

GI

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: CHICAGO

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:

[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.

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

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

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record indicates that on July 6, 1999, 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 17, 1999, 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 January 13, 2000, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On November 6, 2000, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel puts forth a Freedom of Information Act (FOIA) request. Counsel requests an extension of 60 days in which to file a written brief pending receipt of the alien's file. Counsel claims that the facts of the case, and the law applicable thereto, are complicated.

It should be noted that the facts present in the case at hand are similar not only to numerous cases already presented to the AAO by the obligor on previous appeals but to a myriad of similar cases adjudicated by the AAO since its inception in 1983. Therefore, the request for an extension of time in which to submit a brief is denied.

On appeal, counsel states that the obligor has been relieved from liability on the bond because ICE sent the alien a notice to appear for removal on Form I-166. Counsel asserts that this is contrary to current ICE regulations.

Form I-166 has not been required since July 25, 1986, which is the effective date of an amendment to former 8 C.F.R. § 243.3. That amendment had no effect on the obligor's agreement to produce the alien upon request.

Counsel indicates, on appeal, that ICE violated one or more terms of the June 22, 1995 Amwest/Reno Settlement Agreement entered into by the legacy INS 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 upon each and every written request until removal proceedings are finally terminated, or until the 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.

The record fails to contain the domestic return receipt to indicate that the Notice to Deliver Alien dated December 17, 1999 was sent to the obligor at [REDACTED] or to indicate that the obligor had received the notice to produce the bonded alien on January 13, 2000. Consequently, the record fails to establish that the district director properly served notice on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

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 November 6, 2000. This notice was sent to the obligor based upon the obligor's failure to produce the bonded alien on January 13, 2000.

As the district 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.