



U.S. Citizenship
and Immigration
Services

GI

[Redacted]

FILE: [Redacted] Office: DALLAS Date:

IN RE: Obligor: [Redacted]
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

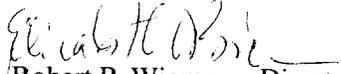
ON BEHALF OF OBLIGOR:

[Redacted]

Administrative Appeals Office
U.S. Citizenship and Immigration Services
Washington, DC 20529

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 District Director, Dallas, Texas, and the Administrative Appeals Office (AAO) sustained a subsequent appeal. The AAO reopened the matter on motion pursuant to 8 C.F.R. 103.5(a)(5)(ii), and notified the obligor of its intention to affirm the decision of the district director. No response has been received. The order of the AAO sustaining the appeal will be withdrawn. The district director's decision declaring the bond breached will be affirmed.

The record indicates that on June 3, 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 February 19, 2002, 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 8:00 a.m. on March 19, 2002, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On March 21, 2002, the district director informed the obligor that the delivery bond had been breached.

The AAO incorrectly sustained the appeal, finding that the district director had notified the obligor to produce the alien outside of the 90-day period of detention authority. On motion, the AAO determined that the bond breach was valid.

The authority of the Secretary, Department of Homeland Security, to maintain a delivery bond is not contingent upon his authority to detain the alien.

Section 305 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), effective April 1, 1997, added section 241(a)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1231(a)(1). It provides generally that the Secretary shall remove an alien from the United States within 90 days following the order of removal, with the 90-day period suspended for cause. During the 90-day removal period, the Secretary shall exercise detention authority by taking the alien into custody and canceling any previously posted bond unless the bond has been breached or is subject to being breached. Section 241(a)(2) of the Act; 8 C.F.R. § 1241.3(a).

Section 241(a)(3) of the Act provides that if an alien does not leave or is not removed during the 90-day period, the alien shall be subject to supervision under regulations prescribed by the Secretary. Posting of a bond may be authorized as a condition of release after the 90-day detention period. 8 C.F.R. § 1241.5(b).

The obligor is bound by the terms of the contract to which it obligated itself. The terms of the Form I-352 for bonds conditioned upon the delivery of the alien establish the following condition: "the obligor shall cause the alien to be produced or to produce himself/herself . . . upon each and every written request until *exclusion/deportation/removal proceedings . . . are finally terminated.*" (Emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

The courts in *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002) have upheld the authority of ICE to maintain a delivery bond following the period of detention authority. 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 9th 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. It is obvious from these rulings 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 removal 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.

ORDER: The order of August 28, 2002 sustaining the appeal is withdrawn. The district director's decision declaring the bond breached is affirmed.