



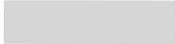
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 17 2015**

Office: ATLANTA, GA

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The delivery bond was declared breached by the Field Office Director, Enforcement and Removal Operations, Atlanta, Georgia, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on September 27, 2010, the obligor posted a \$10,000 bond conditioned upon the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 14, 2014, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of Immigration and Customs Enforcement (ICE) at 10:00 a.m. on September 10, 2014, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On September 13, 2014, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel for the obligor asserts that the delivery bond should have been canceled once a voluntary departure bond had been posted by the bonded alien on May 17, 2013.

The record reflects that a removal hearing was held on May 13, 2013, and the alien was granted voluntary departure from the United States on or before June 12, 2013, with an alternate order of removal to take effect in the event that the alien failed to depart as required. The immigration judge (IJ) ordered that a voluntary departure bond be imposed in the amount of \$500 within five business days. 8 C.F.R. § 1240.26(3)(c)(i). A voluntary departure bond was posted on May 17, 2013.

The bonded alien was advised by the IJ that proof of posting of the voluntary bond must be submitted to the Board of Immigration Appeals (BIA) within 30 days of filing an appeal and that the BIA will not reinstate a period of voluntary departure in its final order unless the alien had timely submitted sufficient proof that the required bond has been posted. 8 C.F.R. § 1240.26(c)(3)(ii). The alien appealed the IJ's decision to the BIA. On March 21, 2014, the BIA dismissed the appeal. The BIA did not reinstate the IJ's grant of voluntary departure as the alien did not submit timely proof of having paid the voluntary bond. The alien was ordered removed from the United States pursuant to the IJ's alternate order.

Bond proceedings are separate and distinct from removal proceedings. 8 C.F.R. §1003.19(d). Removal proceedings are between the United States government and an alien who has been placed into immigration proceedings. 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 cites *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977), in contending that a bond is otherwise cancelled when a requirement is imposed for another bond and the alien posts such a bond. However, *Matter of Smith* does not consider imposition of a second bond for an alien, but rather whether a bond breach occurred after a denial of a change of venue request. Under the current bond form, revised March 2008, ICE can simultaneously maintain both a delivery and a voluntary departure bond posted on the alien. The regulation at 8 CFR §1240.26(c)(3) allows no

exception to the five-business-day posting for voluntary departure and ICE is under no requirement to cancel the delivery bond after the posting of a voluntary departure bond.

The bond contract provides that a delivery bond shall be canceled upon any of the following, provided they occur prior to the date of a breach: DHS' taking the alien back into its custody; deportation/exclusion/removal of the bonded alien; grant of permanent residence to the bonded alien; notice of the detention of the bonded alien for 30 or more days pursuant, or prior, to a conviction by local, state, or federal authorities; termination of deportation/removal proceedings (but not administrative closure or stay of such proceedings); death of the bonded alien; voluntary departure by the bonded alien as evidenced by valid proof thereof; or other circumstances as provided by statute or regulation. *See also* the General Terms and Conditions providing that "[t]he express language of the bond shall take precedence over any inconsistent policies or statements." As the obligor has not shown that any of these circumstances apply, the delivery bond is not canceled.

On appeal, counsel asserts that ICE lost detention authority and hence the authority to maintain the delivery bond when it failed to execute the removal of the bonded alien within 90 days of the final order of removal. 8 U.S.C. § 1231(a)(1) and section 241(a)(1) of the Act.

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). Accordingly, 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), the Supreme Court expressly recognized the authority of the legacy Immigration and Naturalization Services (legacy INS) to require the posting of a bond as a condition of release without regard to detention authority over the alien, even though a bond was not provided as a condition of release by the statute. In *Doan v. INS*, 311 F.3d 1160 (9th Cir. 2002), 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.

The obligor is bound by the terms of the bond contract to which it 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 until either exclusion, deportation or removal proceedings are finally terminated, or one of the other conditions occurs.

Counsel contends that, as the BIA, in its March 21, 2014 decision, did not reinstate the IJ's grant of voluntary departure, and the alternate order of removal took effect, removal proceedings were terminated. However, removal proceedings do not terminate upon an order of removal alone, but

rather when an alien departs from the United States while an order of removal is outstanding and effects his own removal. 8 C.F.R. § 245.1(c)(8)(ii).

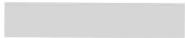
The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e).

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).

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 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 Deliver Alien dated August 14, 2014 was sent to the obligor at [REDACTED] via certified mail. This notice demanded that the obligor produce the bonded alien on September 10, 2014. The notice was returned by the U.S. post office as unclaimed. Counsel, on appeal, asserts that at the time the Notice to Deliver Alien and the breach notice were issued, the obligor was outside of the United States and not aware that the notices had been sent until October 3, 2014. In signing the "Bond Obligor Responsibilities" on September 27, 2010, the obligor acknowledged that if he had a reason to believe he was not able to guarantee the alien's delivery upon ICE's demand, he may have his bond canceled by returning the alien to the custody of ICE. The obligor also acknowledged that he would keep ICE advised of his current address. The record does not contain any evidence that ICE had been informed of the obligor's departure from the United States or of a change of address.



Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.8(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.