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

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[REDACTED]

FILE: [REDACTED] Office: DALLAS Date: MAR 07 2001

IN RE: Obligor: [REDACTED]
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.

A handwritten signature in cursive script, appearing to read "M. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record indicates that on February 29, 2000, the obligor posted a \$7,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated May 20, 2003, 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) at 9:00 a.m. on June 24, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On July 17, 2003, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel contends that the obligor is not bound by the obligations it freely undertook in submitting the bond in this case, and that ICE cannot enforce the terms of the Form I-352 because "its terms constitute regulations, and the INS [now ICE] did not submit it to Congress for review as required by the Congressional Review Act" (CRA), 5 U.S.C. § 801, et seq. This argument is meritless.

For purposes of the CRA, the term "rule" has, with three exceptions, the same meaning that the term has for purposes of the Administrative Procedure Act (APA). 8 U.S.C. § 804(3). The relevant provision of the APA defines a "rule" as the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency. 5 U.S.C. § 551(4).

There are at least two reasons why Form I-352 is not a "rule" for purposes of the CRA. First, the Form I-352 is not a rule at all. It is a bonding agreement, in effect, a surety contract under which the appellant undertakes to guarantee an alien's appearance in the immigration court, and, if it comes to that, for removal. Section 236(a)(2) of the Act, 8 U.S.C. § 1226(a)(2), permits the Attorney General, now the Secretary, Department of Homeland Security (Secretary), to release on bond an alien subject to removal proceedings. This section also permits the Secretary to describe the conditions on such bonds, and to approve the security on them. Section 103(a)(3) of the Act, 8 U.S.C. § 1103(a)(3), permits the Secretary to prescribe bond forms. While Form I-352 may well be a form used to comply with rules relating to release of aliens on bond, the Form itself is not a rule. It is not an "agency statement," 5 U.S.C. § 551(4), but a surety agreement between the obligor and the Government.

Second, even if it can be said that Form I-352 is a "rule," the CRA does not apply. The CRA itself provides that its requirements do not apply to a "rule of particular applicability." 5 U.S.C. § 804(3)(A). Assuming, arguendo, that Form I-352 can be called a rule, it applies only to each particular case in which a person freely agrees to sign and file the Form I-352. Thus, even if the obligor were correct in saying Form I-352 is a rule, it would be a rule of particular applicability, exempt from the reporting requirement.

On appeal, counsel asserts that the director had issued a Form I-340 on March 2, 2002, but failed to issue a breach notice. Counsel asserts, "[n]evertheless, a year or more later, the District sent the breach as final to the DMC, which issued invoice DMC-3-B3231 on June 10, 2003." Counsel argues that the director's complete mismanagement of this case entitles it to cancellation of the bond, and recession of said invoice.

Counsel's assertion has not merit as the record reflects that a Form I-323 was issued by the district director on April 9, 2002 and in October 2003, the Debt Management Center canceled invoice DMC 3B3231.

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 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).

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 May 20, 2003 was sent to the obligor at 4 [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on June 24, 2003. The domestic return receipt indicates the obligor received notice to produce the bonded alien on May 24, 2003. 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.