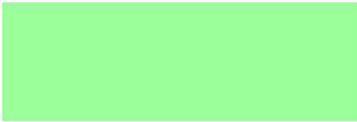




U.S. Citizenship
and Immigration
Services

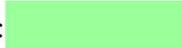
(b)(6)



DATE:

Office: MIAMI

FILE:

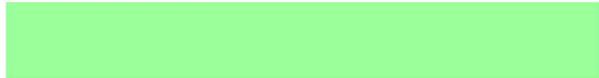


IN RE:

MAY 20 2013

Obligor:

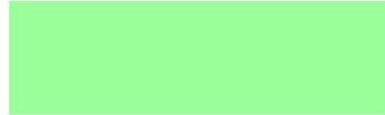
Bonded Alien:



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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. .

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The record indicates that on April 7, 2009, 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 November 2, 24, 2012, was sent to the obligor. 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 December 3, 2012, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On January 24, 2013, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel for the obligor asserts that the bonded alien has a motion to reopen and expedited stay of removal pending before the Board of Immigration Appeals (BIA). Counsel states that the bond should not have been breached as the bonded alien will be eligible for relief. Counsel states that undue hardship has been placed on the obligor as his residence is in the state of New York and the hearing was in Miami.

The record reflects that a removal hearing was held on May 22, 2003, and the alien was ordered removed *in absentia*. The alien filed a motion to reopen before the Immigration Judge. On December 15, 2008, the motion was denied. The alien filed an appeal from the Order of the Immigration Judge (IJ) to the BIA. On March 24, 2009, the case was remanded to the IJ. On May 14, 2009, the IJ denied the motion to reopen and the motion for change of venue and certified its decision to the BIA. On May 6, 2010, the BIA affirmed, without opinion, the IJ's decision. On November 27, 2012, the alien filed a motion to reopen and a motion to reconsider before the BIA. On February 28, 2013, the BIA denied the motions to reopen and reconsider and denied the alien's request for stay of removal.

ICE properly exercised its 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 demand notice simply because a temporary stay of removal has been filed. ICE may call the alien in for custodial determination at any time. The obligor is bound by the terms of the contract to which he obligated himself. 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.

Counsel asserts that the notice lacked sufficient specificity consistent "with *Amwest v. Reno* Settlement Agreement in that the nature of interview is listed as "CUSTODY", a term which indicates different meaning in legal context and is not further explained.

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.

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. § 103.8(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.
- (v) If so requested by a party, advising the party by electronic mail and posting the decision to the party's USCIS account.

The evidence of record indicates that a Notice to Deliver Alien dated September 24, 2012 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien October 24, 2012. The notice was returned to ICE as undeliverable. On November 2, 2012, a Notice to Deliver Alien was sent to the obligor at [REDACTED] via regular mail. This notice demanded that the obligor produce

bonded alien December 3, 2012. Counsel acknowledges, on appeal, that the obligor received the notice of November 2, 2012. Consequently, the record clearly establishes that each notice was properly served on the obligor in compliance with 8 C.F.R. § 103.8(a)(1)(i) and (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.