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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: NEW ORLEANS (LOU)

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.

*Maui Pluson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, New Orleans, Louisiana, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on November 7, 2002, the obligor posted a \$1,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) 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 9:00 a.m. on January 6, 2004, at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On January 8, 2004, 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.

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, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said 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 evidence of record indicates that the Notice to Deliver Alien was sent on December 10, 2003 via certified mail. This notice demanded that the obligor produce the bonded alien on January 6, 2004. The domestic return receipt indicates the obligor received notice to produce the bonded alien on December 15, 2003. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

On appeal, counsel asserts that ICE failed to attach a questionnaire or a photograph to the Form I-340 as required by the Amwest/Reno Settlement Agreement entered into on June 22, 1995 by the Immigration and Naturalization Service (legacy INS) and Far West Surety Insurance Company.<sup>1</sup>

Pursuant to the Amwest/Reno Settlement Agreement, ICE agreed that a properly completed questionnaire would be attached to all Form I-340s (Notices to Surrender) going to the obligor on a surety bond. The failure to attach the questionnaire would result in rescission of any breach related to that Form I-340.

Based on the provisions of the Amwest Agreement and the fact that the record fails to show that a properly completed questionnaire was sent to the obligor, the appeal will be sustained. The field office director's decision declaring the bond breached will be rescinded and the bond will be continued in full force and effect.

**ORDER:** The appeal is sustained. The field office director's decision declaring the bond breached is rescinded and the bond is continued in full force and effect.

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<sup>1</sup> Capital Bonding Corporation executed a settlement agreement with the legacy INS on February 21, 2003, in which it agreed not to raise certain arguments on appeals of bond breaches. The AAO will adjudicate the appeal notwithstanding the obligor's failure to comply with the settlement agreement in this case.