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

**GI**

FILE:

Office: MIAMI

Date:

**NOV 11 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, Miami, Florida, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on January 14, 2004, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated May 25, 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 July 15, 2005,

The obligor failed to present the alien, and the alien failed to appear as required. On August 29, 2005, the field office director informed the obligor that the delivery bond had been breached.

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.

On appeal, the obligor asserted that the alien was advised by his counsel not to surrender on July 15, 2005 as "she [counsel] had filed a Form I-797C (copy enclosed) and was going to file a motion to reopen this case." The obligor further asserted that counsel filed a motion to reopen on August 8, 2005. The obligor submits a Notice of Action, Form I-797C, which reflects that a Form I-130 had been filed on the alien's behalf on February 4, 2004.

The record reflects that an Application for Stay of Removal was received by the Miami District Office on August 4, 2005, 20 days after the surrender date.

The record also reflects that a removal hearing was held on April 1, 2004 and the alien was ordered removed in absentia. On April 14, 2004, the alien filed a motion to reopen which was subsequently denied by the Board of Immigration Appeals on April 23, 2004.

The regulation at 8 C.F.R. § 241.6 provides in pertinent part that neither the request for a stay of deportation nor removal or the failure to receive notice of disposition of the request shall delay removal or relieve the alien from strict compliance with any outstanding notice to surrender for deportation or removal.

Bond proceedings are separate and distinct from any other proceedings. Deportation proceedings are between the United States government and an alien with a questionable right to remain in the U.S. A delivery bond is a contract between ICE and the obligor, where in consideration for obtaining the alien's release from custody, the obligor agrees to produce the alien on demand until the obligation to do so terminates under grounds specified in the contract.

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 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 May 25, 2005 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on July 15, 2005. The domestic return receipt indicates the obligor received notice to produce the bonded alien on July 5, 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.