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**U.S. Citizenship
and Immigration
Services**



G1

FILE:



Office: Phoenix

Date: **AUG 17 2005**

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Phoenix, Arizona, and a subsequent appeal was sustained in error by the Administrative Appeals Office (AAO). After review of the complete record of proceeding, the AAO reopened the matter on motion on June 17, 2005 pursuant to 8 C.F.R. 103.5(a)(5)(ii) for purposes of entering a new decision. No response has been received. The January 13, 2004 order of the AAO dismissing the appeal and the February 22, 2005 order sustaining the appeal have been withdrawn. The district director's decision declaring the bond breached will be affirmed.

The record indicates that on May 6, 2002, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated October 21, 2002, was sent via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 10:00 a.m. on November 13, 2002, at 2035 N. Central Avenue, Phoenix, AZ 85004. The obligor failed to present the alien, and the alien failed to appear as required. On November 19, 2002, the district 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.

The AAO initially dismissed the appeal on January 13, 2004. Subsequently, the director forwarded a duplicate record of proceedings to the AAO, which was incomplete and as such, the AAO inadvertently sustained the appeal on February 22, 2005 finding that the director had failed to properly served notice on the obligor in compliance with 8 C.F.R.. § 103.5a(a)(2)(iv). On motion, the AAO determined that bond breach was valid.

Accordingly, the conflicting decisions of January 13, 2004 dismissing the appeal and of February 22, 2005 sustaining the appeal are withdrawn and the district director's decision declaring the bond breached will be affirmed.

ORDER: The appeal is dismissed. The district director's decision declaring the bond breached will be affirmed.