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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE: [Redacted]

Office: OMAHA

Date: **APR 17 2008**

IN RE: Obligor:
Bonded Alien:

[Redacted]

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:

[Redacted]

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 Field Office Director, Detention and Removal, Omaha, Nebraska, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on December 13, 2005, the obligor posted a \$10,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated June 28, 2006, 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 26, 2006, at 1717 Avenue H, Omaha, NE 68110. The obligor failed to present the alien, and the alien failed to appear as required. On July 25, 2006, the field office director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the bonded alien departed the United States in December 2005, but due to "bureaucratic issues," the alien was unable to obtain the proof of her return to Israel. Counsel asserts that on September 26, 2006, the alien spoke to a representative at the United States Consulate in Jerusalem, who signed a document evidencing that the alien was in Israel.

The record reflects that on December 21, 2005, ICE canceled the Form I-862, Notice to Appear, pursuant to 8 C.F.R. § 239.2(7). On December 22, 2005, ICE issued an order granting the alien voluntary departure from the United States on or before January 21, 2006.

The record contains an original Form G-146, Verification of Departure, signed by a representative of the United States Consulate in Jerusalem, indicating that the alien departed in January 2006 from John F. Kennedy Airport in New York. However, the *actual* date of departure was not indicated on the form.

The AAO has held that an alien who departs from the United States prior to the date demanded for surrender may be in substantial compliance with the terms of his delivery bond. *Matter of Don Donaldson's Key Bail Service*, 13 I&N Dec. 563 (Acting Reg. Comm. 1969). However, the burden is upon the alien or her surety to prove by probative evidence that the alien did leave the country prior to her surrender date. *Matter of Peerless Insurance Company*, 15 I&N Dec. 133 (Reg. Comm. 1974).

A physical verification of departure by an immigration officer at the port of departure, or a verification of the alien's presence in the foreign destination by a United States consular officer or immigration officer abroad, is required to verify departure.

ICE will accept a document signed by an embassy official, consular officer, or an immigration officer abroad, and bearing an appropriate seal or other indicia of reliability as proof that a voluntary departure or self-removal has occurred. The field office director retains the discretion to accept other documents of voluntary departure. The original of such documents may be delivered either by the surety or through diplomatic channels. Copies of such documents will be accepted only if received through diplomatic channels.

Although the record contains the Form G-146, it fails to list the actual date the alien departed the United States. As such, it cannot be determined whether the alien departed on or before January 21, 2006. No other evidence has been provided such as the alien's passport that has been certified to be a true copy of the original by a United States Embassy official, consular officer or immigration officer abroad to establish a timely departure.

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).

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. § 103.5a(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.

The evidence of record indicates that the Notice to Deliver Alien dated June 28, 2006 was sent to the obligor at [REDACTED], Tempe, AZ 85283 via certified mail. This notice demanded that the obligor produce the bonded alien on July 26, 2006. The domestic return receipt indicates the obligor received notice to produce the bonded alien on July 17, 2006. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(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.