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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

GI

FEB 15 2005

FILE:

[REDACTED]

Office: SAN DIEGO Date:

FEB 15 2005

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

R Robert P. Wiemann, Director
Administrative Appeals Office

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 (AAO) on appeal. The appeal will be rejected.

The record indicates that on January 18, 2002, the obligor posted a \$15,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 6, 2002, was sent 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 9, 2002, at 880 Front Street, Room 2242, San Diego, CA 92101. The obligor failed to present the alien, and the alien failed to appear as required. On October 1, 2002, 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 1, 2002. It is noted that the district director properly gave notice to the obligor that it had 33 days to file the appeal. Counsel dated the appeal November 28, 2002, and it was received by ICE on December 5, 2002, or 65 days after the decision was issued. Accordingly, the appeal was untimely filed.

It is noted that counsel asserts that the appeal is timely because ICE failed to serve a copy of the Form I-323 on the co-obligor.

Counsel's assertion is without merit. The Form I-352 provides that the obligor and co-obligor are jointly and severally liable for the obligations imposed by the bond contract. As such, ICE may pursue a breach of bond against one or both of the contracting parties. It is not obligated to take action against any specific contracting party. *See Restatement (Third) of Suretyship and Guaranty* § 50 (1996).

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.