien on March 5, 2003. The domestic return receipt indicates the obligor received notice to produce the bonded alien on January 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).

Furthermore, 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.

**ORDER:** The appeal is dismissed.