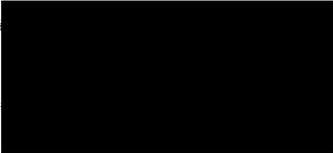




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy
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FILE: [REDACTED] Office: DENVER Date: SEP 06 2005

IN RE: Obligor: [REDACTED]
Bonded Alien: [REDACTED]

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. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on April 24, 2000, 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 June 3, 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 10:00 a.m. on June 22, 2005, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On July 5, 2005, the field office director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the bonded alien departed the United States to Mexico on May 30, 2005.

The record reflects that a removal hearing was held on January 29, 2004, and the alien was granted voluntary departure from the United States on or before March 29, 2004. The court ordered that a voluntary departure bond be imposed in the amount of \$500; however, the alien failed to post the bond, and the delivery bond remained in effect. On January 13, 2005, a removal hearing was held and the immigration judge noted that because the alien failed to post a voluntary departure within five business days he was not entitled to voluntary departure and ordered the alien removed from the United States. The bonded alien appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On April 20, 2005, the BIA dismissed the alien's appeal.

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 3, 2005 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien

on June 22, 2005. The domestic return receipt indicates the obligor received notice to produce the bonded alien on June 8, 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).

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 his surety to prove by probative evidence that the alien did leave the country prior to his surrender date. *Matter of Peerless Insurance Company*, 15 I&N Dec. 133 (Reg. Comm. 1974).

A physical verification of departure by an immigration officer at the port of departure, or a verification of the alien's presence in the foreign destination by a United States consular officer or immigration officer abroad, is required to verify departure.

ICE will accept a document signed by an embassy official, consular officer, or an immigration officer abroad, and bearing an appropriate seal or other indicia of reliability as proof that a voluntary departure or self-removal has occurred. The field office director retains the discretion to accept other documents of voluntary departure. The original of such documents may be delivered either by the surety or through diplomatic channels. Copies of such documents will be accepted only if received through diplomatic channels.

On appeal, the obligor asserts that the bonded alien has departed from the United States. The obligor claims that an official of the United States Consulate signed documentation establishing the applicant's departure from the United States. However, this assertion is unsupported by any acceptable evidentiary documentation. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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.