

# PUBLIC COPY

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



U.S. Citizenship  
and Immigration  
Services

GI

FILE:

Office: DALLAS

Date:

SEP 08 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.

A handwritten signature in black ink that reads "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, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on May 14, 2002, 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 November 21, 2003, was sent to the obligor 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 23, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On January 16, 2004, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel contends that the obligor is not bound by the obligations it freely undertook in submitting the bond in this case, and that ICE cannot enforce the terms of the Form I-352 because "its terms constitute regulations, and the INS [now ICE] did not submit it to Congress for review as required by the Congressional Review Act" (CRA), 5 U.S.C. § 801, et seq. This argument is meritless.

For purposes of the CRA, the term "rule" has, with three exceptions, the same meaning that the term has for purposes of the Administrative Procedure Act (APA), 5 U.S.C. § 804(3). The relevant provision of the APA defines a "rule" as the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency, 5 U.S.C. § 551(4).

There are at least two reasons why Form I-352 is not a "rule" for purposes of the CRA. First, the Form I-352 is not a rule at all. It is a bonding agreement, in effect, a surety contract under which the appellant undertakes to guarantee an alien's appearance in the immigration court, and, if it comes to that, for removal. Section 236(a)(2) of the Act, 8 U.S.C. § 1226(a)(2), permits the Attorney General, now the Secretary, Department of Homeland Security (Secretary), to release on bond an alien subject to removal proceedings. This section also permits the Secretary to describe the conditions on such bonds, and to approve the security on them. Section 103(a)(3) of the Act, 8 U.S.C. § 1103(a)(3), permits the Secretary to prescribe bond forms. While Form I-352 may well be a form used to comply with rules relating to release of aliens on bond, the Form itself is not a rule. It is not an "agency statement," 5 U.S.C. § 551(4), but a surety agreement between the obligor and the Government.

Second, even if it can be said that Form I-352 is a "rule," the CRA does not apply. The CRA itself provides that its requirements do not apply to a "rule of particular applicability." 5 U.S.C. § 804(3)(A). Assuming, arguendo, that Form I-352 can be called a rule, it applies only to each particular case in which a person freely agrees to sign and file the Form I-352. Thus, even if the obligor were correct in saying Form I-352 is a rule, it would be a rule of particular applicability, exempt from the reporting requirement.

On appeal, counsel asserts that the immigration judge (IJ) issued an order of removal on May 17, 2002. Counsel further asserts that because ICE made no attempt to execute this order within 90 days, it has lost detention authority, and the delivery bond should be canceled as a matter of law.

The record reflects that a removal hearing was held on May 16, 2002 and the alien was ordered removed from the United States. On May 24, 2002, the alien filed a motion to reopen and a motion for stay of removal before the Board of Immigration Appeals (BIA). On May 30, 2002, the BIA denied the alien's motion to

reopen and motion for stay of removal. The alien appealed the IJ's decision to the BIA. On May 5, 2003, the BIA affirmed, without opinion, the IJ's decision.

The AAO has continually held that the Secretary's authority to maintain a delivery bond is not contingent upon his authority to detain the alien. Counsel argues this ruling is contrary to *Shrode v. Rowoldt*, 213 F.2d 810 (8<sup>th</sup> Cir. 1954).

Following his arrest for violating immigration laws, [REDACTED] the alien in *Shrode*, was released on a bond conditioned upon his appearance for deportation proceedings. Although the order of deportation became final in April 1952, he was not deported. In October 1952, more than six months after the deportation order became final, [REDACTED] was placed on supervisory parole. Immigration officials, however, refused to release him from bond.

In upholding the lower court's decision releasing [REDACTED] from bond, the appellate court noted that the statute granted the Attorney General supervisory and limited detention authority but did not authorize the posting of bond. The court stated that the requirement to post bail is tantamount to making the sureties jailers, and that the power to require bail connotes the power to imprison in the absence of such bail. Since the only authority the Attorney General could exercise in [REDACTED] case was supervisory, a bond could not be required.

Since *Shrode*, section 305 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) added section 241(a)(1) of the Act, 8 U.S.C. § 1231(a)(1). It provides generally that the Secretary shall remove an alien from the United States within 90 days following the order of removal, with the 90-day period suspended for cause. During the 90-day removal period, the Secretary shall exercise detention authority by taking the alien into custody and canceling any previously posted bond unless the bond has been breached or is subject to being breached. Section 241(a)(2) of the Act; 8 C.F.R. § 241.3(a).

Section 241(a)(3) of the Act provides that if an alien does not leave or is not removed during the 90-day period, the alien shall be subject to supervision under regulations prescribed by the Secretary. Posting of a bond may be authorized as a condition of release after the 90-day detention period. 8 C.F.R. § 241.5(b). Thus, unlike in *Shrode*, the Secretary has the continuing authority to require aliens to post bond following the 90-day post-order detention period.

Counsel suggests that once ICE no longer has detention authority over the alien, the delivery bond must terminate by operation of law. However, this is contrary to the holdings of *Zadvydias v. Davis*, 533 U.S. 678 (2001) and *Doan v. INS*, 311 F.3d 1160 (9<sup>th</sup> Cir. 2002). In *Zadvydias*, the Supreme Court expressly recognized the authority of the Immigration and Naturalization Service (legacy INS) to require the posting of a bond as a condition of release after it lost detention authority over the alien, even though a bond was not provided as a condition of release by the statute. In *Doan*, the 9<sup>th</sup> Circuit held the legacy INS had the authority to require a \$10,000 delivery bond in a supervised release context even though it did not have detention authority. These cases arose in the post-removal period, and it is obvious from the rulings that detention authority is not the sole determining factor as to whether ICE can require a delivery bond.

The bond contract provides that it may be canceled when (1) exclusion/deportation/removal proceedings are finally terminated; (2) the alien is accepted by ICE for detention or deportation/removal; or (3) the bond is otherwise canceled. The circumstances under which the bond may be "otherwise canceled" occur when the

Secretary or the Attorney General imposes a requirement for another bond, and the alien posts such a bond, or when an order of deportation has been issued and the alien is taken into custody. As the obligor has not shown that any of these circumstances apply, the bond is not canceled.

Counsel alternatively argues that the obligor is entitled to cancellation of the bond for equitable reasons, as the chances of the alien becoming a flight risk increase significantly after a final order is issued. As stated in the preceding paragraph, the obligor is bound under the terms of the contract to deliver the alien until the bond is canceled or breached.

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).

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 November 21, 2003 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on December 21, 2003. The domestic return receipt shows it was signed by a representative of Aaron Federal Bonding, and was subsequently received by ICE on November 28, 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 to 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 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 decision of the field office director will not be disturbed.

**ORDER:** The appeal is dismissed.