

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



GI

FILE: [REDACTED]

Office: DALLAS

Date: JAN 27 2005

IN RE: Obligor: [REDACTED]
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:



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 Plusa

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record indicates that on June 28, 2000, the obligor posted a \$7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated October 18, 2000, 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 November 18, 2000, at 8101 North Stemmons Freeway, Dallas, TX 75247. The obligor failed to present the alien, and the alien failed to appear as required. On December 20, 2000, the district director informed the obligor that the delivery bond had been breached.

On motion, counsel disagrees with the AAO's decision to deny him additional time in which to prepare and file a brief pending receipt of a copy of the alien's file from ICE. Counsel asserts that, as the Freedom of Information Act (FOIA) request indicates that ICE failed to attach a questionnaire to the Form I-340, AAO's failure to consider and discuss this issue and its failure to grant the obligor an extension of time in which to file its appeal was an abuse of discretion.

The regulation at 8 C.F.R. § 103.5(a)(2) provides that a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) provides that 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 ICE policy.

The regulation at 8 C.F.R. § 103.5(a)(4) provides that a motion that does not meet applicable requirements shall be dismissed.

Counsel's argument is without merit. Counsel previously based his appeal on ICE's alleged failure to properly notify the obligor of all hearings in the alien's case and in sending the beneficiary a Form I-166 (order to appear for removal), allegedly in contravention of ICE regulation. Although on appeal, counsel alleged that the law applicable to the case was complicated and he needed additional time in which to address the facts, he did not assert that the facts of the case were dissimilar to the facts of other cases previously decided by the AAO. Further, on motion, counsel does not address the alleged failures by ICE that were the basis of his appeal.

Counsel asserts that the response to the FOIA reveals that ICE failed to attach a questionnaire to the Form I-340 as required by the Amwest/Reno Settlement Agreement entered into on June 22, 1995, by the legacy INS and Far West Insurance Company. The evidence that counsel submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

ICE's alleged failure to attach a copy of the questionnaire to the Form I-340 was a fact that was available to the obligor when it filed its appeal. Counsel cannot argue that it only discovered this fact upon receipt of the response to its FOIA request. Further, the AAO noted in its decision that the record before it contained evidence that a properly completed questionnaire was forwarded with the Form I-340.

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 November 18, 2000 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 motion is dismissed. The order of July 19, 2001, dismissing the appeal is affirmed.