



GA

U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
U.I.L.B., 3rd Floor
Washington, D.C. 20536



FILE: [Redacted] Office: Newark

Date:

APR 23 2001

IN RE: Obligor: [Redacted]
Bonded Alien: [Redacted]

IMMIGRATION BOND: Bond Conditioned for the Maintenance of Status and Departure of
an Alien under § 103 of the Immigration and Nationality Act,
U.S.c. 1103

Public Copy

IN BEHALF OF OBLIGOR: Self-represented

Identitymg data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(I)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, Newark, New Jersey, and is now before the Associate Commissioner for Examinations on appeal. The appeal has been filed by an attorney whose standing in this proceeding has not been demonstrated by the filing of a properly executed Notice of Entry of Appearance as Attorney or Representative (Form 8-28). However, in the interest of due process, the case will be considered on certification pursuant to 8 C.F.R. 103.4. The district director's decision declaring the bond breached will be affirmed.

The record indicates that on October 27, 1994, the obligor posted a \$3,000 bond for maintenance of status and departure (MS&D) of nonimmigrant alien. The applicant was paroled into the United States on November 19, 1994, for humanitarian reasons for one year with authorized extensions being granted until November 13, 1997. On August 19, 1998, the applicant filed an application to register permanent residence or adjust status, and she was interviewed on November 19, 1999. Her status was adjusted to that of lawful permanent resident on January 5, 2000.

The district director determined that the alien had violated the conditions of the bond and declared the bond breached.

On appeal, the obligor asserts that the decision is erroneous in law and in fact. The obligor states that a timely and properly filed request for re-parole was duly made.

MS&D bonds are violated if the alien fails to comply with all the conditions of the status accorded and fails to depart from the United States without expense thereto and before the date to which authorization is granted.

8 C.F.R. 103.6(c) (2) provides, in part, that if an application for adjustment of status is made while the alien is in lawful temporary status, the bond shall be cancelled if his status is adjusted to that of a lawful permanent resident...As used in this paragraph, the term lawful temporary status means that there must not have been a violation of any of the conditions of the alien's...classification...during the time he has been accorded such classification, and that from the date of admission to the date of departure or adjustment of status he must have had uninterrupted Service approval of his presence in the United States in the form of regular extensions of stay....

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).

In Matter of Nguyen, 15 I&N Dec. 176 (Reg. Comm 1975), it was held that a violation was substantial when it constituted a willful

departure from the terms or conditions of the bond or failure to comply with or adhere to the essential elements of those terms or conditions. Matter of Kubacki, 18 I&N Dec. 43 (Reg. Comm. 1981).

The obligor provides a copy of a letter dated November 5, 1997, sent to the Service return receipt requested, in which a one-year extension of time was requested in behalf of the alien and her two children and supported by the necessary documentation. The obligor failed to receive any response from the Service. If the Service would have acknowledged the request, the alien's parole would have been extended for one more year until November 13, 1998. However, there are no additional requests for extensions of parole.

The regulations provide that the alien must have had uninterrupted Service approval of her presence in the United States in the form of regular extensions of stay from the date of admission to the date of departure or adjustment of status. Even considering that the Service could have extended the alien's parole until November 13, 1998, the alien must have also requested and received continued extensions of parole through the date of adjustment of status, January 5, 2000. Evidence of such requests and extensions is not present in the record. 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 district director will be affirmed.

ORDER: The district director's decision declaring the bond breached is affirmed.