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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



G₁

DATE: FEB 14 2012

Office: NEW YORK

FILE: [REDACTED]

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:



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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The record indicates that on January 24, 2007, 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 October 25, 2011, 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 9:30 a.m. on November 30, 2011, at 26 Federal Plaza, Room 9-110, New York, NY 10278. The obligor failed to present the alien, and the alien failed to appear as required. On December 14, 2011, the field office director informed the obligor that the delivery bond had been breached.

On appeal, the counsel asserts that the obligor could not surrender the bonded alien into custody on November 28, 2001 because he "was bed resting at home under doctor's orders." As evidence counsel submits a letter from [REDACTED] a medical doctor, who indicated that the bonded alien had sustained injury due to a fall and was advised to take bed rest until December 3, 2011.

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).

In *Matter of Allied Fidelity Insurance Company*, 19 I&N Dec. 124 (Comm. 1984), it was held that determining whether a violation is "substantial" within the meaning of 8 C.F.R. § 103.6(e) requires consideration of the following factors:

- (a) Extent of the breach;
- (b) Whether the violation was intentional or accidental on the part of the alien;
- (c) Whether the actions which constitute the violation were committed in good faith;
and
- (d) Whether the alien took steps to made amends, or to put himself in compliance.

There is nothing in the record to demonstrate that the obligor had contacted ICE to inform them why the alien would not be able to appear on November 30, 2011, or why the obligor did not make arrangements to present the alien to ICE after December 3, 2011. The record reflects that there has been a willful departure from the terms or conditions of the bond and the obligor's failure to deliver the alien at the scheduled time and place is not a mere technical or unimportant occurrence.

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).

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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 October 25, 2011 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on November 30, 2011. The United States Postal Service track and confirmation receipt indicates the obligor received notice to produce the bonded alien on October 31, 2011. 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).

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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.