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

PUBLIC COPY

61

[REDACTED]

FILE: [REDACTED]

Office: LOS ANGELES

Date: **NOV 23 2010**

IN RE: Obligor: [REDACTED]
Bonded Alien: [REDACTED]

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:

[REDACTED]

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 your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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,

Perry Rhew
Chief, Administrative Appeals Office

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

The record indicates that on April 11, 1997, 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 August 2, 2010, 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 August 18, 2010, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On August 30, 2010, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel for the obligor asserts that the alien has filed a motion to reopen that is pending before the Board of Immigration Appeals.

The record reflects that on August 12, 2007, a removal hearing was held and the alien was ordered removed *in absentia*. The alien filed a motion to reopen before the immigration court. On October 14, 1997, the immigration judge (IJ) reopened the proceedings. On February 10, 2008, a removal hearing was held and the alien was ordered removed from the United States. On April 30, 1998, the alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). On October 16, 2000, the BIA remanded the record. On May 28, 2002, a removal hearing was held and the alien was ordered removed from the United States. On June 25, 2002, the alien appealed the IJ's decision to the BIA. On October 16, 2003, the BIA affirmed, without opinion, the IJ's decision. The alien filed a petition for review before the United States Court of Appeals for the Ninth Circuit (Ninth Circuit). On May 12, 2005, the Ninth Circuit granted the petition for review and remanded the record to the IJ for further consideration. On September 28, 2005, the BIA vacated its decision of October 16, 2003, and remanded the record to the IJ for further proceeding consistent with the Ninth Circuit's decision.

On February 6, 2008, a removal hearing was held and the IJ ordered the alien removed from the United States. The alien's requests for cancellation of removal, suspension of deportation and a waiver in accordance with former section 212(c) were denied. On March 5, 2008, the alien appealed the IJ's decision to the BIA. On February 12, 2009, the BIA dismissed the appeal. On September 24, 2010, the alien filed a motion to reopen before the BIA that is currently pending.

The field office director properly exercised his authority by directing the obligor to produce the bonded alien. The obligor is not relieved of its responsibility to deliver the bonded alien at the time and place specified in the field office director's demand notice as said director may call the alien in for 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, as specified in the appearance notice, 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 August 2, 2010, was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on August 18, 2010. The domestic return receipt indicates the obligor received notice to produce the bonded alien on August 5, 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 ensure 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.