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U.S. Citizenship
and Immigration
Services



GI

FILE:



Office: NEW YORK

Date: **JUN 20 2004**

IN RE:

Obligor:

Bonded Alien:



IMMIGRATION BOND:

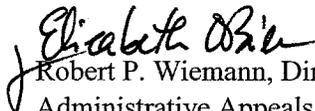
Bond Conditioned for the Delivery of an Alien under Section 103 of the
Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:



INSTRUCTIONS:

This is the decision 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 on appeal. The appeal will be dismissed.

The record indicates that on March 11, 2002, 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 November 18, 2003, was sent to the co-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 December 11, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On December 15, 2003, the field office director informed the co-obligor that the delivery bond had been breached.

On appeal, counsel asserts that according to the EOIR hotline, the immigration judge (IJ) issued an order of removal on February 11, 2003. Counsel states that the alien appealed the IJ's decision, which is currently pending. Counsel further asserts that nonetheless, ICE demanded the alien's surrender for an interview on December 11, 2003. Counsel claims that although ICE has a contractual right under the delivery bond to make such a demand, it is a flagrant abuse of that right and nothing more than a blatant tactic to effect a breach.

The record reflects that a removal hearing was held on February 11, 2003 and the alien was ordered removed from the United States. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On May 26, 2004, the BIA affirmed, without opinion, the IJ's decision.

The obligor is not relieved of its responsibility to deliver the bonded alien for an interview at the time and place specified in the field office director's demand notice as said director may call the alien in for an interview at any time prior to removal. Further, bond proceedings are separate and distinct from deportation proceedings. Deportation proceedings are between the United States government and an alien with a questionable right to remain in the United States. A delivery bond is a contract between ICE and the obligor, where in consideration for obtaining the alien's release from custody, the obligor agrees to produce the alien on demand until the obligation to do so terminates under grounds specified in the contract.

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 immigration and Naturalization Service 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 18, 2003 was sent to the co-obligor via certified mail. This notice demanded that the obligor produce the bonded alien on December 11, 2003. The domestic return receipt indicates the co-obligor received notice to produce the bonded alien on November 26, 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.