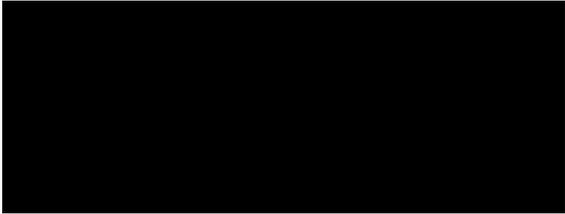




U.S. Citizenship
and Immigration
Services



FILE:



Office: NEW YORK Date:

OCT 12 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:



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**

PUBLIC COPY

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, New York, New York. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted. The order dismissing the appeal will be affirmed.

The record indicates that on April 11, 1996, the obligor posted a \$7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated May 17, 2002, 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 Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 9:00 a.m. on June 18, 2002, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On June 28, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel stated that the District Director failed to provide the obligor with a properly completed signed questionnaire and a photograph of the alien as required by the *Amwest v. Reno Settlement Agreement* entered into June 22, 1995 between the legacy INS and the Amwest and Far West Surety Insurance Companies.

The AAO ruled in a decision dated January 29, 2003 that the completed questionnaire complied with the terms of the Settlement Agreement. The AAO further concluded that the obligor was bound by the terms of the bond contract to surrender the alien upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted for detention or removal.

On motion, counsel for the obligor again states that the questionnaire was incomplete, as it was not signed and ICE did not include a photograph of the alien or indicate that one was unavailable. Counsel argues that the failure to include a photograph or to state that one was unavailable constitutes an incomplete questionnaire that invalidates the bond breach because it does not comply with the Settlement Agreement.¹

The Settlement Agreement, Exhibit F, provides that "a questionnaire prepared by the surety with approval of the INS [now ICE] will be completed by the [ICE] whenever a demand to produce a bonded alien is to be delivered to the surety. The completed questionnaire will be certified correct by an officer of the [ICE] delivered to the surety with the demand."

ICE is in substantial compliance with the Settlement Agreement when the questionnaire provides the obligor with sufficient identifying information to assist in expeditiously locating the alien, and does not mislead the obligor. Each case must be considered on its own merits. Failure to include a photograph, which is not absolutely required under the terms of the Agreement, does not have the same impact as an improper alien number or wrong name. The AAO must look at the totality of the circumstances to determine whether the obligor has been prejudiced by ICE's failure to sign the questionnaire, or to attach a photograph if one is available. A strict reading of the word "complete" as urged by counsel sets standards that are contained in neither of the Agreements styled *Amwest I* and *Amwest II*.

¹ 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.

Counsel has not alleged or established any prejudice resulting from ICE's failure to sign the questionnaire or to attached a photograph, or more particularly, to state that one is unavailable. More importantly, a lack of a photograph or failure to sign the questionnaire does not invalidate the bond breach.

The obligor is bound by the terms of the bond contract to surrender the alien upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted for detention or removal.

Under the provisions of the Immigration Bond Form I-352, the obligor agrees to produce the alien upon demand until: (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by ICE for detention or deportation/removal; or (3) the bond is canceled for some other reason. The obligor is relieved of its contractual responsibility to deliver the alien only if one of these enumerated circumstances has occurred. As the obligor has not shown any of the above occurrences, the bond breach resulting from the obligor's failure to produce the alien on January 29, 2002 is valid.

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The order dismissing the appeal will be affirmed.

ORDER: The order of January 29, 2003, dismissing the appeal is affirmed.