

OI 103.6 Immigration bonds.

(a) Determining whether maintenance of status and departure bond should be posted.

The decision whether an alien is admissible as a nonimmigrant or should be granted an extension of temporary stay should not ordinarily hinge on whether he is capable of posting a maintenance of status and departure bond. The paper work involved in posting a bond, the required periodic review of the case while the bond remains in effect, the eventual adjudication of whether the bond should be declared breached or cancelled, the adjudication of motions and appeals filed when a bond is declared breached, and the government's involvement in litigation which frequently ensues when a bond has been declared breached, are all costly to the Service in terms of money and manpower. Accordingly, a maintenance of status and departure bond should be required by an immigration officer only under the most exceptional circumstances when it is felt that the bond is essential to induce compliance with the terms of the alien's admission or stay, and that the circumstances are such as to warrant requiring the bond notwithstanding the considerations mentioned in the preceding sentence.

When a maintenance of status and departure bond is posted in behalf of an individual alien, Form I-352A, which is attached to the bond form, shall be furnished to the obligor. In all other bond cases Form I-352A shall be destroyed.

(b) Bond control card.

Form I-393 shall be prepared immediately upon the posting of any bond, except a delivery bond, and all Forms I-393 shall be maintained by Examinations. Upon the posting of a maintenance of status and departure bond, the duplicate copy of Form I-393 shall be forwarded to the Document Handling Unit, Central Office. The Form I-393 shall be used to identify files containing these bonds and as a call-up for review. Upon the posting of a delivery bond, Form I-154 shall be noted immediately in the box "Service Custody Status" to show the amount and date of posting. When a bond is posted at the request of an American consular office abroad, the location of the requesting consular office shall be shown at the bottom of the Form I-393. It is imperative that files relating to the Forms I-393 be called up promptly for review of the outstanding bond as indicated in paragraphs (c) and (d) below. (Revised)

(c) Review.

(1) Public charge bonds.

Each public charge bond shall be reviewed every 5 years after posting to ascertain whether it is still required and whether it is subject to breach or cancellation. At the request of an interested party, the bond may be reviewed at any time. The review shall require presentation by the alien of evidence to establish whether the bond shall be cancelled, breached, or continued. Form I-393 shall be used to notify the alien regarding the presentation of required evidence. If deemed necessary, the alien may be requested to appear for an interview. If the alien's address is unknown, the obligor shall be contacted regarding the alien's whereabouts. Also, in the case of a surety bond, the person who requested the surety company to post the bond in the alien's behalf may be contacted for that purpose.

The bond shall ordinarily be cancelled after the initial 5 year period (or earlier, if warranted) if the review shows the alien has not become a public charge and has died, become naturalized as a United States citizen or departed permanently from the United States or if the Service is satisfied that the alien has not been and will not become a public charge. If it is found that the alien has become a public charge, the bond shall be breached in the necessary amount with any remainder continued in effect.

(2) Maintenance of status and departure bonds.

Each maintenance of status and departure bond shall be reviewed periodically to determine whether it is still required or should be cancelled or breached. The first review on bonds for B nonimmigrants shall be 9 months after posting. Bonds for other nonimmigrants shall be reviewed annually after posting. Except when the file contains evidence to sustain cancellation, breach or continuation of the bond, Form G-180, Request for Search of Central Office Index, clearly marked to show it relates to a bond case, shall be sent to the Central Office for copies of arrival, extension of stay, denial of extension of stay and departure records. At the same time, Form G-146 shall be sent simultaneously to the alien's local and foreign addresses shown in the file and to the person who posted the bond. The records received from the Central Office shall be made a part of the relating file as will any relating application for extension of stay not already contained therein. When a record of departure indicates the departure was timely and there is no reason to believe there has been a violation of status, prompt action shall be taken to cancel the bond. If there is no record of a timely extension of stay, other authorization to remain, or timely departure, prompt action will be initiated to breach the bond and the case shall be referred to investigations to locate the alien. When the review indicates the alien's authorized stay has not expired, the call-up date on the Form I-393 shall be changed to 3 months after the expiration date of the extension of stay or voluntary departure. If the review shows an application for permanent residence is pending, call-up shall be made 30 days after the date on which decision on the application is expected, but not exceeding 6 months after bond review.

(d) Notice to regional finance office.

When a public charge bond has been outstanding for 5 years or any other bond has been outstanding for 3 years or more, a memorandum shall be sent by the reviewing office to the finance section of the regional office which has jurisdiction over the office where the bond was originally received, if the bond is secured by cash or United States bonds or notes and the review indicates that neither cancellation nor breach is warranted. The memorandum shall state the date of the review and that it was determined that the bond should continue in effect.

(e) Bond posted for alien who fails to come to United States.

When an individual who has posted a bond in behalf of a nonimmigrant requests to have the bond cancelled on the ground that the alien will not be coming to the United States, he shall be advised to notify the alien to appear in person at the American consulate which issued the nonimmigrant visa for the purpose of having the visa cancelled. After cancellation, the consular office will so notify the Service office where the bond was originally

