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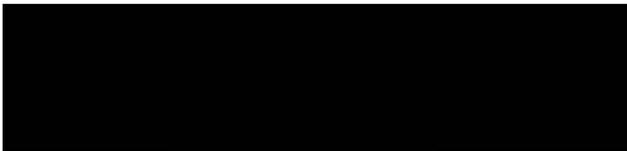
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: COW

Date:

OCT 08 2008

IN RE:

Obligor:

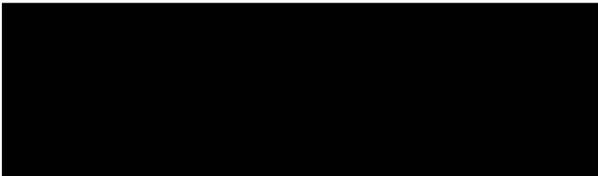
Bonded Alien:



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:



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 sustained.

The record indicates that on October 28, 2005, 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 May 21, 2008, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of ICE for an interview and case review at 10:00 a.m. within five days of June 10, 2008, at the nearest ICE, Detention and Removal Office. The obligor failed to present the alien, and the alien failed to appear as required. On July 30, 2008, the director informed the obligor that the delivery bond had been breached.

The record reflects that a removal hearing was held on December 4, 2007, and the alien was granted voluntary departure from the United States on or before April 2, 2008.

On appeal, counsel asserts that the bonded alien departed the United States to Mexico on April 2, 2008. As evidence of the alien's departure, counsel submits a photocopied Form G-146, Verification of Departure, which indicates that the alien appeared before the American Consulate General in Juarez, Chihuahua, Mexico on April 2, 2008.

The authenticity of the Form G-146 has been verified by the American Consulate General in Juarez, Chihuahua, Mexico and the original form has been received through official channels. Based on the documentation from the American Consulate General in Juarez, Mexico establishing that the bonded alien timely departed the United States, the director's decision to breach the bond will be withdrawn, and the bond will be canceled.

The regulation at 8 C.F.R. § 103.3(a)(2) states an appeal must be accompanied by a nonrefundable fee as set forth in 8 C.F.R. § 103.7.

A fee relating to an appeal may be waived in any case under Citizenship and Immigration Services jurisdiction in which the alien or other party affected is able to substantiate that he or she is unable to pay the prescribed fee. The person seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. § 1746, (1) asking for permission to prosecute without payment of fee of the appeal, or request, and (2) stating his or her belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay. 8 C.F.R. § 103.7(c).

On appeal, counsel submitted the required filing fee, but requests that the fee be waived and refunded to the obligor as evidence of the alien's departure had been submitted prior to the breach notice. Counsel's request, however, was not in the form of an affidavit or of an unsworn declaration pursuant to 28 U.S.C. § 1746, and the obligor failed to claim or to substantiate that she was unable to pay the required fee. The AAO may not approve the fee waiver request as it did not meet the regulatory requirements outlined in 8 C.F.R. § 103.7(c).

Accordingly, the fee waiver and refund requests are denied.

ORDER: The appeal is sustained. The director's decision declaring the bond breached will be withdrawn and the bond will be canceled.