

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

GI

FILE: [REDACTED] Office: NEW YORK Date: **SEP 08 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.

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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be rejected.

The record indicates that on February 27, 2003, 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 August 6, 2003, 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 September 10, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On October 28, 2003, the field officer director informed the obligor that the delivery bond had been breached.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the field office director issued the Notice-Immigration Bond Breached on October 28, 2003. It is noted that the field office director properly gave notice to the obligor that it had 33 days to file the appeal. ICE initially received the appeal on December 1, 2003; however, it was accompanied with an incorrect form of payment. The appeal with the appropriate form of payment was received by ICE on December 10, 2003, or 43 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The field office director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ Capital Bonding Corporation executed a settlement agreement with the Immigration and Naturalization Service (legacy INS) on February 21, 2003 in which it agreed that any appeals to the AAO subsequent to the execution of this Agreement shall be filed by counsel of record and/or not to raise certain arguments on appeals of bond breaches. The AAO will adjudicate the appeal notwithstanding Capital Bonding Corporation's failure to comply with the settlement agreement in this case.