



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHICAGO

Date:

JAN 10 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, Chicago, Illinois, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on February 14, 2003, the obligor posted a \$4,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated February 2, 2004, 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 10:00 a.m. on March 9, 2004, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On March 25, 2004, the field office director informed the obligor that the delivery bond had been breached.

The record reflects that on November 28, 2003, counsel submitted a Form I-246, Application for Stay of Deportation or Removal. Counsel asserted that a statement from the cardiologist would be forthcoming. On December 23, 2003, the field office director denied the application. The director, in denying the application, noted that the only evidence submitted was documentation which listed the medicines the alien was prescribed. As of the date of the director's notice, no evidence from the cardiologist had been provided to ICE. Counsel, on December 24, 2003, submitted a letter from the cardiologist who treated the bonded alien at the time of his heart attack on October 4, 2003.

On appeal, counsel asserts that the bonded alien had suffered a heart attack on October 4, 2003 and, therefore, it is physically impossible for the alien to travel back to his native country. Counsel asserts that the fact the director did not receive the medical statement until a day after her decision to deny the application, "a valid exercise of discretion would have been to reconsider the denial." Counsel argues that this clearly constitutes an abuse of discretion.

The obligor is not relieved of its responsibility to deliver and surrender the bonded alien at the time and place specified in the director's demand notice simply because a request for stay of removal has been previously denied. The obligor is only bound by the terms of the Form I-352 to which it obligated itself. The terms of the Form I-352 for bonds conditioned upon the delivery of the alien establish the following condition: "the obligor shall cause the alien to be produced or to produce himself/herself . . . upon each and every written request until *exclusion/deportation/removal proceedings* . . . are finally terminated." (Emphasis added). Thus, the obligor is bound to deliver the alien by the express terms of the bond until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs. As the obligor has not shown that any of these circumstances apply, the bond is not canceled.

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 February 2, 2004 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on March 9, 2004. The domestic return receipt shows it was signed by a representative of the obligor and was subsequently received by ICE. 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.