U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

A4

[redacted]

FILE: [redacted] Office: SAN DIEGO Date: AUG 02 2004

IN RE: Obligor:
Bonded Alien [redacted]

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: Self-represented

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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The delivery bond in this matter was declared breached by the District Director, San Diego, California, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The record indicates that on December 8, 1993, 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 August 6, 2001, 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 the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 9:00 a.m. on September 18, 2001, a The obligor failed to present the alien, and the alien failed to appear as required. On October 10, 2001, the district 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 record indicates that the district director issued the Notice-Immigration Bond Breached on October 10, 2001. It is noted that the district director properly gave notice to the obligor that it had 33 days to file the appeal. The obligor dated the appeal April 7, 2004, and it was received by ICE on May 11, 2004, over two and a half years after the decision was issued. Accordingly, the appeal was untimely filed.

It is noted that the obligor asserts that she had moved from the address of record in June 1998, and claims "we sent a change of address to inform all of my contacts." The record does not reflect that the obligor informed ICE of her new address until the appeal. The assertion of the obligor 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). Service of a notice is accomplished by mailing it to the obligor's last known address. 8 C.F.R. § 103.5a(a).

It is noted that bond proceedings between the obligor and the government are separate and apart from the deportation proceedings of the bonded alien. Deportation proceedings are between the United States government and an alien with a questionable right to remain in the U.S. A delivery bond is a contract between ICE and the obligor, where in consideration for obtaining the alien's release from custody, the obligor agrees to produce the alien on demand until the obligation to do so terminates under grounds specified in the contract.

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 district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The district director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.