

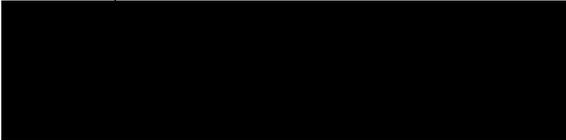
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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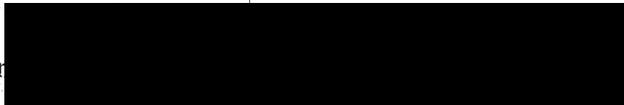


Office: LOS ANGELES

Date: **NOV 07 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

S 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, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on August 21, 2002, 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 December 16, 2004, 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 January 19, 2005, at 300 N. Los Angeles Street, Room 7621, Los Angeles, CA 90012. The obligor failed to present the alien, and the alien failed to appear as required. On June 4, 2005, the field office director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that a Form I-166 sent to the bonded alien was canceled by ICE on January 7, 2005 because the alien had a pending motion to reopen before the Board of Immigration Appeals (BIA). As such, counsel argues that the stipulated conditions of the bond were not violated and the bond should not have been breached.

The record reflects that ICE only canceled the Form I-166 and, therefore, said cancellation does not affect the obligor's duty to surrender the alien under the Form I-340. It is noted that Form I-166 has not been required since July 25, 1986, which is the effective date of an amendment to former 8 C.F.R. § 243.3. That amendment had no effect on the obligor's agreement to produce the alien upon request.

The record reflects that a removal hearing was held on August 30, 2004, and the alien was granted voluntary departure from the United States on or before October 30, 2004. The court ordered that a voluntary departure bond be imposed in the amount of \$500. A voluntary departure bond was not posted, and the delivery bond remains in effect. On November 29, 2004, the alien filed a motion to stay removal and a motion to reopen before the BIA. On January 25, 2005, the BIA denied the alien's motion to reopen and motion to stay removal. On February 23, 2005, the alien appealed the immigration judge's decision to the BIA. On June 24, 2005, the BIA dismissed the appeal. Subsequently, the alien filed a petition for review before the Ninth Circuit Court of Appeals.

An appeal to the federal court of appeals does not stay the execution of the removal order unless the court orders otherwise. Section 242(b)(3)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1252(b)(3)(B). There is no evidence of record to indicate that either the BIA or the Ninth Circuit Court of Appeals has stayed the bonded alien's removal.

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 December 16, 2004 was sent to the obligor [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on January 19, 2005. The domestic return receipt indicates the obligor received notice to produce the bonded alien on December 29, 2004. 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 himself 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 field office director will not be disturbed.

ORDER: The appeal is dismissed.