



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 13 2015

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Enforcement and Removal Operations, San Diego, California, declared the delivery bond breached. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record indicates that on August 19, 2002 the obligor, who is also the bonded alien, posted a \$10,000 bond conditioned for his delivery. A Notice to Obligor to Deliver Alien (Form I-340) dated July 10, 2014, 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 9:00 a.m. on July 29, 2014, at [REDACTED]

[REDACTED] The obligor failed to present himself as required. On July 30, 2014, the field office director informed the obligor that the delivery bond had been breached, Form I-323.

On appeal, counsel asserts that the bonded alien did not receive the Form I-340 or the Form I-323 as they were sent to an old address, the bonded alien reported his change of address on May 6, 2003 and the bonded alien has been under an order of supervision since August 21, 2001. Counsel further asserts subsequent to an appearance on January 23, 2014, the bonded alien was scheduled to report on January 29, 2015. Accordingly, counsel asserts that the obligor is not in breach of the bond.

The regulations provide that an obligor of a bond 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).

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced to an immigration officer upon each and every request until proceedings are finally terminated, or until the alien is actually accepted by the immigration officer for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

Mailing of a notice requesting surrender of the alien to the address of record of the obligor via certified mail, return receipt requested, fulfills the requirements of 8 C.F.R. § 103.5a(2) [now 103.8(a)(2)] respecting service of notice. *Id.*

In any proceeding which is initiated with the proposed adverse effect, service of the initiating notice and of notice of any decision issued by an immigration officer shall be accomplished by personal service. 8 C.F.R. § 103.8(c). The Notice to Obligor to Deliver Alien is a request which is performed by personal service.

The regulation at 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 Obligor to Deliver Alien of July 10, 2014, was addressed to the obligor at [REDACTED] via certified mail. The notice was sent to the obligor's address listed on the Immigration Bond (Form I-352) posted on August 19, 2002. The notice was returned by the U.S. Postal Service as undeliverable

Evidence in the record indicates that the bonded alien has been under an order of supervision since August 21, 2001, and that at the time of his reported appearances on May 6, 2003, October 5, 2006, and January 4, 2007, a change of address was provided to ICE. *Jones v. Flowers*, 547 U.S. 220, 229-237 (2006), requires that the Department of Homeland Security take additional reasonable steps to provide an affected party with notice when the party has not received a certified mail attempt. *See also Echavarría v. Pitts*, F.3d 92, 96 (5th Cir. 2011) (holding that due process requires the Department of Homeland Security DHS to take additional reasonable steps to notify a bond obligor when it has knowledge that the initial attempt at notice failed).

As the record fails to establish that the field office director made additional reasonable steps mandated by the Courts in *Jones and Echavarría* following a failed notice attempt, the field office director's decision declaring the bond breached will be rescinded and a new Form I-340 shall be issued and sent to the obligor at his current address of record. The bond will be continued in full force and effect.

ORDER: The appeal is sustained. The field office director's decision declaring the bond breached is rescinded and the bond is continued in full force and effect.