

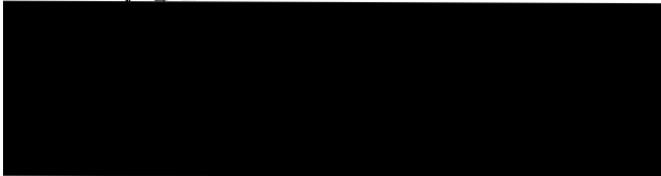
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U.S. Citizenship  
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FILE:



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**AUG 21 2008**

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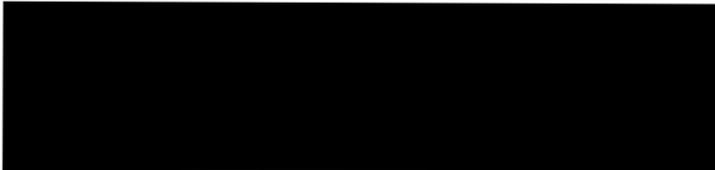
Obligor:  
Bonded Alien



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:



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 Director, Headquarters, Bonds, Immigration and Customs Enforcement (ICE), and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on June 19, 2001, 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 July 16, 2007, was addressed to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of ICE at 10:00 a.m. within five days of August 3, 2007, at the nearest ICE, Detention and Removal Office. The obligor failed to present the alien, and the alien failed to appear as required. On October 31, 2007, the director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the obligor did not receive the Notice to Deliver Alien, and that the Notice of immigration bond Breach was not addressed to the obligor's current address. Counsel claims that the obligor submitted a Form AR-11, Alien's Change of Address Card, on July 13, 2005, and "have received all correspondences at this address."

The filing of the Form AR-11 was submitted to Citizenship and Immigration Services with respect to the obligor's own application filed in a separate proceeding. Bond proceedings are separate and apart from all other proceedings. Counsel has not provided any evidence to reflect that a change of address was sent to any Detention and Removal Office. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel argues that neither he nor the bonded alien's received the Notice to Deliver Alien. Counsel's assertion is without merit as an immigration bond is a contract between ICE and the obligor, not the bonded alien or his counsel. *See Matter of Insurance Company of North America*, 17 I&N Dec. 251 (Act. Reg. Comm. 1978). ICE correctly notified the obligor on Form I-340 to surrender the alien as demanded. The record contains no evidence that the obligor was being represented by counsel in this proceeding until on 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 upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the immigration officer 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 July 16, 2007 was addressed to the obligor at [REDACTED], Alexandria, VA 22306 via certified mail. This notice demanded that the obligor produce the bonded alien within five days of August 3, 2007. The notice was returned by the post office as unclaimed. The envelope indicates that the post office provided the obligor at least two opportunities (July 23 and August 2) to acquire the notice before it was returned to ICE. It is noted that the obligor received the Notice-Immigration Bond Breached that was sent to the same address as the Notice to Deliver Alien. As such, the obligor's failure to receive the Notice to Deliver Alien must be considered to be of his own making. Consequently, the record clearly establishes that the notice was properly served on the obligor by sending it to him at his last known address 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 ensure 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 director will not be disturbed.

**ORDER:** The appeal is dismissed.