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FILE:



Office: MIAMI

Date: **NOV 07 2005**

IN RE:

Obligor:

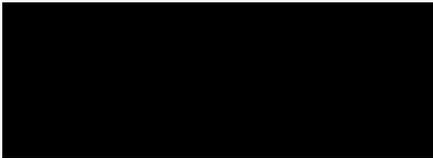
Bonded Alien:



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:



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 Field Office Director, Detention and Removal, Miami, Florida, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on May 15, 2001, the obligor posted a \$3,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated June 1, 2005, 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 August 1, 2005, at 7880 Biscayne Blvd., 6th Floor, Miami, FL 33138. The obligor failed to present the alien, and the alien failed to appear as required. On August 15, 2005, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the delivery bond should be canceled because prior to the breach notice the alien was in ICE's custody and his removal proceedings were terminated on October 31, 2002.

Counsel, however, fails to submit evidence to support his argument that the alien was in ICE's custody. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The present record indicates that the alien's case was administratively closed by an immigration judge on October 31, 2002 because of a finding that the alien may be eligible for temporary protected status (TPS). The record fails to contain evidence that, as a native and citizen of El Salvador, the applicant has applied for and/or has been granted TPS. A delivery bond remains in effect until removal proceedings are finally terminated or the alien is actually accepted for removal. Administrative closing of a case does not result in a final order. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

On appeal, counsel argues that the breach is invalid because ICE failed to comply with the *Amwest v. Reno* Settlement Agreement with respect to the requisite notice and questionnaire to be sent to both the obligor and co-obligor.

On April 6, 2005, the Headquarters Office of Detention and Removal Operations issued a memorandum entitled *Declarations of Breach of Delivery Bonds*. This memorandum confirms that the terms of the Amwest I and Amwest II Settlement Agreements are binding only on those companies who were parties to the agreements. Accordingly, as the obligor was not a party to Amwest I or Amwest II Settlement Agreements, counsel's claim is without merit.

The Form I-352 provides that the obligor and co-obligor are jointly and severally liable for the obligations imposed by the bond contract. As such, ICE may pursue a breach of bond against one or both of the contracting parties. See *Restatement (Third) of Suretyship and Guaranty* § 50 (1996). Consequently, the record clearly establishes that the notice was properly served on either the obligor or the co-obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv). Reference in this decision to the obligor is equally applicable to the co-obligor and vice versa. It is noted that the Form I-352 lists the same address for both the obligor and the co-obligor.

On appeal, counsel again cites the *Amwest v. Reno* Settlement Agreement and argues that the breach is stale and unenforceable against the obligor as ICE failed to issue the Form I-323 within 180 days after the breach date.

As previously noted, as the obligor was not a party to Amwest I or Amwest II Settlement Agreements, counsel's claim is without merit. It is noted the record clearly reflects that the Form I-323 was sent 14 days after the breach 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 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 1, 2005 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on August 1, 2005. The domestic return receipt indicates the obligor received notice to produce the bonded alien on June 10, 2005. 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.