U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI Date: OCT 2 0 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:

[redacted]

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent [illegible] warranted invasion of privacy

PUBLIC COPY

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record indicates that on December 4, 2003, 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 April 26, 2004, was sent to the co-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 May 13, 2004, at [redacted] The obligor failed to present the alien, and the alien failed to appear as required. On June 10, 2004, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel puts forth a Freedom of Information Act (FOIA) request. Counsel requests an extension of 60 days in which to file a written brief pending receipt of the alien's file. Counsel claims that the facts of the case, and the law applicable thereto, are complicated.

It should be noted that the facts present in the case at hand are similar not only to numerous cases already presented to the AAO by the obligor on previous appeals but to a myriad of similar cases adjudicated by the AAO since its inception in 1983. Therefore, the request for an extension of time in which to submit a brief is denied.

On appeal, counsel states that the obligor has been relieved from liability on the bond because ICE sent the alien a notice to appear for removal on Form I-166. Counsel asserts that this is contrary to current ICE regulations.

Form I-166 has not been required since July 25, 1986, which is the effective date of an amendment to former 8 C.F.R. § 243.3. That amendment had no effect on the obligor's agreement to produce the alien upon request.

Counsel indicates, on appeal, that ICE violated one or more terms of the June 22, 1995 Amwest/Reno Settlement Agreement entered into by the legacy Immigration and Naturalization Service and Far West Surety Insurance Company.

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).

Although the obligor failed to produce the alien as required by the surrender demand, counsel stated, on appeal, that all the conditions imposed by the terms of the bond were substantially performed by the obligor. 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 April 26, 2004 was sent to the co-obligor via certified mail. This notice demanded that the obligor produce the bonded alien on May 13, 2004. The domestic return receipt indicates the co-obligor received notice to produce the bonded alien on May 3, 2004. Consequently, the record clearly establishes that the notice was properly served on the obligor 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.

Pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995, by the legacy Immigration and Naturalization Service and Far West Surety Insurance Company, ICE agreed that a properly completed questionnaire would be attached to all Form I-340s (Notices to Surrender) going to the obligor on a surety bond. The failure to attach the questionnaire would result in rescission of any breach related to that Form I-340.

Based on the provisions of the Amwest Agreement and the fact that the record fails to show that a properly completed questionnaire was sent to the obligor, the appeal will be sustained and the field office director's decision declaring the bond breached will be withdrawn.

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.