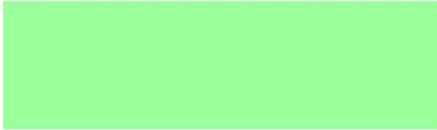




U.S. Citizenship
and Immigration
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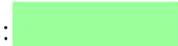


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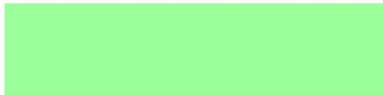
Office: NEW YORK

FILE:



IN RE:

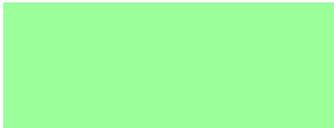
Obligor:
Bonded Alien:



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:



INSTRUCTIONS:

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

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by a Detention and Deportation Officer (DDO), Enforcement and Removal Operations, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on July 15, 2008, the obligor posted a \$15,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated September 26, 2014, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's appearance for an interview before Immigration and Customs Enforcement (ICE) at 9:00 a.m. on October 16, 2014, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On October 21, 2014, a DDO informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the bonded alien's failure to appear on September 26, 2014 was not a "substantial violation" as his removal proceedings are currently pending, he is eligible for relief from removal, and he has no reason not to appear. Counsel asserts that the demand notice was addressed to "[REDACTED]" who is not the obligor, owner or president of the company and is no longer employed by [REDACTED]. Counsel also contends that the demand notice was not valid as it was not properly signed by an authorized official.

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 the Notice to Deliver Alien dated September 26, 2014 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on October 16, 2014. The PS Form 3811, Domestic Return Receipt, indicates that it was signed by a representative of [REDACTED].

While the recipient failed to indicate the date the notice was received, the domestic return receipt was subsequently received by ICE on October 6, 2014.

As to counsel's assertion that there was no "substantial violation," we note the obligor is not relieved of its responsibility to deliver the bonded alien at the time and place specified in the demand notice if the demand pertains only to removal proceedings or removal itself, and counsel has submitted no authority for the assertion that a violation on par with willfully failing to appear after having been ordered removed is necessary for a violation to be considered substantial. Bond proceedings are separate and distinct from removal proceedings, and the alien may be called in for an interview or custodial determination. 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. We find that failure to deliver in this case was a substantial violation.

As to counsel's argument that the demand notice was addressed to individual who is not the obligor, owner or president of the company, and is no longer employed by [REDACTED] we note that counsel has not provided any evidence indicating that the obligor contacted ICE to advise that [REDACTED] who is listed as the agent on the bond contract, was no longer representing it. Furthermore, the mailing of the demand notice in care of the obligor's agent did not prejudice the obligor as it does not allege that it did not timely receive the notice.

As to the requirement that the demand notice was not properly reviewed and signed, counsel states the demand notice contains the name of the officer but no signature, and that the writing next to the name is illegible. We agree with counsel that a handwritten signature is not required when a document is digitally signed.¹ However, we find that the writing next to the name of the officer is legible and is, in fact, a typical digital signature. We find that counsel's assertions are 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, 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). We find that the record establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.8(a)(2)(iv).

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 will not be disturbed.

ORDER: The appeal is dismissed.

¹ See DHS, Privacy Impact Assessment Update for the Enforcement Integrated Database, dated April 6, 2012.