

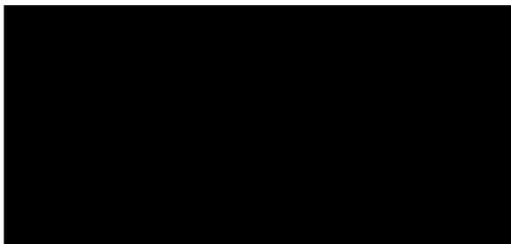
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: HOUSTON

Date:

NOV 01 2010

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

IN BEHALF OF OBLIGOR: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010, must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Σ Perry Rhew
Chief, Administrative Appeals Office

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

The record indicates that on October 31, 2008, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated March 15, 2010, 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 9:00 a.m. on April 20, 2010, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On May 10, 2010, 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, the obligor asserts that the alien never received the Form I-340 and, therefore, the breach is erroneous and should be overturned.

The obligor's assertion is without merit as an immigration bond is a contract between ICE and the obligor, not the bonded alien. *See Matter of Insurance Company of North America*, 17 I&N Dec. 251 (Act. Reg. Comm. 1978). ICE correctly notified the obligor on Form I-340 to surrender the alien as demanded.

On appeal, the obligor asserts that the alien has filed a motion to reopen before the Board of Immigration Appeals that is currently pending and, therefore, the breach should be overturned to allow the alien's case to be adjudicated in a fair and just matter.

The record reflects that a removal hearing was held on December 16, 2009, and the alien was ordered removed from the United States. The bonded alien appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On February 18, 2010, the BIA dismissed the alien's appeal for lack of jurisdiction. On May 18, 2010, the alien filed a motion to reopen before the immigration court. On June 3, 2010, the motion to reopen was denied. On July 1, 2010, the applicant filed an appeal before the BIA that is currently pending.

The obligor is not relieved of its responsibility to deliver the bonded alien at the time and place specified in the field officer director's demand notice as said director may call the alien in for an interview or custodial determination at any time. The obligor is bound by the terms of the contract 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 contract until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

Bond proceedings are separate and distinct from removal proceedings. Removal proceedings are between the United States government and an alien with a questionable right to remain in the United States. A delivery bond is a contract between ICE and the obligor, where in consideration for obtaining the alien's release from custody, the obligor agrees to produce the alien on demand until the obligation to do so terminates under grounds specified in the contract.

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 March 15, 2010, was sent to
via certified mail. This notice demanded that the obligor produce the bonded alien on April 20, 2010. The domestic return receipt indicates the obligor received notice to produce the bonded alien on March 22, 2010. 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.