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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



NOV 22 2004

FILE:  Office: HOUSTON 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: 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be rejected.

The record indicates that on January 7, 2003, 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 12, 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 9:00 a.m. on October 21, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On October 23, 2003, the field office director informed the obligor that the delivery bond had been breached.

The record indicates that the field office director issued the Notice-Immigration Bond Breached on October 23, 2003. The obligor dated the appeal December 2, 2003, and it was received by ICE on December 29, 2003, or 67 days after the decision was issued.

Notwithstanding that the Form I-323 indicates the appeal is due on or before December 8, 2003, the regulation at 8 C.F.R. § 103.3(a)(2)(i) clearly 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). 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.

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.