



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

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

In Re: 20685008

Date: MAR. 16, 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 noncitizen'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 Los Angeles, California ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the bonded Noncitizen upon written request.

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 dismiss the appeal.

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 noncitizen 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).

II. ANALYSIS

The Obligor does not contest their failure to deliver the Noncitizen on the requested date. Instead, they state that they did not violate the terms of the bond because they did not receive notice of when and where to deliver the Noncitizen.

The first issue on appeal is whether ICE properly served the notice. The regulation at 8 C.F.R. § 103.8(c) states that ICE must personally serve an obligor with notice demanding delivery of a noncitizen. The regulation at 8 C.F.R. § 103.8(a)(2) states that personal service may consist of, among other methods, mailing a copy of the notice via certified or registered mail, return receipt requested, to the obligor's last known address.

On appeal, the Obligor submits letters from himself and the Bonded Noncitizen stating that the Obligor did not receive notice to deliver the Noncitizen. The record indicates that on July 21, 2021, ICE mailed an ICE Form I-340, Notice to Deliver Alien, to the Obligor's last known address via certified mail, return receipt requested. The United States Postal Service certified mail record indicates that the notice was delivered on July 24, 2021. It is further noted that the Obligor later received the bond breach notice at this same address. The Obligor and Noncitizen's letters claiming that the Obligor didn't receive the Form I-340 do not suffice to overcome the documentary evidence in the record which demonstrates that ICE properly served the notice to deliver and that the notice arrived at the correct address.

The second issue on appeal is whether the Obligor substantially violated the terms of the bond. When determining whether such a violation is substantial, we consider the following:

- The extent of the violation;
- Whether the violation was accidental or intentional;
- Whether the violation was made in good faith; and
- Whether the obligor took steps to comply with the terms of the bond.

Kubacki, 18 I&N at 44. In this instance, the Obligor violated the central term of the bond by failing to deliver the Noncitizen upon written request. The Obligor claims that the violation was unintentional and that the Obligor wishes to comply with the terms of the bond.¹ However, the record indicates that six months after the requested delivery date, the Obligor still has not delivered the Noncitizen, and there is no indication in the record that he has made any attempt to do so.

Due to the extent of the violation and the Obligor's failure to take steps to comply with the terms of the delivery bond, we find that the bond has been breached.

ORDER: The appeal is dismissed.

¹ The Obligor further points out that the Noncitizen is preparing for their next removal hearing in immigration court. However, bond proceedings are separate from immigration removal proceedings. The Noncitizen's participation in their removal proceedings does not mean that the Obligor is complying with the terms of the delivery bond.