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U.S. Citizenship  
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Services

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prevent unwarranted  
invasion of personal privacy

GI

[Redacted]

FILE:

[Redacted]

Office: HOUSTON

Date:

JAN 27 2004

IN RE:

Obligor:

Bonded Alien:

[Redacted]

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:

[Redacted]

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*

for

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the bond will be continued in full force and effect.

The record indicates that on October 12, 2001, 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 February 6, 2003 was hand delivered to the obligor. 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 9:00 a.m. on March 6, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On March 7, 2003, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel fails to specifically identify any erroneous conclusion of law or statement of fact for the appeal. With the appeal, counsel requests a 60-day extension to file a brief subsequent to the receipt of the alien's file pursuant to his FOIA request. However, no further information or documentary evidence has been received by the AAO as of the date of this decision, more than eight months after the appeal was filed.

The Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company, provides at Exhibit F 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."

ICE is in substantial compliance with the Settlement Agreement when the questionnaire provides the obligor with sufficient identifying information to assist in expeditiously locating the alien, and does not mislead the obligor. Each case must be considered on its own merits. Failure to include a photograph, for example, which is not absolutely required under the terms of the Agreement, does not have the same impact as an improper alien number or wrong name. The AAO must look at the totality of the circumstances to determine whether the obligor has been prejudiced by ICE's failure to fill in all of the blanks.

It is noted that the present record contains evidence that a signed questionnaire was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement. The questionnaire, however, references the wrong alien identity information, including the wrong name and alien number. Because ICE has not substantially complied with the terms of the Settlement Agreement, the appeal must be sustained.

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 hand delivered to the obligor at [REDACTED] on February 19, 2003. However, this notice names the wrong alien for surrender on March 6, 2003. Thus the obligor failed to receive adequate notice of the demand to surrender the alien.

Pursuant to the Amwest/Reno Settlement Agreement, ICE agreed that a properly completed questionnaire would be attached to all Forms I-340 (Notices to Surrender) going to the obligor on a surety bond. The failure to attach a properly completed 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 Notice to Surrender Alien and questionnaire were 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.