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U.S. Citizenship  
and Immigration  
Services

G1



FILE:



Office: HOUSTON

Date: DEC 13 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record indicates that on September 10, 1999, the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated February 17, 2000, was addressed to the obligor 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 10:00 a.m. on March 28, 2000, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On June 24, 2000, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel states that the obligor is not permitted to surrender an alien until a notice of breach has been issued, and the notice of breach was not issued in this case until more than 30 days after the alien's failure to appear. Counsel asserts that ICE concludes that the conditions of the bond have been substantially violated even though the alien is delivered within 30 days of the Notice of Breach. Counsel argues that ICE is violating the substantive and due process rights of the obligor and renders it impossible for the obligor to perform or to substantially perform its obligations under the bond.

Counsel refers to the mitigation clause relating to a bond breach. The mitigation clause provides that an exception occurs when the obligor or surety delivers the bonded alien within varying increments of the 30 calendar day period following the date of the bond breach. The date of the bond breach is the day that the obligor is ordered to surrender the alien and not the date on which the bond breach notice is issued. In the present matter, the obligor was ordered to surrender the alien on February 17, 2000. The obligor failed to do that and the bond was breached on that same date, February 17, 2000. If the alien is surrendered within 30 days of the surrender date, the bond principal may be mitigated. The issues raised by counsel do not negate the fact that the bond was breached when the obligor failed to surrender the alien.

On appeal, counsel further states that district offices have retreated from their former practice of requiring only 24 hours' notice of delivery and are now requiring a full 72 hours' notice. Counsel states that it is an abuse of discretion for the district directors to require 72 hours' notice of delivery.

In the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company, the parties agreed that obligors wishing to mitigate their damages must give the ICE office demanding delivery written notice (on a business day) not less than 72 hours before delivering the alien. All ICE offices are obliged to comply with the settlement agreement.

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 record fails to contain the domestic return receipt to indicate that the Notice to Deliver Alien dated February 17, 2000 was sent to the obligor at [REDACTED] or to indicate that the obligor had received the notice to produce the bonded alien on March 28, 2000. Consequently, the record fails to establish that the field office director properly served notice on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

Pursuant to the Amwest/Reno Settlement Agreement, the legacy INS agreed that a properly completed questionnaire would be attached to all Form I-340s (Notices to Surrender) going to the obligor on a surety bond. The failure to attach the -questionnaire would result in rescission of any breach related to that Form I-340. A properly completed questionnaire must include a copy of any picture of the alien found in the Service file.

Based on the provisions of the Amwest Agreement and the fact that the record fails to show that the Form I-340 and a properly completed questionnaire were sent to the obligor as required, the appeal will be sustained. The district 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 district director's decision declaring the bond breached is withdrawn, and the bond is continued in full force and effect.