

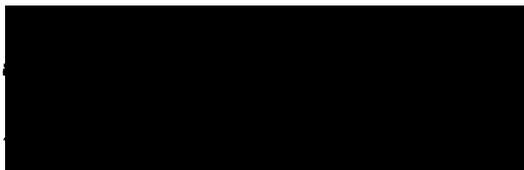
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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



GI

FILE:



Office: HOUSTON

Date: **JAN 27 2005**

IN RE:

Obligor:

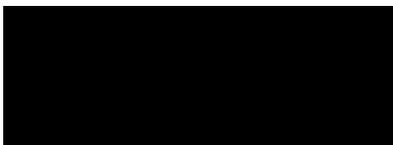
Bonded Alien:



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:



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.

A handwritten signature in cursive script that reads "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District, Director, Houston, Texas. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted. The order dismissing the appeal will be affirmed.

The record indicates that on May 14, 2001, the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated January 23, 2002, 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 Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 9:00 a.m. on March 19, 2002, at 126 Northpoint Drive, Houston, TX 77060. The obligor failed to present the alien, and the alien failed to appear as required. On April 2, 2002, the district director informed the obligor that the delivery bond had been breached.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Immigration and Customs Enforcement (ICE) policy. 8 C.F.R. § 103.5(a)(3).

On appeal, counsel argued that the district director failed to attach a properly completed questionnaire to the Form I-340. In its previous decision, the AAO held that the questionnaire sent to the obligor complied with the terms of the Amwest v. Reno Settlement Agreement entered into on June 22, 1995 between the legacy INS and the Amwest and Far West Surety Insurance Company. The AAO further held that the obligor was bound by the terms of the bond contract to surrender the alien upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted for detention or removal.

On motion, counsel for the obligor again states that the questionnaire was incomplete, as the sections were not filled out. Counsel argues that the failure to complete all sections of the questionnaire invalidates the bond breach, because it does not comply with the Amwest/Reno Settlement Agreement.¹

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

ICE is in substantial compliance with the Settlement Agreement when the questionnaire provides the obligor with sufficient identifying information to assist in expeditiously locating the alien, and does not mislead the obligor. Each case must be considered on its own merits. Failure to include a photograph, for example, which is not absolutely required under the terms of the Agreement, does not have the same impact as an improper alien number or wrong name. The AAO must look at the totality of the circumstances to determine whether the obligor has been prejudiced by ICE's failure to fill in all of the blanks.

Counsel has not alleged or established any prejudice resulting from ICE's failure to complete each section of the questionnaire. More importantly, failure to complete each section does not invalidate the bond breach.

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 motion notwithstanding the obligor's failure to comply with the settlement agreement in this case.

On motion, counsel requests oral argument in light of the complexity of the issues. Oral argument is limited to cases where cause is shown. It must be shown that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for argument is shown. Therefore, the request is denied.

The obligor is bound by the terms of the bond contract to surrender the alien upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted for detention or removal.

Under the provisions of the Immigration Bond Form I-352, the obligor agrees to produce the alien upon demand until: (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 canceled for some other reason. The obligor is relieved of its contractual responsibility to deliver the alien only if one of these enumerated circumstances has occurred. As the obligor has not shown any of the above occurrences, the bond breach resulting from the obligor's failure to produce the alien on March 19, 2002 is valid.

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 order dismissing the appeal will be affirmed.

ORDER: The order of February 10, 2003, dismissing the appeal is affirmed.