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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

GI

[Redacted]

FILE: [Redacted]

Office: PHOENIX

Date:

APR 11 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record indicates that on September 12, 2003 the obligor posted a \$6,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated April 15, 2004, was sent 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 May 19, 2004, at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On December 5, 2004, the field office director informed the obligor that the delivery bond had been breached.

The Form I-352 provides that the obligor and co-obligor are jointly and severally liable for the obligations imposed by the bond contract. As such, ICE may pursue a breach of bond against one or both of the contracting parties. *See Restatement (Third) of Suretyship and Guaranty* § 50 (1996). Consequently, the record clearly establishes that the notice was properly served on either the obligor or the co-obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv). Reference in this decision to the obligor is equally applicable to the co-obligor and vice versa.

On appeal, counsel argues that the breach is invalid because ICE failed to comply with the Amwest/Reno Settlement Agreement with respect to the questionnaire.

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.

Part 9 of the Amwest/Reno Settlement Agreement states:

INS agrees that no Form I-323, Notice - Immigration Bond Breached, shall be sent to the obligor more than 180 days following the date of the breach. If the I-323 is not sent to the obligor within 180 days following the date of the breach, then the declared breach shall be stale and unenforceable against the obligor.

As noted previously, the record indicates that the Form I-323, Notice - Immigration Bond Breached, was sent to the obligor on December 5, 2004. This notice was sent to the obligor based upon the obligor's failure to produce the bonded alien on May 19, 2004.

As the field office director delayed notification of the bond breach in violation of the conditions of the aforementioned Settlement Agreement, the breach is not valid. The appeal is sustained and the bond will be continued in full force and effect.

ORDER: The appeal is sustained. The bond will be continued in full force and effect.