

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:

NOV 01 2012

Office: PORTLAND

FILE:



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: 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.

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, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record indicates that on February 11, 2008, the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 4, 2011, was addressed 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 8:00 a.m. on August 19, 2011, at 511 NW Broadway, Room 463, Portland, OR 97209. The obligor failed to present the alien, and the alien failed to appear as required. On August 30, 2011, the field office director informed the obligor that the delivery bond had been breached.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must submit the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. An application, which is submitted with the wrong filing fee, shall be rejected as improperly filed. *See* 8 C.F.R. § 103.2(a)(7)(i).

The obligor asserts that on August 31, 2011, she visited the Boise (Idaho) office and reported her change of address.

The record indicates that the field office director issued the Notice-Immigration Bond Breached on August 30, 2011, and it was mailed to the obligor at her address of record. It is noted that the field office director properly gave notice to the obligor that it had 30 days to file the appeal. The Form I-290B, Notice of Appeal or Motion, was initially received on December 30, 2011, however, it was rejected because the proper fee was not included. The Form I-290B was returned to the obligor on January 10, 2012, with instructions to file the appropriate fee. The Form I-290B with Form I-912, Request for Fee Waiver, was received at the Phoenix Lockbox on August 21, 2012, over 11 months after the decision was issued. Accordingly, the appeal was untimely filed.

Assuming, *arguendo*, a properly completed Form I-290B was received on December 30, 2011, it would have still been untimely filed as it was received 122 days after the decision was issued.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the field office director. If the field office director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.