



U.S. Citizenship
and Immigration
Services

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G1

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: AUG 23 2007

IN RE:

Obligor:
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:

[REDACTED]

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, Chief
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 (AAO) on appeal. The appeal will be dismissed.

The record indicates that on July 19, 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 August 3, 2005, was sent 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 1:30 p.m.¹ on August 22, 2005, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On September 19, 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: 1) alien was in ICE's custody; 2) alien was granted permanent residency; 3) alien's removal proceedings were terminated; and 4) alien was deceased. Counsel, however, fails to submit evidence to support any of his arguments. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel asserts that the bonded alien was ordered deported on August 22, 2005 and, therefore, the delivery bond should be canceled as a matter of law as required by the *Amwest v. Reno* Settlement Agreement and the Immigration and Naturalization Service (legacy INS) implementing memorandum because ICE made no attempt to execute this order within 90 days, and has lost detention authority.

On appeal, counsel asserts that the alien was granted voluntary departure without the requirement of a voluntary departure bond, and that the delivery bond should be canceled as required by the *Amwest v. Reno* Settlement Agreement and the legacy INS implementing memorandum.

On appeal, counsel asserts 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 as well as ICE's failure to issue the Form I-323 within 180 days after the breach date. Counsel asserts that the breach is stale and unenforceable against the obligor.

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 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. Nevertheless, given the nature of counsel's arguments, some discussion is warranted.

¹ The director inadvertently indicated the alien was to appear at 1:30 a.m.

The legacy INS memoranda merely articulate internal guidelines for its personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)); see also *R.L. Inv. Ltd. Partners v. I.N.S.*, 86 F.Supp.2d 1014, 1022 (D. Haw. Mar 03, 2000); *aff'd*, 273 F.3d 874 (9th Cir.).

Likewise, documentation developed by the Office of General Counsel (OGC), now Office of the Principal Legal Adviser (OPLA), are advisory in nature and do not bind ICE or the AAO. See *R.L. Inv. Ltd. Partners*, 86 [REDACTED]. Even apart from its advisory nature, an OGC opinion is not a statement on which the obligor was entitled to rely. The AAO has held in a precedent decision that INS General Counsel memoranda are merely opinions. The OGC is not an adjudicative body and functions in an advisory capacity only; as such, adjudicators are not bound by its recommendations. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998).

Counsel's assertion that ICE had lost detention authority as it made no attempt to execute the order within 90 days has no merit as the record clearly reflects that a removal hearing was held on July 17, 2003, and the alien was granted voluntary departure from the United States on or before November 17, 2003 with an alternate order of removal to take effect in the event that the alien failed to depart as required. The immigration judge (IJ) imposed no requirement for a voluntary departure bond and did not set other conditions on the grant of voluntary departure. Although the alien waived his right to an appeal, he nonetheless appealed the IJ's decision to the Board of Immigration Appeals (BIA) on August 7, 2003. The regulation at 8 C.F.R. § 1003.38(b) states, in pertinent part, a Notice of Appeal (Form EOIR-26) may not be filed by any party who has waived appeal.

On July 12, 2004, the BIA dismissed the appeal as the IJ's decision became administratively final upon the alien's waiver of the right to appeal and the BIA lacked jurisdiction. It is noted that on August 2, 2004, the alien filed a petition for review and a motion for stay of removal before the United States Court of Appeals for the Ninth Circuit (Ninth Circuit). On October 4, 2005, the Ninth Circuit dismissed the petition for review for failure to prosecute and indicated that the order shall act as and for the mandate of the court.

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 August 3, 2005 was sent via certified mail. This notice demanded that the obligor produce the bonded alien on August 22, 2005. The domestic return receipt indicates the obligor received notice to produce the bonded alien on August 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).

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.