U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22573842

Date: SEP. 23, 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 Honolulu, Hawaii ICE Field Office declared the bond breached, concluding that the Obligor did not deliver the bonded noncitizen upon written request. The matter is now before us on appeal.

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 bonded 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

On [redacted] 2018, the Obligor signed ICE Form I-352, Immigration Bond, agreeing to deliver the bonded noncitizen to ICE upon each and every written request. On May 5, 2021, ICE sent a Form I-

340, Notice to Obligor to Deliver Alien, to the Obligor's address of record via certified mail, return receipt requested. The Form I-340 directed the Obligor to deliver the bonded noncitizen to the Honolulu, Hawaii ICE Field Office for an interview on [redacted], 2021. On [redacted], 2021, ICE found that the noncitizen had not appeared for the interview and declared the bond breached.

The record indicates, and the Obligor does not dispute, that the Obligor received notice to deliver the bonded noncitizen and that the noncitizen did not appear at her interview, which was a violation of bond's terms. Therefore, the sole issue on appeal is whether this violation was substantial. In order to determine whether a bond violation is substantial, we examine its extent, whether it was made accidentally or in good faith, and whether the Obligor attempted to come into compliance with the bond's terms.

By failing to deliver the noncitizen upon written request, the Obligor violated the central term of the bond. The record further indicates that a year after the requested delivery date, the Obligor still has not delivered the noncitizen. We therefore find that the violation of the bond's terms was extensive.

Regarding whether the violation was accidental or made in good faith, the attorney[1] letter provided on appeal states that prior to the requested delivery date, she contacted the ICE Field Office in writing to request that the interview be rescheduled because the noncitizen had given birth in [redacted] and could not travel due to health concerns. To support this claim, the Obligor provides the cover sheet of a fax dated May 25, 2021, that is directed to two ICE deportation officers. The sheet includes another attorney letter stating that the noncitizen had recently given birth[2] and would not be able to attend her interview due to health concerns, and further stating that the interview should be rescheduled due to the noncitizen's ongoing asylum proceedings.[3]

As noted above, 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. at 129. Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

In this instance, while the attorney letter and the attorney statement on the fax cover sheet both reference a doctor's letter, this letter is not provided on appeal. Statements from counsel, standing alone, do not suffice to establish the nature or extent of the noncitizen's health concerns or why they would have prevented her from travelling to the ICE Field Office. *Id.*

The attorney letter further states that the delivery date was scheduled on the same date as the noncitizen's immigration hearing, and that since the immigration court granted the noncitizen a continuance based on her health issues, ICE should have done so as well. However, bond proceedings

[1] A Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, was filed with the instant appeal. We found the form was improperly executed under 8 C.F.R. § 292.4(a) and notified the attorney of the deficiency. As there was no response, we do not recognize her appearance in this matter and consider the Obligor to be self-represented in the instant proceedings.

[2] We note that the attorney letter states that the noncitizen gave birth on [redacted], 2021, after the date on the fax.

[3] It is noted that while the fax cover sheet states that the fax is 12 pages long, only that cover sheet was submitted to the record. There is also no confirmation page indicating that the fax was sent.

are separate from immigration removal proceedings. The Form I-352 that the Obligor signed states in its terms and conditions that the obligation to deliver the noncitizen upon written request continues to be in force even if the noncitizen's removal proceedings are administratively closed or stayed. The attorney's assertion that the interview should have been rescheduled based on the continuance of the removal proceedings does not constitute evidence that the Obligor violated those terms accidentally or in good faith.

Finally, regarding the Obligor's attempts to comply with the bond's terms, we first note that a year after the requested delivery date, the noncitizen still has not been delivered to the ICE Field Office. Secondly, while the record includes the cover sheet of a fax addressed to ICE, it does not include a confirmation page indicating that the fax was sent. Furthermore, the attorney statement on the fax cover sheet states that she was acting as counsel for the noncitizen at the time, not for the Obligor. The record does not include sufficient information about what efforts the Obligor made, if any, to comply with the bond's terms.

Pursuant to the *Kubacki* factors, we find that the record does not establish that the bond violation was made accidentally or in good faith, since the claims regarding those issues consist entirely of the unsupported assertions of counsel. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2. Furthermore, even if those assertions were supported, the violation of the bond's terms was extensive and there is no indication that the Obligor has attempted to come into compliance with those terms. Therefore, we find that the Obligor substantially violated the terms of the bond, and the bond has been breached.

ORDER: The appeal is dismissed.