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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE:

[Redacted]

Office: NEW YORK Date:

JUL 14 2004

IN RE:

Obligor:  
Bonded Alien

[Redacted]

IMMIGRATION BOND:

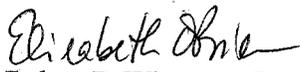
Bond Conditioned for the Delivery of an Alien under Section 103 of the  
Immigration and Nationality Act, 8 U.S.C. § 1103

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.

  
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 (AAO) on appeal. The appeal will be dismissed.

The record indicates that on May 28, 1999, 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 November 14, 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 Immigration and Customs Enforcement (ICE) at 10:00 a.m. on January 7, 2004,

The obligor failed to present the alien, and the alien failed to appear as required. On March 16, 2004, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the immigration judge issued an order of removal on July 31, 2000. Counsel further asserts that the alien appealed the IJ's decision, which was subsequently dismissed by the Board of Immigration Appeals (BIA) on January 15, 2003. Counsel states that although ICE made a timely attempt to execute this order with a demand for the alien's surrender on April 15, 2003, it failed to breach the bond within 180 days when the obligor failed to deliver the alien. Counsel further states that ICE let the case sit idle for another nine months before issuing a second demand for the alien's surrender on January 7, 2004. Counsel argues that ICE has lost detention authority, and the delivery bond should be canceled as a matter of law.

The record reflects that a removal hearing was held on July 31, 2000 and the alien was ordered removed from the United States. The bonded alien appealed the IJ's decision to the BIA. On January 15, 2003, the BIA affirmed, without opinion, the IJ's decision.

Counsel argues that the obligor is entitled to cancellation of the bond for equitable reasons, as the chances of the alien becoming a flight risk increase significantly after a final order is issued. The obligor is bound under the terms of the contract to deliver the alien until the bond is canceled or breached.

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 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 last known address.

The evidence of record indicates that the Notice to Deliver Alien dated November 14, 2003 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on January 7, 2004. The domestic return receipt indicates the obligor received notice to produce the bonded alien on November 20, 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).

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.