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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: SAN ANTONIO Date: NOV 22 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: Self-represented

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.

Marc Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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

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**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 (AAO) on appeal.[1] The appeal will be rejected.

The record indicates that on February 26, 2003, the obligor posted a $20,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated April 25, 2003, was sent 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 10:00 a.m. on June 9, 2003, at: The obligor failed to present the alien, and the alien failed to appear as required. On August 6, 2003, the field office 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 mailed the Notice-Immigration Bond Breached on August 7, 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 the obligor dated the appeal September 4, 2003, it was received by ICE on September 10, 2003, or 34 days after the decision was issued. Accordingly, the appeal was untimely filed.

It is noted that the obligor asserts that the breach notice was not postmarked until August 13, 2003. The obligor, however, provides no evidence to support its argument. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972).

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.

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[1] Capital Bonding Corporation executed a settlement agreement with the Immigration and Naturalization Service (legacy INS) on February 21, 2003 in which it agreed that any appeals to the AAO subsequent to the execution of this Agreement shall be filed by counsel of record. The AAO will adjudicate the appeal notwithstanding Capital Bonding Corporation's failure to comply with the settlement agreement in this case.

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

**ORDER**: The appeal is rejected.