



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

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

In Re: 22954314

Date: DEC. 15, 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 ICE Enforcement and Removal Operations (ERO) Field Office located in Westerville, Ohio declared the bond breached, concluding that the Obligor failed to deliver the bonded Foreign National and breached the terms of the Form I-352, Immigration Bond she signed.

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 sustain the appeal.

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). 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: 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).

On appeal, the Obligor asserts that delivery of the bonded Foreign National was impossible because he voluntarily departed the United States prior to the date of delivery and that he had no means (e.g. a visa) to reenter the United States. She asserts that she informed ICE's ERO personnel in person on the date of delivery. Government records corroborate that the Obligor went to the ICE ERO field office at Westerville, Ohio on the delivery date. [REDACTED] 2021. Our records also confirm that she informed ERO that the bonded Foreign National had already left the United States.

The issue is whether the bonded Foreign National departed the United States and, if so, whether that departure substantially performed or violated the bond's conditions. We conclude that a preponderance of the evidence establishes that the bonded Foreign National departed the United States before the date ICE requested his delivery for removal.¹

Next, we examine the express language of this Immigration Bond to determine if his departure means the Obligor substantially performed the bond's conditions. The language of the Immigration Bond includes the following:

Cancellation of a bond issued as a delivery bond shall occur upon any of the following, provided they occur prior to the date of a breach: DHS' taking the alien back into its custody; deportation/exclusion/removal of the bonded alien; grant of permanent residence to the bonded alien; notice of the detention of the bonded alien for 30 or more days pursuant, or prior, to a conviction by local, state, or federal authorities; termination of deportation/removal proceedings (but not administrative closure or stay of such proceedings); death of the bonded alien; voluntary departure by the bonded alien as evidenced by valid proof thereof; or other circumstances as provided by statute or regulation. Cancellation for these reasons is automatic, and any subsequent appearance demand, or attempt to breach the bond, is null and void.

Because the voluntary departure of the bonded Foreign National is one of the actions that cancels the bond, we determine that the Obligor substantially performed the bond's conditions, and the bond should be reinstated and cancelled. *See also* 8 C.F.R. § 103.6(c)(3) (stating that substantial performance of all bond conditions releases the obligor from liability.)

We further note that the Obligor's personal appearance on the date of delivery to inform the ICE ERO's office that he had left the United States shows her good faith effort to satisfy her obligations under the terms of the Immigration Bond. *See Matter of Kubacki*, 18 I&N Dec. 43, 44 (Reg'l Comm'r 1981).

ORDER: The appeal is sustained.

¹ The record includes the following documents demonstrating that the bonded Foreign National is in Mexico: a notarized statement confirming that he resides in Mexico dated November 10, 2020; a marriage certificate showing he got married in Mexico on [REDACTED] 2021; his personal statement dated December 20, 2021 explaining that he has been residing in Mexico for a year; paystubs for his employment in Mexico for September and October 2021; his request for a bank account in Mexico dated February 16, 2021 showing his Mexican address; and an appointment notice for him to appear at a Mexican Citizen Care office located in [REDACTED] Mexico on January 27, 2021 to replace his birth certificate.