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U.S. Citizenship
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FILE:



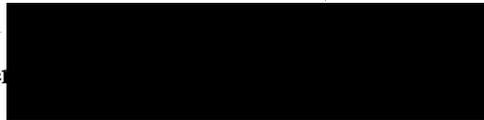
Office: TAMPA

Date:

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:



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, Miami, Florida, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on February 1, 2002, the obligor posted a \$2,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated April 23, 2003, 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 22, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On June 18, 2003, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the Form I-323, Notice-Immigration Bond Breached is erroneous as the obligor received a new Form I-340 with a surrender date of June 20, 2003.

The record reflects that the Form I-323 dated June 18, 2003 indicated that the obligor had failed to produce the alien for surrender on May 22, 2003 as required by ICE's demand dated April 23, 2003. However, a subsequent Form I-340 was issued on May 20, 2003, which demanded the surrender of the bonded alien on June 20, 2003. Once a new demand is sent to the obligor, the new demand supersedes all prior demands namely, the demand issued on April 23, 2003. As such, the breach as noted on the Form I-323 is not valid.

On appeal, counsel asserts that ICE failed to attach a questionnaire or a photograph to the Form I-340 as required by the Amwest/Reno Settlement Agreement entered into on June 22, 1995 by the Immigration and Naturalization Service (legacy INS) and Far West Surety Insurance Company.¹

Counsel indicates:

I am attaching a questionnaire brief, which is a history of the I-340 questionnaire and the requirements under *Amwest I*, *Amwest II*, and many INS [now ICE] memorandums, wires and training materials dedicated to this particular issue. They make it clear that each District must attach a properly completed (and signed) questionnaire and photograph to each I-340 at the time they send it to the surety.

Counsel fails to submit the ICE memoranda, wires and training materials to support his arguments. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, training materials written by the INS office of General Counsel, now Office of the Principal Legal Adviser (OPLA), are not binding on ICE.

The Settlement Agreement, Exhibit F, provides that "a questionnaire prepared by the surety with approval of the INS [now ICE] will be completed by the [ICE] whenever a demand to produce a bonded alien is to be delivered

¹ Capital Bonding Corporation executed a settlement agreement with the legacy INS on February 21, 2003, in which it agreed not to raise certain arguments on appeals of bond breaches. The AAO will adjudicate the appeal notwithstanding Capital Bonding Corporation's failure to comply with the settlement agreement in this case.

to the surety. The completed questionnaire will be certified correct by an officer of the [ICE] delivered to the surety with the demand."

The present record contains evidence of a properly completed questionnaire with the alien's photograph attached. However, it is not known if said questionnaire accompanied the Form I-340 issued on May 20, 2003 as the questionnaire was dated March 17, 2003.

Because the record fails to show that a properly completed questionnaire was sent to the obligor along with the Form I-340 issued on May 22, 2003, and the failure to issue a Form I-323 for latest Form I-340, the appeal will be sustained. The field office director's decision declaring the bond breached will be rescinded and the bond will be continued in full force and effect.

ORDER: The appeal is sustained. The field office director's decision declaring the bond breached is rescinded and the bond is continued in full force and effect.