

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

G,

DATE: DEC 21 2012

Office: CHICAGO

FILE: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, Chicago, Illinois. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider.

The record indicates that on April 12, 2007, 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 December 1, 2011, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien to appear for an interview before Immigration and Customs Enforcement (ICE) at 9:00 a.m. on December 16, 2011, at 101 W. Congress Parkway, 4th Floor, Chicago, IL 60605. The obligor failed to present the alien, and the alien failed to appear as required. On December 20, 2011, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserted that the obligor received the Form I-340 six days after the bonded alien was scheduled to appear for an interview and that the obligor had provided the U.S. Postal Service with a change of address on November 1, 2011. The AAO, in dismissing the appeal, determined that the untimely receipt of the Form I-340 was considered to be of the obligor's own making as the record contained no evidence that the obligor had submitted an Obligor Change of Address, Form I-333, or any other written change of address notification; that in signing the Bond Obligor Responsibilities on April 11, 2007, the obligor agreed that he would always advise ICE of his current address; that ICE had no knowledge that the initial attempt at notice failed; that the U.S. Postal Service and ICE are separate entities; and that advising the U.S. Postal Service of a new address did not impute knowledge of the change of address to ICE.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(4) states, "[a] motion that does not meet applicable requirements shall be dismissed."

On motion, counsel argues that the AAO failed to address, or even consider, that the obligor is, at a minimum, entitled to 50% mitigation of the bond penal amount. While the obligor may be entitled to mitigation of the bond penal amount, mitigating procedures are not at issue in this proceeding. Consideration here is limited solely to the issue of whether the bond has been breached.

On motion, counsel, citing *Ruiz-Rivera v. Moyer*, 70 F. 3d 498, 501 (7th Cir. 1995)(citing *Bahramizadeh v. INS*, 717 F. 2d 1170, 1173 (7th Cir. 1983)), argues that the AAO failed to address all four factors in determining whether the bond violation was substantial. Counsel states that the AAO's decision was based on an incorrect application of law.

While the AAO did not specifically enumerate each of the factors as outlined in counsel's brief, a review of the AAO's decision indicates that the facts were considered and appropriately applied. The AAO determined that the breach was significant as the obligor did not immediately surrender the bonded alien to ICE after the receipt of the demand notice. The AAO also determined that the obligor failed to inform ICE of his change of address as required and ICE had no knowledge that the breach notice was not delivered to the address of record. The record contains no evidence that the obligor's failure to notify ICE of his change of address and, therefore, his ability to present the alien upon demand was in good faith. As noted, the obligor took no immediately steps to surrender the alien once he received the demand notice on December 22, 2011.

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 motion to reconsider will be dismissed and the previous decision of the AAO dated June 28, 2012 will not be disturbed.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed.