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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE:

[Redacted]

Office: ATLANTA

Date:

NOV 15 2004

IN RE:

Obligor:  
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]

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.

*Maui Johnson*

*for* Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent disclosure of unwarranted  
invasion of personal privacy

**DISCUSSION:** The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record indicates that on May 7, 2002, 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 September 23, 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 Immigration and Customs Enforcement (ICE), at 8:00 a.m. on October 21, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On November 5, 2003, the field officer director informed the obligor that the delivery bond had been breached.

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. *See Restatement (Third) of Suretyship and Guaranty* § 50 (1996). Consequently the record clearly establishes that the notice was properly served on either the obligor or the co-obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv). Reference in this decision to the obligor is equally applicable to the co-obligor and vice versa.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the field office director issued the Notice-Immigration Bond Breached on November 5, 2003. It is noted that the field office director properly gave notice to the obligor that it had 33 days to file the appeal. Although counsel dated the appeal November 21, 2003, it was received by ICE on December 31, 2003, or 56 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The field office director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.