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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



FILE:



Office: MIAMI

Date:

NOV 26 2004

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

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

The record indicates that on June 30, 2003, the obligor posted a \$3,000 bond conditioned for the delivery of the above referenced alien. A removal hearing was held on July 16, 2003, and the alien was granted voluntary departure from the United States on or before August 15, 2003, with an alternate order of removal to take effect in the event that the alien failed to depart as required. The court ordered that the delivery bond shall serve as a voluntary departure bond. As there is no evidence that the obligor was present or agreed to bond changes, the delivery bond remains in effect. On February 11, 1994, the field office director informed the obligor that the delivery bond had been breached.

The record fails to indicate that a Notice to Deliver Alien was sent to the obligor. As such, the breach is not valid.

On appeal, the obligor asserts that the bonded alien departed the United States and presented himself before the United States Embassy in Jamaica. The obligor provides copies of a Notification of Departure-Bond Case (Form I-392), the alien's airline ticket for departure on August 15, 2003, and a self-serving statement from the alien.

The AAO has held that an alien who departs from the United States prior to the date demanded for surrender may be in substantial compliance with the terms of his delivery bond. *Matter of Don Donaldson's Key Bail Service*, 13 I&N Dec. 563 (Acting Reg. Comm. 1969). However, the burden is upon the alien or his surety to prove by probative evidence that the alien did leave the country prior to his surrender date. *Matter of Peerless Insurance Company*, 15 I&N Dec. 133 (Reg. Comm. 1974).

A physical verification of departure by an immigration officer at the port of departure, or a verification of the alien's presence in the foreign destination by a United States consular officer or immigration officer abroad, is required to verify departure.

ICE will accept a document signed by an embassy official, consular officer, or an immigration officer abroad, and bearing an appropriate seal or other indicia of reliability as proof that a voluntary departure or self-removal has occurred. The field office director retains the discretion to accept other documents of voluntary departure. The original of such documents may be delivered either by the surety or through diplomatic channels. Copies of such documents will be accepted only if received through diplomatic channels.

Although ICE received the original Form I-392, the officer in charge at the United States Embassy in Jamaica indicated that the bonded alien appeared on August 19, 2003 without a passport or ticket. The officer in charge further indicated that someone other than an official at the Embassy filled in the date, place and manner of departure. Thus, the alien's alleged departure from the United States on August 15, 2004 could not be authenticated.

It is noted that the record reflects that ICE provided the obligor several opportunities to present proof of the alien's departure from the United States; however, to date no evidence has been presented by the obligor. Nevertheless, because the record fails to indicate that the Form I-340 was sent to the obligor, the breach is not valid.

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