



U.S. Citizenship
and Immigration
Services

GI



FILE: [REDACTED] Office: HOUSTON Date: OCT 08 2004

IN RE: Obligor: [REDACTED]
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: 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

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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 Field Officer 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 30, 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 August 6, 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 September 11, 2003, at [REDACTED]. [REDACTED] the obligor failed to present the alien, and the alien failed to appear as required. On September 17, 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 September 17, 2003. The obligor dated the appeal October 20, 2003, it was received by ICE on October 22, 2003, or 35 days after the decision was issued.

It is noted that the obligor asserts that the breach notice was not postmarked until September 24, 2003. The obligor, however, provides no evidence to support its argument. The assertion of the obligor does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Notwithstanding that the Form I-323 indicates the appeal is due on or before October 23, 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.