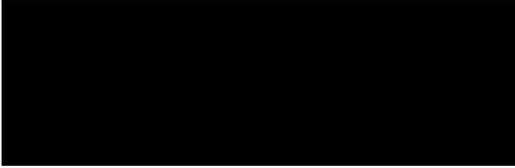




U.S. Citizenship
and Immigration
Services

GI



FILE:



Office: SAN DIEGO

Date:

SEP 30 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.

Mari Johnson

for

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

The record indicates that on April 14, 1995 the obligor posted a \$1,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated April 19, 2004, 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 May 3, 2004, at 880 Front Street, Room 2242, San Diego, CA 92101. The obligor failed to present the alien, and the alien failed to appear as required. On May 4, 2004 the field office director informed the obligor that the delivery bond had been breached.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) 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).

The record indicates that the field office director issued the Notice-Immigration Bond Breached on May 4, 2004. It is noted that the field office director properly gave notice to the obligor that it had 33 days to file the appeal. The obligor dated the appeal June 15, 2004, and it was received by ICE on July 15, 2004, or 72 days after the decision was issued. Accordingly, the appeal was untimely filed.

It is noted that the obligor asserts that she was in the hospital at the time the breach notice was sent to her address of record. The obligor, however, provides no evidence to support her argument. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Assuming, arguendo, the obligor is correct, the appeal would have still been untimely filed as the United States Postal Service track and confirmation receipt indicates that the Form I-323, Notice-Immigration Bond Breached was delivered at the obligor's address of record on May 29, 2004.

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.