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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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APR 11 2005

FILE:  Office: SAN ANTONIO Date:

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.

for 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, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record indicates that on January 16, 2003, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated November 6, 2003, was sent 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 December 18, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On January 6, 2004, the field office director informed the obligor that the delivery bond had been breached.

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. *See Restatement (Third) of Suretyship and Guaranty* § 50 (1996). Consequently, the record clearly establishes that the notice was properly served on either the obligor or the co-obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv). Reference in this decision to the obligor is equally applicable to the co-obligor and vice versa.

On appeal, counsel asserts that ICE attached a questionnaire to the Form I-340, but did not provide the required information as required by the Amwest/Reno Settlement Agreement entered into on June 22, 1995 by the Immigration and Naturalization Service (legacy INS) and Far West Surety Insurance Company.¹

Counsel indicates:

I am attaching a questionnaire brief, which is a history of the I-340 questionnaire and the requirements under *Amwest I*, *Amwest II*, and many INS [now ICE] memorandums, wires and training materials dedicated to this particular issue. They make it clear that each District must attach a properly completed (and signed) questionnaire and picture of the alien to each I-340 at the time they send it to the surety. Improperly completed questionnaires, or those that do not provide answers to all sections (including a negative one) do not satisfy the *Amwest* Settlements' requirements.

Counsel fails to submit the ICE memoranda, wires and training materials to support his arguments. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, training materials written by the INS office of General Counsel, now Office of the Principal Legal Adviser (OPLA), are not binding on ICE.

The Settlement Agreement, Exhibit F, provides that "a questionnaire prepared by the surety with approval of the INS [now ICE] will be completed by the [ICE] whenever a demand to produce a bonded alien is to be delivered

¹ Capital Bonding Corporation executed a settlement agreement with the legacy INS on February 21, 2003, in which it agreed not to raise certain arguments on appeals of bond breaches. The AAO will adjudicate the appeal notwithstanding Capital Bonding Corporation's failure to comply with the settlement agreement in this case.

to the surety. The completed questionnaire will be certified correct by an officer of the [ICE] delivered to the surety with the demand."

ICE is in substantial compliance with the Settlement Agreement when the questionnaire provides the obligor with sufficient identifying information to assist in expeditiously locating the alien, and does not mislead the obligor. Each case must be considered on its own merits. Failure to include a photograph, for example, which is not absolutely required under the terms of the Agreement, does not have the same impact as an improper alien number or wrong name. The AAO must look at the totality of the circumstances to determine whether the obligor has been prejudiced by ICE's failure to fill in all of the blanks.

Counsel has not alleged or established any prejudice resulting from ICE's failure to complete each section of the questionnaire. More importantly, failure to complete each section does not invalidate the bond breach.

On appeal, counsel states that ICE ignored the language in Exhibit G of the Amwest/Reno Settlement Agreement requiring the director to state a correct purpose on the Form I-340. Counsel asserts that a correct statement of purpose can only be satisfied by the statement of a single legitimate purpose.

The Settlement Agreement requires the Form I-340 to state the correct purpose for which the alien is to be produced. The evidence reflects that the obligor was required to "surrender such aliens(s) for surrender" at the time and place specified in the notice. However, this statement of purpose is unclear, does not reflect the correct purpose for which the alien is to be produced, and therefore does not meet the requirement of the Settlement Agreement.

Based on the provisions of the Settlement Agreement and the fact that the Form I-340 did not state a correct purpose, the appeal will be sustained. The field office director's decision declaring the bond breached will be rescinded and the bond will be continued in full force and effect.

ORDER: The appeal is sustained. The field office director's decision declaring the bond breached is rescinded and the bond is continued in full force and effect.