

PUBLIC COPY



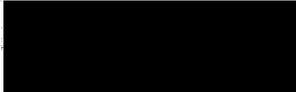
U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



GI

FILE:



Office: NEW YORK

Date: JUN 29 2004

IN RE:

Obligor:
Bonded Alien



IMMIGRATION BOND:

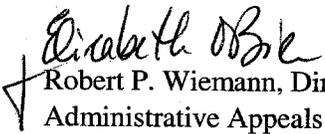
Bond Conditioned for the Delivery of an Alien under Section 103 of the
Immigration and Nationality Act, 8 U.S.C. § 1103

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 February 27, 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 January 10, 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 9:00 a.m. on February [REDACTED]. [REDACTED] the obligor failed to present the alien, and the alien failed to appear as required. On March 27, 2003, the field office director informed the obligor that the delivery bond had been breached.

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.

On appeal, counsel states that the obligor received the Form I-340 on February 3, 2003 and mailed it to the co-obligor who received it on February 6, 2003. Counsel argues that the notice, with a surrender date of February 14, 2003, was untimely in that service of the Form I-340 within 10 days of the surrender date constitutes unreasonable notice.

The evidence of record indicates that the Notice to Deliver Alien dated January 10, 2003 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on February 14, 2003. The domestic return receipt indicates the obligor received notice to produce

the bonded alien on February 3, 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).

As the obligor received over 10 days notice to produce the alien, this argument is moot. Further, counsel's assertion that the Form I-340 was not timely served is without merit. In *International Fidelity Ins. Co. v. Crosland*, 516 F. Supp. 1249 (S.D.N.Y. 1981), the court determined that the surety received sufficient notice even though it did not receive the demand notice until one day before it was required to produce the alien.

The Form I-352 in this case requires notices to be sent to both the obligor and co-obligor. Counsel asserts that, as ICE mailed the Form I-340 only to the obligor, the breach must be rescinded. Counsel cites no statute, regulation or case law that would require the bond to be rescinded against the sureties.

The Form I-352 provides that the obligor and co-obligor are jointly and severally liable for the obligations imposed by the bond contract. As such, ICE may pursue a breach of bond against one or both of the contracting parties. It is not obligated to take action against any specific contracting party. *See Restatement (Third) of Suretyship and Guaranty* § 50 (1996).

ICE's failure to provide notice to both the obligor and co-obligor is not a material breach of the contract such as to require a rescission of the bond breach. The record reflects that both parties received timely notice of the demand to surrender the bonded alien. Counsel has not alleged, and the record does not reflect, that the obligor's ability to produce the bonded alien was adversely affected by ICE's failure to also serve a copy of the Form I-340 upon the co-obligor.

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.