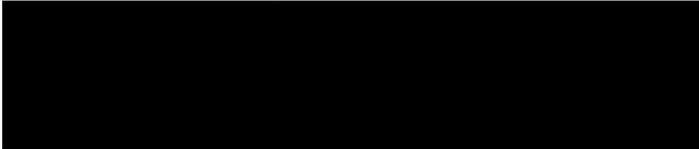


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U.S. Citizenship  
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Services

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FILE:



Office: EL PASO

Date: JUN 21 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: Self-represented

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 black ink that reads "Mari Johnson".

Robert P. Wieman, Director  
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, El Paso, Texas, and a subsequent appeal was sustained by the Administrative Appeals Office (AAO) on appeal. On March 29, 2005, the AAO reopened its decision and, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), afforded the petitioner 30 days in which to supplement the record. The appeal will be dismissed.

The record reflects that on February 26, 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 December 8, 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 at 10:00 a.m. on January 6, 2004 at [REDACTED]

[REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On January 13, 2004, the field office director informed the obligor that the delivery bond had been breached. The obligor subsequently submitted a timely appeal. On November 22, 2004, the AAO sustained the appeal, finding that there was no evidence in the record before the AAO to show that the field office director properly served notice on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv). The field office director subsequently provided the AAO with a complete copy of the record of proceeding establishing that the obligor received the Form I-340 Notice to Deliver Alien on December 12, 2003.

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 motion, the AAO determined that the record established that the Notice to Deliver Alien was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv). Confirmation acknowledging the receipt of the Notice to Deliver Alien was inadvertently omitted from the record of proceeding initially prepared for review by the AAO. Upon review of the complete record, including the confirmation of receipt of the notice, the AAO has determined that the bond was properly breached.

The obligor was granted 30 days from March 29, 2005, to respond to the AAO's notice of motion. No response has been entered into the 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 the immigration officer 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 December 8, 2003 was sent to via certified mail. This notice demanded that the obligor produce the bonded alien on January 6, 2004. The United States Postal Service track and confirmation receipt indicates the obligor received notice to produce the bonded alien on December 12, 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 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 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.