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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536



FILE:



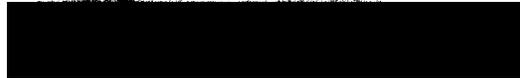
Office: San Antonio

Date:

MAR 01 2004

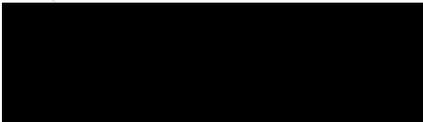
IN RE: Obligor:

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

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, San Antonio, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on September 5, 2001, the obligor posted a \$7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated January 22, 2003, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 10:00 a.m. on March 12, 2003, at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On October 3, 2003, the field office director informed the obligor that the delivery bond had been breached.

Counsel argues that the service of the Form I-323 was untimely as it was issued over 180 days after the breach date.

Part 9 of the Settlement Agreement entered into on June 22, 1995 by the legacy INS and Amwest Surety Insurance Company states:

INS agrees that no Form I-323, Notice - Immigration Bond Breached, shall be sent to the obligor more than 180 days following the date of the breach. If the I-323 is not sent to the obligor within 180 days following the date of the breach, then the declared breach shall be stale and unenforceable against the obligor.

As noted previously, the record indicates that the Form I-323, Notice - Immigration Bond Breached, was sent to the obligor on October 3, 2003. This notice was sent to the obligor based upon the obligor's failure to produce the bonded alien on March 12, 2003.

As the field office director delayed notification of the bond breach in violation of the conditions of the aforementioned Settlement Agreement, the breach is not valid. The appeal is sustained and the bond will be continued in full force and effect.

ORDER: The appeal is sustained. The bond will be continued in full force and effect.