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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEWARK

Date: DEC 03 2008

IN RE:

Obligor:

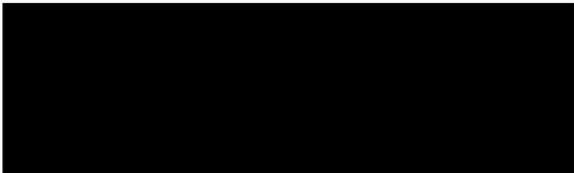
Bonded Alien:



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.


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 on appeal. The appeal will be sustained.

The record indicates that on July 2, 2002, the obligor posted a \$20,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated May 1, 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 June 6, 2007, at 570 Hemisphere Center, Route 1 and 9 South, 5th Floor, Room 512, Newark, New Jersey 07114. The obligor failed to present the alien, and the alien failed to appear as required. On June 7, 2007, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the obligor has never received the Form I-340 notifying her to surrender the bonded alien on June 6, 2007. Counsel asserts that the alien "appeared at the same date for a fingerprint appointment and was rejected due to the Service failing to return his passport."

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 record fails to contain the certified mail receipt to indicate that the Notice to Deliver Alien dated May 1, 2007 was sent to the obligor at [REDACTED] Bronx, NY 10475, or to indicate that the obligor had received the notice to produce the bonded alien on June 6, 2007. Consequently, the record fails to establish that the field office director properly served notice on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

Because the record fails to establish proper service of the Form I-340 on the obligor as required, the appeal will be sustained. The field office director's decision declaring the bond breached will be rescinded and the bond will be continued in full force and effect.

ORDER: The appeal is sustained. The field office director's decision declaring the bond breached is withdrawn and the bond is continued in full force and effect.