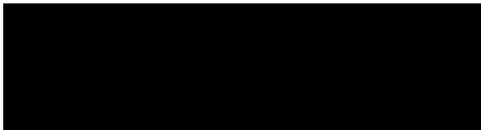


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U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



GI

FILE:



Office: SAN DIEGO

Date: MAY 23 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, San Diego, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on November 12, 2002, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated December 24, 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 Immigration and Customs Enforcement (ICE) at 9:00 a.m. on January 12, 2004, at [REDACTED]. [REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On January 14, 2004, the field office director informed the co-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 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.

On appeal, counsel asserts that the Form I-340 was untimely because it was received by the obligor on January 5, 2004 with a surrender date of January 12, 2004, 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 December 24, 2003 was sent to the co-obligor via certified mail. This notice demanded that the obligor produce the bonded alien on January 12, 2004. The domestic return receipt indicates the obligor received notice to produce the bonded alien on January 2, 2004.

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 fails to explain how he arrived at 10 days as being reasonable notice. ICE regulations at 8 C.F.R. § 243.3, in effect until the regulation was removed on March 6, 1997, provided for notice to an alien of his or her final order of removal three days prior to the removal of the alien. That regulation is no longer in effect. Even if that regulation still existed, the demand notice is notice to the obligor, not notice to the alien. In *International Fidelity Ins. Co. v. Crosland*, 516 F. Supp. 1249 (S.D.N.Y. 1981), the court determined that sufficient notice was given even if the surety did not receive the demand notice until one day before it was required to produce the alien.

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.