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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

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[Redacted]

FILE:

[Redacted]

Office: ST. PAUL

Date: FEB 10 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: 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.

Mai Johnson

6 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record indicates that on May 29, 1998 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 February 10, 1999, 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 the legacy Immigration and Naturalization Service, now Immigration and Customs Enforcement (ICE), at 10:00 a.m. on March 2, 1999, at 2901 Metro Drive, Suite 100, Bloomington, Minnesota, 55425. The obligor failed to present the alien, and the alien failed to appear as required. On March 4, 1999, the district 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 district director mailed the Notice-Immigration Bond Breached on March 15, 1999. It is noted that the district director properly gave notice to the obligor that it had 33 days to file the appeal. The envelope containing the notice was returned by the post office as undeliverable—moved. The obligor dated the appeal May 20, 2003, and it was received by ICE on May 20, 2003, over four years after the decision was issued. Accordingly, the appeal was untimely filed.

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 district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The district director declined to treat the late appeal as a motion and forwarded the matter to the AAO.¹

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ The record reflects that a removal hearing was held on December 15, 1998, and the alien was granted voluntary departure from the United States on or before January 14, 1999. The record contains a Form G-146 issued on June 14, 1999 from the American Consulate in Educador indicating that the alien departed the United States on December 28, 1998. As such, the bond should be canceled.