



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 18574234

Date: APR. 19, 2022

Appeal of U.S. Immigration and Customs Enforcement Decision

ICE Form I-352, Immigration Bond

The Obligor seeks to reinstate a delivery bond. *See* Immigration and Nationality Act section 103(a)(3), 8 U.S.C. § 1103(a)(3). An obligor posts an immigration bond as security for a bonded foreign national's compliance with bond conditions, and U.S. Immigration and Customs Enforcement (ICE) may issue a bond breach notice upon substantial violation of these conditions.

The Detroit, Michigan ICE Field Office declared the bond breached, concluding that the obligors failed to deliver the bonded foreign national in accordance with the terms of the Form I-352, Immigration Bond (the Immigration Bond), requiring delivery of the bonded foreign national upon notice.

In these proceedings, it is the Obligor's burden to establish substantial performance of a bond's conditions. *Matter of Allied Fid. Ins. Co.*, 19 I&N Dec. 124, 129 (BIA 1984). Upon *de novo* review, we will remand the matter for further review and entry of a new decision.

I. LAW

A delivery bond creates a contract between the U.S. Government and an obligor. *United States v. Minn. Tr. Co.*, 59 F.3d 87, 90 (8th Cir. 1995); *Matter of Allied Fid. Ins. Co.*, 19 I&N Dec. at 125. An obligor secures its promise to deliver a foreign national by paying a designated amount in cash or its equivalent. 8 C.F.R. § 103.6(d). A breach occurs upon substantial violation of a bond's conditions. 8 C.F.R. § 103.6(e). As stated in the Immigration Bond "[i]f, however, the obligor fails to surrender the alien in response to a timely demand while the bond remains in effect, the full amount of the bond . . . becomes due and payable." Conversely, substantial performance of a bond's conditions releases an obligor from liability. 8 C.F.R. § 103.6(c)(3).

Several factors inform whether a bond violation is substantial including: the extent of the violation; whether it was intentional or accidental; whether it was in good faith; and whether the obligor took steps to comply with the terms of the bond. *Matter of Kubacki*, 18 I&N Dec. 43, 44 (Reg'l Comm'r 1981) (citing *Int'l Fidelity Ins. Co. v. Crosland*, 490 F. Supp. 446 (S.D.N.Y. 1980)); *see also Aguilar v. United States*, 124 Fed. Cl. 9, 16 (2015).

II. ANALYSIS

The Detroit, Michigan ICE Field Office declared the bond breached, concluding that the obligors did not deliver the bonded foreign national to ICE upon receipt of notice. The Co-Obligor files this appeal asserting that “[t]he issue on appeal is whether the Co-Obligor was properly served with notice of when and where to deliver the [F]oreign National.” The Co-Obligor further asserts that, if it was not properly served notice of when and where to deliver the bonded foreign national, “the government’s failure caused the initial violation of the terms of the bond, and therefore negates any ‘substantial violation’ contemplated by 8 C.F.R. § 103.6(e).”

Conditions of the delivery bond to which the Co-Obligor is a party include that it “shall cause the [bonded foreign national] to be produced...to an immigration officer or an immigration judge of the United States, as specified in the appearance notice, upon each and every written request until exclusion/deportation/removal proceedings in his/her case are finally terminated” or the bonded foreign national “is accepted by the [Department of Homeland Security] for detention or deportation/removal.”

On appeal, the Co-Obligor asserts that an acceptable manner of service of ICE’s written request for delivery of the bonded foreign national includes “[m]ailing a copy [of the request] by certified or registered mail, return receipt requested, addressed to [the Co-Obligor] at his last known address.”

The record establishes that the Detroit, Michigan ICE Field Office mailed a copy of ICE Form I-340, Notice to Obligor to Deliver Alien, to the Co-Obligor at the address it provided on the delivery bond, via U.S. Postal Service certified mail. The record also establishes that the Co-Obligor received the ICE Form I-340 on January 29, 2021. The record further establishes that the ICE Form I-340 specified the date, place, time, and purpose for the Obligor to deliver the bonded foreign national. Therefore, we conclude that the Co-Obligor was properly served notice of when and where to deliver the bonded foreign national.

We will not, however, dismiss the appeal at this time because ICE may need to consider additional evidence before a final decision declaring the bond breached is made. We see indicia that the bonded foreign national is enrolled in an [REDACTED], and that she has been reporting regularly to the Detroit ICE Field Office. She is in removal proceedings and has a hearing in Detroit, Michigan scheduled for [REDACTED] 2022.

We therefore question whether a substantial violation of the bond’s terms in fact occurred. *See* 8 C.F.R. § 103.6(e). At any rate, given that it is unclear from ICE’s decision whether it considered this information, we are remanding the matter so that it may be considered, and a new decision issued.

ORDER: The decision of the ICE office is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.