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U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: [Redacted] Office: SAN ANTONIO Date: SEP 29 2011

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:

[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*

for Robert P. Wiemann, Director  
Administrative Appeals Office

SEP 29 2011  
U.S. CITIZENSHIP AND IMMIGRATION SERVICES  
ADMINISTRATIVE APPEALS OFFICE

**DISCUSSION:** The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, San Antonio, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that April 29, 2003, the obligor posted a \$2,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated March 2, 2004, was sent to the co-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 April 19, 2004, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On April 21, 2004, the field office director informed the co-obligor that the delivery bond had been breached.

On appeal, counsel asserts that the alien was granted voluntary departure in removal proceedings on October 21, 2003, without the requirement of a voluntary departure bond and voluntarily departed the United States on April 20, 2004. Counsel asserts that the delivery bond should be canceled as required by the *Amwest v. Reno* Settlement Agreement and the Immigration and Naturalization Service (legacy INS) implementing memorandum. Counsel fails to submit the legacy INS memorandum to support his argument.

The record reflects that a removal hearing was held on October 23, 2003, and the alien was granted voluntary departure from the United States on or before December 22, 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 a voluntary departure bond be imposed in the amount of \$500. A voluntary departure bond was not posted, and the delivery bond remains in effect. The alien appealed the decision to the Board of Immigration Appeals (BIA). On February 11, 2004, the BIA returned the record to the immigration court without further action as the alien's appeal had been withdrawn.

The obligor is bound by the terms of the contract to which it obligated itself. The terms of the Form I-352 for bonds conditioned upon the delivery of the alien establish the following condition: "the obligor shall cause the alien to be produced or to produce himself/herself . . . upon each and every written request until *exclusion/deportation/removal proceedings* . . . are finally terminated." (Emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

Citing the legacy INS memorandum, counsel asserts that the delivery bond must be canceled when the alien is granted voluntary departure without the requirement to post a voluntary departure bond. The memorandum and the Settlement Agreement that it proposes to implement were predicated on former section 242(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1252(c), which was deleted by section 306 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) effective April 1, 1997. Because former section 242(c) of the Act no longer exists, this language contained in the Settlement Agreement and its implementing memoranda is no longer applicable.

Notwithstanding that ICE maintains detention authority in this case, as the alien failed to post a voluntary departure bond as ordered by the court, counsel's argument will be addressed below. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court expressly recognized the authority of the legacy INS to require the posting of a bond as a condition of release after it lost detention authority over the alien, even though a bond was not provided as a condition of release by the statute. In *Doan v. INS*, 311 F.3d 1160 (9<sup>th</sup> Cir. 2002), the 9<sup>th</sup> Circuit held the legacy INS had the authority to require a \$10,000 delivery bond in a supervised release context even though it did not have detention authority. Even though these cases arose in the post-removal

period, it is obvious from the rulings that detention authority is not the sole determining factor as to whether ICE can require a delivery bond.

The bond contract provides that it may be canceled when (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 otherwise canceled. The circumstances under which the bond may be "otherwise canceled" occur when the Secretary or the Attorney General imposes a requirement for another bond, and the alien posts such a bond, or when an order of removal has been issued and the alien is taken into custody. As the obligor has not shown that any of these circumstances apply, the bond is not canceled.

On appeal, counsel asserts that the appeal should be sustained as the bonded alien departed the United States on April 20, 2004. The record, however, fails to contain an "attached copy" of the verification of departure. The assertion of counsel 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). Further, the alien's alleged departure does not change the fact that the breach occurred when the obligor failed to deliver the alien on April 19, 2004.

The present record contains evidence that a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement.

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 upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the immigration officer 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 dated March 2, 2004 was sent to the co-obligor via certified mail. This notice demanded that the obligor produce the bonded alien on April 19, 2004. The domestic return receipt indicates the co-obligor received notice to produce the bonded alien on March 8,

2004. 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).

It is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE for detention or removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

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 decision of the field office director will not be disturbed.

**ORDER:** The appeal is dismissed.