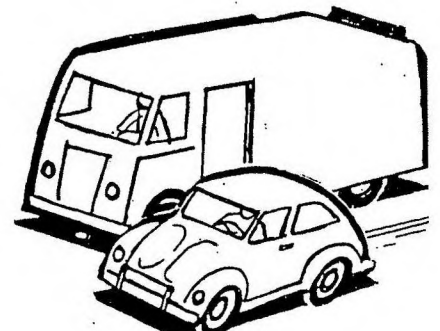
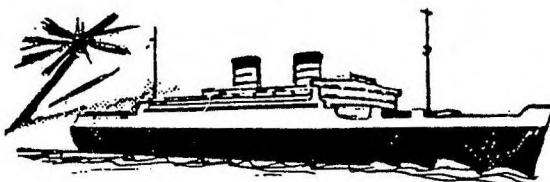


EXAMINATIONS HANDBOOK



U.S. Immigration & Naturalization Service



UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

EXAMINATIONS HANDBOOK
TRANSMITTAL MEMORANDUM No, 02

October 1, 1988

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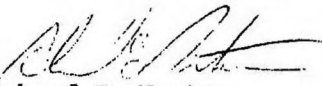
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FOR THE COMMISSIONER


Richard E. Norton
Associate Commissioner,
Examinations

Attachments

Immigration and Naturalization Service

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FOR THE COMMISSIONER

2/12/18 Associate Commissioner
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BONDS

REFERENCES

Statutory: 103(a); 213; 237(d); and 242, I & N A

Regulations: 8 CFR 103.6(a); 212.5(a); 213.1; 214.1; and 221.1

Operations Instructions: 103.6(a); 103.6(n); and 242.6(b)

General

A bond is a contract between the United States Government (the obligee) and an individual (the obligor). The obligor pledges a sum of money to guarantee that a set of conditions set by the Government concerning an alien or other responsible party will be met. There are five types of bonds that the Government may require:

1. Maintenance of Status and Departure Bond (MS&D)-In this type of bond, the Government agrees to admit an alien to the United States, extend the alien's stay, or grant a change of nonimmigrant status. The obligor agrees to guarantee that the alien will maintain his nonimmigrant status while here and will depart the United States in a timely manner.
2. Exclusion Bond-In this type of bond, the Government agrees to release an alien from custody pending a determination of admissibility by an Immigration Judge. The obligor agrees to produce the alien for any Service action upon request.
3. Public Charge Bond-In this type of bond, the Government agrees to admit the alien to the United States despite reservations about the alien's admissibility under section 212(a)(15). The obligor agrees that the expenses of the alien will not fall upon the U.S. Government. (This type of bond is normally requested to ensure that an applicant for permanent residence will not fall within the public charge provision.)
4. Delivery Bond-In this type of bond, the Government agrees to release an alien from custody, pending a hearing before an Immigration Judge. The obligor agrees to produce the alien for any Service action upon request.
5. Bond for Payment of Sums and Fines Imposed under Immigration and Nationality Act (Form I-310)- This type of bond is used as security for fines and penalties imposed under sections 231, 233, 237, 243, 254, 255, 256, 272, and/or 273 of the Immigration and Nationality Act. The bond allows the carrier or responsible party to obtain clearance of a vessel or aircraft for which fines or civil penalties remain unpaid or for cases in which the determination of liability is pending. Unlike other bonds, approval of a Form I-310 or acceptance of a case deposit to obtain clearance is presently a function of

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the district director of customs, not Immigration. The remainder of this chapter does not, therefore, apply to this type of bond. For a more detailed discussion of Form I-310, see the section on Administrative Fines.

POSTING A BOND

Public Charge or MS&D Bonds may be requested by either a United States Consular officer or a Service officer. Exclusion or Delivery Bonds, by their very nature, are requested only by a Service officer. Any type of bond may be posted by the obligor with the Service in one of three forms: (1) in the form of a surety bond, where a surety company authorized by the Service to post bond does so on the obligor's behalf; (2) in the form of a United States Treasury Bond, or Note; and (3) in the form of cash. This may also include a money order or bank check.

ACCEPTANCE OF A BOND

You may determine to require a bond in a particular situation; you may be required to accept a bond at the request of a Consular officer or at the request of a Service officer stationed at another location. A United States consular officer who feels that an applicant for a nonimmigrant visa may violate his/her status while in the United States may require the applicant to have an MS&D bond posted on his behalf by a friend or relative in the United States. In addition, an applicant for an immigrant visa who appears to fall within the public charge provision of the act may be required by the consular officer to have a public charge bond posted on his/her behalf before visa issuance. If either of these situations occurs, the consul will notify the visa applicant in writing, advising him or her of the amount of the bond required. The applicant will be advised to forward this notice to a person in the United States who will act as obligor. Under no circumstances should you accept a bond supposedly requested by a consular officer without presentation of this type of letter, as some obligors will attempt to post a bond for an applicant whom the consul has determined to be ineligible for visa issuance, and for whom the consul would not issue a visa even after the posting of a bond. Once a bond requested by a consular officer has been posted, notify the officer by sending Form I-349, or in emergent circumstances, by cable at the obligor's expense (see the Service Telegraphic Code Book for the proper format to be used). Upon admission under these circumstances, the alien's Form I-94 should be noted "Section 212(g) bond posted at (office)" and should not be noted with the alien's Service file number. In accepting a bond, take the following actions:

1. Check Service records to determine if a Service file exists. If no file is in existence, one should be created. The file jacket should be stamped "Bond posted at (office) on (date)."
2. Check Form I-351 to see if any conditions listed on the rider form are applicable. If so, Form I-352 should be filled out completely.

- 3 Fill out Form I-352, Immigration Bond. Be particularly careful of the following:
- a. Block C on the form requires the use of one of the four numbered paragraphs on the reverse of the form. For example, an MS&D Bond would show "(1)" as the number and "Bond for Maintenance of Status and Departure of Nonimmigrant Alien" as the caption. The sum of the bond should be written in words, "one thousand" as well as in figures, "\$1,000."
 - b. If riders are applicable, the pertinent letters and captions on Form I-351 are also inserted in Block C.
 - c. The obligor of the bond must sign block D of the form. It is required that the signature be made before two witnesses who must also sign Block D. The seal of the obligor is required in this block. The requirement of a seal can be met by having the obligor make a mark of his or her choosing or initials or write the letters "L.S." (standing for "in place of a seal"), over the word "seal" on the form.
 - d. If the bond is in the form of cash, or a U.S. Treasury Bond or Note, the appropriate section of Block E must be executed. It must be signed by any Service officer authorized to administer oaths under Section 287 of the Act.
 - e. If the bond is in the form of a surety bond, you should consult Treasury Department Circular 570 to assure the surety company is authorized to post bonds with this Service.
 - f. Form I-352 should be distributed as follows:
 - (1) The original should be placed in the "A" file relating to the alien for whom the bond is posted.
 - (2) The first carbon copy is sent to the obligor.
 - (3) The second carbon is sent only in the case of a surety bond; otherwise it is destroyed. It is sent to the individual who requested that the surety company post the bond.
 - (4) Form I-352A should be sent to the obligor if the bond is an MS&D Bond; otherwise it is destroyed.

- g. The location and date of the acceptance of the bond must be indicated in Block F. The acceptance should be indicated by the signature of the District Director. The accepting Service officer may, however, indicate this acceptance by signing the District Director's name and initialling this signature or by using the District Director's facsimile stamp and initialling the stamp.
4. Fill out Form I-305, receipt of Immigration Officer, in all cases where United States Bonds or Notes, or cash are accepted as security on immigration bond. Form I-305 is not issued for surety bonds. Be particularly careful of the following:
 - a. The receipt number in Block Z should indicate a Service office code and a numerical designation. One officer in each office should be designated to keep a log file of bond receipt numbers to avoid duplication.
 - b. Block 9 should be filled out in any situation where any type of cash is used to post the bond. The amount should be written in words and figures, as on Form I-352.
 - c. Block 11 should be completed by the Service officer who receives the funds.
5. Fill out Form I-301 for a treasury bond or note bond. This form is used to document the receipt by a Federal Reserve Bank or branch of such bank of United States bonds or notes deposited for safekeeping. The basic procedures relating to fees and money received by a Service office are also applicable to bond collateral. (See Am 2974.)
6. Forms necessitating transmittal to the regional office should be transmitted together, under a covering memorandum, to the Associate Commissioner, Robud, Attention: Finance.

CONTROL OF BONDS

Once a bond has been posted by an obligor, it is necessary to ensure that the applicant complies with the conditions of the bond during his/her stay in the United States. Control of an alien for whom a bond has been posted begins right at the time of posting. Form I-393 should be filled out; the original should be used as a call up card; and the duplicate should be sent to the Central Office, Document Handling Unit, in the case of an MS&D Bond. In any other type of bond, the duplicate I-393 should be destroyed. Explain the conditions of the bond and emphasize the importance of correct and timely information concerning the alien's whereabouts and intentions to the obligor at the time of posting. The obligor, in order to ensure the quick return of his collateral, will be willing to assist

you in controlling the bond. The following hints may save you numerous hours of work in this regard:

1. If the bond was requested by a consular officer, advise the obligor to bring you a copy of the alien's Form I-94, or a copy of the passport page establishing the alien's entry for permanent residence. This will assist you in controlling any MS&D Bond, as well as in consolidation of Service files that would be necessary in any public charge bond for a newly admitted permanent resident.
2. Obtain a work and home telephone number for the obligor. You will find that much of the information needed in controlling a bond can be obtained by telephone much more quickly than by written correspondence.
3. Advise the obligor to inform you immediately if either he or she or the alien moves to another address. See the procedures for transferring a bond if the alien moves to another Service jurisdiction.

Call up Procedures

Despite the degree of cooperation received from the obligor, it is necessary to call up and review bond files on a regular basis. Use Form I-393 as your call up card. MS&D Bonds should be called up during the month before the alien's time expires in the United States. Exclusion should be called up on the same schedule.

Public charge bonds should be called up yearly during the month of the anniversary date of posting. Contact the obligor at the time of call up. In the case of a public charge bond, verify both the obligor's and the alien's current address. Determine if the alien has received public funds. In the case of an exclusion bond, check the file to make sure that the obligor was notified in writing to present the alien. Verify whether the obligor has received that notice. In the case of an MS&D Bond, attempt to verify the intentions of the alien. If the obligor indicates the alien intends to depart, take the following actions:

1. Send Form G-146 to the alien at his United States address. Include the following notation: "When you leave the U.S., request the foreign Immigration officer to stamp your passport. Make a copy of all the pages of your passport. Take this form, your passport, and the copy to the U.S. Consulate of Embassy. Request the consular official to verify the date of entry into a foreign country from your passport, and sign and seal this form." Request that the alien send the form, along with the copy of the passport, to the obligor, or in the case where the alien is the obligor, to you. The obligor should be advised to contact you when he receives Form G-146 from the alien.

2. If the obligor indicates the alien intends to remain in the United States, set up an appointment with the alien before his authorized stay expires to allow him to submit whatever application is necessary. Such applications should be handled under the up front adjudications program, if possible.
3. If the obligor indicates he is unaware of the alien's intention, send the alien a call in to determine his plans.

Situations are going to arise when you are going to be unable to get in touch with either the obligor or the alien. Before taking action on the bond, you should do the following:

1. Check all Service record systems. Keep in mind that the information used to create the original "A" file at the time of posting was probably information posted by the obligor. The spelling of the name, or the exact date or year of birth, may have been incorrect. A second file may have been created. Check all nonimmigrant systems to which you have access.
2. Send Form G-180 to the Central Office, Document Handling Unit, requesting information on the alien. Mark Form G-180 "Bond Case" in red letters.
3. Send Form I-146 to the obligor, to the alien at his last United States address and to the alien at his foreign address. Call up the bond six months later to determine if an response has been received.

Transfer of Bond.

If, in the case of an MS&D or public charge bond, the alien moves out of your jurisdiction, or in the case of an exclusion bond, the hearing is transferred to a judge in another Service office, the bond, as well as the Service file, must be transferred to the District having jurisdiction over the alien. In order to transfer, attach Form I-393 to the front of the file jacket. Fill out Form I-350 as if it were being sent by the receiving FCO.

CANCELLATION OF BOND

Exclusion Bond.

Once the exclusion hearing has been completed, you must determine if the obligor and alien have complied with all the conditions of the bond. Keep in mind that the obligor is required to guarantee the presence of the alien only when the obligor has been notified.

MS&D Bonds.

Once you have received verification that the alien has complied with the conditions of the bond, you may proceed to cancel. Form I-146 or the

departure verification on Form I-94 may be used to verify the alien's timely departure. Remember also that the alien does not violate nonimmigrant status by filing an application for permanent residence while still in valid nonimmigrant status. Be familiar with all administrative decisions which discuss the concept of "substantial compliance."

Public Charge Bonds.

By statute (section 213), Public charge bonds are cancelled when the alien dies, departs permanently from the United States, or is naturalized, provided he/she did not become a public charge prior to his or her demise, departure, or naturalization. Public charge bonds may also be cancelled in the case of an alien in the United States if you determine that there is no likelihood that the alien will become a public charge. The obligor may request review of the public charge bond at any time. Form I-356 (Request for Cancellation of Public Charge Bond) shall be sent to the alien. The documentary evidence submitted by the alien must establish that there is no likelihood that the public charge provision could ever be applied. Note that the alien must submit letters from the local Department of Public Welfare in each country where he has lived in the United States indicating whether he has received public assistance. If the alien has received assistance, that fact is sufficient to warrant continuation of the bond. If no request from the obligor has been received earlier, you should attempt to determine if the bond could be cancelled on the I-393 review date of the fifth year that the bond is in force. Send Form I-356 to the alien. If you are satisfied on the basis of the information returned that the alien has not and will not become a public charge, you should recommend cancellation.

ACTION UPON CANCELLATION

Once you have determined that a bond is to be cancelled, take the following actions:

1. Fill out Form I-391 (Notice-Immigration Bond Cancelled). One of four blocks must be checked, depending on the type of bond posted (Security, Cash, or Bonds or Notes) and whether or not the bonds or notes have already been converted to cash.
2. The original of Form I-391 must be signed with the signature of the District Director. The officer recommending cancellation may sign the District Director's signature or may use the facsimile stamp. In either of these cases, however, the recommending officer must clearly initial the signature and must include his or her admission stamp number. Two carbon copies must also be made of Form I-391, one to be put in the file and a second to be sent to the Finance Section of the Regional Office having control over the bond.
3. Advise the obligor that if the bond is in the form of cash, or was posted as a bond or note, but has been redeemed to cash, it is necessary to surrender the original of the receipt (Form

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I-305) before the funds can be returned. The obligor should be advised that if the bond is in the form of United States Treasury Bonds, or Notes, he must indicate on Form I-391 whether he wishes to receive his securities at a Service office or by express. In either case, the obligor should surrender the original of his receipt (Form I-305) at the time of notification. Once the bond has been cancelled and a notice of such on Form I-391 has been sent to the obligor and the Finance Section of the Regional Office, a six month call-up should be made on the bond. If the obligor has not yet surrendered his receipt, he should be sent a letter reminding him to do so. A copy of that letter should be sent to the Regional Office Finance Section. Be sure to include the bond receipt number on that letter.

BREACH OF BOND

Exclusion Bonds.

An exclusion bond should be declared breached if the obligor has been notified to present the alien to the Service and does not do so.

MS&D Bonds.

An MS&D Bond should be declared breached upon establishment in the record that the alien did not comply substantially with the conditions of the bond, for example: overstayed, worked without authorization, or attended school without authorization.

Public Charge Bonds.

Public charge bonds are not considered breached in the same sense as exclusion or MS&D bonds. If the alien has received public funds, and the agency from which he has obtained the funds requests repayment, the obligor is required to pay the actual expenses to the Immigration and Naturalization Service within thirty days. In either case, if no payment is made, the obligor is then required to pay the total amount due plus two hundred dollars to the Service. If payment is not made, the amount is then exacted from the bond itself. See the reverse of the face copy of Form I-352 for instructions on the acceptance of funds under such conditions.

NOTIFICATION.

When a determination is made that a substantial violation of the terms of an MS&D or exclusion bond has occurred, the bond should be declared breached as of the date of the violation. A notice of breach should be prepared on Form I-323, with appeal if possible to the Regional Commissioner.

If necessary, an attachment sheet should be used. Each breach notice should contain the following elements:

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1. An explanation of the conditions of the bond to which the obligor has agreed. (You may wish to paraphrase material from the reverse of the face copy of Form I-352);
2. A discussion of the alien's immigration history;
3. A discussion of the evidence upon which you are basing your decision to breach;
4. The citing of pertinent precedent or interim decisions; and
5. A concluding paragraph notifying the obligor of your decision to breach.

Form I-323 should be signed by the District Director. Form I-323 should be distributed in the following manner:

1. The original should be sent, return receipt requested, to the obligor;
2. One copy should be sent to the attorney for the obligor, if applicable;
3. One copy should be sent to the Finance Section of the Regional Office having control over the bond;
4. Two copies should be placed in the file of the alien; and
5. One copy should be placed in the public reading room, if applicable.

Upon mailing of a breach notice, Form I-393 should be used to call-up the bond at the end of thirty days. If an appeal is filed, it should be handled as discussed in the section on appeals and motions. Keep in mind that the obligor, or his attorney of record, is the only party who can appeal a bond breach. In the case of a surety bond, only the surety company may file an appeal. Any representation directly from the alien or from the individual who requested that a surety bond be posted by the surety company should be rejected.

If no appeal is filed to the breach notice, or if one is filed and the appeal is dismissed by the Regional Commissioner, you must notify the Finance Section, Regional Office, by forwarding one of the two file copies of Form I-323. The form should be clearly stamped "No Appeal Filed, Breach Should be Considered Final, (date)" or "Appeal Filed, Dismissed on (date)" before forwarding. The initials of the forwarding officer along with admission stamp number should also appear. If upon appeal, the Regional Commissioner overturns the District Director, a copy of that decision and the file copy of Form I-323 stamped "Appeal Filed, Overturned on (date)" should be sent to the appropriate Regional Office Finance Section. The bond should then be handled in accordance with the ruling of the Regional Commissioner.

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Designation of Attorney in Fact.

Occasionally, the obligor of a bond may request that another individual be authorized to accept the payment of funds from the Service. To do so, the obligor should be requested to fill out Form I-312 in triplicate. The original should be kept by the obligor, one copy should be contained in the alien's file, and the second copy should be forwarded to the Finance Section in the Regional Office controlling the bond. Upon submission, you must check to be sure the form is properly filled out. Check the following:

1. The name and address of the obligor is placed on the first two lines of Form I-305.
2. The name and the address of the person to whom the obligor wishes the Services to send payment goes on line 3, 4, and 5.
3. The obligor's name goes on line 7 and 8. Again, unless the form is being used for assignment from a second to a third party, in which case the name of the original obligor goes on these lines.
4. The name of the alien is placed on line 9 (in behalf of...).
5. The description of the bond on line 10, 11, and 12 should be listed as "cash, in the amount of _____," or "U.S. Treasury Bonds or Notes, (serial numbers)."
6. The obligor should sign the box in the middle of the form above the line "Signature of Designator," if appropriate.
7. The form must be signed by the obligor on the line marked "Signature of Designator" and by the person to whom the obligor wished the Service to send payment on the line marked "Signature of Designatee." Both signatures must be witnessed by the same person.
8. The form must be taken by the obligor to a notary public in order to be notarized.
9. If all material is correct, the District Director acknowledges acceptance of the designation by signing and dating the form in the lower left hand corner.

Once a Form I-312 has been executed, all notices should be sent by the Service to the attorney in fact rather than the obligor. If approved by the Regional Office, the Service may accept a designation of attorney in fact in the form of a letter, instead of on Form I-312.

Affidavit in lieu of lost receipt.

Occasionally, the obligor of a bond may have lost or misplaced the receipt Form I-305 for a bond posted. In such cases, the obligor may complete

Form I-395, and the Service will consent to returning his security if the bond is cancelled. The form should be executed in triplicate; one copy going to the obligor; one to the alien's file; and one to the Finance Section, Regional Office.

PRECEDENT DECISIONS:

Matter of Nguyen, 15 I&N Dec. 176 An MS&D Bond will be cancelled if the alien files an application for permanent residence while still in lawful nonimmigrant status. However, when an application is filed 27 days after expiration of nonimmigrant stay, that 27 days presence in the U.S. without authorization is considered to be a substantial violation, and the bond should be breached.

Matter of De Los Santos, 11 I&N Dec. 121 A public charge bond may be cancelled if it is determined that the alien has permanently departed from the United States and the terms of the bond were complied with during the period of permanent residence.

Matter of Continental Casualty Company, 12 I&N Dec. 795 The introduction of a private bill and request for report is tantamount to the filing of an application for permanent residence for the purpose of bond proceedings.

Matter of Wong, 13 I&N Dec. 383 An MS&D Bond posted in behalf of a nonimmigrant visitor is breached when the applicant accepts unauthorized employment and thereby violated his status.

Matter of Stuyvestant Insurance Company, 13 I&N Dec. 555 An MS&D Bond posted on behalf of a nonimmigrant visitor was properly breached when the alien violated the conditions of his nonimmigrant status by accepting employment during the period of his authorized admission even though he was subsequently granted adjustment of status under section 245.

Matter of Insurance Company of North America, 17 I&N Dec. 251 Failure to obtain an extension of stay is a violation of the terms of an MS&D Bond. The obligor or his attorney in fact is the proper party to appeal a Service notice of breach.

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