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

PUBLIC COPY



FILE: 

Office: NEW YORK Date: **MAR 07 2005**

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:



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

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

The record indicates that on October 13, 1993, the obligor posted an \$8,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated June 25, 2004, 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 Immigration and Customs Enforcement (ICE) for an interview at 10:00 a.m. on August 3, 2004, at [REDACTED] Federal Plaza, Room 9-110, New York, NY 10278. The obligor failed to present the alien, and the alien failed to appear as required. On August 6, 2004, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel argues that the immigration judge (IJ) issued an order of removal on November 9, 1996. Counsel further asserts that because ICE made no attempt to execute this order within 180 days, it has lost detention authority, and the delivery bond should be canceled as a matter of law.

The record reflects that a removal hearing was held on November 6, 1996 and the alien was ordered deported from the United States. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On August 24, 1998, the BIA dismissed the alien's appeal. On September 17, 1998, the applicant submitted a motion to reopen. On January 25, 1999, a stay of deportation was granted by the 2nd Circuit Court of Appeals. The BIA reopened the proceedings, vacated its August 24, 1998 decision, and reinstated the alien's appeal. On July 7, 1999, the BIA dismissed the appeal.

The field office director properly exercised his authority by directing the obligor to produce the bonded alien for an interview. The obligor is not relieved of its responsibility to deliver the bonded alien at the time and place specified in the field office director's demand notice simply because it was issued five years after his final deportation order. The obligor is bound by the terms of the contract to which it obligated itself. The terms of the Form I-352 for bonds conditioned upon the delivery of the alien establish the following condition: "the obligor shall cause the alien to be produced or to produce himself/herself . . . upon each and every written request until *exclusion/deportation/removal proceedings* . . . are finally terminated." (Emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

The AAO has continually held that the Secretary's authority to maintain a delivery bond is not contingent upon his authority to detain the alien. Counsel argues this ruling is contrary to *Shrode v. Rowoldt*, 213 F.2d 810 (8th Cir. 1954).

Following his arrest for violating immigration laws, Rowoldt, the alien in *Shrode*, was released on a bond conditioned upon his appearance for deportation proceedings. Although the order of deportation became final in April 1952, he was not deported. In October 1952, more than six months after the deportation order became final, Rowoldt was placed on supervisory parole. Immigration officials, however, refused to release him from bond.

In upholding the lower court's decision releasing Rowoldt from bond, the appellate court noted that the statute granted the Attorney General supervisory and limited detention authority but did not authorize the posting of bond. The court stated that the requirement to post bail is tantamount to making the sureties jailers, and that the power to require bail connotes the power to imprison in the absence of such bail. Since the only authority the Attorney General could exercise in Rowoldt's case was supervisory, a bond could not be required.

Since *Shrode*, section 305 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) added section 241(a)(1) of the Act, 8 U.S.C. § 1231(a)(1). It provides generally that the Secretary shall remove an alien from the United States within 90 days following the order of removal, with the 90-day period suspended for cause. During the 90-day removal period, the Secretary shall exercise detention authority by taking the alien into custody and canceling any previously posted bond unless the bond has been breached or is subject to being breached. Section 241(a)(2) of the Act; 8 C.F.R. § 241.3(a).

Section 241(a)(3) of the Act provides that if an alien does not leave or is not removed during the 90-day period, the alien shall be subject to supervision under regulations prescribed by the Secretary. Posting of a bond may be authorized as a condition of release after the 90-day detention period. 8 C.F.R. § 241.5(b). Thus, unlike in *Shrode*, the Secretary has the continuing authority to require aliens to post bond following the 90-day post-order detention period.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court expressly recognized the authority of the legacy Immigration and Naturalization Service to require the posting of a bond as a condition of release after it lost detention authority over the alien, even though a bond was not provided as a condition of release by the statute. In *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002), the 9th Circuit held the legacy INS had the authority to require a \$10,000 delivery bond in a supervised release context even though it did not have detention authority. These cases arose in the post-removal period, and it is obvious from the rulings that detention authority is not the sole determining factor as to whether ICE can require a delivery bond.

The bond contract provides that it may be canceled when (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by ICE for detention or deportation/removal; or (3) the bond is otherwise canceled. The circumstances under which the bond may be "otherwise canceled" occur when the Secretary or the Attorney General imposes a requirement for another bond, and the alien posts such a bond, or when an order of deportation has been issued and the alien is taken into custody. As the obligor has not shown that any of these circumstances apply, the bond is not canceled.

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 said alien is actually accepted by ICE for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

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 June 25, 2004 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien for an interview on August 3, 2004. The United States Postal Service track and confirmation receipt indicates the obligor received notice to produce the bonded alien on July 28, 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.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

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 field office director will not be disturbed.

ORDER: The appeal is dismissed.