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

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GL

FILE: 

Office: BALTIMORE

Date: JAN 27 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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record indicates that on July 7, 2003, 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 January 23, 2004, 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 8:30 a.m. on February 23, 2004, at Fallon Federal Building, 31 Hopkins Plaza, 6th Floor, Baltimore, MD 21201. The obligor failed to present the alien, and the alien failed to appear as required. On March 4, 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 puts forth a Freedom of Information Act (FOIA) request. Counsel requests an extension of 60 days in which to file a written brief pending receipt of the alien's file. Counsel claims that the facts of the case, and the law applicable thereto, are complicated.

It should be noted that the facts present in the case at hand are similar not only to numerous cases already presented to the AAO by the obligor on previous appeals but to a myriad of similar cases adjudicated by the AAO since its inception in 1983. Therefore, the request for an extension of time in which to submit a brief is denied.

On appeal, counsel states that the obligor has been relieved from liability on the bond because ICE sent the alien a notice to appear for removal on Form I-166. Counsel asserts that this is contrary to current ICE regulations.

Form I-166 has not been required since July 25, 1986, which is the effective date of an amendment to former 8 C.F.R. § 243.3. That amendment had no effect on the obligor's agreement to produce the alien upon request.

While counsel indicates, on appeal, that ICE violated one or more terms of the June 22, 1995 Amwest/Reno Settlement Agreement entered into by the legacy Immigration and Naturalization Service and Far West Surety Insurance Company, he does not raise any specific ICE violation, and none appear of record.

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).

Although the obligor failed to produce the alien as required by the surrender demand, counsel stated, on appeal, that all the conditions imposed by the terms of the bond were substantially performed by the obligor. 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 January 23, 2004 was sent to the obligor, or to indicate that the obligor had received the notice to produce the bonded alien on February 23, 2004. 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).

Because the record fails to establish proper service of the Form I-340 on the obligor as required, 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 withdrawn and the bond is continued in full force and effect.