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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-Z-

DATE: FEB. 8, 2016

APPEAL OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT NEWARK FIELD OFFICE DECISION

FORM: ICE FORM I-352, IMMIGRATION BOND

The Obligor seeks to reinstate a delivery bond. *See* Immigration and Nationality Act (the Act) § 103, 8 U.S.C. § 1103. The U.S. Immigration and Customs Enforcement (ICE) Field Office Director, Newark, New Jersey, declared the bond breached. The matter is now before us on appeal. The appeal will be sustained.

The record indicates that on June 20, 2011, the Obligor posted a $15,000 bond conditioned upon the delivery of the above referenced alien. A Form I-340, Notice to Obligor to Deliver Alien, dated August 24, 2011, was sent to the Obligor via certified mail. The notice demanded the Bonded Alien's appearance for an interview before ICE at 10:00 a.m. on October 4, 2011, at The Obligor did not present the Bonded Alien, and the Bonded Alien did not appear as required. On October 12, 2011, the Director issued a Form I-323, Notice-Immigration Bond Breached, which informed the Obligor that the delivery bond had been breached. On appeal, the Obligor asserts that he did not receive the Notice to Obligor to Deliver Alien. The Obligor requests that the bond be reinstated and that a new interview date be scheduled.

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 does not 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'l Comm'r 1977).

Mailing of a notice requesting surrender of the bonded 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 August 24, 2011, was addressed to the Obligor at FL . On September 19, 2011, the notice was returned as unclaimed by the U.S. Postal Service.

In *Jones v. Flowers,* 547 U.S. 220, 229-237 (2006), the Supreme Court ruled that the government shall take additional reasonable steps to provide an affected party with notice when the government is aware that the party has not received a certified mail attempt. In *Echavarria v. Pitts,* 641 F.3d 92, 96 (5th Cir. 2011), the Fifth Circuit Court of Appeals held that due process requires the Department of Homeland Security to take additional reasonable steps to notify a bond obligor when it has knowledge that the initial attempt at notice failed.

As the record does not establish that the Director made any additional reasonable steps following knowledge of an unsuccessful notice attempt, the Director's decision declaring the bond breached will be rescinded, a new Form I-340 shall be issued, and it shall be sent to the Obligor at the Obligor's address of record. The bond will be continued in full force and effect.

ORDER: The appeal is sustained.

Cite as *Matter of W-Z-*, ID# 14705 (AAO Feb. 8, 2016)