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

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GI

FILE:



Office: NEW YORK 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, San Antonio, 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.

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 Citizenship and Immigration Services policy. 8 C.F.R. § 103.5(a)(3).

On motion, counsel argues that Immigration and Customs Enforcement (ICE) has lost detention authority over the alien as a result of the alien's eligibility for, and possible grant of, Temporary Protected Status (TPS).

TPS is by definition a temporary status for certain qualifying aliens from designated countries. At the expiration of a validly granted TPS period, absent some further change of the alien's status, the alien will be required to depart the United States. Under the terms of the bond contract, ICE has the responsibility to maintain the bond to insure the alien's ultimate departure from the United States. Pursuant to part (G) of the bond contract, the delivery bond remains in effect until removal proceedings are finally terminated or the alien is actually accepted for removal.

Counsel posits that once ICE no longer has detention authority over the alien, the delivery bond must terminate by operation of law. However, this is contrary to the holdings of *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002). In *Zadvydas*, the Supreme Court expressly recognized the authority of the Immigration and Naturalization Service (legacy INS) to require the posting of a bond as a condition of release after it lost detention authority over the alien, even though a bond was not provided as a condition of release by the statute. In *Doan*, the 9th Circuit held the legacy INS had the authority to require a \$10,000 delivery bond in a supervised release context even though it did not have detention authority. Even though these cases arose in the post-removal period, it is obvious from the rulings that detention authority is not the sole determining factor as to whether ICE can require a delivery bond.

The obligor is bound by the terms of the contract to which it obligated itself. It is noted that the terms of the I-352 for bonds conditioned upon the delivery of the alien establish the following condition: "the obligor shall cause the alien to be produced or to produce himself/herself . . . upon each and every written request until *exclusion/deportation/removal proceedings* . . . are finally terminated." (Emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

The bond contract provides that it may be canceled when (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 otherwise canceled. The circumstances under which the bond may be "otherwise canceled" occur when the Secretary or the Attorney General imposes a requirement for another bond, and the alien posts such a bond, or when an order of deportation has been issued and the alien is taken into custody. As the obligor has not shown that any of these circumstances apply, the bond is not canceled.

Counsel asserts that either ICE or the Executive Office of Immigration Review would be the logical agency through which the Attorney General, now the Secretary, Department of Homeland Security (Secretary), would give written notice of eligibility to all aliens eligible to apply for TPS. Counsel cites section 244(a)(3) of the Immigration and Nationality Act (the Act).

Sections 244(a)(3)(B) and (C) of the Act, 8 U.S.C. § 1254(3)(B) and (C), require to aliens in removal proceedings to be given notice of their eligibility for TPS. While the alien within the context of removal proceedings must be provided notice of his or her eligibility for TPS, this requirement has no bearing on the obligor's contractual duty to deliver an alien. Even assuming that ICE were to lose detention authority over an alien who may be eligible for TPS, as noted above, this would not require cancellation of the delivery bond.

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 April 17, 2002 is valid.

The regulation at 8 C.F.R. § 103.5(a)(4) states, "[a] motion that does not meet applicable requirements shall be dismissed." As counsel failed to cite any precedent decisions in support of its motion to reconsider, the obligor's motion will be dismissed. The previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is dismissed. The order of September 30, 2002 dismissing the appeal is affirmed.