



U.S. Citizenship
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FILE:



Office: SAN DIEGO

Date:

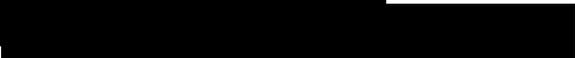
MAY 03 2005

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: 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.

Mari Johnson

Robert P. Wisnann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, San Diego, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on January 16, 1987, the obligor posted a \$1,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated June 16, 1989, 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, Immigration and Customs Enforcement (ICE), for an interview at 9:00 a.m. on July 12, 1989, at [REDACTED] San Diego, CA 92188. The obligor failed to present the alien, and the alien failed to appear as required. On August 8, 1989, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the bonded alien appeared on July 12, 1989 for her interview and was granted voluntary departure for August 12, 1989.

The record contains no evidence to corroborate the obligor's assertion that the applicant appeared at the San Diego Office on July 12, 1989. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record reflects that a removal hearing was held on February 18, 1987, and the alien was granted voluntary departure from the United States on or before April 17, 1987, with an alternate order of removal to take effect in the event that the alien failed to depart as required. The bonded alien appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On August 24, 1988, the BIA dismissed the alien's appeal and granted the alien voluntary departure within 30 days from the date of the order.

The AAO has held that an alien who departs from the United States prior to the date demanded for surrender may be in substantial compliance with the terms of his delivery bond. *Matter of Don Donaldson's Key Bail Service*, 13 I&N Dec. 563 (Acting Reg. Comm. 1969). However, the burden is upon the alien or her surety to prove by probative evidence that the alien did leave the country prior to her surrender date. *Matter of Peerless Insurance Company*, 15 I&N Dec. 133 (Reg. Comm. 1974).

The record does not contain any evidence that the alien departed the United States voluntarily prior to the interview date. Nor does the record contain a Notification of Departure-Bond Case (Form I-392) properly executed and received through official channels indicating the bonded alien's departure from the United States prior to her interview date.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by ICE for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e).

8 C.F.R. § 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The evidence of record indicates that the Notice to Deliver Alien dated June 16, 1989 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on July 12, 1989. The domestic return receipt shows it was received by a representative of Aaron Federal Bonding Co., and was subsequently received by the San Diego Office on July 3, 1989. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

It is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce herself to an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE for detention or removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

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 decision of the district director will not be disturbed.

ORDER: The appeal is dismissed.