identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

[redacted]

G1

DATE: JUL 1 1 2012 Office: NEWARK FILE: [redacted]

IN RE: Obligor:
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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

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

The record indicates that on September 28, 2001, the obligor posted a $2,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 12, 2004, was sent via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of at 9:00 a.m. on September 28, 2004, at The obligor failed to present the alien, and the alien failed to appear as required. On October 28, 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, counsel puts forth a Freedom of Information Act request. Counsel requests an extension of 60 days in which to file a written brief pending receipt of the alien's file. Counsel claims that the facts of the case, and the law applicable thereto, are complicated.

It should be noted that the facts present in the case at hand are similar not only to numerous cases already presented to the AAO by the obligor on previous appeals but to a myriad of similar cases adjudicated by the AAO since its inception in 1983. Therefore, the request for an extension of time in which to submit a brief is denied.

On appeal, counsel asserts that the bonded alien was ordered deported on "November 6, 2001." Counsel further asserts that because ICE made no attempt to execute this order within 180 days, it has lost detention authority. Counsel states that the delivery bond should be canceled as a matter of law as required by the *Amwest v. Reno* Settlement Agreement and the Immigration and Naturalization Service (legacy INS) implementing memorandum.

On April 6, 2005, the Headquarters Office of Detention and Removal Operations issued a memorandum entitled *Declarations of Breach of Delivery Bonds*. This memorandum confirms that the terms of the Amwest I and Amwest II Settlement Agreements are binding only on those companies who were parties to the agreements. Accordingly, as the obligor was not a party to Amwest I or Amwest II Settlement Agreements, counsel's claim is without merit.

The record reflects that a removal hearing was held on February 3, 2003 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 April 21, 2004, the BIA affirmed, without opinion, the immigration judge'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 (8th Cir. 1954).

Following his arrest for violating immigration laws, 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, was placed on supervisory parole. Immigration officials, however, refused to release him from bond.

In upholding the lower court's decision releasing 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 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.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002), the Supreme Court expressly recognized the authority of the 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 Ninth 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.

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 12, 2004 was sent, via certified mail. This notice demanded that the obligor produce the bonded alien on September 28, 2004. The domestic return receipt indicates the obligor received notice to produce the bonded alien on August 16, 2004. 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.