



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

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

In Re: 22586253

Date: SEP. 22, 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 Baltimore, Maryland ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the noncitizen upon written 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 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

A. Identity of the Obligor

On appeal, the Appellant¹ states that she is not responsible for any violation of the bond's terms because she did not sign the ICE Form I-352, Immigration Bond; she does not know the bonded noncitizen; and she has been the victim of identity theft. To support this claim, she provides an affidavit and a scan of her driver's license to demonstrate that this was not the identification used by the Obligor.

The record includes scans of the identification documents used by the Obligor when signing the Form I-352, including a Maryland driver's license and a U.S. passport. The driver's license in the bond record expired on October 10, 2017. The driver's license provided on appeal was issued on September 21, 2017. The Form I-352 was signed on August 3, 2017, before the Appellant's driver's license was issued and while the license in the bond record was still valid. Therefore, while the license in the bond record and the license provided on appeal are not the same, the evidence indicates that this is due to their respective expiration and issue dates.

The license numbers on the two driver's licenses are the same. The biographical information on the two licenses and the passport is the same. The signatures on all three documents also appear similar and match the signature on the Form I-352. This signature is also similar to the one on the Form I-290B, Notice of Appeal or Motion, and the accompanying affidavit. Notably, the signature on the Form I-352 was witnessed in person by two ICE officers, who also signed the form.² Additionally, the mailing address and telephone number provided for the Obligor on the Form I-352 and on the bond worksheet are the same as the address and telephone number provided for the Appellant in her Form I-290B.

The cashier's check used to secure the bond states that the remitter's name was not that of the Appellant. This indicates that the Appellant did not pay for this cashier's check, which she acknowledges in her affidavit. However, the record indicates that the Appellant is the person who signed the Form I-352, and that she is therefore the responsible Obligor, based on the other probative facts detailed above, including that the signatures and biographical information in the bond record match those provided by the Appellant; the bond signatory used two forms of identification whose information also matches that provided on appeal; and the signature on the Form I-352 was witnessed in person by two ICE officers. We will therefore refer to the Appellant as the Obligor for the remainder of this analysis.

¹ In this instance, the Appellant claims that she is not the Obligor. As set forth later in this section, the record indicates that they are the same individual.

² "[A]n obligor who deposits United States bonds, notes, or cash must deposit the requisite security and execute the appropriate Power of Attorney...This deposit and execution may be made before two officers or employees of the Department of Homeland Security ("DHS") who have been authorized to administer oaths...and who shall sign as witnesses." U.S. Immigr. And Customs Enforcement, Form I-352 Instructions at 1, <https://ice.gov/doclib/forms/i352.pdf> (last visited Sept. 7, 2022).

B. Violation of Bond Terms

The record indicates that on April 5, 2021, ICE sent a Form I-340, Notice to Obligor to Deliver Alien, to the Obligor's address of record via certified mail, requesting that she deliver the bonded noncitizen to the Baltimore, Maryland ICE Field Office on [REDACTED] 2021.

The certified mail record indicates that the notice was received by the Obligor on April 16, 2021. In her affidavit, the Obligor states that she received this notice, and that on or around April 20, 2021, she attempted to contact the Department of Homeland Security (DHS) using two phone numbers. One of these numbers is not associated with DHS, and the other is the direct contact line for DHS headquarters. According to the affidavit, the Obligor left a message with both numbers, but her phone calls were not returned.

Three weeks later, on [REDACTED] 2021, the noncitizen did not report to the ICE Field Office as requested. On [REDACTED] 2021, ICE declared the bond breached. According to the affidavit, the Obligor received the breach notice on May 27, 2021, and then contacted her attorney³ regarding this matter.

When determining whether a violation of a bond's terms is sufficiently substantial to constitute a breach, we consider 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. at 44.

Because the noncitizen was not delivered to the ICE Field Office upon written notice, the principal term of the delivery bond has been violated. The record indicates that the noncitizen still has not been delivered to the ICE Field office over a year after the requested delivery date, making the extent of the violation substantial.

The Obligor asserts in her affidavit that she is not acquainted with the bonded noncitizen and did not sign the bond contract. However, as explained above, the evidence of record indicates that the Obligor did sign the bond contract. Because the affidavit's claims regarding the bond contract are not supported by the record, its evidentiary value is diminished,⁴ and the record contains no other documentation to support the claim that the Obligor does not know the bonded noncitizen.⁵ The record does not establish that the bond violation was accidental or made in good faith.

In the three weeks between receiving the notice to deliver the bonded noncitizen and the scheduled delivery date, the only step that the Obligor took to comply with the terms of the bond was to leave two phone messages, one with an unrelated phone number and one with DHS headquarters. Despite the fact these messages received no response, and the Form I-340 the Obligor received stated which

³ A Form G-28, Notice of Entry of Appearance, signed by an attorney, accompanied this appeal. We found the form improperly executed under 8 C.F.R. § 292.4(a) and notified the attorney of the deficiency. As there was no response, we consider the Obligor to be self-represented in the instant proceedings.

⁴ In evaluating evidence, we consider not only the quantity of the documentation provided but also the quality (including relevance, probative value, and credibility). See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

⁵ It is noted that the Obligor states in her affidavit that she made a complaint to her state attorney general's identity theft unit regarding this issue, but she provided no documentation of this complaint.

ICE Field Office she needed to deliver the noncitizen to, there is no indication that she attempted to contact that field office.⁶ Although the Obligor contacted an attorney and filed the instant appeal upon receiving the breach notice, the record does not establish that she attempted to comply with the bond's terms. Thus, the violation of those terms was substantial.⁷

III. CONCLUSION

The totality of the evidence indicates that the Obligor is the person who signed the Form I-352 and is bound by its terms. It also indicates that the violation of the bond's terms was extensive and that only minimal attempts were made to comply with them. The record does not establish that the violation was accidental or made in good faith. Therefore, pursuant to the *Kubacki* factors, the Obligor has substantially violated the terms of the bond, and the bond is breached.

ORDER: The appeal is dismissed.

⁶ The ICE website lists telephone numbers for its field offices, including the one in Baltimore, Maryland. ICE Field Offices, U.S. Immigr. and Customs Enforcement, <https://ice.gov/contact/field-offices> (last visited Sept. 7, 2022). While the affidavit states that after the breach notice the Obligor's attorney has been unsuccessful in contacting "the immigration office," and the attorney letter states that "the local immigration office" has been unresponsive, they do not specify who was contacted, when, or in what manner.

⁷ See *Matter of Allied Fid. Ins. Co.*, 19 I&N Dec. 124, 128 (Finding that an obligor who "only appears to have become involved upon receiving the notice that the immigration bond was breached" substantially violated the terms of that bond.); see also *Aguilar v. United States*, 124 Fed. Cl. at 18 (Finding that even if an obligor acted in good faith when he delivered the noncitizen to the wrong federal office, his "lack of action after...he...received notice of the breach[] would be sufficient to support ICE's conclusion that he substantially violated the bond.").