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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 DIEGO (ECC)

Date:

IN RE: Obligor:
Bonded Alien:

[Redacted]

NOV 22 2004

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.

Mari Johnson

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 District Director, San Diego, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record indicates that on October 11, 2000, 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 May 25, 2001, 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 legacy Immigration and Naturalization Service, now Immigration and Customs Enforcement (ICE), at 9:00 a.m. on June 27, 2001, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On July 26, 2001, the district director informed the obligor that the delivery bond had been breached.

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 district director issued the Notice-Immigration Bond Breached on July 26, 2001. It is noted that the district director properly gave notice to the obligor that it had 33 days to file the appeal. Counsel dated the appeal August 27, 2001, and it was received by ICE on September 6, 2001, or 42 days after the decision was issued. Accordingly, the appeal was untimely filed.¹

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 district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The district 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 The AAO notes that a Notice to Deliver Alien was issued subsequent to May 25, 2001. A new Form I-340 supersedes all prior demands, thus also rendering the appeal moot.