

61



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date:

SEP 30 2004

IN RE:

Obligor:
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

to 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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on October 19, 2001, the obligor posted a \$3,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated January 12, 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 10:00 a.m. on March 2, 2004, at 300 N. Los Angeles Street, Room 7621, Los Angeles, CA 90012. The obligor failed to present the alien, and the alien failed to appear as required. On March 22, 2004, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the immigration judge issued an order of removal on April 4, 2002. Counsel further asserts that because ICE made no attempt to execute this order within 90 days, it has lost detention authority, and the delivery bond should be canceled as a matter of law.

The record reflects that a removal hearing was held on April 4, 2002 and the alien was ordered removed in absentia.

In *Bartholomeu v. INS*, 487 F. Supp. 315 (D. Md. 1980), the judge stated regarding former section 242(c) of the Immigration and Nationality Act (the Act) that, although the statute limited the authority of the Attorney General, now the Secretary, Department of Homeland Security (Secretary), to detain an alien after a six-month period (at that time) following the entry of an order of removal, the period had been extended where the delay in effecting removal arose not from any dalliance on the part of the Attorney General but from the alien's own resort to delay or avoid removal. The Attorney General never had his unhampered and unimpeded six-month period in which to effect the alien's timely removal because the alien failed to appear for removal and remained a fugitive.

Present section 241(a)(2) of the Act, 8 U.S.C. § 1231(a)(2), gives the Secretary authority to physically detain an alien for a period of 90 days from the date of final order of removal for the purpose of effecting removal, and was intended to give the Secretary a specific unhampered period of time within which to effect removal. Section 241(a)(1)(C) of the Act, 8 U.S.C. § 1231(a)(1)(C), specifically provides for an extension of the removal period beyond the 90-day period when the alien conspires or acts to prevent his own removal. As the alien in this case failed to appear for the removal hearing, the Secretary's detention authority is suspended, and, following *Bartholomeu*, will be deemed to start running when the alien is apprehended and otherwise available for actual removal.

As noted above, the Secretary maintains detention authority in this case, as the alien failed to appear for his removal hearing and to surrender to ICE for removal.

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.

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 deportation 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.

Counsel alternatively argues that the obligor is entitled to cancellation of the bond for equitable reasons, as the alien essentially goes into hiding after a final order is issued. As stated in the preceding paragraph, the obligor is bound under the terms of the contract to deliver the alien until the bond is canceled or breached.

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, entered into on June 22, 1995 by the legacy Immigration and Naturalization Service and Far West Surety Insurance Company.

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, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by ICE 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 January 12, 2004 was sent to the obligor at 525 Penn Street, Suite 200, Reading, PA 19601 via certified mail. This notice demanded that the obligor produce the bonded alien on March 2, 2004. The domestic return receipt indicates the obligor received notice to produce the bonded alien on January 20, 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.