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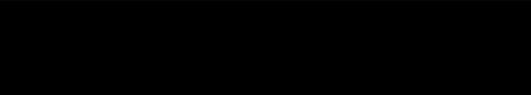


U.S. Citizenship
and Immigration
Services



MAR 22 2004

FILE:  Office: SAN ANTONIO Date:

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

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prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, San Antonio, Texas. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted. The order dismissing the appeal will be affirmed.

The record indicates that on April 26, 2000, 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 June 11, 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 10:00 a.m. on July 15, 2002, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On August 22, 2002, the district director informed the obligor that the delivery bond had been breached.

On motion, counsel argues that ICE has lost detention authority over the alien as a result of the alien's eligibility for, and possible grant of, Temporary Protected Status (TPS).

Jurisdiction to determine whether an alien is eligible for TPS lies with CIS or the immigration judge, not the obligor for the alien's delivery bond. Counsel has not submitted evidence that the bonded alien has been granted Temporary Protected Status by either CIS or an immigration judge.

Temporary Protected Status is by definition a temporary status for certain qualifying aliens from designated countries. At the expiration of a validly granted TPS period, absent some further change of the alien's status, the alien will be required to depart the United States.

The obligor is bound by the terms of the contract to which it obligated itself. It is noted that 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.

Counsel posits that once ICE no longer has detention authority over the alien, the delivery bond must terminate by operation of law. However, this is contrary to the holdings of *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002). 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. Even though these cases arose in the post-removal period, it is obvious from the 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 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.

On motion, counsel claims that sections 244(a)(3)(B) and (C) of the Immigration and Nationality Act (the Act), require that the alien be informed of his eligibility for TPS.

Sections 244(a)(3)(B) and (C) of the Act, 8 U.S.C. § 1254(3)(B) and (C), require notice to aliens in removal proceedings of their eligibility for Temporary Protected Status. While the alien within the context of removal proceedings must be provided notice of his or her eligibility for TPS, this requirement has no bearing on the obligor's contractual duty to deliver an alien. Even assuming that ICE were to lose detention authority over an alien who may be eligible for TPS, as noted above, this would not require cancellation of the delivery bond.

On motion, counsel asserts that the obligor routinely files a FOIA request with each bond breach appeal involving TPS to obtain the relevant information, but that the AAO frequently decides the appeal before the obligor receives a response.

As noted above, whether or not the alien has been granted TPS is not determinative, as a loss of detention authority would not require cancellation of the delivery bond. Further, the alleged failure of the District Office to respond to the obligor's FOIA request has no bearing in this matter, as bond proceedings are separate and apart from any other proceedings. The mere filing of a FOIA request does not excuse the obligor from delivering the alien as demanded.

Counsel requests oral argument in light of the complexity of the issues. Oral argument is limited to cases where cause is shown. It must be shown that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for argument is shown. Therefore, the request is denied.

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 order dismissing the appeal will be affirmed.

ORDER: The order of February 5, 2003 dismissing the appeal is affirmed.