U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK Date: JAN 1 0 2007

IN RE: Obligor: [redacted]
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:

[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.

Marc Johnson

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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on April 3, 2001, the obligor posted a $7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated October 12, 2004, 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 December 2, 2004, at The obligor failed to present the alien, and the alien failed to appear as required. On December 22, 2004, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the alien was granted voluntary departure in removal proceedings on February 28, 2002 without the requirement of a voluntary departure bond. Counsel asserts that the delivery bond should be canceled as required by the *Amwest v. Reno* Settlement Agreement and the legacy Immigration and Naturalization Service (INS) implementing memorandum.

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 F.Supp.2d at 1022. Even apart from its advisory nature, the 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).

On April 6, 2005, the Acting Director for Detention and Removal, issued a memorandum clarifying that the provisions of the Amwest I and Amwest II Settlement Agreements were 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 record reflects that a removal hearing was held on February 28, 2002, and the alien was granted voluntary departure from the United States on or before June 28, 2002, with an alternate order of removal to take effect in the event that the alien failed to depart as required. The immigration judge imposed no requirement for a voluntary departure bond and did not set other conditions on the grant of voluntary departure.

The obligor is only bound by the terms of the Form I-352 to which it obligated itself. It is noted that the terms of the Form I-352 for bonds conditioned upon the delivery of the alien establish the following condition: "the obligor shall cause the alien to be produced or to produce himself/herself . . . upon each and every written request until *exclusion/deportation/removal proceedings* . . . are finally terminated." (Emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

Counsel appears to be suggesting that once ICE no longer has detention authority over the alien, it can no longer require a delivery bond. However, this ignores the holdings of *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002). In *Zadvydas*, the Supreme Court expressly recognized the authority of the legacy INS to require the posting of a bond as a condition of release without regard to detention authority over the alien, even though a bond was not provided as a condition of release by the statute. In *Doan*, the 9th Circuit held the legacy INS had the authority to require a $10,000 delivery bond in a supervised release context even though it did not have detention authority. Even though these cases arose in the post-removal period, it is apparent from the rulings that detention authority is not the sole determining factor as to whether ICE can require a delivery bond.

The bond provides that it may be canceled when (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by ICE for detention or deportation/removal; or (3) the bond is otherwise canceled. The circumstances under which the bond may be "otherwise canceled" occur when the Secretary or the Attorney General imposes a requirement for another bond, and the alien posts such a bond, or when an order of removal has been issued and the alien is taken into custody. For instance, in accordance with the instructions on the current Form I-352 (Rev. 06/23/00), which was approved by the Office of Management and Budget after changes implemented by IIRAIRA, the General Terms and Conditions provide that "[c]ancellation of a bond issued as a delivery bond shall occur upon...issuance of a new delivery [bond] or voluntary departure bond on the bonded alien" and "[e]xecution of a voluntary departure bond for an alien cancels any existing delivery bond posted on behalf of the same alien, except in the circumstance when an immigration judge grants voluntary departure at the conclusion of a proceeding, and the alien appeals the finding of removability." As the obligor has not shown that any of these circumstances apply, the bond is not canceled. *See also* Form I-352 at ¶ 1, providing that "[t]he express language of the bond contract shall take precedence over any inconsistent policies or statements."

Further, the regulation at 8 C.F.R. § 103.2(a)(1) provides, in pertinent part that:

> Every . . . document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

In accordance with the post-IIRAIRA instructions on the bond, incorporated into the regulations pursuant to 8 C.F.R. § 103.2(a)(1), there is no cancellation of the delivery bond if the immigration judge grants voluntary departure but does not require that a voluntary departure bond be posted. Under the express terms of the bond, it is only the execution of a voluntary departure bond that cancels the delivery bond. *See* Form I-352, General Terms and Conditions at ¶ 2.

That the immigration judge did not order the posting of a voluntary departure bond does not alter the terms of the bond or serve to extinguish the delivery bond. The delivery bond requires delivery of the alien to ICE upon demand or until proceedings have terminated, and is not conditioned upon a theory of constructive detention. Thus counsel's arguments cannot be reconciled with the statutory, regulatory, and case law discussed above or with the express terms of the delivery bond.

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 October 12, 2004 was sent to the obligor at [redacted] via certified mail. This notice demanded that the obligor produce the bonded alien on December 2, 2004. The domestic return receipt indicates the obligor received notice to produce the bonded alien on October 19, 2004. 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.