

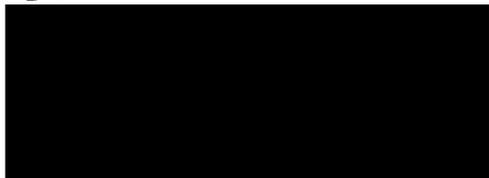
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FILE:

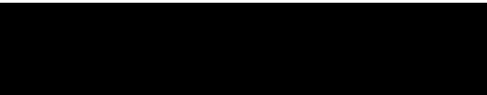


Office: COW

Date: **NOV 29 2007**

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Director, Headquarters, Bonds, Immigration and Customs Enforcement (ICE), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record indicates that on April 12, 2002, the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated February 14, 2007, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of ICE at 10:00 a.m. within five days of March 12, 2007, at the nearest ICE, Detention and Removal Office. The obligor failed to present the alien, and the alien failed to appear as required. On April 5, 2007, the director informed the obligor that the delivery bond had been breached.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the Notice-Immigration Bond Breached on April 5, 2007 and mailed it to the obligor's address of record. The United States Postal Service track and confirm website¹ indicates that a notice was left at the applicant's address on April 16, 2007; however, the obligor failed to claim the breach notice at the post office. The notice was subsequently returned to ICE and delivered at Lees Summit, Missouri on May 16, 2007. The record contains no evidence of a change of address prior to the issuance of the director's breach notice. Therefore, the obligor's failure to receive the Notice-Immigration Bond Breached was of his own making. Counsel dated the appeal October 12, 2007, and it was received by ICE on October 19, 2007, over six months after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ <http://trkcnfrm1.smi.usps.com/PTSIInternetWeb/InterLabelDetail.do>, accessed on November 23, 2007.