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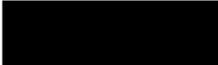
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GI

SEP 20 2007

FILE:



Office: NEW ORLEANS (MEM)

Date:

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, New Orleans, Louisiana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The record indicates that on January 23, 2004, the obligor posted a \$1,500 bond conditioned for his delivery. A Notice to Deliver Alien (Form I-340) dated April 11, 2007, 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 April 24, 2007, at 842 Virginia Run Cove, Memphis, TN 38122. The alien failed to appear as required. On May 24, 2007, the field office 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 date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The regulation at 8 C.F.R. § 103.2(a)(7) provides that an application or petition that is submitted with the wrong filing fee shall be rejected as improperly filed.

The record indicates that the field office director issued the Notice-Immigration Bond Breached on May 24, 2007. It is noted that the Form I-323, Notice-Immigration Bond Breached gave notice that the fee to file an appeal on Form I-290B is \$110.00; that fee was increased to \$385.00 effective September 28, 2005. *See* 70 Fed. Reg. 50954, 50957 (Aug. 29 2005). Counsel dated the appeal June 18, 2007, and it was received by ICE on June 20, 2007. The appeal, however, was rejected because it had been submitted with an incorrect fee. The appeal filed with the correct fee of \$385.00 was received on June 27, 2007, 34 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On appeal, counsel indicates that he contacted the Memphis Office prior to the bonded alien's scheduled interview and presented good cause for his inability to attend. The record, however, indicates that the Memphis Office received correspondence from counsel nearly 30 days after the scheduled interview date of April 24, 2007.

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.